

KANSAS ADJUTANT GENERAL'S DEPARTMENT

MEMORANDUM FOR ALL STATE EMPLOYEES

FROM: TAG-SHRO

SUBJECT: Grievances
TAG Policy No. 034-10

EFFECTIVE DATE: July 10, 2017

POLICY STATEMENT: The Adjutant General's Department shall address employee grievances in a fair and timely manner without retaliation, reprisal, restraint, interference, or coercion.

DEFINITIONS:

Conditions of Employment. That part of employment that sets out the duties, responsibilities, hours of work, salary, leave, and other privileges enjoyed by employees are Conditions of Employment.

Discrimination. As defined by law, unequal treatment on the basis of race, religion, color, sexual orientation, gender identity, gender, age, national origin, ancestry, military or veteran status, genetic information or disability status, is Discrimination.

Grievance. A formal complaint that is a charge:

- related to working conditions, employee relationships, or unfair work-related matters,
- of alleged discrimination on the basis of race, color, religion, sexual orientation, gender identity, gender, age, national origin, ancestry, military or veteran status, genetic information, or disability status related to employment practice or work environment,
- of sexual harassment.

Grievant. An employee or group of employees who file a Grievance is a Grievant.

Official Personnel File. A confidential file maintained by the State Human Resource Office (SHRO) which contains all transactions related to a person's employment with the Adjutant General's Department except for documents specifically excluded by State or Federal law, regulation or policy is the Official Personnel File.

Sexual Harassment. As defined by law, unwelcome advances of a sexual nature, requests for sexual favor, verbal or physical conduct of a sexual nature, and derogatory sexual remarks is Sexual Harassment. Sexual Harassment can be committed by men, or women, and between people of the same or different sex.

Working Days. Monday through Friday, excluding legal or officially observed holidays, are Working Days.

PROCESS GUIDELINES:

Requirements

Any employee who believes they have been discriminated against or sexually harassed while at work shall contact the State Human Resource Director immediately following the behavior or incident causing concern.

Any employee who wishes to file a Grievance related to working conditions, employee relationships, or other work-related matters including but not limited to, inappropriate behavior, language, or treatment by a co-worker, supervisor, manager, or other person in relation to the workplace or work-related activities, shall contact their immediate supervisor following the Informal Process outlined in this policy.

Grievances may be filed by an individual or by a group of employees with a similar issue(s).

Employees who are covered by a Memorandum of Agreement (MOA) may choose the Grievance process outlined in the MOA, or the process detailed in this policy, but not both.

Grievances may NOT be filed for the following:

- Demotions, suspensions, or dismissals of employees.
- Counseling or informal disciplinary actions taken by the supervisor or manager.
- Individual employee performance reviews.
- Decisions regarding requests to receive shared leave donations.
- When an investigation has already occurred and/or a final decision has been made on a grievance.

Employees shall not be subject to retaliation or penalized in any way for the proper use of the Grievance Policy and/or process.

Assistance and advice is available from the State Human Resource Office at any stage of the Grievance Process.

Informal Process

Step 1. Complaint is brought to the employee's immediate supervisor.

- Within five (5) Working Days of the incident causing the complaint, the employee shall request a meeting with their immediate supervisor to discuss the issue(s) of concern.
- The supervisor shall meet with the employee and respond in writing to the employee within seven (7) Working Days of receiving the request to meet.
- In addition to addressing the issues of the complaint, the response shall advise the employee of their right to file an appeal within five (5) Working Days of receipt of the response from the supervisor using TAG Form #010, "Official Grievance Form" (step 2).

Formal Process (Documented)

Step 2. If the issue(s) of complaint are not resolved by the employee and supervisor during the informal process (step 1), the employee may, within five (5) Working Days of receipt of the written response from the supervisor, complete TAG Form # 010, "Official Grievance Form," and submit to their Division Director, along with a copy of the Supervisors response and a statement of why the Supervisors response was not acceptable.

- Within ten (10) Working Days following the receipt of the Grievance Form, the Division Director shall meet with the employee to discuss the grievance and prepare a written response.
- In addition to addressing the issues of the complaint, the response shall advise the employee of their right to appeal the written response of the Division Director to the Adjutant General or his/her designee. Such appeal shall be made within five (5) Working Days following receipt of the written response from the Division Director.

Step 3. Within five (5) Working Days following receipt of the response from the Division Director, the Grievant may appeal the decision by identifying in writing the reason(s) for the appeal on the TAG Form #010, "Official Grievance Form," and forwarding, along with written responses from the immediate supervisor and Division Director to the State Human Resource Director

Upon receipt of the appeal, a designated representative will be appointed by the Adjutant General or State Human Resource Director, to review the grievance and make recommendations for its resolution. The Adjutant General or State Human Resource Director may incorporate all, part, or none of the designee(s) recommendations into the written response to the Grievant within 15 working days of receiving the appeal. The decision of the Adjutant General is final and not subject to further appeal.

Confidentiality

Information concerning an employee Grievance shall be confidential and investigations or discussions related to grievances shall take place during normal work hours and considered hours worked.

Due to the need to maintain the integrity of an ongoing Grievance investigation, all investigative documentation shall remain confidential. Once the Grievance process has been completed, employees who provided witness statements may request a copy of the signed statements they provided.

Grievance Files

Upon the completion of the Grievance process, all documents and information regarding the Grievance, held by any party shall be turned over to the Director of State Human Resource Office for placement in a confidential Grievance File.

Employee Grievance files related to working conditions or employment issues shall be maintained for five (5) years after the date the grievance is resolved.

Grievance files related to an allegation of Discrimination or Sexual Harassment shall be retained for five (5) years following resolution and transferred to Agency Archives.

Documentation related to a Grievance shall not be placed in any persons Official Personnel File unless disciplinary action is taken.

Special Circumstances

At no time shall a person directly identified in a Grievance, participate in the investigation or respond to the Grievance.

In situations where the complaint involves an individual assigned responsibility in the Grievance or appeal process, the process shall begin at the next level of supervision, or the employee may meet with the SHR Director.

Extensions or changes to the timelines and/or deadlines of the Grievance process may be made by mutual agreement of involved parties, with the approval of the State Human Resource Director.

When a situation arises that would necessitate an extension of time in order to conduct an accurate and thorough investigation, a written notice indicating the reason for the extension and when the decision will be available will be forwarded to the grievant.

If a complaint is verbalized but the complainant does not want to file a grievance, the Agency may investigate the complaint at the direction of the State Human Resource Director. Upon completion of the investigation a response will be made to the complainant; however, there will be no right to appeal within the Agency.

Responsibilities

When an employee believes they have been subjected to a discriminatory, hostile, or offense work environment or behavior they should, whenever possible, put the person creating the hostile or offensive environment 'on notice' that the behavior is offensive and not acceptable.

Employees are responsible for discussing harassing or discriminatory activity with their supervisor or manager immediately. Grievances should be promptly filed and follow the procedures outlined in this policy.

Supervisors and managers are responsible for discouraging and addressing hostile or offensive behavior in the work place immediately and thoroughly. Counseling shall take place to manage such behavior and employees shall be made aware of the process for filing a Grievance.

Supervisors and managers are responsible for discussing, resolving, and responding to all grievances promptly and without reprisal.

AUTHORITATIVE REFERENCES:

K.A.R. 1-12-1, "Grievance Procedures"

K.S.A 45-221(a)(4)(11), "Kansas Records Retention Schedule"

TAG Policy 034-03, "Discrimination and Sexual Harassment"