



Ohio Administrative Code Rule 3339-20-10 Discipline.

Effective: June 19, 2023

(A) Grounds for discipline

Employees may be disciplined for just and proper cause to include incompetency, inefficiency, unsatisfactory performance, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy or work rule of the employees appointing authority, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony.

Any employee in the classified service who is absent from duty habitually or for three or more successive duty days, without leave and without approval by the employees supervisor or the department of human resources for such absence may be subject to removal for neglect of duty.

This rule does not require the university to initiate disciplinary action if it is determined to be unwarranted nor does it preclude discipline or termination for a shorter period of absence if the absence is of sufficient seriousness.

Possible disciplinary actions are as follows, but not limited to: spoken reprimand, written reprimand, suspension with pay, suspension without pay, reduction of pay, demotion to next lower classification, or dismissal. The appropriate action in each individual case will be selected based upon the relevant facts, history, and/or circumstances. Similarly, whether progressive discipline is appropriate, as opposed to immediate imposition of a greater penalty, will depend upon the relevant facts, history, and/or circumstances.

The denial of a one-time pay supplement, annual increase, or a bonus is not a reduction in pay for purposes of this rule. A voluntary written agreement by an employee to accept a demotion or reduction shall be considered a satisfactory basis for such action in the absence of evidence to the contrary and is not subject to the rules herein. The salary of an employee following demotion shall be set in accordance with the pay plan. This section does not apply to any modifications or



reductions in pay or work week authorized in other Miami university rules.

Conviction of a felony is a separate basis for discipline in accordance with section 124.34 of the Revised Code.

(B) Pre-disciplinary process

Before a non-probationary employee is reduced in pay or position, fined, suspended, or removed, or have the employees longevity reduced or eliminated, s/he shall be entitled to a hearing before an administrative hearing officer appointed by the universitys associate vice president of human resources. The employee will be advised of his/her right to such hearing at the time s/he is presented with the notice of proposed discipline setting forth the charges and the proposed discipline. Such charges may be for a series of events or for a single event. The notice of proposed discipline must include information regarding the basis for discipline in sufficient detail to disclose the reasons and basis for the proposed discipline and a statement that the employee is presumed not responsible until a final determination has been made at the conclusion of the disciplinary process. The notice of proposed discipline must also include:

- (1) A statement that the employee may be accompanied by an advisor of their choice throughout the hearing process;
- (2) A statement that the complainant (if a party as set forth below) and employee may request to inspect and review evidence prior to the hearing;
- (3) A statement that knowingly making false statements or knowingly submitting false information during the hearing is prohibited and may serve as grounds for disciplinary action.
- (4) The proposed discipline;
- (5) The date, time, and location of the hearing. Any party may seek a temporary delay of the hearing for good cause. Good cause includes, the unavailability of a party, a partys advisor or a witness; concurrent law enforcement activity; or the need for language assistance or disability accommodation.



The parties to the disciplinary proceeding are the employee and the university's representative. In matters involving sexual harassment, sexual misconduct, domestic violence, dating violence or stalking, the complainant (alleged victim) is also a party to the proceeding and shall have all the rights of a party, including without limitation the right to cross examine witnesses through an advisor and a right to appeal the determination by the hearing officer.

The pre-disciplinary administrative hearing will be scheduled no sooner than ten business days from the receipt of the notice of proposed discipline and the hearing officer will render his/her decision within ten business days of the hearing. The decision of the hearing officer shall be final unless an appeal is filed by one of the parties within five business days of the party's receipt of the decision as set forth in the appeal process in paragraph (D) of this rule.

An employee may waive his/her right to a pre-disciplinary administrative hearing by signing a written waiver any time prior to the scheduled hearing. Once such waiver is filed, the waiver is irrevocable and disciplinary action may be taken by the university.

Whether or not a pre-disciplinary hearing is conducted, any employee who is reduced in pay or position, fined, suspended, or removed, or have his/her longevity reduced or eliminated, shall be notified, in writing, of such action. Such written notice shall be delivered to the employee by hand or mailed to the employee's last known home address by certified United States mail prior to discipline being imposed and shall state the reasons for the action. The written notification must include information regarding the employee's appeal rights where applicable.

An interim suspension may be imposed by the associate vice president of human resources before the disciplinary procedures described in this rule are initiated or resolved. During an interim suspension, the employee is relieved of all employment responsibilities; the employee may be prohibited from all or any portion of university premises, university-related activities, or be permitted to remain only under specific conditions prior to the conclusion of the disciplinary process. An interim suspension will be with compensation until the disciplinary procedures are completed.

(C) Hearing procedures



- (1) Hearings are designed to provide a prompt, fair, and impartial resolution regarding the disciplinary matter. The hearing will be held before a designated impartial hearing officer. The hearing officer will determine the order of proceedings and other matters pertinent to the conduct of the hearing. The university may elect to have legal counsel present to advise the hearing officer.
- (2) The hearing may be conducted with all parties physically present or at the university's discretion any and all parties and witnesses may appear at the hearing virtually with technology enabling participants to simultaneously see and hear each other. Except in matters involving sexual harassment, sexual misconduct, domestic violence, dating violence or stalking, the failure of the charged employee to appear at the scheduled pre-disciplinary administrative hearing shall automatically waive the right to such hearing. In such event, disciplinary action may be taken by the university.
- (3) The employee and any complainant may be represented, at their own expense, by legal counsel or other advisor. The university may elect to provide legal counsel to the university's representative.
- (4) The parties shall submit a list of witnesses and copies of proposed exhibits to the hearing officer three working days before the scheduled hearing, with copies to the other parties. The hearing officer may notify all parties in writing before the hearing whether any of the submitted documentary evidence requires the presence of the documents author or other witness for cross examination at the hearing in order to be considered. Likewise, any party may call this issue to the attention of the hearing officer by submitting a written objection to the hearing officer, with copies to the other parties. Failure of the hearing officer or of a party to do so, however, does not prevent a challenge to the admissibility of such evidence at the hearing.
- (5) The hearing officer has the authority to determine the relevance and admissibility of testimony and other evidence presented during the hearing and may place time limitations on opening and closing statements. Credibility determinations of parties and witnesses will not be made based on the person's status within the university or at the hearing. The disciplinary process does not require any party to disclose legally privileged information, unless the person holding the privilege has waived it.
- (6) The university may accommodate concerns for personal safety, well-being and/or concerns



regarding confrontation among the complainant, the employee and other witnesses by providing separate facilities, by using a visual screen or permitting participation by closed circuit tv, video conferencing or other means.

(7) The university will make a record of the hearing and it will be made available to the parties.

(8) Parties have the right to submit relevant evidence and cross-examine adverse witnesses. In matters involving sexual harassment, sexual misconduct, domestic violence, dating violence or stalking cross examination may only be conducted by advisors. The university will provide an advisor to any party who has not selected his or her own for the purpose of conducting the cross examination at the hearing. With the consent of the complainant, the university representative may act as advisor for both the university and the complainant.

(9) In matters involving sexual harassment, sexual misconduct, domestic violence, dating violence or stalking, the advisor must appear at the hearing to ask questions on behalf of the accused employee, even if the employee fails to appear. The hearing officer may not rely on any statements or other information related to the accused employee if the accused employees fails to appear or participate in the hearing to answer questions. The hearing officer may not to use the lack of the accused employees participation as a factor in making determinations of responsibility.

(10) Witnesses, other than the accused employee, the complainant and the university representative, will ordinarily be present only while testifying. Each party is responsible for securing the attendance of witnesses whose testimony will be offered by such party.

(11) The standard of review used to determine responsibility is a "preponderance" standard. This determination is based on whether the greater weight of the evidence proves the allegations of misconduct.

(12) The hearing officer shall, objectively evaluate all relevant evidence, including both those that tend to prove the allegations or absolve the employee within ten business days from the close of the hearing, issue a written decision. The hearing officer will not draw any inferences based solely on a partys or witnesss absence from the live hearing or refusal to answer cross examination or other questions.



(13) The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on Miami university and not on the parties. Privileged medical and treatment records may only be accessed, considered, disclosed or otherwise used by Miami university with a party's written consent to do so.

(14) The parties will be simultaneously notified, in writing, of the outcome of the disciplinary proceedings including the result of any initial, interim and final decision, the procedures for appeal and any change to the results. This notification includes whether the respondent was found responsible, and if so, the sanction(s) imposed and the rationale as well as any remedies offered to the complainant in matters involving sexual harassment, sexual misconduct, domestic violence, dating violence or stalking.

(D) Appeals

Each party has the right to file a written appeal with the human resources department within seven business days of the written decision by the hearing officer. The appeal should be addressed to associate vice president for human resources.

All parties will be notified if an appeal is filed and will have a seven calendar days to submit a written response to the appeal. Copies of the statements of appeal and any responses will be made available to all parties.

Appeals may be filed for one or more of the following reasons:

(1) Inappropriate sanction.

(2) Procedural irregularity in the adjudication of the case. In considering appeals based on a procedural defect, a new hearing will be ordered only if the irregularity is found to be substantial enough to have changed the outcome of the original hearing.

(3) New evidence that was not reasonably available at the time of the decision. In considering appeals based on new evidence, a new hearing will be ordered only if the new evidence is found to



be substantial enough to have changed the outcome of the original hearing.

(4) Bias of the hearing officer.

(E) Determining merit

If the sanction is found to be inappropriate, the sanction may be increased or reduced on appeal.

If it is determined that there was a defect in procedure, new evidence or bias in a hearing officer and if it is determined to be sufficiently substantial to have affected the outcome, a new hearing will be ordered.

(F) Decision

The decision to sustain the finding of the hearing officer or change a sanction is final.

Further appeal rights to the state personnel board of review.

In decisions resulting in a reduction, a suspension of more than twenty-four work hours, a fine of more than twenty-four hours pay, or removal (except for the reduction or removal of a probationary employee), the employee will have the right to file an additional appeal with the state personnel board of review.

Within ten business days following the date on which the written notification of discipline is served, except as otherwise provided herein, the employee may file an appeal of the order in writing with the state personnel board of review. For purposes of this rule, the date on which the written notification is served is the date of hand delivery of the written notice or the date of delivery of the written notice by certified United States mail, whichever occurs first. If an appeal is filed, the remainder of the process will be followed as outlined in the applicable sections of Ohio Revised Code.

(G) No contact directive



The director of human resources may direct an employee to have no contact with another employee or student for a specified period. No contact directives are issued when there is reason to believe that a directive would be in the best interest of the parties and/or the community for maintaining safety. Such situations include, but are not limited to: harassment, threats, physical assault, stalking, domestic violence, dating violence, sexual misconduct, retaliation or other threatening behaviors. No contact directives will typically be issued as mutual and time-limited, meaning all parties involved are subject to the same restrictions for a specified period of time. No contact directives prohibit all forms of communication between designated individuals; direct or indirect, written, electronic, through a third party, or social media. Should any employee fail to comply with a no contact directive, they may be subject to disciplinary action for violating the no contact directive.

No contact directives are distinct and different from court-imposed restraining orders or protective orders. A no contact directive is a university action and is not recognized by city, county or state law as a legal action. If a person wishes to pursue a civil protection order, they must make the request through an appropriate court.

A no contact directive may be requested in writing at any time through the office of human resources. Modification requests will be considered when submitted through the office of human resources and accompanied by evidence to support the request.

(H) General matters

The university is deeply committed to maintaining a disciplinary process that protects the rights of the accuser, the accused, and the institution. The university reserves the right to supplement or alter these disciplinary procedures any time it deems appropriate, with appropriate notice to all parties involved, to protect the constitutional rights of those involved or to comply with state and/or federal law. In particular, the university notes that it may well be necessary to supplement and/or alter these procedures in cases involving alleged sexual harassment, sexual violence, domestic violence, dating violence, and stalking in order to comply with Title IX and the Violence Against Women Act.