



ARKANSAS

ENERGY & ENVIRONMENT

GRIEVANCE POLICY AND PROCEDURE

I. PURPOSE

The purpose of this policy and procedure is to establish a grievance process pursuant to Arkansas Code Annotated § 21-1-701 *et seq.* for the prompt review, impartial consideration, and equitable disposition of Arkansas state employee grievances.

Eligible employees may resolve grievances through this established policy and procedure to ensure fair resolution within a reasonable period.

II. DEFINITIONS

Administrative Review Hearing—The fact-finding hearing conducted by the Department involved in the grievance.

Appeal Hearing—The hearing conducted by the State Employee Grievance Appeal Panel (SEGAP) after the Administrative Review Hearing.

Department Hearing Officer—An impartial person or committee appointed by the Department to conduct the Administrative Review Hearing and make a recommendation to the Department Secretary or designee. The Department Hearing Officer must be employed by the Department involved in the grievance.

Employee—A person regularly appointed or employed in a position of state service by the Department for which he or she is compensated on a full-time or part-time basis for whom a class title and pay grade are established in the appropriation act for the Department in accordance with the Uniform Classification and Compensation Act. The following individuals, while not exhaustive, are not considered an Employee for purposes of this policy and procedure:

1. Extra-help employee;
2. New employee on non-disciplinary probation; or
3. Supervisory Employee as defined below.

Grievance—A complaint by an Employee regarding his or her termination or suspension without pay.

Grievance Coordinator—The person designated by the Department to provide information to and receive complaints from an Employee. The Grievance Coordinator will assign the complaint to a grievance officer.

Grievance Officer—The person designated by the Department with the responsibility for coordinating the grievance case and being the liaison between the Employee, the Department, representatives, and the Office of Personnel Management (OPM). The Grievance Officer is employed by the Department involved in the grievance.

Mediation—A collaborative, problem-solving, and joint decision-making process between the Employee and Department with the help of a mediator.

Supervisory Employee—(a) An individual with authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees of the department; (b) An individual who has the responsibility to direct other employees of the department by which he or she is employed; or (c) An individual whose exercise of authority requires the use of independent judgment and is not of a merely routine or clerical nature. For example, an attorney exercises independent judgment and thought, rather than following a manual or pre-determined formula, when providing his or her opinion. An individual who supervises the equivalent of one full-time Employee is not eligible to use the grievance process.

III. POLICY

The policy and procedure established herein recognizes the employment-at-will doctrine, and its exceptions as defined by the Arkansas Supreme Court, and does not confer a property right in employment, either expressed or implied.

The Employee and the Department shall take all reasonable efforts to settle a grievance. This policy and procedure encourages communication and resolution among the Employee and the Department.

The Employee's participation in the grievance process is voluntary and may be withdrawn by the Employee at any step. The Employee is responsible for timely participation in the grievance process, and failure to meet any of the established time frames will result in dismissal of the case.

The Employee or the Department may be represented at each step of the grievance process; however, attorney's fees will not be awarded. Written correspondence from the Department or OPM will be mailed to the address provided by the Employee, and anyone at the address who signs for the correspondence is presumed to be signing on behalf of the Employee. Any required time frames will begin the first business day after receipt of the correspondence as indicated by a signature. If the Employee chooses to be represented, there is a presumption that the representative

is authorized to communicate on behalf of the Employee, and the Employee is subject to the same time frames for all correspondence received by the representative. The Mediation or hearing will not be postponed due to the late hiring of an attorney or representative.

The Employee is allowed reasonable time during work hours to meet with the Grievance Officer or attend a scheduled Mediation or hearing. A disagreement regarding how much time is reasonable will be decided by OPM.

An Employee is not prohibited from pursuing remedies outside the grievance process. An Employee is not prohibited from filing a claim under the Arkansas Whistle-Blower Act. The Department is prohibited from retaliating against an Employee for using the grievance process.

IV. PROCEDURE

An eligible Employee may file a grievance for two issues: 1) termination and 2) suspension without pay. The Employee has five (5) business days from the date of termination or suspension without pay to submit the Grievance Form to the Grievance Coordinator. The Grievance Coordinator will assign the complaint to a grievance officer. If the Employee requests a whistle-blower hearing, refer to section VI.

1. Final Determination

The Grievance Officer will determine whether the complaint meets the eligibility criteria for the grievance process. If the complaint meets the eligibility criteria, the Employee may request Mediation or Administrative Review Hearing.

If the Grievance Officer determines the Employee is not eligible, the Employee may request a final determination of grievability by OPM. The Employee must make the written request to the Grievance Officer no later than five (5) business days after being notified of the ineligibility determination. The Grievance Officer will submit the documentation to OPM. If OPM determines the complaint is not eligible, the Employee is prohibited from using the grievance process. If OPM determines the complaint is eligible, the Employee may proceed to the next step, either Mediation or Administrative Review Hearing.

2. Mediation

The Employee and the Department must both agree to participate in the Mediation session; otherwise, skip to Administrative Review Hearing.

The Mediation should be held as soon as possible. If the Employee fails to attend the Mediation without providing prior notice to the Grievance Officer or OPM, the Employee's grievance may be dismissed.

If a Mediation session must be rescheduled, the Employee or representative is responsible for communicating with the Grievance Officer regarding availability for the rescheduled Mediation. If the Employee or representative fails to timely communicate with the Grievance Officer, the Employee's case may be dismissed.

Mediation sessions are confidential; however, the final results will be part of the case file and may be subject to disclosure under the Arkansas Freedom of Information Act.

Settlement: If a settlement is reached during Mediation, the grievance is considered resolved, and the settlement is binding unless a federal or state statute provides otherwise. The settlement is subject to approval by the OPM Director.

Non-settlement: If there is a non-settlement, the Employee may request an Administrative Review Hearing. The request must be made to the Grievance Officer no later than three (3) business days after the Mediation.

3. Administrative Review Hearing

The hearing should be held within fifteen (15) business days of receiving the Employee's request unless a later date is agreed upon. The Grievance Officer will coordinate with the Employee and Department to schedule the hearing. The hearing will be audio recorded. The Department Hearing Officer will preside over the hearing and issue a typewritten recommendation summarizing the hearing and explaining in detail the basis for the recommendation. The recommendations should be provided to the Grievance Officer and Secretary no later than seven (7) business days after the hearing transcript is provided to the Hearing Officer and the parties. The recommendation will become a part of the case file. The Department Secretary will accept or reject the recommendation.

The Employee may appeal the Secretary's decision by requesting an Appeal Hearing. The Employee must file the Grievance Appeal Form with the Grievance Officer no later than ten (10) business days after receiving the Secretary's decision. If the Employee does not timely appeal, the Secretary's decision will stand.

V. **APPEAL HEARING**

1. SEGAP

OPM will maintain the roster of SEGAP members and assign the case to three members. One member will serve as the chair and must be an Arkansas licensed attorney and current state employee of the Executive Branch. The other two members must be current state employees of the Executive Branch.

2. Scheduling the Appeal Hearing

The Appeal Hearing should be held within twenty-five (25) business days of OPM receiving the request from the Grievance Officer. The Appeal Hearing will not be postponed or delayed unless compelling circumstances are presented to OPM prior to the start of the Appeal Hearing. The final decision to postpone or delay is at the discretion of OPM.

3. Burden of Proof

The Department has the burden to prove that the termination or suspension was consistent with the Department's disciplinary policy. The Employee is then given the opportunity to rebut, contradict, or discredit the Department's case.

4. Public Hearing

The Appeal Hearing is open to the public and will be audio recorded by OPM; however, any testimony or evidence that is otherwise confidential under federal law, state law, rule, or regulation will remain confidential.

5. Decision

SEGAP should issue a written recommendation no later than ten (10) business days after the hearing and forward the recommendation to OPM. The recommendation may be appealed pursuant to section VII. TSS SECRETARY APPEAL. If the SEGAP recommendation is not appealed to the TSS Secretary, it shall become binding on the Employee and the Department.

VI. **WHISTLE-BLOWER HEARING**

An Employee who has been terminated may request a whistle-blower hearing if the Employee is alleging the termination is an adverse action for the Employee exercising one of the following protected activities under the Arkansas Whistle-blower law:

- (a) Communicating in good faith to an appropriate authority the existence of waste of public funds, property, or manpower, including federal funds, property, or manpower administered or controlled by a public employer; or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state or a political subdivision of the state;
- (b) Participating or giving information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review;

- (c) Objecting or refusing to carry out a directive the employee reasonably believes violates a law, rule, or regulation adopted under the authority of the laws of the state or a political subdivision of the state; or
- (d) Reporting a loss of public funds under Ark. Code Ann. § 25-1-124.

The Employee may request a hearing by submitting the Grievance Form to the Grievance Officer no later than five (5) business days after the termination. The Grievance Officer will timely notify OPM of the Employee's request for a whistle-blower hearing.

Along with the Grievance Form, the Employee must submit evidence that he or she committed one of the actions in (a) through (d) prior to being terminated. Documentation that is otherwise confidential under federal or state law will remain confidential. OPM will review the documentation to determine whether it meets the requirements for a whistle-blower hearing. If the Employee fails to show that he or she committed one of the actions (a) through (d), then OPM will deny the request for a hearing. A denial of the whistle-blower complaint does not preclude the Employee from pursuing any additional grievance complaints. The Employee does not waive his or her right to file a claim under the Arkansas Whistle-blower Act as set out at Ark. Code Ann. § 21-1-603.

OPM will schedule the whistle-blower hearing to be held within fifteen (15) business days of receiving the request unless the Employee and Department mutually agree to a later date.

OPM will assign the case to SEGAP. SEGAP will conduct the hearing and determine if the Employee proved that a reasonable person would conclude that the termination was the result of the Employee exercising one of the actions in (a) through (d). The Employee must present the case in its entirety. The Department will have an opportunity to rebut the Employee's allegation and case presentation.

The Employee and Department can request witnesses to testify on their behalf and must provide the witness list to the Grievance Officer at least four (4) business days prior to the hearing. The Grievance Officer will notify any witnesses who are employed by the Department.

The Employee and Department will each have two (2) hours to present their case. SEGAP has the discretion to grant additional time.

If the whistle-blower allegation is regarding a confidential matter, the hearing will be a closed hearing; however, it will be audio recorded, and the Employee or the Department may request a copy of the hearing recording.

If SEGAP determines that the Employee met the burden of proof using the reasonableness standard outlined above, the Employee will either be

- i. reinstated to his or her position until the conclusion of the Department's grievance process; or
- ii. reinstated to his or her position and placed on paid administrative leave until the conclusion of the Department's grievance process.

The Employee or the Department may appeal from the whistle-blower decision following the process outlined in section VII. TSS SECRETARY APPEAL.

VII. TSS SECRETARY APPEAL

The Employee or Department may file an appeal from SEGAP after either a whistle-blower hearing or an Appeal Hearing. If TSS is the Department involved in the grievance, OPM will assign the case to another Department Secretary.

The appeal must be submitted to the Grievance Officer no later than seven (7) business days after receiving SEGAP's written decision.

The Grievance Officer must timely provide a copy of the appeal to the opposing side and to OPM. The non-appealing side may file a response to the appeal no later than seven (7) business days after receiving the appeal.

All appeals to the TSS Secretary will be determined solely on the Administrative Record. The TSS Secretary will review the Administrative Record, including the appeal and any response to the appeal, and accept or reject the recommendation. The TSS Secretary is authorized to order back pay, restore leave and health insurance benefits, and any other benefits the Employee would have received if the termination or suspension had not occurred.

The TSS Secretary's decision will be issued no later than fifteen (15) business days after receiving the appeal or response to the appeal, whichever is later. Any appeal from the TSS Secretary's decision will not be accepted.