

Institutional Handbook of Operating Procedures
Policy 03.01.09

Section: Human Resources Policies	Responsible Vice President: Vice President and Chief Human Resources Officer
Subject: Discipline and Discharge	Responsible Entity: Human Resources

I. Title

Discipline, Dismissal, and Appeal for Classified Employees

II. Policy

It is the policy of The University of Texas Medical Branch at Galveston (UTMB) to encourage fair and efficient processes to resolve disputes arising out of the employment relationship and to meet the requirements of state and federal law.

The purpose of this policy is to provide a procedure for the discipline and dismissal of classified employees who are subject to its provisions and to outline the procedure for appeal of that action. Classified employees are at-will employees who serve without tenure. No provision of the policy and procedures that follows shall confer rights to employees that are contrary to the employment-at-will doctrine.

UTMB complies with applicable federal and state laws and regulations, strives to maintain an environment which does not discriminate against applicants or employees on the basis of race, color, national origin, sex, age, religion, disability, sexual orientation, gender identity or expression, genetic information, or veteran status.

III. Applicability

- A.** These policies and procedures are applicable to conduct or job performance of a classified employee that results in a decision to impose a disciplinary penalty of demotion, suspension without pay, or dismissal. It does not apply to:
1. Institutional police or faculty who are subject to other approved discipline or dismissal procedures;
 2. Suspension with pay pending investigation of allegations relating to an employee;
 3. Decisions not to offer reappointment to persons whose appointment for a stated period of one year or less expires at the end of such period without the necessity of notice of non-renewal as provided in the Regents' Rules and Regulations or the policies of UTMB;
 4. Administrative and professional employees who are appointed to positions without fixed term and serve at the pleasure of a specific administrative officer;
 5. Persons who are employed in positions that require student status as a condition of employment; or
 6. Dismissal of employees:
 - a) who occupy positions that are dependent upon funding from a specific source and such funding is not received,
 - b) as a result of reduction in force, which are subject to the grievance process,
 - c) due to financial exigency,
 - d) during any probationary period of employment,
 - e) who are appointed for a stated period that is less than 180 days,

- f) who are appointed at a per diem or hourly rate and work on an as needed basis,
- g) who have not attained or maintained the necessary clearance, certification, or licensure for their position,
- h) who have exhausted applicable leave entitlements,
- i) UTMB employees assigned to work in a Texas Department of Criminal Justice (TDCJ) facility or private entities whose entry access has been revoked by a TDCJ warden or other appropriate authority or the private entity authority.

IV. Discipline Procedure

A. Employee Standard of Conduct

Each employee is expected to become familiar with the performance criteria for his or her particular job and with all rules, procedures, and standards of conduct established by the Board of Regents, UTMB, and the employee's department or unit. An employee who does not fulfill the responsibilities set out by such performance criteria, rules, procedures, and standards of conduct may be subject to adverse personnel action.

B. Conduct Subject to Disciplinary Action

1. Work Performance

Work performance is to be judged by the supervisor's evaluation of the quality and quantity of work performed by each employee. Failure of an employee to maintain satisfactory work performance standards or to meet a reasonable and objective measure of efficiency and productivity may constitute grounds for disciplinary action including dismissal.

2. Unacceptable Conduct

All employees are expected to maintain standards of conduct suitable and acceptable to the work environment. Disciplinary action, including dismissal, may be imposed for unacceptable conduct. Examples of unacceptable conduct include, but are not limited to:

- a) falsification of time sheets, personnel records, or other institutional records;
- b) neglect of duties;
- c) smoking or use of tobacco products, including electronic cigarettes, anywhere on UTMB premises or at UTMB controlled facilities;
- d) gambling or participating in lotteries or any other games of chance on the premises at any time;
- e) soliciting or collecting money or circulating petitions on the premises other than within the rules and regulations of the institution;
- f) bringing intoxicants or illegal drugs onto the premises of the institution, using intoxicants or illegal drugs on the premises at any time, having intoxicants or illegal drugs in one's possession on the premises at any time, or being under the influence of intoxicants or illegal drugs on the premises at any time;
- g) abuse or waste of tools, equipment, fixtures, property, supplies, time, or goods of the institution;
- h) creating or contributing to unhealthy or unsanitary conditions;
- i) violation of safety rules or accepted safety practices;
- j) failure to cooperate with supervisor or co-worker, impairment of function of work unit, or disruptive conduct;
- k) disorderly conduct, harassment of other employees (including unlawful discrimination, sexual harassment, sexual violence, dating and domestic violence, and stalking) or use of abusive language on the premises;
- l) fighting, encouraging a fight, or threatening, attempting or causing injury to another person on the premises;
- m) theft, dishonesty, or unauthorized use of institutional property, including records

- and confidential information;
- n) creating a condition hazardous to another person on the premises;
- o) destroying or defacing institutional property or records or the property of a student, patient, or employee;
- p) refusal of an employee to follow instructions or to perform designated work that may be required of an employee, or refusal to adhere to established rules and regulations;
- q) repeated tardiness or absence, absence without proper notification to the supervisor, or absence without satisfactory reason or unavailability for work;
- r) privacy violations such as improper use, disclosure, or disposal of patient information, education records or other personally identifiable information (such as social security numbers, credit card numbers, or protected health information);
- s) failure to comply with federal healthcare program requirements
- t) intentional misrepresentation of services on claims submitted to any third-party payer and/or patient;
- u) failure to report noncompliance with federal healthcare program requirements or failure to report possible wrongdoing or suspected violations of applicable federal and state law regulations;.
- v) being listed as excluded, debarred, suspended, or ineligible to participate in federal or state programs;
- w) failure to follow UTMB professionalism standards;
- x) violation of institutional information resources security procedures including the unauthorized sharing of system passwords;
- y) violation of any federal or state law or regulation or UT System or UTMB policy or procedure;
- z) failure of a Responsible Employee (defined in the Sexual Harassment/Sexual Misconduct policy and only applies to Responsible Employees who are subject to discipline under this policy) to immediately report alleged violations of the Sexual Harassment/Sexual Misconduct policy to the Title IX Coordinator's office;
- aa) failure to notify your supervisor within five (5) business days of any criminal complaint, information, indictment, no contest plea, guilty plea or criminal charges, convictions (and whether registered as a sex offender or will be required to register as a sex offender), excluding misdemeanor offenses punishable only by fine.

C. Discipline Procedures

1. Employees subject to this policy whose performance or conduct does not meet acceptable standards but is not to the severity for suspension, demotion, or dismissal should receive one or more of the following:
 - a) Verbal warning
 - b) Written warning
 - c) Paid decision day or Final Written Warning to develop a performance improvement plan
2. While progressive discipline is encouraged, disciplinary action will be based on the seriousness of the unsatisfactory performance or misconduct and is not required to follow any established sequence of disciplinary actions. [UTMB Performance Management Matrix.doc](#)
3. The following procedures will be followed when an employee who is subject to this policy is demoted for disciplinary reasons, suspended without pay, or dismissed.
 - a) The supervisor will review the evidence and the proposed disciplinary action with HR Employee Relations.

- b) Once the supervisor has sought and obtained the concurrence of HR Employee Relations, he or she must then obtain the concurrence of the department head or administrative equivalent to whom he or she reports before proceeding with the proposed disciplinary action.
- c) The supervisor shall inform the employee in writing of the reasons for the proposed disciplinary action and the facts upon which the supervisor relies. The employee shall be provided with an opportunity to respond to the charges either verbally or in writing within a reasonable time, usually 24 hours but not to exceed two (2) days, and to persuade the supervisor that the grounds for the disciplinary action are mistaken or incorrect before a final decision is made to take disciplinary action. This pre-disciplinary notification serves as an opportunity to avoid mistaken decisions to impose discipline and is not intended to definitively resolve the propriety of the disciplinary action being considered.
- d) If the supervisor is not persuaded by the employee's response that the intent to take disciplinary action is incorrect or mistaken, the supervisor will proceed to impose the disciplinary action. The supervisor shall inform the employee in writing of the following:
 - (1) whether the disciplinary action is a demotion, suspension without pay or dismissal and its effective date;
 - (2) a specific period for a suspension without pay, not to exceed one (1) month;
 - (3) the specific incident, conduct, course of conduct, unsatisfactory work performance, or other basis for the disciplinary action;
 - (4) any previous efforts to make the employee aware of the need to change or improve work performance or conduct; and
 - (5) reference to any relevant rule, regulation, or policy.

D. Effect Upon Employee Benefits

An employee who is demoted or suspended without pay continues to accrue vacation and sick leave, to be covered by group insurance, and to be entitled to other employee benefit programs. If a demotion or suspension without pay is appealed and the appeal of the demotion or suspension is successful, the employee shall be entitled to payment for wages lost as a result of the demotion or suspension. If an appeal of dismissal is successful, the employee shall be reinstated to the same or similar position and shall be entitled to payment of back wages less any unemployment compensation insurance benefits received by the employee after the date of dismissal. Employee benefits such as vacation and sick leave shall be credited back to the date of dismissal.

E. Procedure for Appeal.

Disciplinary actions resulting in dismissal, suspension without pay, or demotion may be appealed by the affected employee pursuant to the process set out below by submitting a written request for a hearing to Employee Relations in Human Resources. The request must be made timely within ten (10) business days following the date of the disciplinary action. The failure of the employee to submit the appeal within ten (10) business days irrevocably waives the employee's appeal rights. Employee Relations staff will assist the executive vice president for the area in which the appellant is/was employed with coordination of the appeal hearing. The executive vice president shall, at his or her discretion, either hear the appeal in person or appoint a delegate(s) to hear the appeal. The hearing shall be conducted within thirty (30) business days of the appeal being filed. A maximum of one fifteen (15) day extension may be given either party who requests an extension.

If the matter under appeal involves a disciplinary action taken as a result of a violation of UTMB's Sexual Harassment/Sexual Misconduct policy, the presiding executive vice president or delegate(s) will be trained specifically for these types of appeals. The delegate(s) will be selected from a pool of trained hearing panel members. The Title IX Coordinator's office will coordinate the appeal hearings in conjunction with Employee Relations. Hearing procedures will be modified to comply with Title IX.

1. Naming of Delegate

If the executive vice president elects to appoint a delegate(s) to hear the appeal, the name or names will be furnished to the appellant as soon as practical after the selection is made. If more than one person is appointed, one of them shall be designated in the notice to the employee to serve as chair.

2. Challenges as to Fairness

An appellant may challenge the fairness and impartiality of the executive vice president or administrative equivalent or an appointed delegate(s). The challenge must be in writing and must clearly state the factual basis for the challenge. A challenge of the executive vice president must be made within five (5) business days of the date of the request for a hearing and a challenge of a delegate(s) must be made within five (5) business days after the date of the notice appointing the delegate(s). In collaboration with Employee Relations, it shall be up to the person challenged to determine whether he or she can serve with fairness and impartiality. If the challenged executive vice president determines that he or she cannot be fair and impartial in the consideration of the appeal, he or she shall appoint a delegate(s) to hear the appeal. If a challenged delegate(s) determines that he or she cannot be fair and impartial in the consideration of the appeal, the executive vice president shall appoint another delegate(s).

3. Exchange of Information

At least seven (7) business days prior to the time set for the hearing, the institutional representative for the appeal and the appellant shall furnish each other with the names of the witnesses to be called, a summary of their expected testimony, and a copy of each document, record or exhibit to be introduced at the hearing. Failure by either party to provide the above information within the time set forth may waive that party's ability to present such evidence at the hearing.

4. Chair

The executive vice president or the delegate designated as chair shall preside at the hearing and ensure the order of presentation as well as decide on questions of relevancy and admissibility of evidence. The chair shall also have the discretion to determine the length of the hearing and the form and scope of cross-examination allowed during the hearing. Upon request, the chair may consult with and be advised by legal counsel before, during, and after the hearing.

5. Right to Representation

The appellant has the right to be represented at the hearing by an attorney or other individual representative. If the appellant is represented by an attorney or an individual from an employee organization, the institution may be represented by an attorney from the institution or the Office of General Counsel of The University of Texas System Administration. The appellant shall notify Employee Relations within five (5) business days of the date of the request for a hearing that he or she will have representation.

6. Record of the Hearing

In all appeal hearings, the institution shall make a digital recording of the hearing and make one (1) copy of the recording available to the employee on request. The digital recording of the proceedings shall be the official record of the hearing.

7. Burden of Proof

The institution shall demonstrate by the greater weight of the credible evidence that the supervisor's disciplinary action was neither inappropriate nor illegal. The institution shall present its case first after which the employee shall present his or her case.

8. Hearing Preparation

The supervisor that implemented the disciplinary action shall represent the institution during the appeal hearing. The supervisor shall seek advice and guidance from an Employee Relations Consultant while preparing for the hearing.

If the appeal involves a disciplinary action that was the result of a violation of UTMB's Sexual Harassment/Sexual Misconduct policy, a representative from the Department of Internal Investigations/Title IX office shall represent the institution during the appeal hearing. The Title IX Coordinator will administer these hearings and ensure compliance with applicable laws.

9. Evidence

The hearing shall consist of testimony by witnesses called by the institution and the appellant, with both parties having the right to cross-examine witnesses.

Alleged victims of sexual harassment, sexual violence, dating or domestic violence, and stalking may also present evidence, which includes the right to interview witnesses and cross-examine witnesses. The appellant or representative and alleged victims of sexual harassment, sexual violence, dating or domestic violence, and stalking will not be allowed to directly interview or cross-examine each other. The chair and/or hearing panel and the institution's representative may ask clarifying questions to the appellant and other relevant witnesses, including alleged victims if they are willing to participate in the hearing.

Alleged victims of sexual harassment, sexual violence, dating or domestic violence, and stalking do not have to be present for the hearing. A representative from the Department of Internal Investigations/Title IX office may present the information on the behalf of alleged victims.

Relevant exhibits may be introduced by either party and the chair shall take notice of the employee's personnel record.

10. Witnesses

Any employee may be asked to appear as a witness for either party. It shall be the duty of an employee requested to testify to do so as to any facts which may be relevant to the appeal. It is the responsibility of each party to assure attendance by its witnesses. Time spent testifying on behalf of either party shall be considered work time.

11. Notification to Executive Vice President

The delegate(s) shall deliberate, prepare, and forward written findings and

recommendations to the executive vice president and Employee Relations within ten (10) business days after the close of the hearing.

12. Notification of Employee

- a) The executive vice president shall mail his or her decision to the employee and Employee Relations within ten (10) business days following the receipt of the findings and recommendations from the delegate(s).
- b) If the executive vice president has heard the appeal, he or she shall mail a written decision to the employee and Employee Relations within ten (10) business days after the close of the hearing.
- c) The decision of the executive vice president is final.

V. CORRECTIONAL MANAGED CARE (CMC)

In order to comply with security requirements, UTMB employees assigned to Correctional Managed Care (CMC) are subject to the same standards of conduct as TDCJ or private entity employees as well as UTMB policies when working in a correctional facility. Specific examples of unacceptable conduct in TDCJ or private correctional facilities may be obtained from the regional CMC Department of Human Resources.

VI. Investigation by the Department of Internal Investigations and the Office of Institutional Compliance

Reports of unlawful discrimination, sexual harassment and sexual misconduct, or retaliation will be investigated by the Department of Internal Investigations. Corrective action may be recommended with any findings of illegal action or violations of policy. An appeal hearing may be delayed until the conclusion of the investigation.

Compliance allegations will be investigated by the Office of Institutional Compliance. An appeal hearing may be delayed until the conclusion of a Compliance investigation.

VII. Records of Disciplinary Actions

Copies of all documents pertaining to disciplinary actions shall be filed in the employee’s personnel file.

VIII. Relevant System Policies and Procedures

Regents’ *Rules and Regulations*, Series [30601](#)

IX. Related UTMB Policies and Procedures

- [IHOP - 03.02.01 - Non-discrimination, Equal Employment Opportunity, and Affirmative Action](#)
- [IHOP - 03.02.04 - Sexual Harassment and Misconduct](#)
- [IHOP - 03.01.10 - Grievance Policy](#)

X. Δατεσ Αππροσθεδ ορ Αμενδεδ

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<i>Reviewed with Changes</i>	<i>Reviewed without Changes</i>
07/17/2013	
03/15/2017	03/23/2021

XI. Contact Information

Employee Relations
(409) 772-8696