

<b>System-wide Policy: HR0525 - Disciplinary Action</b>	
<b>Version: 11</b>	<b>Effective Date: 4/1/2021</b>

## HR0525 – Disciplinary Action

### Topics:

<a href="#">Unsatisfactory Work Performance Or Work-Related Behavior</a>	<a href="#">Procedures</a>
<a href="#">Gross Misconduct</a>	<a href="#">Forms</a>
<a href="#">Related Policies</a>	

To set forth the University’s policy for disciplinary action, termination, and appeals. This policy applies to regular and temporary employees (*i.e.*, not faculty or student employees) who have completed any required probationary period.

All regular staff employees, including those hired pursuant to a Limited Duration Appointment, serve on an **at will** basis, meaning that either the University or the employee may end the employment relationship at any time, with or without cause, and with or without notice, unless the University and employee have executed a written contract in accordance with [Fiscal Policy FI0420](#), [Contracts](#). Nothing in this policy alters or affects the at-will status of any employee.

### I. DISCIPLINARY ACTION

#### 1. Philosophy

The University’s policy governing disciplinary action is intended to provide a fair process for communicating performance deficiencies and unsatisfactory behavior to employees. The University seeks to achieve optimal employee performance and to give employees sufficient opportunity to correct deficient work performance or unsatisfactory work-related behavior before further action becomes necessary, unless the employee engages in conduct that is so serious that the employee should not be given the opportunity to correct a deficiency.

#### 2. Definitions

- (A) **Unsatisfactory work performance** is the failure to perform job responsibilities in an acceptable manner.
- (B) **Unsatisfactory work-related behavior** is behavior that disrupts the workplace, compromises the orderly, professional, and satisfactory completion of an employee’s job responsibilities, or otherwise violates [Human Resources Policy HR0580, Code of Conduct](#).
- (C) **Gross misconduct** includes the following:
  - (i) Fraud, theft or dishonesty;

<b>System-wide Policy: HR0525 - Disciplinary Action</b>	
<b>Version: 11</b>	<b>Effective Date: 4/1/2021</b>

- (ii) Gross insubordination or refusal of an employee to follow instructions or to perform designated work or to comply with directives of authorized university officials;
  - (iii) Willful damage to University property;
  - (iv) Falsification of University records;
  - (v) Acts of moral turpitude;
  - (vi) Reporting for duty under the influence of intoxicants;
  - (vii) The unlawful manufacture, distribution, dispensation, possession, or use of alcohol, illegal drugs, intoxicants, or controlled substances (more fully described in [HR0720 – Drug Free Campus and Workplace](#), paragraphs 1 through 3);
  - (viii) Misrepresentation of academic credentials (as defined by Tennessee law);
  - (ix) Disorderly Conduct (more fully described in Section 5. General Principles of Ethical and Responsible Conduct, Sections 1 through 5 of [HR0580, Code of Conduct](#));
  - (x) Behavior or conduct unacceptable to the University or the community at large
  - (xi) Any other behavior of a similar nature and severity as those listed above.
- (D) TUAPA is the Tennessee Uniform Administrative Procedures Act, the administrative process recognized by Tennessee law for resolution of certain disputes involving state agencies.
- (E) Administrative Judge – a special judge appointed under TUAPA to preside over and administrative hearing in accordance with TUAPA.

### 3. Progressive Discipline

The University utilizes its annual performance review process and progressive discipline when appropriate to notify employees of unsatisfactory work performance or work-related behavior and to provide an opportunity to correct deficiencies. Although supervisors are encouraged to utilize these steps when appropriate, a supervisor is not required to utilize every step in this process, and a supervisor has discretion to skip or repeat any or all steps if warranted by the circumstances. Immediate termination may be appropriate when an employee's performance or behavior constitutes gross misconduct, violates the law, results in significant property loss or injury, is of such a nature that progressive discipline is not appropriate, or if continued employment is otherwise not in the best interest of the University.

The steps in the progressive discipline process are as follows:

- (A) Verbal warning (to be documented by the supervisor);
- (B) Written warning;
- (C) Final written warning;

<b>System-wide Policy: HR0525 - Disciplinary Action</b>	
<b>Version: 11</b>	<b>Effective Date: 4/1/2021</b>

- (D) Suspension, either with or without pay; and
  - (E) Termination.
4. Disciplinary action of any kind should be taken with attention to fairness and consistency. When disciplining an employee, supervisors should consider the nature of the unsatisfactory work performance or work-related behavior, the past record of the employee, the supervisor's reasonable expectations, and the appropriate action necessary to correct the issue. All disciplinary actions should be presented to the employee, describe the unsatisfactory performance or work-related behavior, articulate the supervisor's expectations, and describe the necessary corrective action the employee must take.
  5. Departments must contact the applicable system, campus, or institute Office of Human Resources (HR) prior to imposing formal discipline (the steps listed in paragraph 3) to ensure that discipline is appropriate and consistent with University policy. HR must determine that discipline complies with University policy before discipline is imposed. This policy does not limit the discretion of supervisors to informally counsel employees about performance or behavior issues. Informal counseling may, but need not, be documented. Departments may, but are not required to, contact HR prior to providing informal counseling.
  6. At every step in the disciplinary process, a non-exempt employee may request that the employee relations representative assigned to the department be present. Should the assigned representative be unavailable or have a conflict of interest, HR will assign another representative.
  7. Supervisors, with the assistance of HR, may prepare a performance improvement plan (PIP) in conjunction with (1) any step in the progressive discipline process, (2) an employee's annual performance review, or (3) as an independent action. A PIP should specify the supervisor's expectations, the unsatisfactory work performance or work-related behavior, remedial steps that the employee must complete, and a time period during which the employee must demonstrate improvement.
  8. An employee who receives progressive discipline more serious than a verbal warning is ineligible to transfer to another position within the University for up to one year from the date of the most recent disciplinary action more serious than a verbal warning.

## **II. TERMINATION**

9. Termination should be considered only upon a determination by the supervisor, after consultation with HR, that (1) the employee engaged in gross misconduct, (2) additional corrective action would be ineffective or is otherwise not warranted, (3) all other steps of progressive discipline have been followed, and/or (4) termination is in

<b>System-wide Policy: HR0525 - Disciplinary Action</b>	
<b>Version: 11</b>	<b>Effective Date: 4/1/2021</b>

the best interest of the University. The process for terminating an employee is as follows:

- (A) Pre-termination meeting: Before terminating an employee, the supervisor or other authorized University official must (i) consult with HR; (ii) advise the employee, orally or in writing, of the reasons why the University believes termination is appropriate, and (iii) provide the employee an opportunity to respond. An employee may present witnesses and other evidence to rebut the allegations, but legal counsel is not permitted to attend.
  - (B) Termination letter: If termination is deemed appropriate following the pre-termination meeting, the supervisor, in consultation with HR, must issue a termination letter to the employee. The termination letter should explain the grounds for the termination, the employee's appeal rights, and applicable exit procedures.
10. An employee may be placed on administrative leave while the University is investigating or addressing allegations of misconduct, or as otherwise permitted by University policies.
  11. During an ongoing investigation of fraud, waste, or abuse by the University's Office of Audit and Compliance or the State of Tennessee Comptroller's Office, management should consult with the Office of General Counsel, Human Resources, and the Office of Audit and Compliance prior to taking any disciplinary action, including termination, against either the individual under investigation or an individual who has provided information relevant to the investigation. See FI0130—Fraud Waste and Abuse. An employee suspected of fraud, waste, or abuse may not resign as an alternative to discharge unless the approval of the system, campus, or institute chief business officer (as appropriate) is obtained in advance.
  12. The university may refuse to accept an employee's resignation and proceed with the termination process if a resignation would not be in the best interest of the University.
  13. Employees who are terminated for gross misconduct (or who resign during an investigation of an allegation of gross misconduct that is later substantiated) will not receive any payout for their accrued annual leave. If there is a pending investigation of gross misconduct at the time of resignation, payout of annual leave will only occur after the investigation is completed, and only if the allegations are not substantiated. Employees terminated for gross misconduct will be ineligible for Consolidated Omnibus Budget Reconciliation Act (COBRA) benefits. The University can withhold a portion of an employee's final paycheck (including accrued leave payout) to recover lost or stolen funds, but it cannot pursue recovery of funds from an employee's retirement benefits.

<b>System-wide Policy: HR0525 - Disciplinary Action</b>	
<b>Version: 11</b>	<b>Effective Date: 4/1/2021</b>

14. In the event the University is planning on suspending an employee without pay, the University will hold a pre-suspension meeting, provide notice of the reasons for the suspension without pay, and give the employee the opportunity to respond.

### III. APPEALS

15. Except in certain circumstances, employees may appeal a termination. The types of appeal available depend on (A) whether the employee is exempt or nonexempt and (B) whether the termination or suspension is for unsatisfactory work performance/work-related behavior or for gross misconduct.
16. Nonexempt employees have three appeal options to appeal a termination (regardless of the grounds for the termination) or suspension without pay, and can select any one of the following:
- (A) Administrative review. The review will be conducted by the chief executive officer of the system, campus, or institute in which the employee works.
  - (B) Informal hearing. This hearing will be held before a panel of employees selected by HR and conducted by an HR official or designee. An employee may object to a panel member based on bias, which shall be decided by the chief human resources officer of the system, campus, or institute (as applicable). The University and employee will be permitted to present witnesses and other evidence. An employee may elect to have a lawyer present to provide advice during the hearing, and if the employee does so, then the University will also have an attorney present. Attorneys are not permitted to advocate, argue to the panel, or otherwise participate in the hearing.
  - (C) Formal hearing pursuant to [Human Resources Policy, HR0640, Grievances](#). This is a formal hearing under the Tennessee Uniform Administrative Procedures Act (TUAPA). A TUAPA hearing will be conducted in accordance with the University's contested case rule. The hearing will be held before an Administrative Judge (AJ) selected by the University. Both the University and the employee can be represented by an attorney, who may participate in all aspects of the case.
  - (D) Exception. In cases where an employee is terminated or suspended without pay for a Title IX violation following a hearing conducted pursuant to any campus or institute Policy on Sexual Harassment, Sexual Assault, Dating and Domestic Violence, and Stalking, the employee will be entitled to the appeal process set forth in that policy.
17. Exempt employees.
- (A) Administrative Review. An exempt employee can request an administrative review. The review will be conducted by the chief executive officer of the system, campus, or institute in which the employee works.

<b>System-wide Policy: HR0525 - Disciplinary Action</b>	
<b>Version: 11</b>	<b>Effective Date: 4/1/2021</b>

- (B) Exception. In cases where an employee is terminated or suspended without pay for a Title IX violation following a hearing conducted pursuant to the university's Policy on Sexual Harassment, Sexual Assault, Dating and Domestic Violence, and Stalking the employee will be entitled to the appeal process set forth in that policy.
18. An employee who wishes to appeal a termination or suspension without pay must notify HR in writing within fifteen (15) working days of being provided with the written decision, unless the termination or suspension without pay is pursuant to a campus or institute Policy on Sexual Harassment, Sexual Assault, Dating or Domestic Violence, and Stalking, in which case the time period to appeal set forth in that policy is applicable. An employee may respond in writing to verbal and written warnings, and the response will be maintained in the employee's personnel file along with the written warning.
19. An employee who selects an informal appeal must sign a waiver of TUAPA hearing rights.

#### **PROCEDURES:**

To view links to campus policies and procedures, click here:

<https://policy.tennessee.edu/campus-policies-procedures>

#### **FORMS:**

- [TUAPA Hearing Waiver Form - Rev 5/05](#)

**Related Policies:** [HR0355 - Leave of Absence](#), [HR0640 - Grievances](#)