

CHAPTER 1 - GRIEVANCE PROCEDURE

1.01 PURPOSE

This grievance procedure is established pursuant to Wis. Stat. § 66.0509(1m). Eligible employees shall use the procedure to resolve disputes with the Bayfield County regarding covered employee termination, employee discipline or workplace safety issues. This grievance procedure may be modified or eliminated by the County at any time, with or without prior notice. This policy is not a guarantee of employment, a guarantee of any rights or benefits, does not create or grant covered employees with a property interest in their employment or tenure rights of any kind and does not constitute a contract of employment, express or implied. Unless specifically required by another statute or code, the County's employment relationship with employees eligible to use this procedure is at will and employment may be terminated at any time for any reason, with or without cause and with or without notice, at the option of the County or the employee.

1.02 DEFINITIONS

The following definitions shall apply to this grievance procedure:

1. "Employee" for purposes of a grievance of Discipline and Termination (as defined in this grievance procedure) means a regular full-time employee who has completed twelve (12) continuous months of employment with the County or a part-time employee who has worked one thousand two hundred hours (1200) for the County in the year preceding the event which is being grieved and who has completed twelve (12) months of continuous employment with the County. "Employee" does not include, without limitation, any of the following: elected officials, other part-time employees, temporary employees, seasonal employees, contract employees, limited term employees, contractors or their respective employees, employees covered by a collective bargaining agreement which contains a grievance procedure covering Discipline or Termination (as defined in this grievance procedure) or any employees, officials or officers that serve at the pleasure of an appointing authority as provided by Wisconsin statutes.

"Employee" for purposes of Workplace Safety (as defined in this procedure) means any employee of the County.

2. "Discipline" is defined as any of the following adverse employment actions: unpaid disciplinary suspension of employment, disciplinary reduction in base pay; and disciplinary reduction in rank or demotion with a reduction in pay. "Discipline" does not include, without limitation, any of the following actions: layoffs or workforce reduction activities; non-disciplinary wage, benefit or salary adjustments or reductions; non-disciplinary reductions in rank or demotions; plans of correction or performance improvement; performance evaluations or reviews; documentation of employee acts or omissions in an employment file; oral or written reprimands; administrative suspensions pending investigation of misconduct or nonperformance; or change in assignment or assignment location.

3. “**Termination**” is defined as an involuntary separation of employment initiated by the County that is not a layoff, furlough or workforce reduction or termination arising from disability or failure to maintain the necessary qualifications or certifications for a position.

4. “**Working day**” means a day when the Bayfield County Courthouse is open for business.

5. “**Workplace safety**” means any standard established or adopted under Wis. Admin. Code Chapter Comm 32.

1.03 GRIEVANCE PROCEDURE FOR DISCIPLINE AND TERMINATION.

A. Filing Procedure.

1. Who May File A Grievance For Discipline Or Termination.

A grievance may only be filed by the “Employee” who is the subject of the Discipline or Termination.

2. Initiating A Grievance; Extensions Of Time; Impact Of An Untimely Filing.

An Employee may initiate a grievance relating to Discipline or Termination by presenting a written grievance on the form attached to this policy as Appendix A to the Office of the County Administrator within five (5) working days of the event giving rise to the grievance or the date upon which the Employee should have reasonably known the facts giving rise to the grievance. The Employee must sign and date the grievance. A grievance will not be considered filed until the employee signs the grievance and the grievance is received by the Office of the County Administrator.

The County Administrator may, in his or her sole and absolute discretion, agree to extend the time for filing a grievance for Discipline or Termination for up to an additional five (5) working days based upon receipt of a written request for an extension from the Employee prior to the expiration of the original filing deadline. An Employee’s written request for an extension of time must identify the extenuating circumstances which prevent the Employee from complying with the original filing deadline. The decision of the County Administrator regarding a request for an extension of time shall be final and binding and not subject to appeal. Failure to timely file a grievance with the County Administrator within five (5) working days or any period of extension granted by the County Administrator shall constitute a waiver of the Employee’s right to use the grievance procedure and an abandonment of the grievance.

3. Incomplete Grievance; Impact Of Failure To Provide Complete Information.

If a timely filed grievance is missing information or is incomplete, the County Administrator shall issue a written request to the Employee identifying the information needed to complete the grievance form and proceed with the grievance procedure. The Employee shall

have five (5) working days from receipt of the written request to provide the Office of the County Administrator with the missing information.

If the Employee timely responds, and the County Administrator finds that the information provided by the Employee is complete, the grievance shall move forward in the grievance procedure. If, upon timely receipt of a response from the Employee, the County Administrator finds that the grievance is still incomplete, the County Administrator shall refer the response to the Personnel Committee for a final decision as to whether the Employee's response is sufficient and the grievance may move forward. The decision of the Personnel Committee regarding the sufficiency of a grievance shall be final and binding and not subject to appeal. Failure of the Employee to timely provide the requested information to the County Administrator or a finding by the Personnel Committee that the Employee has failed to provide sufficient information to allow the grievance to move forward in the grievance procedure shall constitute a waiver of the right to use this grievance procedure and an abandonment of the grievance.

4. Grievance Verification.

By signing the grievance, the Employee is declaring under penalty of law that the statements contained in a grievance relating to Discipline or Termination are true and correct to the Employee's knowledge and belief. Any employee who files a grievance that is false or misleading or for the purposes of intimidation, annoyance or harassment or who otherwise files a grievance in bad faith is subject to disciplinary action.

B. County Answer

Upon receipt of a *timely and complete* grievance form, the County Administrator shall have five (5) working days to provide a written response to the Employee either granting the grievance or denying the grievance. In the event that the County Administrator fails to answer within five (5) working days, the grievance shall be deemed denied.

C. Request For Hearing.

An Employee shall have five (5) working days from receipt of the County's Answer denying the grievance or, in the event the County does not answer, ten (10) working days from the date the grievance was filed, in which to file a written request for hearing with the Office of the County Administrator. The County Administrator may, in his or her sole and absolute discretion, agree to extend the time for requesting a hearing for up to an additional five (5) working days based upon receipt of a written request for an extension from the Employee prior to the expiration of the original filing deadline. An Employee's written request for an extension of time must identify the extenuating circumstances which prevent the Employee from complying with the original filing deadline. The decision of the County Administrator regarding a request for an extension of time shall be final and binding and not subject to appeal. Failure of the Office of County Administrator to receive a written request for hearing from the Employee within five (5) working days of the deadlines set forth above or any extension granted by the County Administrator shall constitute a waiver of the employee's right to use the grievance procedure and an abandonment of the grievance.

D. Hearing Procedure.

1. Selection Of An Impartial Hearing Officer.

As soon as reasonably possible following the receipt of a timely request for hearing, the County shall appoint an Impartial Hearing Officer and provide the grievant with the name of the individual appointed. The County shall pay any cost associated with the service of the Impartial Hearing Officer unless the Impartial Hearing Officer deems that the grievance is frivolous as provided herein.

2. Hearing Date.

Upon notification of his or her selection, the Impartial Hearing Officer shall schedule a hearing within a period of not less than twenty (20) working days nor greater than (40) working days. Within ten (10) working days of the date of the appointment of the Impartial Hearing Officer, the Impartial Hearing Officer shall conduct a pre-hearing conference with the Employee and the County Administrator to select a date for the hearing. Once a hearing date is scheduled, it may be adjourned only upon written motion by the Employee or the County to the Impartial Hearing Officer and a finding by the Impartial Hearing Officer that there is "good cause" for an adjournment. The decision of the Impartial Hearing Officer regarding a request for adjournment shall be final, binding and not subject to appeal.

3. Discovery; grievance amendment; witnesses and documents; pre-hearing statement; no mediation.

There shall be no formal pre-hearing discovery. The Employee and the County shall exchange a list of witnesses they intend to call at the hearing and any documents and exhibits they intend to introduce at the hearing no less than ten (10) working days before the hearing.

The parties shall provide a copy of the witness list, documents and exhibits to the Impartial Hearing Officer. No witness, exhibit or document which was not identified or exchanged by a party may be introduced in the hearing absent a written finding by the Impartial Hearing Officer that there was good cause for the failure of the party to identify a witness or document within the deadline for exchanging witnesses or documents. Each party may file a pre-hearing statement of no more than two (2) type written single space pages outlining their position relative to any issues related to the grievance. The Impartial Hearing Officer may not serve as a mediator nor make any attempt to mediate the dispute. The parties will notify the Impartial Hearing Officer of any settlement of a grievance that the parties negotiate as soon as possible.

4. Hearing.

a. Recording; Closed Hearing. The hearing before the Impartial Hearing Officer will be digitally recorded upon the request of the Employee or the County. The County shall maintain any digital recording for the period required by law. A copy of the recording shall

be provided at no cost to the Employee, the County and the Impartial Hearing Officer. The hearing shall be closed to the public.

b. Representation; fees and costs. The Employee and the County may be represented by an attorney of their choice. Neither party shall be responsible for the attorneys' fees, witness fees or costs of the other.

c. Order Of Case; Cross-Examination. The Employee shall call witnesses and present testimony and exhibits that are relevant to the grievance. At the close of the Employee's case, the County shall call its witnesses and present testimony and exhibits that are relevant to the grievance. The parties may cross-examine witnesses presented by the other party. Cross-examination shall be limited to ten (10) minutes per witness unless extended by the Impartial Hearing Officer. The Impartial Hearing Officer may allow for opening or closing statements at the discretion of the Impartial Hearing Officer, such statements not to exceed ten (10) minutes in length.

d. Rules of Evidence; Exclusion of evidence. The Impartial Hearing Officer is not bound by rules of evidence and may admit all evidence that the Impartial Hearing Officer determines is relevant and may exclude immaterial, irrelevant or unduly repetitious testimony or evidence. The Impartial Hearing Officer shall recognize the rules of privilege. The Impartial Hearing Officer may not base any finding or conclusion solely on hearsay evidence.

e. Right Of Impartial Hearing Officer To Question. During the hearing, the Impartial Hearing Officer may ask questions as the Impartial Hearing Officer deems necessary.

f. Close of the Hearing; No briefs. After the Employee and the County have finished introducing evidence, the Impartial Hearing Officer shall close the hearing. The parties shall have no right to file briefs or position statements following the hearing.

E. Burden Of Proof; Impartial Hearing Officer's Decision; Remedies

1. Burden Of Proof; Standard Of Review.

Unless specifically required by another statute or code, the Employee bears the burden of proof to persuade the Impartial Hearing Officer by clear and convincing and satisfactory evidence that the County's decision to Discipline/Terminate the Employee did not have a rational basis. If the Employee does not meet his or her burden of proof, the Impartial Hearing Officer shall deny the grievance.

In determining whether an Employee has proved by clear, convincing and satisfactory evidence that the County's decision to Discipline/Terminate did not have a rational basis, the Impartial Hearing Officer may only consider the evidence introduced at the hearing and the weight of that evidence. The Impartial Hearing Officer may not overturn the County's decision to Discipline/Terminate based upon his or her own personal judgment or opinion regarding the matter. Moreover, the Impartial Hearing Officer may not determine a decision to

Discipline/Terminate did not have a rational basis based on the County's failure to implement or follow concepts of progressive discipline or just cause, in whole or in part, in making the decision to Discipline/Terminate the Employee. Finally, the Impartial Hearing Officer must recognize all County policies, rules, procedures and regulations and may not modify or disregard the same in determining whether the County's decision to Discipline/Terminate has a rational basis.

2. Decision.

Unless otherwise agreed to by the parties, the Impartial Hearing Officer shall issue a written decision within ten (10) working days of the close of the hearing. The decision of the Impartial Hearing Officer shall, at a minimum, contain a statement of issues, standard of review, findings, and a remedy for the Employee if appropriate. If the Impartial Hearing Officer sustains the grievance, in whole or in part, the Impartial Hearing Officer's decision must include a detailed explanation as to why the County's decision to Discipline/Terminate has no rational basis as well as a detailed description of the Impartial Hearing Officer's reasons for reducing or modifying the Discipline/Termination imposed by the County.

If the County has requested the Impartial Hearing Officer for a determination that the grievance is frivolous, the Impartial Hearing Officer's decision must include a ruling on the request and the reasons for granting or denying the same. If the Impartial Hearing Officer determines that the grievance is frivolous, the Impartial Hearing Officer shall require the Employee to pay for the costs of the Impartial Hearing Officer, if any.

3. Remedies.

If the grievance is sustained, the Impartial Hearing Officer may only award the Employee one or more of the following remedies: (a) reinstatement; (b) a lesser adverse employment action consisting of a suspension, reduction in the length of a suspension, written reprimand or documentation of employee acts and/or omissions in an employment file; (c) back pay (including sick & vacation accrual); and (d) in the event of a reinstatement following termination, reimbursement of the County's applicable percentage of any payments made by the Employee for continuation of health insurance under the Consolidated Omnibus Budget Reconciliation Act (COBRA).

1.04 GRIEVANCE PROCEDURE – WORKPLACE SAFETY

A. Preconditions To Filing.

1. Report Of An Unsafe Condition. An employee may not file a grievance relating to a condition that the Employee believes constitutes a Workplace Safety violation (Comm 32) unless the employee has first reported the condition to the County Administrator in writing on the attached Unsafe Condition Or Hazard form, Appendix B.

2. County Response. Upon receiving written notice of an alleged Workplace Safety violation from an Employee in accordance with paragraph 1.04(A)(1) above, the County shall

have ten (10) working days to investigate the condition and advise the employee in writing that the County: (a) has determined that the condition does not constitute a Workplace Safety violation and will not be taking corrective action; or (b) is taking corrective action in accordance with law to address the condition.

3. Grievance Filing Limitation. If the County advises the employee in writing within ten (10) working days that it is taking corrective action to address an alleged Workplace Safety violation in accordance with law, an Employee may not initiate a Workplace Safety grievance.

4. Dissatisfaction With The County's Corrective Action. If, at completion of the County's corrective action, the Employee believes a Workplace Safety violation continues to exist, the Employee must submit a new Unsafe Condition or Hazard Report and follow the procedures in this paragraph prior to proceeding with a Workplace Safety grievance.

B. Filing Procedure.

1. Who May File A Workplace Safety Grievance.

A grievance may only be filed by an "Employee." The Employee need not be personally impacted by a condition alleged to constitute a Workplace Safety violation.

2. Initiating A Grievance.

An Employee may initiate a grievance relating to Workplace Safety (Appendix C) by presenting a written grievance to the office of the County Administrator within five (5) working days of: (a) the Employee's receipt of written notice from the County that the County will not be taking corrective action with respect to an alleged Workplace Safety violation; (b) the County's failure to begin corrective action relative to a Workplace Safety violation within ten (10) working days as provided in section 1.04(A)(2)(b) and (c) above; (c) the failure of the County to respond to a report of a Workplace Safety violation within ten (10) working days.

3. Extensions Of Time; Impact of Untimely Filing.

The County Administrator may, in his or her sole and absolute discretion, agree to extend the time for filing a grievance up to an additional five (5) working days based upon a written request for an extension received from the Employee prior to the expiration of the five (5) working day deadline to file the grievance. Any written request for an extension of time must explain the reasons why the Employee cannot meet the grievance filing deadline. Failure to timely file a grievance with the Office of the County Administrator within five (5) working days or any period of extension granted by the County Administrator shall constitute a waiver of the right to use the grievance procedure and an abandonment of the grievance.

4. Incomplete Grievance; Impact Of Failure To Provide Complete Information.

If a timely filed grievance is missing information or is incomplete, the Administrator shall issue a written request to the Employee identifying the information needed to complete the grievance form and proceed with the grievance procedure. The Employee shall have five (5) working days from receipt of the written request to provide the Office of the County Administrator with the missing information.

If the Employee timely responds, and the County Administrator finds that the information provided by the Employee is complete, the grievance shall move forward in the grievance procedure. If, upon timely receipt of a response from the Employee, the County Administrator finds that the grievance is still incomplete, the County Administrator shall refer the response to the Personnel Committee to determine whether the response is sufficient. The decision of the Personnel Committee shall be final and binding. Failure of the Employee to timely provide the requested information or a finding by the Personnel Committee that the Employee has failed to provide sufficient information to allow the grievance to move forward in the grievance procedure shall constitute a waiver of the right to use this grievance procedure and an abandonment of the grievance.

5. Grievance Verification.

By signing the grievance, the Employee is verifying and affirming that the statements contained in a grievance relating to Workplace Safety are true and accurate to the best of the Employee's knowledge. Any employee who files a grievance that is frivolous, false or misleading, for the purposes of intimidation, annoyance or harassment or who otherwise files a grievance in bad faith is subject to disciplinary action.

C. County Response.

Upon receipt of a *timely and complete* grievance form, the County Administrator shall have five (5) working days to provide a written response to the Employee either granting the grievance or denying the grievance. In the event that the County Administrator fails to respond within five (5) working days the grievance shall be deemed denied.

D. Request For Hearing.

An Employee shall have five (5) working days from receipt of the County's Response denying the grievance or, in the event the County does not answer, ten (10) working days from the date the grievance was filed, in which to file a written request for hearing with the Office of the County Administrator. The County Administrator may, in his or her sole and absolute discretion, agree to extend the time for requesting a hearing for up to an additional five (5) working days based upon receipt of a written request for an extension from the Employee prior to the expiration of the original filing deadline. An Employee's written request for an extension of time must identify the extenuating circumstances which prevent the Employee from complying with the original filing deadline. The decision of the County Administrator regarding a request for an extension of time shall be final and binding and not subject to appeal. Failure of

the Office of County Administrator to receive a written request for hearing from the Employee within five (5) working days of the deadlines set forth above or any extension granted by the County Administrator shall constitute a waiver of the employee's right to use the grievance procedure and an abandonment of the grievance.

E. Hearing Procedure.

The selection of an Impartial Hearing Officer and hearing on a Workplace Safety violation shall be conducted in accordance with the Hearing Procedure in section 1.03(D) above.

F. Burden Of Proof; Impartial Hearing Officer's Decision; Remedies

1. Burden Of Proof; Standard Of Review.

The County bears the burden of proving by a preponderance of the evidence that the condition identified by the Employee does not constitute a Workplace Safety violation and that no corrective action is required. If the County does not meet its burden of proof, the Impartial Hearing Officer shall grant the grievance.

2. Decision.

Unless otherwise agreed to by the parties, the Impartial Hearing Officer shall issue a written decision within ten (10) working days of the close of evidence. The decision of the Impartial Hearing Officer shall, at a minimum, contain a statement of: (a) the standard of review; (b) the particular provisions of Wis. Admin. Code Chap. Comm 32 that are implicated by the Workplace Safety grievance; (c) the Impartial Hearing Officer's findings as to whether a Workplace Safety violation exists; and (d) a remedy, if any.

If the County has requested the Impartial Hearing Officer for a determination that the grievance is frivolous, the Impartial Hearing Officer's decision must include a ruling on the request and the reasons for granting or denying the request. If the Impartial Hearing Officer determines that the grievance is frivolous, the Impartial Hearing Officer shall require the Employee to pay for the costs of the Impartial Hearing Officer, if any.

3. Remedies.

If the grievance is sustained, the Impartial Hearing Officer may order the County take corrective action in accordance with law to address the Workplace Safety violation. The Impartial Hearing Officer shall have no authority to require the County to take any specific corrective action or provide any specific remedy in response to the Workplace Safety violation.

1.05 COUNTY BOARD APPEAL OF DISCIPLINE, TERMINATION AND WORKPLACE SAFETY MATTERS

A. Who May File An Appeal.

An appeal of the Impartial Hearing Officer's decision may be filed by the Employee or the County.

B. Requesting An Appeal.

An appeal may be initiated to the County Board by filing an appeal with the Administrator on the form attached as Appendix D within five (5) working days of the date of the Impartial Hearing Officer's decision. Failure to file a written appeal by the filing deadline will result in the waiver of the right to an appeal and the outcome of the proceedings before the hearing officer shall be final.

C. County Board Appeal.

When the County Administrator receives a timely request for appeal, the Administrator shall forward the appeal to the chair of the County Board along with a copy of hearing record inclusive of any exhibits introduced at the grievance hearing. The Chair shall schedule the appeal before the County Board for purposes of reviewing the hearing record and the Impartial Hearing Officer's decision as soon as reasonably possible. The County Board shall not take testimony, accept additional evidence, accept briefing, accept oral argument or otherwise conduct a hearing of any sort in relation to an appeal.

D. Standard Of Review.

The Board may overturn or otherwise modify the Impartial Hearing Officer's decision if the decision of the Impartial Hearing Officer is found to be clearly erroneous.

E. Decision.

The County Board shall deliver a written decision to the Employee and the County Administrator no later than ten (10) working days from the date of the County Board meeting. The written decision shall contain: (1) a statement of the issues; (2) findings along with an explanation as to why any findings differ from the Impartial Hearing Officer; and (3) a remedy, if applicable, along with an explanation as to why any remedy differs from the remedy granted by the hearing examiner.

F. Remedies On Appeal; Discipline And Termination.

The County Board may award the following remedies to the Employee on appeal in a matter involving Discipline or Termination: (a) reinstatement; (b) a lesser adverse employment action consisting of a suspension, reduction in the length of a suspension, written reprimand or documentation of employee acts and/or omissions in an employment file; (c) back pay (including

sick & vacation accrual); and (d) in the event of a reinstatement following termination, reimbursement of the County's applicable percentage of any payments made by the Employee for continuation of health insurance under the Consolidated Omnibus Budget Reconciliation Act (COBRA).

G. Remedies On Appeal; Workplace Safety.

If the County Board determines on appeal that a violation of Workplace Safety has occurred, the County Board may order that corrective action be taken by the County according to law.

H. Final Decision.

The decision of the County Board shall be final. Any judicial review of the County Board's decision shall be only as provided by law.