Policy 2100

From Human Resources

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PERSONNEL POLICY MANUAL
MoDOT Personnel Policy Title: Grievance Procedure **Policy Number**: 2100 **Chapter Title**: Grievances and Complaints **Effective Date**: September 1, 2012 **Supersedes Policy Number**: 2100 **Dated**: May 1, 2012
Approved By: Micki Knudsen, Human Resources Director (Signature on file)

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POLICY STATEMENT

The department shall provide an orderly and systematic process for resolving differences of opinion between the department and its employees on issues that arise outside the scope of Personnel Policy 0505, “Equal Employment Opportunity,” or except as otherwise exempted pursuant to department policy. This procedure is not intended to eliminate employees' rights to communicate directly with the Audits and Investigations (AI) director or informally with any level of management, through administrative channels, at any time they may have a concern or a question which has not been satisfactorily answered under this policy.

PROCEDURES

1. Except for those employees listed in paragraph 12, any full-time or permanent part-time employee who has completed his/her initial probationary period and feels unfairly treated by an action taken or omitted by the department may file a grievance. A grievance must be filed in writing and received by the appriate department representative noted in this policy no later than 30 calendar days after the act, occurrence, or omission leading to the grievance. The grievance will be denied if it is not received by the appropriate department representative within 30 calendar days of the act, occurrence, or omission leading to the grievance, unless a determination is made that the act, occurrence, or omission could not reasonably be detected by the employee until a later date. In such circumstances, the grievance must be filed in writing and received within 30 calendar days from the date the act, occurrence, or omission could have reasonably been detected by the employee.

2. Appeals of verbal and written warnings must be filed in writing with the local Human Resources (HR) manager for review by the relevant district engineer or division leader/state engineer (Step 2 of the process defined in paragraph 7 below). Such appeals must be received by the local HR manager within 30 calendar days of the disciplinary action. Review of appeals of verbal warnings will be resolved by the district engineer or division leader/state engineer. Employees appealing written warnings who are not satisfied after the first review can further appeal to the AI Division for resolution pursuant to Steps 3 and 4 of paragraph 7 below. Appeals of higher level discipline, such as suspension, probation, demotion, or termination, must be filed in writing and received by the Audits and Investigations Director within 30 calendar days of the disciplinary action. Such appeals are to be filed in writing directly with the Audits and Investigations Director, Missouri Department of Transportation, P. O. Box 270, Jefferson City, Missouri 65102 (start at Step 3 of the process defined in paragraph 7 below). When employees in the AI Division want to file an appeal regarding discipline of a written warning or higher level discipline, they should write to the equal opportunity and diversity (EOD) director at this same address. The EOD director will follow the same procedures as identified for the AI director throughout the remainder of this policy. Except as provided in paragraph 4, discipline resulting from findings of an investigation by the AI Division is not grievable to the AI or EOD director.

3. A terminated full-time or permanent part-time employee who successfully completed his/her initial probationary period may elect to have his/her appeal heard either as a grievance pursuant to Steps 3 and 4 of paragraph 7 of this policy or as a formal hearing pursuant to the policy and procedure described in Personnel Policy 2103, “Formal Termination Hearings,” and Procedure 2103, “Formal Termination Hearing Procedure.”

4. A termination that results from findings of an investigation by the AI Division may be appealed by timely filing a grievance initially with the AI director (must be received within 30 days of termination), who will forward such grievance to the EOD director, who will review and respond to such grievance consistent with this policy.

5. A full-time or permanent part-time employee who successfully completed his/her initial probationary period and is terminated as the result of findings of an investigation by the AI Division will be allowed, in lieu of a grievance to the EOD Division, the option of a formal hearing as described in Personnel Policy 2103, "Formal Termination Hearings," and Procedure 2103, "Formal Termination Hearings," only by filing the Formal Complaint form attached to Procedure 2103.

6. The result or method of implementation of a job evaluation study is not grievable. In addition, salary inequity issues and performance-based pay decisions are not grievable.

7. Other than the stated exceptions in paragraphs 2, 3, 4, 5, and 6 above, the following procedures will be used when filing a grievance under this policy:

Step 1
The employee must file the grievance in writing with the local HR manager which must be received by the HR manager within 30 days of the action or inaction being grieved. The employee should explain the act, occurrence or omission that led to the filing of the grievance, the basis for the grievance, present all the facts related to the grievance, and describe the corrective action desired.

Within five workdays after receiving the written grievance, the local HR manager will hold a meeting with the employee and the supervisor or manager that made the decision at issue. Within five workdays after that meeting, the supervisor will provide the employee with a written reply.

The employee will have the option of including another person of his/her choice (which could be a union representative for the certified bargaining unit) to be present at Step 1 and all future grievance meetings; however, this individual will not be allowed to represent the employee, including providing legal counsel or participate at the meetings.

Step 2
If the grievance is not resolved to the employee's satisfaction at Step 1, the employee may, within five workdays after receiving the written reply, file the grievance in writing with the district engineer in the case of district employees, or their division leader/state engineer in the case of Central Office employees. Another meeting may be scheduled of those involved to obtain more information about the grievance. A reply will be made in writing to the employee within ten workdays following receipt of the forwarded grievance.

If a meeting is held at Step 2 and the employee requests another person of his/her choice be present (which could include a union representative for the bargaining unit), this individual will not be allowed to represent the employee, including providing legal counsel; however, he/she may ask brief clarifying questions as long as such participation is not disruptive to

the process and does not hinder the department's investigation. If the individual's participation is not limited to what is outlined in Step 2 of this policy as determined solely by the district engineer or division leader/state engineer, the individual shall be required to leave, and the grievance meeting will proceed without that individual. Failure of the individual to leave in these circumstances shall result in the immediate termination of the meeting.

Step 3
If the employee is dissatisfied with the written reply from Step 2, the employee may file an appeal in writing with the Audits and Investigations Director, Missouri Department of Transportation, P. O. Box 270, Jefferson City, Missouri 65102, within five workdays after receiving the reply. If the grievance pertains to discipline resulting from an investigation by the AI director, such grievance shall be forwarded to EOD director who will follow the process as outlined in Steps 3 and 4 herein: investigating, making the recommendation to the department director, and notifying the grievant and supervisors of the final disposition and any corrective action. The EOD director will similarly follow the steps, requirements and process outlined in paragraphs 8 and 9 below.

The AI director (or EOD director) will ensure whatever investigation is necessary to establish or validate the facts of the case is conducted. This investigation may include, but is not limited to, the scheduling of a grievance meeting or conducting interviews for the purpose of obtaining information from the grievant, the supervisor(s), and other employees involved in the matter.

Step 4
The AI director (or EOD director) will make a recommendation to the department director for final disposition. A summary of the information regarding the grievance will be presented to the Missouri Highways and Transportation Commission (Commission) for review. The AI director (or EOD director) will notify the employee and supervisors in writing of the final disposition and any corrective action that will be taken as soon as practical.

8. All steps should be carried out in the time specified in this policy, unless there are extenuating circumstances, such as absence of personnel involved, need for higher review or local investigation, etc. The employee should be kept informed of the status of the grievance when an immediate decision cannot be reached and a reply will be delayed.

9. Any investigation, correspondence, etc., involved in the processing of a grievance handled by the AI director or the EOD director should be treated as confidential information to minimize publicity and embarrassment to all parties concerned; however, anonymity cannot be promised to persons (public or employees) who provide information as part of the investigation. The identity of persons who provide information and the information provided shall only be disclosed to those who have a legitimate need to know or who have a lawful right to such information.

10. The Commission and appointed officials of the Missouri Department of Transportation hold a responsibility to fairly and efficiently carry out designated functions, and nothing in this procedure precludes this responsibility or authority to do so.

11. This policy and its accompanying procedure shall not apply to employees that leave employment with the department as a result of: (1) a layoff; (2) a resignation or retirement from the department; or (3) a resignation or retirement in lieu of termination from the department. Such employees do not have the rights outlined in this policy and procedure.

12. This procedure shall not apply to employees in personnel policy making and other designated positions. The following list identifies positions which are exempt from this procedure. Promotions to positions on the list cannot be filed as a grievance.

Job Titles Exempt From Personnel Policy 2100

Director, Department of Transportation Chief Engineer Chief Financial Officer Assistant Chief Engineer Chief Counsel Assistant Chief Counsel Secretary to the Commission District Engineer Regional Counsel Division Leader/State Engineer Attorneys I-V Law Clerk Seasonal and other wage employees

CROSS REFERENCES

Personnel Policy 0505, “Equal Employment Opportunity”

Personnel Policy 2103, “Formal Termination Hearing”

Procedure 2103, "Formal Termination Hearing"

ATTACHMENT

- MoDOT Grievance Procedure Flow Chart

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