



State of Ohio
Administrative Policy

Removals and Resignations

No:

Human Resources
HR-12

Effective:

October 30, 2017

Issued By:

Robert Blair, Director

1.0 Purpose

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

A glossary of terms found in this policy is located in Appendix A - Definitions. The first occurrence of a defined term is in ***bold italics***. To go directly to a term's definition, click on the bold and italicized term. To return to the body of the policy, click on the defined term.

2.0 Policy

It is the policy of the State of Ohio to expeditiously remove any employee who is reasonably believed to have committed an egregious offense, in accordance with all applicable collective bargaining agreements and applicable law, and to make all public information concerning a former employee's separation from state service readily available consistent with Ohio public records law. It is understood that each ***removal*** shall be viewed on a case-by-case basis, and appointing authorities shall have some flexibility in permitting ***resignations*** with and without restrictive language. Any potential State of Ohio employer should be able to readily ascertain when a former state employee has resigned in lieu of discipline and/or removal or if a removal resulted in a former employee being designated as not recommended for rehire. The Department of Administrative Services (DAS) will help provide information about former state employees to state agencies, boards and commissions seeking to fill positions by hire, re-hire or transfer.

Individuals convicted of, or who plead guilty to certain offenses are disqualified by law from holding public office or employment. Such offenses include, but are not limited to, theft in office pursuant to section 2921.41(C)(1) of the Revised Code or felonies involving fraud, deceit or theft

for positions that have substantial management or control over property of a state agency pursuant to section 2961.02 of the Revised Code.

Appointing authorities are strongly encouraged to use this policy to make decisions which will best serve the people of Ohio. The following requirements of this policy are established to ensure that an accurate record of the disciplinary action exists and to prevent rehire at another state agency, board or commission where appropriate.

- 2.1 **Removals:** State employees in the classified service and/or any bargaining unit may be removed in accordance with section 124.34 of the Revised Code and/or any applicable collective bargaining agreement. State employees in the unclassified service may have their appointment revoked at any point during their appointment. State employees who have not yet completed their initial probationary period may also be removed in accordance with any applicable law and/or collective bargaining agreement.

Employees who are removed for criminal, quasi criminal and/or other egregious offenses may be designated as not recommended for rehire by the State of Ohio in accordance with section 2.1.2 of this policy. Appointing Authorities shall consult with their legal counsel for determination of criminal, quasi criminal and/or egregious actions. Examples of such offenses may include, but are not limited to, client or inmate abuse, theft in office, illegal drug use on the job, sexual or racial harassment, assault on a fellow employee, or any other similar offenses.

In rare circumstances, if information about, or conduct by, the removed employee is discovered post removal that would otherwise have been considered criminal, quasi criminal and/or egregious, Appointing Authorities should consult with their legal counsel to determine if the prior employee should be designated as not recommended for rehire post removal.

- 2.1.1 **Notification:** Employees designated as not recommended for rehire should be notified that this designation may appear to prospective employers or other state agencies, boards and commissions checking references. Additionally, the employee should be notified that this designation will appear in applicable public records requests pursuant to Ohio's public records law. Generally, this notification should be provided to the employee in writing, or otherwise follow the direction provided by agency legal counsel. A sample letter can be found in Appendix B, Attachment 1.

- 2.1.2 **Removals Not Recommended for Rehire Coding:** Where an Appointing Authority has determined that an employee should be designated not recommended for rehire based on the provisions of section 2.1 above, the following action reasons are applicable:

- **Termination Unclassified Removal-Not Recommended for Rehire:** This code is used when an unclassified removal is for conduct that the Appointing Authority has determined to be criminal, quasi criminal and/or egregious.

- Termination Probationary Removal-Not Recommended for Rehire: This code is for an employee who has been removed during their initial probationary period for conduct that the Appointing Authority has determined to be criminal, quasi criminal and/or egregious.
- Termination Removed-Not Recommended for Rehire: This code is for a classified employee who has been removed for conduct that the Appointing Authority has determined to be criminal, quasi criminal and/or egregious.

When any of the above action reasons are used on an electronic personnel action request (ePAR), the electronic personnel records screen and employee history report for the individual will reflect the applicable action reason.

- 2.2 **Removal Appeals and Resignations in Lieu of Removal**: State employees who are removed from their positions often grieve or appeal such disciplinary action. Non-probationary bargaining unit employees may only be removed for just cause and may grieve such removals as permitted under contractual grievances/arbitration procedures. Non-probationary classified employees who are exempt from collective bargaining may only be removed pursuant to section 124.34 of the Revised Code and may pursue appeal of such removals through the State Personnel Board of Review. Unclassified employees who are not covered by collective bargaining agreements do not have appeal rights through the State Personnel Board of Review.

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

In some instances, a resignation in lieu of removal may be part of a settlement discussion. Resignations may be accepted in lieu of removal or as a settlement to a disciplinary appeal or grievance. Appointing Authorities shall consult with their legal counsel prior to offering or accepting a resignation in lieu of removal. In cases where a resignation in lieu of removal is accepted by the Appointing Authority, the employee shall either be designated as not recommended for rehire or not in good standing depending on the reason for the removal in accordance with sections 2.3 and 2.4 below.

In situations where an employee resigns prior to the imposition or issuance of discipline and/or settlement agreement Appointing Authorities shall consult with their legal counsel to determine if an employee should be designated as not recommended for rehire or not in good standing.

- 2.3 **Resignations in Lieu of Removal for Criminal or Quasi-Criminal Actions**: Appointing Authorities are strongly discouraged from permitting resignations of any kind where employees are removed for actions which are criminal or quasi criminal in nature, especially if the employee has been charged with a crime related to employment. However, Appointing Authorities are not prohibited from permitting such resignations as

part of an agreement or settlement limiting or precluding rights to challenge the action where the Appointing Authority, in consultation with agency legal counsel, determines such an agreement or settlement is in the best interest of the agency and the State of Ohio. For example, settlement may be an option if witness availability or witness reliability is a problem, or there are procedural issues present.

In cases where an Appointing Authority has determined a resignation in lieu of removal for actions of a criminal or quasi criminal nature is appropriate, the resignation shall be designated as resigned-not recommended for rehire. This designation language shall appear in any settlement agreement, so that the employee is aware of the descriptive language, and it shall be designated as such in that employee's personnel file(s).

2.3.1 **Notification:** The employee shall be informed that this designation may appear to prospective employers or other state agencies, boards and commissions checking references. Additionally, the employee shall be informed that this designation will appear in applicable public records requests pursuant to Ohio's public records law. Generally, notification shall be provided to the employee in writing, or otherwise follow the direction provided by agency legal counsel. A sample letter can be found in Appendix B, Attachment 2.

2.4 **Resignations in Lieu of Removal for Other Infractions:** Other removals may be for actions which do not implicate criminal or quasi-criminal behavior. Such actions may include violations of agency work rules such as absenteeism or tardiness, unsatisfactory performance, insubordination, failure to meet or maintain minimum qualifications, inefficiency and/or neglect of duty. In these cases, where an Appointing Authority determines that a resignation in lieu of removal is in the best interest of the agency, the resignation shall be designated as resigned-not in good standing.

2.4.1 **Notification:** Employees designated as not in good standing may be notified that this designation may appear to prospective employers or other state agencies, boards and commissions checking references. Additionally, the employee may be notified that this designation will appear in applicable public records requests pursuant to Ohio's public records law. Generally, this notification should be provided to the employee in writing, or otherwise follow the direction provided by agency legal counsel. A sample letter can be found in Appendix B, Attachment 2.

2.5 **Resignations in Lieu of Removal Coding:** To accurately reflect the circumstances of a resignation in lieu of removal, agencies shall designate the type of resignation as follows:

2.5.1 **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.

- 2.5.2 Resigned-Not Recommended for Rehire: This code shall be used for resignations in lieu of discipline or to settle grievances or appeals when an offense of a criminal or quasi-criminal nature is known or suspected.

When either of the above action reasons are used on an electronic personnel action request (ePAR), the electronic personnel records screen and employee history report for the individual will reflect the applicable action reason.

- 2.6 **Implementation**: Each agency, board or commission shall designate a human resources officer or other person to be responsible for verifying prior employment history and accurately documenting any information received by the applicant/transferring employee. Agencies, boards and commissions should develop and adopt a new hire review process for potential candidates that includes gathering applicable information such as required forms, past employment information including Employment History on Computer (EHOC) reports, reference checks, compliance with guidelines contained in State of Ohio Administrative Policy HR-29, as well as other information which must be verified with every new hire, re-hire or transfer. Agencies, boards and commissions shall be responsible for conducting reference checks and requesting applicable past employment information prior to hiring or transferring a candidate to ensure that any employee that has been coded in accordance with this policy has been evaluated before hire, re-hire or transfer. (See Appendix B for a link to the Pre-Hire Review Form.) Agencies, boards and commissions may use this form to assist in developing this process as well as adding any other pertinent information they deem necessary. A link to HR-29 can also be found in Appendix B.

- 2.6.1 Every personnel action form or ePAR for a new hire, re-hire or transfer must include a representation that all items contained in the pre-hire review form were verified. This representation shall be made by checking the appropriate box on either the personnel action form or ePAR or typing in a statement in the remarks/comments section. DAS will not process any personnel action for a new hire, re-hire, or transfer which does not include this representation.

- 2.6.2 Agencies are responsible for reporting resignation and removal codes to DAS and checking those records before hiring an applicant. Compliance with this is mandatory and must be implemented by all agencies, boards and commissions.

3.0 Authority

ORC 124.09, 123.32, 124.34, 2921.41; OAC 123:1-31-05, 123:1-45-01, 123:1-47-01

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

4.0 Revision History

Date	Description of Change
09/01/2009	Original policy.
10/27/2017	Policy revised.

5.0 Inquiries

Direct inquiries about this policy to:

Labor Relations and Human Resources Policy Section
Office of Collective Bargaining
Ohio Department of Administrative Services
1602 West Broad Street
Columbus, Ohio 43223

614.752.5393 | DASHRD.HRPolicy@das.ohio.gov

State of Ohio Administrative Policies may be found online at
www.das.ohio.gov/forStateAgencies/Policies.aspx

For assistance processing ePARs, contact:

Office of HR Operations
Agency HR Support
Ohio Department of Administrative Services
30 East Broad Street, 28th Floor
Columbus, Ohio 43215

614.466.4194 | hrcustomerservice@das.ohio.gov

Appendix A – Definitions

- a. Removal. Termination of an employee's employment for the reasons outlined in section 124.34 of the Revised Code and/or any applicable collective bargaining agreement.
- b. Resignation. Voluntary separation from state service by an employee, per OAC 123:1-47-01(A)(73).

(See next page for Appendix B - Resources)

Appendix B - Resources

Document Name
<p><i>Pre-hire Review Form ADM 4174</i> Department of Administrative Services. http://das.ohio.gov/Divisions/HumanResources/HRDownloadableForms.aspx#HRsupport.</p>
<p>HR-29 Disclosure of Criminal Convictions During the Application Process http://das.ohio.gov/Portals/0/DASDivisions/DirectorsOffice/pdf/policies/humanresources/HR-29.pdf</p>
<p>Settlement Writing Guide. http://das.ohio.gov/Divisions/CollectiveBargaining/OCBForms.aspx#4624683-settlements</p>
<p>Attachment 1: Sample Termination Not Recommended for Rehire Letter</p>
<p>Attachment 2: Sample Resigned-Not Recommended for Rehire/Not in Good Standing Letter</p>

Attachment 1
Sample Removal Notification Letter

(Agency Letterhead)

Date

Name

Address

City and State

Subject: Notice of Removal Status

Dear (Insert Name):

The (Agency) removed you effective (insert date), which was your last day worked.

This letter will serve to notify you that you will be coded in the OAKS system (Insert applicable action reason: Termination Unclassified Removal-Not Recommended for Rehire, Termination Probationary Removal-Not Recommended for Rehire or Termination Removed-Not Recommended for Rehire). This designation may appear to prospective employers or other state agencies, boards and commissions checking references. Additionally, it will appear in any applicable public records requests pursuant to Ohio's public records law.

If you have any questions regarding this matter, please feel free to contact (name) in the (Agency) Human Resources office at (phone number)

Sincerely,

Name

(Appointing Authority)

Cc:

Personnel File

(Include a line for employee to sign verifying receipt. If employee refuses to sign or is unable to sign have an HR designee sign indicating as such and indicate the date the letter was sent to employee if unable to hand deliver).

Attachment 2
Sample Resignation Notification Letter

(Agency Letterhead)

Date

Name

Address

City and State

Dear (Insert Name):

The (Agency) received your resignation effective (insert date), which was your last day worked.

This letter will serve to notify you that you will be coded in the OAKS system (Insert applicable action reason: Resigned-Not Recommended for Rehire or Resigned-Not in Good Standing). This designation may appear to prospective employers or other state agencies, boards and commissions checking references. Additionally, it will appear in any applicable public records requests pursuant to Ohio's public records law.

If you have any questions regarding this matter, please feel free to contact (name) in the (Agency) Human Resources office at (phone number)

Sincerely,

Name

Cc:

Personnel File

(Include a line for employee to sign verifying receipt. If employee refuses to sign or is unable to sign have an HR designee sign indicating as such and indicate the date the letter was sent to employee if unable to hand deliver).