PURPOSE

It is important to the Department that employees have a process that allows them to raise grievances to all levels of management. It is also important that grievances be resolved quickly and at the lowest level possible. This policy provides guidance to non-union represented employees in resolving grievances, work-related problems, and concerns regarding the work environment. This policy also provides guidelines for managers in addressing and resolving such situations. No person will be harassed for or retaliated against concerning the filing of a grievance. No person will be harassed or retaliated against for assisting/participating in any part of the grievance process. All allegations of retaliation and/or harassment will be investigated. If an employee is represented by a union, then a different procedure will be followed.

**DEFINITIONS**

**Conflict Resolution**:A process of coming to an agreement and ending a conflict in a constructive fashion for all parties involved. This process uses a facilitator to arrive at a mutually acceptable settlement agreement.

**Coworker**: A coworker is an employee of the Department who has voluntarily agreed to assist the employee in the grievance process. The coworker should work in the same location as the grievant.

**Human Relations Officer**: (HRO) the departments HRO monitors all grievances.

**Representative**: An individual (e.g. attorney or coworker) who has been chosen by the grievant to assist the grievant in the process and represent the grievant at steps 2 and 3.

**Grievance:** An allegation by an employee of the Department that certain events or circumstances at work are having a negative impact on the employee's ability to perform their job or are affecting a condition of employment.

**Grievant**: An employee who files a grievance. All employees of the Department are eligible to file a grievance.

**Grievable Issue**: A situation within the Department’s jurisdiction and control that impedes an employee’s ability to effectively perform their job. The exercise of management’s rights and Departmental policies are not grievable; however, a grievance may be filed for alleged inappropriate or inconsistent application of a policy.

**Mediation**: An intercession by a neutral party to resolve the grievance at Step 1.

**Non-Grievable Issues**: Personnel transactions are covered under a specific appeal process such as review by the Director of the Division of Personnel, and the Commisioner of Administration, in consultation with appointing authorities/and or their designees (see Grievable Issue from above). The exercise of management rights shall not be the subject of a grievance. Departmental policies and official actions by the Department Director, including but not limited to reorganization and layoff, and ENGAGE are not grievable issues. If a situation is considered a non-grievable issue, it may be reviewed for conflict resolution.

**Remedy**: A statement by the employee that specifically states the desired outcome of the grievance.

**Time Frames**:All time frames shall be calculated beginning the next working day excluding weekends and holidays after receipt of the grievance or response. Time frames calculating the time in which to file the grievance will begin the next working day after the event occurs, date of the final action, or the date the grievant becomes aware of the action.

**Witness**: An individual who has direct, firsthand knowledge of the situation either by participation or observation.

**Working Days**: Monday through Friday, excluding weekends and holidays.

**Business Hours**: 8:00 a.m. through 5:00 p.m. unless extenuating circumstances apply.

1. **GENERAL PROVISIONS**
   1. All Department employees may file grievances. The process remains the same whether the grievance is filed against a supervisor or co-worker.
   2. Complaints of protected-class discrimination or sexual harassment are not processed under this policy. (See Policy 12.3 Sexual and Other Harassment, and/or Policy 12.6 Complaint Procedure).
   3. The Department’s HRO will monitor all grievances. The HRO will limit distribution of grievances to those with a business need to know, and will provide copies to the Office of Human Resources Chief, HR Manager, and the appropriate Division Director. Files of grievances will be retained by the HRO for the appropriate length of time as deemed appropriate by Office of Administration guidelines. Grievances shall not become part of any other permanent record. They will not be maintained in any official personnel file.
   4. Grievance Review Request Non-Union Represented Form (HR-17/Attachment A) will be made available to employees on the Department intranet in the policy manual and through the HRO and/or Office of Human Resources.
   5. If the grievant ceases to be employed by the Department, the grievance shall be administratively closed. If an individual who is the subject of a grievance (i.e. supervisor or co-worker) ceases to be employed by the Department, all desired remedies specific to that individual would no longer be considered relevant and would become null and void. All remedies specific to alleged policy violations would be allowed to continue through the grievance process.
   6. The grievant is allowed to use Department equipment to prepare (i.e., copier and computer) and distribute their grievance to the required distribution list. This shall be included in the one (1) hour granted for grievance preparation.
   7. Individuals who are not employees of the Department may not file a grievance for an employee. Employees shall not file grievances for other staff. This provision does not apply if union representation is involved.
   8. A coworker, or legal counsel may provide assistance to the grievant at Step 2 or Step 3. The coworker must maintain confidentiality of the grievance procedures. Failure to maintain confidentiality will result in disciplinary action. The grievant still has the responsibility to present their position at each Step.
   9. The representative may assist or advise the employee but may not replace the employee’s role in the grievance process.
   10. Mediation requires that both sides involved in the situation cooperate and actively participate in the mediation process. The Office of Human Resources will provide mediators. Successful mediation will resolve the grievance. A mediator will not decide the resolution but will serve only as facilitator for the resolution to occur.
   11. Employees and management shall act in good faith when utilizing these procedures. All parties should understand that the goal of the grievance process is to provide a forum through which to resolve issues, and the parties should not unduly focus on technicalities of the process to stall or complicate the expeditious accomplishment of that goal.
2. **GRIEVANCE PROCESS**

2.1 Following is a step-by-step process for filing a grievance. When an employee has less than three (3) steps in the process due to their place in the chain of command, the process will be condensed. The Department Director’s Office is the highest step.

* 1. **Informal Resolution**
     1. Employees are encouraged to resolve all grievances in an informal manner. Employees may do so by contacting the immediate supervisor or the next level supervisor within their chain of command, either verbally or in writing.
     2. The employee should be prepared to discuss the situation in detail with either or both supervisors involved, and bring whatever evidence is necessary into the informal process.
     3. The employee and management may ask questions of the HRO concerning the informal resolution process. The HRO, if involved in any way, will work closely with both management and the employee and shall serve as a neutral, non-biased party in the informal process.
     4. Employees should attempt informal resolution within fifteen (15) working days of the problem or situation. If the informal resolution effort is unsuccessful, the employee has fifteen (15) working days from the date of the last resolution attempt to file a grievance at Step 1.
  2. **STEP ONE (1) (Mediation Level)**
     1. **Employee Responsibility at Step 1**

The employee wishing to begin the grievance process should submit a written grievance on the HR-17 Grievance Review Request Non-Union Represented Form (Attachment A) within fifteen (15) working days of the event or of the failure of informal resolution. This form is submitted to the immediate supervisor, the person who is being grieved against, and the HRO. If the employee alleges discrimination, the employee shall consult with the HRO to see if the issue should be handled as a complaint rather than a grievance.

* + 1. The employee shall include specific information including dates, times, witnesses, etc. The employee shall include all relevant information from the informal process.
    2. The employee shall include the requested remedy. This remedy shall not change throughout the process.
    3. The employee may contact the HRO for assistance in filing the grievance. After receiving the HR-17 Grievance Review Request Non-Union Represented Form, the HRO will review the content and if a grievable issue, the HRO will send a copy of the grievance to the applicable division director. The HRO will maintain an ongoing file of the grievance and all correspondence relative to it.
    4. The grievance procedure time frames will be suspended while mediation occurs.
    5. The grievant(s) or their representative shall provide to the Office of Human Resources (OHR) an e-mailed list of all grievants and witnesses upon initiation of a grievance at Step 1. This list must contain the names and work telephone numbers of all the grievants/witnesses, and must be received by OHR not later than two (2) working days prior to any teleconference or meeting related to the grievance.
  1. **Management Responsibility at Step 1**

Upon receipt of the Step 1 HR-17 Grievance Review Request Non-Union Represented Form, the immediate supervisor and the HRO shall review the grievance for content and determine the appropriate persons to be involved.

* + 1. Within fifteen (15) working days of receipt, the HRO shall contact applicable parties to schedule the mediation, if appropriate. Mediation would involve the mediator, the employee, the immediate supervisor, and the bureau/section chief or regional manager if they choose to participate. No tape recording is allowed at Step 1.
    2. Within fifteen (15) working days of the end of mediation, the mediator will document issues discussed, identify resolved issues, and document each party’s position on unresolved issues. All participants will receive a copy of the report from the HRO.
    3. If the grievance issues are clearly outside the realm of the supervisor's responsibility (e.g., Department policy, etc.), the HRO will notify the parties involved of the recommended appropriate action.
  1. **STEP TWO (2) (Division/Center Level)**

2.5.1. **Employee Responsibility at Step 2**

If the employee is not satisfied with the results of the mediation at Step 1, the employee shall complete the HR-17 Grievance Review Request Non-Union Represented Form and submit it to the division/center director within fifteen (15) working days of receipt of the Step 1 mediation report. The employee shall submit a copy of the HR-17 Grievance Review Request Non-Union Represented Form and all related materials to the HRO.

2.5.2 The employee should set out the reasons why the mediation at Step 1 did not resolve the grievance. The employee may not bring in new information that would change the content of the grievance or add new grievance issues. The employee should include any additional documentation or information which has occurred during or since the Step 1 process, including the mediator’s report.

2.5.3 The HRO will make sure all applicable persons receive copies of the documentation.

2.6 **Management Responsibility at Step 2**

Upon receipt of the Step 2 grievance, the division director or designee will conduct an overall review of the facts.

* + 1. The division director or designee will hold a hearing to review all relevant information and hear witness testimony, as they deem appropriate. This may be done via teleconference or in person. Tape recording at Step 2 will be required for possible use at Step 3. The Division is responsible for taping. If the grievant wishes to tape the proceedings, they may do so at their expense.
    2. At the hearing, the division director or designee will discuss with the employee and their representative and the employee(s) being grieved against (and their representative if applicable) the information provided, this could include any mediation attempts and possible solutions.
    3. The hearing must be conducted and the decision issued within twenty (20) working days of receipt of the Step 2 request.
    4. The division director makes the final Step 2 determination regarding the requested remedies and issues a written response to the employee with a copy to the HRO.
    5. Any delay in meeting time frames shall be discussed with the HRO. The division director shall notify the grievant in writing of the delay with an explanation. A copy of this memo will be given to the HRO.
  1. **STEP THREE (3) (Department Level) -** The Step 3 review will be conducted in the following manner.

2.7.1. **Employee Responsibility at Step 3**

If the employee is satisfied with the Step 2 decision, then the employee must notify the HRO within five (5) working days. If the employee is not satisfied with the decision at Step 2, the employee has fifteen (15) working days after receiving notification of the Step 2 hearing decision to appeal the grievance to Step 3.

a) The employee shall set out specifics as to what aspects of the decision at Step 2 were unacceptable.

b) The employee shall include any additional information gathered at Step 2 and all information from Step 1. The content of the grievance cannot change at this point.

c) The employee shall send the original Step 3 grievance and relevant documents to the HRO who will refer the documents to the Department Director or designee, as appropriate.

2.7.2 **Department Responsibility at Step 3**

Upon receipt of the Step 3 grievance, the HRO will notify the Department Director’s Office or designee and make sure all relevant documents are delivered. The review will be conducted by the Department Director or designee. The review and decision and response will occur within twenty (20) working days. This will be the final decision of the grievance process. It is possible, at Step 3, that parties directly involved (employees and applicable supervisors/managers) will be asked to come to Jefferson City to present all relevant information or be present by tele-conference. For exceptions see 3.0, Step 2- # 3.2.11 - 3.2.18.

1. **HEARINGS PROCESS**

3.1 Hearings, either in person or via teleconference will be conducted at Step 2. The possibility of additional testimony may occur at Step 3. Step 2 hearings will address the requested remedies. Step 3 will address the decision(s) made at Step 2.

3.2 Hearings shall be conducted in the following manner:

**Step 2**

* + 1. Participants shall receive at least three (3) working days notice of the date, time, and location of the hearing.
    2. Exceptions may be made by the HRO on a case-by-case basis in the event a short-notice replacement is needed, etc.
    3. This notice may be provided to the grievant(s), their representative, or their supervisor/manager.
    4. Notice given to any of the aforementioned shall be considered notice given all grievants and/or witnesses.
    5. It is the responsibility of the supervisor/manager (if notified) to contact the grievant or representative, who in turn is responsible to contact the other grievants (if any) and all witnesses. Once confirmed with all participants, the arrangements will be confirmed via fax or e-mail.
    6. Both the grievant and management shall be given an opportunity to:

1. review documents presented (confidential personnel information will not be disclosed);
2. present oral or documentary evidence supporting their position without undue interference;
3. question or refute any testimony or documents offered; and
4. listen to and question all witnesses.
   * 1. The grievant may have a coworker representative assist them at the hearing. However, this does not negate the employee’s responsibility to present their issues and respond fully to questions. The grievant(s) must notify the HRO of the intended representative at least two (2) working days prior to the hearing. This notification shall be via fax or e-mail. The selected representative may not change throughout the process. Exceptions may be requested through the HRO. If the selected representative is not also a grievant or witness, the fact that they are present or named to be present at a hearing on behalf of the grievant(s) shall constitute acknowledgement that they are indeed the formally selected representative.
     2. Attendance at the Step 2 hearing is limited to the Chair (division director or designee), applicable supervisory/management staff, grievant(s), grievant’s representative (if any), person being grieved against, and legal counsel (if any).
     3. All witnesses must have first-hand knowledge of or personally witnessed the situation. Witness testimony is normally through written statements or teleconference unless an exception is granted after consultation with the HRO at least two (2) working days prior to any hearing.
     4. Management may contact witnesses with first-hand testimony relevant to the specifics of the grievance. Participation is required by Department employees.
     5. In the event there are multiple grievants and/or witnesses, the physical presence of these grievants/witnesses at face-to-face meetings will be limited to two (2) if travel expenses are to be reimbursed by the Department.
     6. If the grievants have previously selected a coworker representative at Step 1, they must be present, along with one (1) grievant. If no coworker representative was selected, the two (2) employees eligible for travel reimbursement by the Department may be one (1) grievant and one (1) witness, or two (2) grievants. In any case, at least one (1) grievant must attend.
     7. Testimony by grievants is permissible by teleconference or in person.
     8. Any additional written statements will be provided by the grievant representative to the Hearing Chair, in advance of face-to-face meetings.
     9. Grievants and/or witnesses wishing to provide testimony by teleconference must be in place and prepared to do so upon request.
     10. It is the responsibility of the grievant(s) to arrange and coordinate the availability and use of a suitable private room or facility and speaker-telephone system for this purpose. Supervisors and managers are directed to provide reasonable assistance to grievants in doing so.
     11. The grievant(s) or their representative will notify the Hearing Chair of the telephone number and location at which the witnesses/grievants are to be situated at least two (2) days prior to the Step 2 Hearing.
     12. **Note**: Additional grievants or witnesses may be physically present at a panel hearing at such times during the hearing as are otherwise permitted, but they must travel at their own personal expense and take annual leave or compensatory time.
     13. If situations or circumstances arise that make it unacceptable to the grievant(s) to convene a previously scheduled hearing (e.g., lack of advance notice, unavailability of teleconference facility/equipment, etc.) the grievant or their designated representative will notify the HRO as soon as reasonably possible prior to the beginning of the hearing. In no event will the grievant(s) or their representative appear at the hearing requesting it be rescheduled when prior notice could reasonably have been given.

**Step 3**

* 1. After the Step 3 request has been received by the HRO, the HRO will have ten (10) working days to submit the necessary information to the Department Director’s Office.
     1. The Department Director or designee will review decisions made at Step 2 and will be given an opportunity to:

1. Review documents presented at Step 1 and Step 2 in order to make a ruling concerning the Step 2 remedy decision(s).
2. Listen to the tape recording of the Step 2 hearing if it is needed to clarify an issue.
3. Hold a supplemental hearing for additional testimony if questions arise.
4. Listen to and question all witnesses during supplemental hearings.
   * 1. If a supplemental hearing is held, it should be held within ten (10) working days of receipt of the Step 3 materials from the HRO. The grievant may have a coworker, representative, or legal counsel assist them at any additional Step 3 hearing. However, this does not negate the employee’s responsibility to present their issues and respond fully to questions.
     2. The grievant(s) must notify the HRO of whom their intended representative at least two (2) working days prior to the hearing. This notification shall be via fax or e-mail. The selected representative may not change throughout the process. Exceptions may be requested through the HRO.
     3. If the selected representative (coworker representative or legal counsel) is not also a grievant or witness, the fact that they are present or named to be present at a hearing on behalf of the grievant(s) shall constitute acknowledgement that they are indeed the formally selected representative.
     4. Attendance at any additional Step 3 hearing is limited to whomever the Department Director’s Office feels should be present.
     5. All witnesses must have first-hand knowledge of or personally witnessed the situation.
     6. Witness testimony is normally through written statements, teleconference, or in person unless an exception is granted after consultation with the HRO at least two (2) working days prior to any hearing.
     7. Participation is required by Department employees.
     8. In the event a supplemental Step 3 hearing is called and there are multiple grievants and/or witnesses, the physical presence of these grievants/witnesses at face-to-face meetings will be limited to two (2) if travel expenses are to be reimbursed by the Department. If the grievants have previously selected a coworker representative at Step 1, they must be present, along with one (1) grievant. If no coworker representative was selected, the two (2) employees eligible for travel reimbursement by the Department may be one (1) grievant and one (1) witness, or two (2) grievants. In any case, at least one (1) grievant must attend.

**Note**: Additional grievants or witnesses may be physically present at a panel hearing at such times during the hearing as are otherwise permitted, but they must travel at their own personal expense and take annual leave or compensatory time.

a) Testimony by grievants is permissible by teleconference or in person. Any additional written statements will be provided by the grievant or representative to the Department Director’s Office in advance of face-to-face meetings. Grievants and/or witnesses wishing to provide testimony by teleconference must be in place and prepared to do so upon request. It is the responsibility of the grievant(s) to arrange and coordinate the availability and use of a suitable private room or facility and speaker-telephone system for this purpose. Supervisors and managers are directed to provide reasonable assistance to grievants in doing so. The grievant(s) or their representative will notify the HRO of the telephone number and location at which the witnesses/grievants are to be situated at least two (2) days prior to the Step 3 hearing.

b) If situations or circumstances arise that make it unacceptable to the grievant(s) to convene a previously scheduled hearing (e.g., lack of advance notice, unavailability of teleconference facility/equipment, etc.) the grievant or their designated representative will notify the HRO as soon as reasonably possible prior to the beginning of the hearing. In no event will the grievant(s) or their representative appear at the hearing requesting it be rescheduled when prior notice could reasonably have been given.

1. **TIME FRAMES**
   1. All levels of management and supervisory staff shall consider and respond to time frames in an appropriate manner. If consistent disregard for time frames is noted, disciplinary action may result.
   2. Time frames should not become an obstacle in settling the grievance. Time frames may be extended by mutual written agreement or by the HRO.
   3. Calculations for time frames shall use the next working day after the event or receipt of the grievance/response as the first day. For example, if the supervisor receives the grievance on a Friday, the first day counted toward meeting the response time frame is Monday.
   4. If the employee is on extended leave after initiating a grievance, the grievance process is suspended until the employee returns. The supervisor shall notify the HRO of the absence. The grievance will continue when the employee returns.
   5. If a supervisor is away for an extended time during the processing of a grievance, a designee may act in their behalf or, by mutual agreement, the time frames may be extended. The employee, appropriate management, and the HRO shall consult relating to the handling of grievances in these circumstances.
   6. If the employee fails to proceed according to the appropriate time frame, the grievance will be closed. The grievant will receive a notification letter from the HRO.
   7. If management fails to respond according to the appropriate time frames, the grievant may proceed to the next level unless an extension of the time frames had been agreed to by the parties or granted by the HRO. The grievance is not closed due to management failure to act within time frames. However, management may be subject to disciplinary action if a response is not issued or an extension is not requested.
2. **REMEDIES**
   1. Grievants should list all requested remedies at Step 1. If an amenable compromise can be reached that does not include all of the requested remedies, the grievance may be settled.
   2. Requested remedies may not be changed by the grievant after the filing of Step 1; however, extenuating circumstances may alter the requested remedies (i.e. if the subject of the grievance ceases to be employed, those remedies specific to that individual would become null and void).

5.3 Requested remedies should be appropriate to the grievance and within the control of the Department.

1. **WORK TIME/TRAVEL**
   1. A reasonable time not to exceed one (1) hour shall be allowed for grievance preparation (e.g., preparing documents, copying, etc.) during work time. Employees should ensure that preparation does not interfere with normal work assignments and operations. Coworkers may not assist with this preparation time. Supervisors may request that employees conduct work business before preparing grievances.
   2. All meetings, mediation and hearings of grievances shall be conducted during normal work hours unless extenuating circumstances apply.
   3. It is the responsibility of management to arrange meetings and hearings such that travel costs are minimized. Use of conference calls are encouraged. Travel expenses will not be reimbursed unless management requires an in-person meeting.
   4. Time to travel for a grievance shall be considered work time. If management requires a Department employee to travel or meet to process a grievance outside the normal workday, compensatory time will be granted in accordance with the Administrative Policy 7.3.

**7.0 CONFIDENTIALITY**

7.1 All grievances and associated information are considered confidential. All Department employees involved in grievances are expected to respect and maintain this confidentiality. All panel members are required to sign a statement of confidentiality.

* 1. Any correspondence/files related to grievances should be marked “Confidential” and shall be handled and maintained in a confidential manner.

Prepared By: Approved By:

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Chief, Office of Human Resources DHSS Director (or designee)

**References**

* [Administrative Policy 7.3 - Overtime](https://dhssnet.state.mo.us/policiesprocedures/)
* [Administrative Policy 12.3 – Sexual and Other Harassment](https://dhssnet.state.mo.us/policiesprocedures/)
* [Administrative Policy 12.6 – Complaint Procedure](https://dhssnet.state.mo.us/policiesprocedures/)

FORMS

* HR-17 [Grievance Review Request Non-Union Represented Form – Admin Policy 12.1A -Attachment A](https://dhssnet.state.mo.us/policiesprocedures/)
  + posted in Policy Manual and HR intranet page under “Procedural Reference Forms @ <https://dhssnet.state.mo.us/hr/forms.php>