



Discipline

Human Resources Policy

Effective Date: May 2009

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1 PURPOSE

To outline the policy and process for the management of discipline in Queensland Health.

2 APPLICATION

This policy applies to all Queensland Health employees. The provisions of the *Public Service Act 2008* relating to discipline have been extended to health services employees by *Public Service Regulation 2008*.

3 GUIDELINES

Guidelines may be developed to facilitate implementation of this policy. The guidelines must be consistent with this policy.

4 DELEGATION

The 'delegate' is as listed in the Queensland Health Human Resource Delegations Manual as amended from time to time.

5 REFERENCES

- *Public Service Act 2008*
- *Public Service Regulation 2008*
- *Crime and Misconduct Act 2001*
- Queensland Health Code of Conduct
- Financial Management Standard 1997
- Directive 18/97 – Performance Management
- Directive 06/08 – Appeals
- Assault in the Workplace HR Policy E3
- Requirements for Reporting Official Misconduct HR Policy E9
- Performance Improvement HR Policy G11

6 SUPERSEDES

- IRM 5.5 Prescribed Remuneration
- IRM 9.2 Disciplinary Offences
- IRM 9.3 Suspension of Officers or Employees
- IRM 9.8 Discipline – A Strategy for Managing Discipline

7 POLICY

7.1 Key principles

The following key principles apply to the disciplinary process in Queensland Health:

- The decision to commence the disciplinary process will be made with regard to the grounds for discipline (refer 7.3).
- The principles of natural justice are to be applied throughout the disciplinary process (refer 7.2).

- The standard of proof to be applied in making a finding in relation to a disciplinary matter is on the balance of probabilities.
- All decisions are made in a timely manner when practicable.
- An employee is advised that they can access the employee assistance service (EAS) if desired.
- The matters surrounding the disciplinary process are confidential. Employees are entitled to discuss the matter with a support person, union representative or legal representative.
- All stages of the disciplinary process are to be documented and stored confidentially in a secure location and are not to be kept on the employee's personnel file.
- There is a distinction between criminal process and disciplinary process. Therefore an employee charged with a criminal offence, whether subsequently convicted or not, may still be subject to disciplinary action.

7.2 Natural justice

The principles of natural justice are to be applied when undertaking the disciplinary process. Any decisions made during the discipline process are to be:

- in accordance with relevant legislation and/or applicable policy
- supported by objective evidence which has taken into account all relevant materials
- in accordance with the principles of natural justice.

Natural justice is an administrative law principle that provides for fairness in decision-making. It is concerned with ensuring that an objective decision maker reaches a procedurally fair decision. Natural justice has two rules:

- Rule against bias: decision-makers are to be objective, free of bias, and have no personal interest in the matter being decided.
- Hearing rule: an individual is to be informed of the substance of an allegation/s against them and have the opportunity to present their case prior to a decision being made.

7.3 Grounds for discipline

The disciplinary process may be applied to an employee in situations when:

- the employee, despite management action, fails to adequately address unsatisfactory work performance, workplace conduct or workplace behaviour
- allegations of misconduct or unacceptable, disgraceful or improper conduct or workplace behaviour, including the behaviour prescribed in section 187 of the *Public Service Act 2008* (refer below), are made and reasonable evidence exists to support the allegations.

Under section 187 of the *Public Service Act 2008*, the department may discipline an employee if the Director-General or delegate is reasonably satisfied that the employee has:

- performed their duties carelessly, incompetently or inefficiently

- been guilty of misconduct
- been absent from duty without approved leave and without reasonable excuse
- contravened, without reasonable excuse, a direction given to them as an employee by a person with authority to give the direction
- used, without reasonable excuse, a substance to an extent that the substance has adversely affected the competent performance of the employee's duties or
- contravened, without reasonable excuse, a provision of the *Public Service Act 2008* or the Queensland Health Code of Conduct. This includes the contravention of a departmental policy or procedure.

7.4 Disciplinary outcomes

The Director-General or delegate may, after consideration of all the relevant information, take action they consider reasonable in the circumstances. For example, they may do any one or more of the following provided for by section 188 of the *Public Service Act 2008*:

- Terminate the employee's employment.
- Reduce the employee's classification level and change the employee's duties accordingly.
- Transfer or redeploy the employee to other employment in the public service/sector.
- Forfeit or defer a remuneration increment or increase of the employee.
- Reduce the level of remuneration of the employee.
- Impose a penalty on the employee of not more than the total of two of the employee's periodic remuneration payments.
- Direct that a penalty imposed on the employee be deducted from the employee's periodic remuneration payments.
- Reprimand the employee.

The Director-General or delegate may elect to take other reasonable management action. Other management action is to comply with the *Public Service Act 2008* and any directive issued by the Public Service Commission (PSC).

7.5 Suspension from duty

Suspension from duty is not a disciplinary penalty, but an administrative action designed to temporarily remove the employee from the workplace. An employee may be suspended:

- under section 189 (1) of the *Public Service Act 2008* when the agency reasonably believes that the employee is liable to discipline under a disciplinary law or
- under section 137 of the *Public Service Act 2008* when the agency reasonably believes the proper and efficient management of the department might be prejudiced if the officer is not suspended.

Prior to the suspension of an employee, the Human Resources Branch, Corporate Office is to be consulted and the suspension agreed to. Notification of suspension is to be reported immediately to suspensions@health.qld.gov.au.

The Director-General (or delegate) may decide to suspend an employee from duty pending the outcome of any investigation or the resolution of any disciplinary process.

Prior to suspending an employee, all alternatives including alternative duties or increased supervision is to be considered. Alternatively an employee may choose to apply for leave which may be approved in certain circumstances.

When the Director-General or delegate determines that an employee is to be suspended, the notice of suspension is to be provided to the employee in writing and include the period of suspension and the date it takes effect.

An employee is entitled to prescribed remuneration (see definitions) for the period of the suspension unless decided otherwise by the Director-General (or delegate). When suspending on full pay, it is not necessary to give the employee an opportunity to respond to this decision.

When the Director-General (or delegate) determines that suspension without full remuneration may be appropriate, the Director-General (or delegate) is to:

- advise the employee in writing of the proposed decision and invite the employee to show cause why they are not to be suspended without pay. Usually a period of 48 hours is afforded to the employee to respond. The employee may be given alternative duties or be suspended on full pay during this show cause period
- consider the employee's response and make a final decision
- advise the employee in writing of the final decision.

If the Director-General determines to cease the period of suspension without pay and the employee resumes duty, then unless the Director-General decides otherwise, the employee may be entitled to be paid the prescribed remuneration to which the employee would have been entitled during the suspension, less any amount earned by the employee from additional employment undertaken during the suspension period.

When the Director-General or delegate determines to lift the suspension, the notice cancelling the suspension is to be in writing.

Suspensions with or without pay are to be monitored to determine whether circumstances have changed.

In addition to the immediate reporting of suspensions, all suspensions including information on the actions undertaken during the previous month, are to be reported to suspensions@health.qld.gov.au on a monthly basis.

8 APPLYING THE POLICY

The PSC has prepared discipline guidelines. This provides information and guidance to public service agencies in relation to the management of potential disciplinary matters, including suspension, under the *Public Service Act 2008*.

Queensland Health policy reflects the discipline guidelines. The steps below provide a guide to the Queensland Health discipline process.

If management determines that disciplinary action may be necessary they are to consult district human resources prior to commencing the disciplinary process.

Step 1 Preliminary assessment

On receipt of allegations the manager is to conduct a preliminary assessment of the matter to determine the appropriate course of action with the assistance of district human resources. In the case of suspected official misconduct the matter is to be immediately referred to the Director of Ethical Standards Unit (ESU).

Step 2 Consideration of suspension

In some circumstances, it may be necessary for the Director-General (or delegate) to suspend an employee from duty (refer section 7.5).

Step 3 Gather evidence

Unless the matter has been referred to ESU, the district may determine that the allegations cannot be resolved through management action alone. The district needs to gather and assess all available information prior to determining appropriate action.

An employee may have a support person present during the investigation interview. The support person is not able to advocate on behalf of the employee. The support person may assist by taking notes or quietly prompting or giving advice to the employee. The support person is not to be disruptive or obstruct the process.

Step 4 Determine liability for discipline

Upon receipt of the relevant documentation, the Director-General (or delegate) determines whether there is evidence that appears to substantiate the allegations. When it appears the employee may have breached section 187 of the *Public Service Act 2008* the Director-General (or delegate) is then to determine if the employee is liable for disciplinary action.

Step 5 Issue first show cause notice – liability for discipline

If the Director-General (or delegate) determines that the employee may be liable for disciplinary action, the employee is to be asked to show cause why disciplinary action is not to be initiated against them and given an opportunity to respond.

Step 6 Reach a finding on the allegations and intent to impose disciplinary action

On consideration of all the material available in relation to the allegation, including the employee's response to the first show cause notice, the Director-General (or delegate) makes a finding as to whether disciplinary action is appropriate. If the Director-General (or delegate) determines that disciplinary action is appropriate they are then to propose an appropriate penalty under section 188 of the *Public Service Act 2008*.

Step 7 Issue second show cause – proposed penalty

The Director-General (or delegate) advises the employee of the proposed penalty in the second show cause notice. The employee has the opportunity to comment on the appropriateness of the proposed penalty. A penalty may include action up to and including termination of employment.

Step 8 Make a decision on the disciplinary action to be imposed

Upon reviewing all material available, including the employee's response to the second show cause letter, the Director-General (or delegate) makes a final decision on the disciplinary penalty to be imposed.

Step 9 Management of outcomes and documentation

The employee is notified in writing of the Director-General (or delegate) decision. All aspects of the disciplinary process are recorded in the confidential discipline file and not placed on the employee's personnel file. For all disciplinary decisions an employee is to be advised of their appeal rights.

9 DEFINITIONS

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| Allegation | A stated belief or claim that is yet to be substantiated on the balance of probabilities. 'Allegation' relates to work performance, conduct or behaviour. |
| Balance of probabilities | The civil standard of proof when the Director-General or delegate assesses the direct evidence to determine whether or not it is more probable than not that a contested fact/s exists. The degree of probability necessarily varies according to the seriousness of the issues involved e.g. the more serious the allegation the higher degree of probability that is required. |
| Director-General (or delegate) | The Director-General or other role or person who has been delegated the authority to determine disciplinary matters. |
| Disciplinary action | Action taken as a outcome of a disciplinary process pursuant to the <i>Public Service Act 2008</i> . |
| Disciplinary process | The method used to determine whether or not disciplinary action is warranted and the taking of disciplinary action. The process commences from the receipt of allegations/complaint (Stage 1) and concludes by notifying the employee of the decision made by the Director-General or delegate (Stage 8). |
| Employee assistance service (EAS) | A confidential counselling and referral service for Queensland Health employees. The Employee Assistance Service provides short term personal counselling to all employees and/or immediate family members for personal and work-related problems. |
| Investigating officer | A person appointed by the Director-General or delegate to conduct an investigation into allegation/s made against an employee. This may include a person external to Queensland Health. |
| Manager/supervisor | The person who has responsibility for the employee for performance management purposes and who is responsible for their performance outputs, development and guidance. |
| Misconduct | Disgraceful or improper conduct in an official capacity or disgraceful or improper conduct in a private capacity that reflects seriously and adversely on Queensland Health. |

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| Official misconduct | Section 15 of the <i>Crime and Misconduct Act 2001</i> defines official misconduct as: Conduct that could, if proved, be - a) a criminal offence; or b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment. |
| Prescribed remuneration | Means the remuneration prescribed under Directive 10/96 which states: a) the ordinary hours worked by the employee; and b) the amounts payable to the employee for the hours, including (for example) allowances, loadings and penalties; and c) any other amounts payable under the employee's employment contract. |
| Support person | An employee may have a support person present during the interview with the investigating officer. The support person cannot advocate on behalf of the employee. The support person may assist by taking notes or quietly prompting or giving advice to the employee. The support person cannot be disruptive or obstruct the process. |

10 HISTORY

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| May 2009 | Amended to reflect the provisions in the <i>Public Service Act 2008</i> for suspension from duty and to adjust the definition of support person. |
| July 2008 | Amended to reflect <i>Public Service Act 2008</i> and <i>Public Service Regulation 2008</i> . |
| June 2008 | Developed as a result of the HR policy consolidation project. |