



CITY OF MARSHFIELD, WISCONSIN POLICIES AND PROCEDURES

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CHAPTER: Affirmative Action and Equal Employment Opportunity

SUBJECT: Grievance Procedure

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Special Notes: This policy/procedure manual does not in any way constitute an employment contract and the City of Marshfield reserves the right to amend this manual at any time subject only to approval by the Common Council.

POLICY:

The City of Marshfield has established this Grievance Procedure for an employee to utilize for matters concerning discipline, termination, or workplace safety covered by this Grievance Procedure. This Procedure provides an employee with the individual opportunity to address concerns regarding discipline, termination or workplace safety matter, to have those matters reviewed by an Impartial Hearing Officer, and to appeal to the Common Council.

An employee shall use the Grievance Procedure for resolving disputes regarding employee termination, employee discipline or workplace safety issues covered by this Procedure. The City of Marshfield expects an employee and Department/Division Head to exercise reasonable efforts to resolve any questions, problems or misunderstandings prior to utilizing the Grievance Procedure. An employee subject to a contractual grievance procedure shall follow the contractual grievance procedure to the extent those procedures cover the matters covered by the Grievance Procedure. An employee subject to statutory dispute resolution procedures shall be subject to those procedures to the extent those procedures cover the matters covered by the Grievance Procedure. This Grievance Procedure does not create a legally binding contract.

The City of Marshfield reserves all rights and this procedure does not create a contract of employment. Employees of the City of Marshfield are employed at-will and may resign with or without reason. The Employer may terminate the employment relationship at any time with or without reason and without violation of applicable law.

DEFINITIONS:

“Termination” means a separation from employment by the employer for disciplinary or quality of performance reasons. “Termination” does not include layoff, furlough or reduction in workforce, job transfer, non-disciplinary demotion, reduction or position elimination based on failure to meet qualifications, resignation, abandonment, retirement, nonrenewal of contract, death, separation as a result of the disability, action taken pursuant to an ordinance created under s.19.59 (1m), or the end or completion of temporary employment, seasonal employment, contract employment, or assignment.

“Employee discipline” means an employment action that results in disciplinary suspension, with or without pay, disciplinary termination, or disciplinary demotion. “Employee discipline” does not include oral reprimands or warnings, written reprimands or warnings, performance improvement plans, performance evaluations or reviews, documentation of employee acts or omissions, administrative leave or suspension with or without pay, non-disciplinary wage, benefit or salary adjustments, changes in assignment, action taken pursuant to an ordinance created under s. 19.59(1m), or other non-material employment actions.

“Employee” shall not include employees subject to a collective bargaining agreement addressing employee discipline, termination and workplace safety, statutorily appointed individuals identified specifically in statute as serving at the pleasure of an appointing authority, elected officials, and independent contractors.

“Workplace safety” shall be narrowly construed and not construed to include basic conditions of employment unrelated to physical health and safety. “Workplace Safety” means conditions of employment related to the physical health and safety of employees, as long as such conditions are not enforceable under state or federal law, and includes safety of the physical work environment, the safe operation of workplace equipment and tools, provision of protective equipment, training and warning requirements, workplace violence and accident risk. “Workplace safety” does not include conditions of employment unrelated to physical health and safety matters, including, but not limited to, hours, overtime, sick, family, or medical leave, and work schedules, breaks, termination, vacation, performance reviews, and compensation.

TIMELINES AND GRIEVANCE FORMAT:

Verbal Grievance and Dispute Resolution. Within ten (10) calendar days of the termination, employee discipline or actual or reasonable knowledge of the workplace safety issue and prior to filing a written Grievance, the Grievant must discuss the dispute with the supervisor who made the decision. The supervisor and employee must informally attempt to resolve the dispute. The supervisor shall notify the Human Resources Manager of this meeting and the results of the meeting.

Written Grievance Submission. The employee must file a written Grievance within fifteen (15) calendar days of the verbal grievance and dispute resolution meeting with the supervisor who made the decision. The Grievance must be in writing and must be filed with the supervisor and with a copy to the Human Resources Manager. The Grievance shall contain a clear and concise statement of the pertinent facts, the dates the incidents occurred, the identities of the persons involved, documentation related to the Grievance in possession of the Grievant, the steps taken to informally resolve the dispute and the results of those discussions, all reasons why the actions of the supervisor should be overturned, if applicable, and the remedy that should be issued. A Grievance alleging a workplace safety issue shall also identify the workplace rules allegedly violated, if applicable.

Administrative Response. The City Administrator shall meet with the Grievant within fifteen (15) calendar days of receipt of the written Grievance to discuss voluntary resolution of the Grievance. If those discussions do not resolve the Grievance, then the Administration will provide a written response to the Grievance within five (5) calendar days of the meeting. The written response shall contain a statement of the date of the meeting between the City Administrator and the Grievant occurred, the decision to sustain or deny the Grievance, and the deadline for the Grievant to appeal the Grievance to an Impartial Hearing Officer. The Human Resources Manager will serve in the absence of/or at the request of the City Administrator.

Impartial Hearing: The response of the City Administrator or Human Resources Manager shall be final unless the Grievant files a written appeal requesting a hearing before an Impartial Hearing Officer. The written appeal shall be filed with the Human Resources Manager within ten (10) calendar days of the response. The Impartial Hearing Officer shall file a written response within fifteen (15) calendar days of the close of the hearing.

Appeal for Review. The non-prevailing party may file a written request for review by the Common Council within ten (10) calendar days of receipt of the Impartial Hearing Officer's written response and the review of the remedy by the Common Council recommended by the Impartial Hearing Officer if any.

Decision of the Governmental Body: The Common Council shall make a decision regarding whether or not a meeting will be held within thirty (30) calendar days of the appeal. A decision by the governmental body will be made within sixty (60) calendar days of the filing of the appeal unless the governmental body extends this timeframe.

Importance of Timeline and Process: A Grievance will be processed pursuant to the established timelines. A Grievant may advance a Grievance to the next step if a response is not provided within the designated timeframes. A Grievant may not file or advance a Grievance outside of the designated timeframes. The Administration may advance a Grievance to the next step at the written request of either the Grievant or the Administration. The timelines may be modified by mutual agreement of the Grievant and Administration. The failure of the Grievant to follow the timelines and other requirements in this policy shall result in the Impartial Hearing Officer not having jurisdiction over this matter and shall terminate the Grievance Procedure for that Grievance. The Impartial Hearing Officer shall have the authority to determine whether the Impartial Hearing Officer has jurisdiction, which may be subject to review by the governmental body.

Scheduling. Grievance meetings and hearings will typically be held during the Grievant's off-duty hours. Time spent in Grievance meetings and hearings will not be considered as compensable work time.

Individual Claim. Any Grievance filed regarding workplace safety must relate to issues personal to the Grievant filing the Grievance and may not relate to, without limitation by enumeration, safety of property or third parties. A Grievance filed regarding workplace safety must be filed by the Grievant claiming he or she has been personally affected by the alleged workplace safety violation.

Selection of Hearing Officer. Following receipt of the appeal requesting a hearing before an Impartial Hearing Officer, the Human Resources Manager shall provide the name of the person who shall serve as an Impartial Hearing Officer.

HEARING PROCEDURE

Pre-Hearing Conference and Timelines. The City Administrator and/or Human Resources Manager, Grievant and Impartial Hearing Officer shall conduct a pre-hearing conference and select a date for hearing not more than forty-five (45) calendar days from the date of the appeal. The Impartial Hearing Officer shall assign dates for preliminary matters that may arise prior to the hearing.

Conciliation. Prior to the Hearing, the parties and Impartial Hearing Officer may engage in conciliation meetings to resolve the dispute. In cases involving allegations of workplace safety, the conciliation meeting shall be mandatory and shall occur not more than ten (10) calendar days after assignment to the Impartial Hearing Officer. The Impartial Hearing Officer's involvement in any conciliation process shall not disqualify the Impartial Hearing Officer from hearing the merits of any Grievance unless all parties agree to replace the Impartial Hearing Officer.

Representation. The Grievant shall have the right to representation during the Grievance Procedure at the Grievant's expense. The representative shall not be a material witness to the dispute.

Record of Proceedings. The Impartial Hearing Officer shall conduct the proceedings and make a record of the proceedings. Following the issuance of the response, the record shall be provided to the Human Resources Manager for preservation.

Burdens. The Grievant shall bear the burden of production and burden of proof. The rule of evidence shall not be strictly followed, but no factual conclusions may be based solely on hearsay evidence. Not less than ten (10) days prior to the hearing, the Grievant and the Administration shall exchange lists of witnesses and documentary evidence that they intend to introduce at the proceedings

The Powers and Response of the Impartial Hearing Officer. Written Response. After receiving the evidence and closing the hearing, the Impartial Hearing Officer shall issue a written response. The Impartial Hearing officer may request oral or written arguments and replies. The recommendation shall contain findings of fact, analysis and a recommendation. The Impartial Hearing Officer must answer the following question: Based on the preponderance of the evidence presented has the Grievant proven the decision of the Administration was arbitrary or capricious?

Powers of the Hearing Officer. The Impartial Hearing Officer shall have the power to issue a response to the Grievance. The Impartial Hearing Officer shall have no power to issue any remedy, but the Impartial Hearing Officer may recommend a remedy. Remedial authority shall be subject to the determination and approval of the Common Council, and shall be addressed by the governmental body in the event the Grievance is sustained.

APPEAL TO GOVERNMENTAL BODY

Written Appeal. The written notice of appeal shall contain a statement explaining the reasons for the appeal and a copy of the Grievance, the Administration's response to the Grievance, and the Impartial Hearing Officer's response. The written notice may not include information that was not presented at the Hearing. The request shall be filed with the Human Resources Manager.

Record of the Hearing. Upon appeal of the response of the Impartial Hearing Officer, a copy of the record shall be provided to the members of the Common Council.

Review by Governing Body. The Common Council may decide, in each situation whether it will review the record and make a decision, assign an Impartial Hearing Officer to create a recommendation for the Common Council's review, or hold new hearing and make an independent decision. The manner and process of review is the sole choice of the Common Council.

Additional Information. The Common Council may offer the Grievant and the Administration the opportunity to provide information to the Common Council in a meeting duly noticed for closed session or open session discussion. The Common Council may request written or oral arguments from each party.

Decision. All decisions of the governing body involving the Grievance shall be by simple majority vote and in writing and filed with the clerk of the governmental body within five (5) calendar days of the date of the final decision. A copy of the final decision shall be delivered to the Grievant and the Administration. The Common Council's decision is final and is not subject to appeal.

LIMITATIONS OF THE SCOPE OF THE GRIEVANCE PROCEDURE

The scope of a Grievance that is subject to the jurisdiction of a governmental body or specific procedure by other Wisconsin Statutes shall be governed by those statutes and not the Grievance Procedure.

The scope of a Grievance that is subject to a grievance procedure in a collective bargaining agreement may not be brought forth under this Policy.

The scope of a Grievance that is subject to other Policy or Ordinance for formal or informal investigation or dispute resolution procedures may not be brought forth under this Policy.