



LISA M. GARRETT
DIRECTOR OF PERSONNEL

COUNTY OF LOS ANGELES DEPARTMENT OF HUMAN RESOURCES

HEADQUARTERS
579 KENNETH HAHN HALL OF ADMINISTRATION • LOS ANGELES, CALIFORNIA 90012
(213) 974-2406 FAX (213) 621-0387

BRANCH OFFICE
3333 WILSHIRE BOULEVARD • LOS ANGELES, CALIFORNIA 90010
(213) 738-2211 FAX (213) 637-0820

February 9, 2017

To: All Department Heads

From: Lisa M. Garrett
Director of Personnel

Subject: **OUTSTANDING AUDITOR-CONTROLLER FRAUD HOTLINE CASES
REGARDING PENDING DISCIPLINE FOR EMPLOYEES ON LEAVE**

On November 15, 2016, pursuant to a motion by Supervisor Kuehl, the Board of Supervisors instructed County Counsel and the Director of Personnel, working with the Chief Executive Officer and the Auditor-Controller, to submit a memorandum to the Board and all Department Heads that includes recommended protocols to resolve outstanding fraud hotline cases. The motion specifically focused on cases where discipline was determined to be appropriate, but not implemented because the subjects of the investigations are on leave. The motion also instructed the directors of departments with substantiated investigations, but unresolved discipline cases identified in the May 6, 2016 Semi-Annual Fraud Hotline Status Report (Report) to provide a plan and timeline within 120 days to resolve those cases. The motion further instructed the directors of the 23 identified departments, with the assistance of the Auditor-Controller, to resolve open, but not investigated, cases over one year old and provide a status within 120 days.

This memorandum provides direction on the resolution of outstanding cases where discipline is pending and the employee is on leave.

Background

As stated in the November 15, 2016 motion, the Report disclosed that the disciplinary actions for 79 fraud hotline cases in seven departments with substantiated fraud and/or misconduct have been outstanding for an average of 449 days (1.2 years). County managers reported that, in some cases, the subjects of these investigations, knowing of the possibility of impending discipline (or termination), filed for stress, disability, medical or

Workers Compensation leave, which delayed resolution of their cases indefinitely, or until they returned from leave.

The concern is that employees who engaged in fraud and misconduct may delay or avoid disciplinary action by taking advantage of stress, disability, medical and/or Workers Compensation leave. This situation has created hurdles for County management in balancing employees' medical needs and due process rights when facing discipline with the need to take timely corrective action to maintain the integrity of the progressive discipline system. This also creates challenges in continuously tracking and updating long-delayed disciplinary and corrective actions.

Representatives from the Department of Human Resources, the Office of the County Counsel, the Chief Executive Office and the Auditor-Controller met to review the outstanding fraud hotline cases where discipline has been determined, but not implemented because the subjects of the investigations have taken leave. Because of that review and ensuing discussions, the Department of Human Resources, in consultation with the Office of the County Counsel, issues the recommendations detailed below. These recommendations strike a balance between the integrity of the County's disciplinary process and the affected County employees' due process and leave rights.

Recommended Protocols for Dealing with Discipline

To address the issues described above and to begin resolving the cases of substantiated, but not resolved fraud and/or misconduct, the Department of Human Resources recommends that departments prioritize outstanding cases based on the level of discipline, with discharge cases holding the highest priority. We also recommend that each department consult with the Department of Human Resources and County Counsel on cases that involve discipline and employee leaves to determine the appropriate administrative actions to resolve such cases. Departments are advised to follow the protocols described below when managing the disciplinary process with employees on leave:

I. Discharge Actions

The decision to discharge an employee from County service is a serious matter and should be treated as such, even when an employee is on leave status. The primary potential grounds for discharge are dishonesty and/or continued misconduct after progressive steps to correct the behavior were unsuccessful. A discharge matter is a clear indication that the employee's conduct is having a negative impact on the County service and is inconsistent with County policy. As such, the employee is beyond rehabilitation and should be removed from the County workforce accordingly. Once discharged, an aggrieved employee's timely petition to the

Los Angeles County Civil Service Commission for a hearing shall be granted.

1. Leave status should not be a deterrent for imposing discipline when a discharge action is pending. Departments should immediately impose the discipline regardless of leave status.
2. In discharge actions, departments are required to issue notices of intent prior to finalizing the action.
3. To ensure appropriate due process is afforded, employees on leave status will be allowed to respond through a representative, in writing, via telephone or in the alternative, allowed a reasonable continuance based on the circumstances of the leave, prior to finalizing the disciplinary action.
 - a. A reasonable continuation should be evaluated on a case-by-case basis. For guidance, departments should consult with Department of Human Resources and County Counsel.
4. The action should be finalized following the due process and consultation with the Department of Human Resources and County Counsel.

II. Suspension/Reduction Actions

A decision to suspend or reduce an employee is an action designed to retain and rehabilitate that employee. An employee's continued presence in the workplace warrants a difference in the handling in these types of matters.

A. Suspensions five (5) days or less

A department may issue notices:

1. For suspensions of five (5) days or less, warnings or reprimands, immediately, regardless of leave status.
2. Departments should then place the suspension matter in abeyance until the employee on leave returns to work.
3. Once the employee returns to work, he or she will have the opportunity to grieve or otherwise appeal the suspension action.

On an action to suspend for five (5) days or less, an aggrieved employee does not have an automatic right to an administrative hearing, should he or she file a petition with the Los Angeles County Civil Service Commission.

B. Suspensions six (6) days or more and Reductions actions

1. In cases where an employee is on a medical leave but is expected to return within a reasonable amount of time not to exceed 30 days departments should:
 - a. Issue the notice of intent immediately upon the employee's return to work.
2. In cases where an employee continues to utilize medical leaves, or is expected to be off in excess of thirty (30) days, departments should:
 - a. Issue the notice of intent.
 - b. Hold the effective date of the action in abeyance pending exercise of the respective employee's due process rights.
 - c. Departments should consult with the Department of Human Resources and County Counsel when employee leaves extend beyond statutory leave requirements.

In cases of actions to suspend in excess of five (5) days or reduce a permanent employee an aggrieved employee's timely petition to the Los Angeles County Civil Service Commission for a hearing shall be granted.

County Fraud Hotline Case Status Reports

To account for the above protocols, the Auditor-Controller will revise its reporting methodology for future Semi-Annual Fraud Hotline Status Reports to identify cases where departments have taken all possible action to determine the proposed disciplinary action and notify subject employees of such disciplinary action pending their return to work. This will differentiate cases that are still under management review from those of an employee on leave who has been formally notified of the department's intent to impose specific discipline pending his/her return to work. To ensure that the Semi-Annual Fraud Hotline Report reflects the most up-to-date information, departments are directed to notify the County Fraud Hotline as soon as such actions are completed.

In addition, the Auditor-Controller and the Internal Services Department are in the process of testing enhancements to the web-based Investigation Tracking and Management System, to streamline and automate the process of reporting disciplinary and/or corrective actions. Countywide rollout of these enhancements is planned for late 2017.

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Existing Unresolved Cases

The Report identified seven departments with 79 substantiated investigations with discipline pending. The Department of Human Resources contacted each of the departments to ascertain the status of the 79 cases and found that 39 were closed since the issuance of the May 6, 2016 report. Please ensure your teams do everything possible to close the remaining cases. Department of Human Resources will continue to work closely with departments to complete the cases by the March 15 deadline set forth in the motion.

Should you have any questions, please contact me at (213) 974-2406, or your staff may contact Rodney Collins, Senior Human Resources Manager at (213) 253-9620.

LMG:EP
JAWT:tdb

c: Executive Officer, Board of Supervisors
Chief Executive Officer
Auditor-Controller
County Counsel