

ADMINISTRATIVE INVESTIGATIONS POLICY

SOURCE: AGENCY ADMINISTRATION

CONTACT: OFFICE OF ADMINISTRATIVE INVESTIGATIONS

DATE: AUGUST 15, 2016

PURPOSE: The purpose of this document is:

- To provide guidelines for reporting complaints or allegations of illegal activity, ethics violations, wrongful acts or omissions, and administrative violations (i.e., violations of rules, policies, procedures, or any other State of Ohio or OEPA directives) involving any OEPA property owned or leased by the State. This policy also pertains to all OEPA employees or officials acting in the course of their employment, or while executing their official duties;
- To provide guidelines for initiating and conducting an administrative investigation when OEPA has reasonable cause to believe that an employee has violated any law, rule, policy, procedure or any other State of Ohio or OEPA directive; and
- To maintain public confidence in the agency by ensuring the professional conduct of all OEPA employees.

This policy is intended to supplement, not replace, the rights and obligations of OEPA employees to report any and all violations of law, any OEPA work rules, policies (including the Equal Opportunity Employment policies), procedures, other agency directives under the whistleblower statutes, Administrative Code provisions, or any other applicable statutes. This policy does not affect the rights and obligations set forth in applicable collective bargaining agreements or statutory notification requirements.

POLICY:

A. ADMINISTRATIVE INVESTIGATIONS. The Office of Administrative Investigations (OAI) shall conduct a thorough, fair, and impartial review of all allegations of misconduct, regardless of the nature or source of the complaint. An administrative investigation is not a disciplinary action of the Agency, but rather a fact finding action of the Agency. Any corrective action and/or discipline shall be determined by the Office of Employee Services following the review of associated investigative materials (Investigation Report, witness statements, etc.).

B. BASES FOR ADMINISTRATIVE INVESTIGATION AND ADDITIONAL ROLES FOR OAI.

1. Ohio EPA may begin an administrative investigation upon a reasonable cause to believe that an employee may have violated a law, rule, policy, or procedure. Namely:

- **Illegal Activities**, including any violation of local, State and/or Federal law in connection with any property owned or leased by the OEPA, or committed by any OEPA employee/official on or in any property owned or leased by OEPA, or while acting in the course of employment or executing official duties;
- **Ethics Violations**, including conduct in violation of Ohio ethics laws, including, but not limited to, Ohio Revised Code (ORC) Section 102;
- **Wrongful Acts**, including any act or omission that subverts the process of government. Examples of such acts and omissions include, but are not limited to,

abuses of time or property, and allegations of unprofessionalism or bullying in the workplace;

- **Administrative Violations**, including conduct in violation of State of Ohio (DAS) rules, OEPA rules, regulations, policies, procedures, or directives. This may also include conduct in violation of any applicable Executive Order from the Governor's Office; and
- **EEO Violations**, including any discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, military status, or veteran status.

2. Ohio EPA may also begin an administrative investigation upon a request from the Chief of Legal, or designee in the Office of Legal Services, to assist in serving the legal needs of OEPA.

C. RESPONSIBILITIES.

1. **The Office of Administrative Investigations (OAI)**. The OAI shall oversee all internal administrative investigations conducted on OEPA employees, assist supervisors with the initiation and completion of administrative investigations, and shall review reports of investigation for accuracy, objectivity, and content prior to forwarding to the Office of Employee Services. OAI shall report directly to the Director (or Director's designee) and shall notify the Director (or Director's designee) of the status of pending investigations as needed. The OAI shall oversee the retention and destruction of all administrative investigation reports in accordance with the Department of Administrative Services (DAS) and/or OEPA retention schedules. The OAI shall provide training to management personnel as requested.

2. **Office of Legal Services**. The Chief Legal Counsel, or designee in the Office of Legal Services, shall have the right to review and advise on any administrative investigation and/or the development of any investigative report.

3. **Supervisors**. OEPA supervisors are responsible for the fair and consistent application of work rules, policies, procedures, and directives of the OEPA and/or laws. All supervisors shall report to OAI any allegation of the activities specifically listed in Section B.1.

A. **Participation in Administrative Investigations**. When directed by the OAI, supervisors shall investigate routine complaints or work rule violations, and shall at all times follow the direction and instruction of OAI. During any such investigation, Supervisors must collaborate with OAI and should seek guidance or direction from OAI as needed (for example, to resolve any confusion or ambiguity). Such investigations shall follow the procedure described in "Description of Administrative Procedure," below.

4. **Employees**. All OEPA employees shall comply with and adhere to all OEPA work rules, regulations, policies, procedures, other agency directives, Administrative Code provisions, and/or any other applicable laws.

A. **Notifying OAI**. Employees are required to notify the OAI in the following instances:

- **Allegations of Illegal and Improper Conduct**. Allegations of a serious nature including but not limited to all allegations of criminal misconduct, corruption, civil rights violations and sexual harassment, involving any property owned or leased by the OEPA, or committed by any OEPA employee/official on or in any property owned or leased by OEPA, or while acting in the course of

employment or executing official duties must be reported to the OAI for investigation. Additionally, as noted in the EEO policies, any employee who believes that he or she has been a victim of sexual harassment, or that has been subject to a civil rights violation may report the allegation directly to the Office of EEO.

- **Lost or Damaged Equipment.** The OAI shall be notified of any lost or damaged OEPA equipment when any of the following are suspected:
 - The loss or damage is the result of neglect on the part of the employee;
 - The employee has a demonstrated pattern of equipment loss or misuse;
 - The lost or damaged item is valued at \$100 or more;
 - The lost or damaged item contains sensitive and/or confidential information, including but not limited to: confidential personal information, security records, the ability to access departmental databases, systems, etc.; and/or
 - The item is believed to have been stolen.

- **Vehicle Crash.** The OAI shall be notified of all vehicle crashes involving an OEPA vehicle and/or OEPA employees who are involved in a vehicle crash while in an active-duty pay status. The OAI will determine if an administrative investigation is necessary to document the events and circumstances surrounding the vehicle crash. If an administrative investigation is initiated, the OAI will direct and coordinate the gathering of documentation and evidence needed.

B. Expectation of Honesty and the Garrity Rule. OEPA employees shall be honest and forthright in the reporting of any allegations, and shall be honest and forthright during any investigatory interview. If an employee's refusal to answer administrative investigation questions is based on his or her concern that such answers will incriminate him or herself, the OAI may issue a promise to the employee that his/her answers will not be used against him or her in any subsequent criminal proceeding. This is known as the "Garrity" Rule (based on the United States Supreme Court's ruling in *Garrity v. New Jersey*, 385 U.S. 493 (1967)). The investigator shall notify the OAI, which may consult with the Office of Legal Services, to determine if a Garrity order will be given.

i. If a Garrity order is given, no statements given by the employee shall be used in any criminal proceeding, in the event illegal activity is identified. The employee's statement shall only be used for departmental investigation purposes. The OEPA Pre-Interview Form shall be utilized as written documentation of any Garrity order. A copy of the completed OEPA Pre-Interview Form shall be provided to the employee and/or union representative at the conclusion of the interview.

ii. If a Garrity order is given, the employee must answer any questions truthfully and with absolute candor. ***Any subsequent refusal to answer questions, and/or providing a dishonest or misleading answer, may lead to discipline, up to and including termination.***

D. DESCRIPTION OF ADMINISTRATIVE PROCEDURE.

1. Initiation of Administrative Investigation.

A. **Allegations.** Allegations may be made in person, in writing (including by e-mail), or by telephone. Any individual (including an employee) inquiring about making an allegation should be directed to the OAI. Upon receipt of an external complaint (i.e., by someone not employed by OEPA), the person assigned to conduct the administrative investigation shall provide a verbal or written acknowledgement to the complainant within three days of the onset of the investigation. This acknowledgement shall include the contact information for the investigator. Upon conclusion of the investigation, the complainant shall be informed by the OAI of the final disposition of the investigation.

B. **Feasible.** The Chief of the OAI will determine when to investigate an allegation- for example; it may not be feasible to investigate allegations that have not been reported to the OAI in a timely manner.

2. Criminal Allegations.

A. **Concurrent Criminal Investigation.** If there is a concurrent criminal investigation pending on the same allegation(s) as in the administrative investigation, the administrative investigation shall be placed on hold pending the completion of the criminal investigation, or until given permission to proceed by the investigating law enforcement agency or applicable prosecutor's office.

B. **Suspected Criminal Activity.** If, during the course of an administrative investigation, criminal conduct is suspected or uncovered, the investigator or supervisor shall suspend the investigation and contact the OAI for further guidance. The OAI will notify the Office of Legal Services and/or the Director's Office, and will coordinate any further investigatory actions with the applicable law enforcement agency and/or prosecutor's office.

3. Investigative Process.

A. **Notifying Employee.** The OAI will assign each administrative investigation a unique investigation number. Prior to conducting an administrative investigation interview, the assigned investigator shall notify the employee of the nature of the investigation and if the employee is being interviewed as a subject of, or a witness in the investigation. If the employee is a subject of the investigation, and is a member of a collective bargaining unit, the employee shall also be informed of the right to union representation. If it is not clear if the interview or questioning might reasonably lead to disciplinary action, the assigned investigator should err on the side of permitting union representation.

B. **Documentation of Interview Statements.** Administrative investigation interviews may be recorded by the investigator via digital audio recorder. The employee being interviewed will be notified of the recording prior to the start of the interview or questioning. Upon request, a copy of the recording will be provided once the investigation has been completed.

4. Reports of Investigation. The assigned investigator or supervisor shall document in writing the investigative actions taken, including the allegations received, a summary of interviews conducted, the findings of the investigation, and a conclusion of whether the

allegation(s) are founded or unfounded. All evidence and documentation used to prove or disprove an allegation shall be included (e.g., police reports, complaint correspondence, audio/video records, payroll records, work samples, photos, etc.).

5. **Disposition.** OAI shall oversee the retention and destruction of all administrative investigation files in accordance with DAS and/or OEPA record retention schedules, applicable Collective Bargaining Agreements, and/or any other related policies. The current record retention for administrative investigations is three years. All requests for copies of completed investigations shall be coordinated by the OEPA Records Manager.

Form References:

OEPA Pre-Interview Form

Attachments:

Suspected Illegal Activity Notification Procedure, Governor's Memo 04/2011
Reporting Guide
Discipline Grid