

DAS Directive

Directive No. **HR-D-12**
Effective Date: **09-01-2009**



To: All Appointing Authorities and Personnel Officers
From: Hugh Quill, *Director of Administrative Services*
Re: Resignation

PURPOSE

To ensure that any state employee who commits an egregious offense related to employment is separated, establish guidelines for accepting resignation in lieu of termination, establish procedures for making information concerning termination and resignation available to potential future employers.

GENERAL

It is the policy of the state of Ohio to follow all applicable collective bargaining agreements and civil service laws, and expeditiously terminate any employee who is reasonably believed to have committed an egregious offense. In some instances, a resignation may be preferable to termination. Resignation in lieu of termination or as a settlement to a disciplinary appeal or grievance may be accepted as outlined below.

It is the policy of the State of Ohio to make all public information concerning a former employee's separation from state service readily available. Any potential employer should be able to readily ascertain when a former state employee has resigned in lieu of discipline and/or termination. The Department of Administrative Services will provide information about former state employees to state agencies seeking to fill positions by hire, transfer or promotion as outlined below.

Section 2921.41(C) (1) of the Ohio Revised Code disqualifies any person who has been convicted of or pleaded guilty to theft in office from holding public office or employment. The Ohio State Highway Patrol and Human Resources Division, Department of Administrative Services, will make information about such convictions available to state agencies as outlined below. It is the policy of this department to assist all state agencies in preventing any person convicted of theft in office from becoming a state of Ohio employee.

PROCEDURE

A. Accepting Resignation in Lieu of Termination

State employees who are removed from their positions often grieve or appeal such disciplinary action. Employees covered by collective bargaining agreements may only be removed for just cause and may grieve such removals under contractual grievances/arbitration procedures (except in the case of employees serving an initial

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probationary period). Non-probationary classified employees who are not covered by labor contracts may only be removed pursuant to section 124.34 of the Revised Code and may pursue appeal of their removals through the State Personnel Board of Review.

As a result of such grievances or appeals, appointing authorities often wish to settle such matters. Settlements may assist in avoiding a prolonged appeal process and the potential uncertainty or turmoil in the workplace. Settlement may also prevent the accrual of potential back pay liability, assist in speedily resolving the removal dispute and promote the speedy resolution of grievances as a whole.

In order to assure that an accurate record of the disciplinary action exists, especially in the event of discipline for egregious offenses, the following requirements are established. These requirements will ensure that a record of the disciplinary action is kept, in order to prevent rehire at another state agency:

1. Appointing authorities should be extremely resistive to permitting resignations of any kind where employees are removed for actions which are criminal or quasi-criminal in nature. Appointing authorities should be especially resistive to allowing the employee who has been charged with a crime related to employment to resign.
2. Even in the most egregious cases, however, resignation as a part of settlement may at times be a viable option. For example, witness availability *or witness* reliability may be a problem, as may be certain procedural matters. In cases where a resignation-settlement is desired for actions of a criminal or quasi-criminal nature, the resignation must be designated, "Resigned -- not recommended for rehire." This language shall appear in any settlement agreement, so that the employee has notice of the descriptive language, and it shall be designated as such in the agency and state personnel files. The employee shall also be informed that this designation will appear to outside employers checking referenced and employment history.
3. Other removals may be for actions, which do not connote criminal or quasi-criminal behavior. Such actions may include absenteeism, tardiness, and insubordination, failure to meet or maintain minimum qualifications, inefficiency, or neglect of duty. Such resignations must be coded, "Resigned - not in good standing" on a personnel action form. This code will indicate to other state agencies to which the individual may apply that further checking of references and employment history may be necessary. However, the former employee's status, as it will appear to outside employers, is that of resignation with no other designation.
4. It is understood that each removal must be viewed on a case-by-case basis, and appointing authorities must have some flexibility in permitting resignations with and without restrictive language. Appointing authorities are strongly encouraged to

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utilize these guidelines, while at the same time making decisions which will best assist them in serving the people of Ohio.

5. For purposes of this procedure, egregious offenses are those offenses, which are criminal or quasi-criminal in nature and related to the workplace. Examples of such offenses include, but not limited to, client or inmate abuse, theft in office, illegal drug use on the job, sexual/racial harassment, assault on a fellow employee or any other similar offense.

B. Reporting Resignation in Lieu of Termination

To accurately reflect the circumstances of a resignation, agencies must designate the type of resignation as follows:

TER NGS: "Resigned -- not in good standing." This code shall be used for resignations in lieu of discipline or to settle grievances or appeals for offenses such as absenteeism, tardiness, insubordination, failure to meet/maintain minimum qualifications, inefficiency or neglect of duty.

TER NRR: "Resigned -- not recommended for rehire." This code shall be used for resignations in lieu of discipline or to settle grievances for appeals when an egregious offense of a criminal or quasi-criminal nature is known or suspected.

When either of these codes is used on a personnel action, the EPM Warehouse screen for the individual will reflect what is contained within the quotation marks for the code as identified above.

C. Reporting Theft in Office Convictions

Any person who has been convicted of theft in office is permanently barred from holding any public office or employment pursuant to section 2921.41(C)(1) of the Revised Code. In order to assist state agencies in determining whether an applicant is ineligible for hire based on this reason, the State Highway Patrol has developed a procedure to notify the Human Resources Division of such convictions. The Human Resources Division will place a block on the computer which will bar a personnel action from being processed to hire such an individual. If a personnel action is submitted for such a hire, it is to be disapproved and returned to the agency marked, "Ineligible for rehire per section 2921.41 of the Ohio Revised Code."

A copy of the letter received from the State Highway Patrol will be microfilmed and placed in the individual's file in the Records Room, Human Resources Division. This will serve as the master record if a question arises at a later date as to why the block has been placed on the file. The microfilmed copies of the letters will be available for viewing under the normal

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guidelines for viewing of public records. Any inquiries as to the accuracy of the information contained in the letters will be referred to the State Highway Patrol.

ENFORCEMENT

Each department should designate a human resources officer or other person to be personally responsible for verifying prior employment history and accurately documenting any information received by the applicant/transferring employee. A model checklist includes past employment information, as well as other information which must be verified with every new hire or transfer. Agencies should adopt this model checklist and add any other pertinent information they deem necessary.

Every personnel action form for a new hire, promotion or transfer must include a representation that all items contained in the pre-hire review form were verified. This representation shall be made by either checking the box immediately above the appointing authority's signature (on new OAKS forms) or typing in a statement in the Remarks section. Administrative Services will not process any personnel action for a new hire, promotion or transfer which does not include this representation.

Agencies are responsible for reporting resignation codes to Administrative Services and checking those records before hiring an applicant. This directive is mandatory and must be implemented by all departments. Any amendments to the policy must be approved by the Governor's office.

This directive supersedes any previously issued directive or policy and will remain effective until canceled or superseded.

AUTHORITY & REFERENCE

OAC 123:1-45-01

ORC 2921.41