



COUNTY FISCAL MANUAL
Revised – November 2022

Chapter 15 – Employee Misconduct

15.1.0 EMPLOYEE MISCONDUCT

15.1.1 Introduction

Every organization will likely deal with employee misconduct at some time and every manager needs to be prepared to recognize and address employee misconduct when such time arises. However, frequent changes in employment law and policies can make even the best managers uncertain on how to proceed. The guidelines in this chapter were developed to aid all County managers in preventing, detecting and properly reporting employee misconduct. These guidelines incorporate current County policies and procedures and should be referred to before taking any action against employees, vendors or contractors.

15.1.2 Preventive Measures

There are a several steps managers can take to help prevent or minimize employee misconduct.

- Supervisors and managers should make a sincere effort to get to know their employees. Supervisors/managers should be alert to changes in employees' actions, work hours, attitudes towards their co-workers and supervisors, etc. Management must follow up on changes in employee behavior/actions and must be prepared to take immediate action. In addition, appropriately managing employee performance is an ongoing process involving effective communication of both the supervisor/manager's standards and expectations, and departmental policies.
- Departments need to take greater precautions in hiring. Agencies that routinely check references at all levels have been able to eliminate potentially serious employee problems by not hiring individuals whose resume or application otherwise made them appear eligible for the job.
- Management should review the ["Guidelines for Administrative Investigations Update," issued by the Chief Executive Office \(CEO\), Auditor-Controller, and Department of Human Resources \(DHR\) on April 21, 2011,](#) as well as this Chapter on Employee Misconduct, and any policies cited therein. Handling employee misconduct requires a strategic approach developed by management, in conjunction with human resource staff and legal counsel. Following these policies and guidelines and adhering to these approaches will guide management through the process to reduce both the emotional and business impact of the misconduct and reduce the chances of successful litigation against the department by employees alleged to have committed wrongdoing.
- Management should also ensure that employees are familiar with these and other applicable policies on a regular basis.
- In conjunction with the "Guidelines for Administrative Investigations Update," as well as this chapter, departments should make employees aware of the Auditor-Controller's (A-C) Fraud Hotline. Employee reporting is still the best method of detecting employee misconduct. Management systems and internal controls are not designed to detect or prevent collusive employee misconduct. According to the 2014 Global Fraud Study conducted by the Association of Certified Fraud

Examiners, more than 40% of illegal actions that are discovered are detected by internal reporting. Facilitating the internal reporting of employee misconduct not only reduces employee misconduct but also serves as a strong deterrent. However, department management must be prepared to listen and act appropriately once employees report misconduct. If employees believe management does not take these reports seriously or does not act appropriately, this could discourage further internal reporting of misconduct and an important mitigation or potential prevention resource could be lost.

Continuous training as well as education programs on detecting employee misconduct and prevention for both employees and managers are key components in mitigating or potentially preventing employee misconduct. These programs are available from a variety of sources. The A-C has developed two (2) programs: Fraud Awareness Training (See [Section 15.1.3](#)) and the Internal Control Certification Program (See [Section 15.4.0](#)) to assist departments.

Appropriate corrective and disciplinary action are also an important part of managing employee misconduct, including the aggressive prosecution of criminal charges and termination of employees, when warranted. People are less willing to be dishonest when organizations seek prosecution for all offenders, no matter how large or small the crime. A strong disciplinary policy which includes prosecution and termination for criminal conduct has a proven deterrent effect.

15.1.3 Fraud Awareness and Cash Fraud Training

The A-C's Office of County Investigations (OCI) conducts training classes to assist line supervisors in recognizing potentially criminal or fraudulent situations and other areas of employee misconduct. These classes provide an overview of County policies regarding investigations, what to do when you suspect fraudulent activity, and a discussion on management's role and responsibilities in the prevention and detection of employee misconduct. The OCI offers other training that specifically address supervisors of units that receive, track, and store cash revenues for safekeeping. These classes provide instructions for preventing, identifying, and reporting common on-book and off-book cash fraud schemes and counterfeit warrants and currency. Please contact the Office of County Investigations if you are interested in scheduling a class for your department.

15.2.0 REPORTING MISCONDUCT

By order of the Board of Supervisors ([Board of Supervisors Policy Manual 9.040 - Investigations of Possible Criminal Activity Within County Government](#)), the department head, District Head or Director of any County agency, department, commission or special district is responsible for reporting all allegations of suspected criminal activity by an employee, vendor and/or contractor to the A-C's OCI. In addition, [Board of Supervisors Policy Manual, Policy 9.040](#) prohibits departments from conducting internal investigations prior to notifying the OCI. This policy was enacted to prevent multiple departments from conducting simultaneous investigations into a single instance or allegation of misconduct.

An online form may be used to report incidents at:

<http://fraud.lacounty.gov>

You may also write, call, fax, or email your report to:

County Fraud Hotline
500 W. Temple Street, Suite 514
Los Angeles, CA 90012

Call: (213) 89-FRAUD or (213) 893-7283
Toll Free: (800) 544-6861
FAX: (213) 947-5809
E-mail: fraud@auditor.lacounty.gov

Allegations of misconduct such as theft of County resources, embezzlement, vendor/contractor improprieties, timesheet fraud, conducting personal business during work hours, misuse of County equipment, and/or misuse of County information technology resources should be directed to the A-C's Fraud Hotline.

Other types of specific incidents should be reported to the appropriate Agency/Department as follows:

- Human resources issues including, but not limited to, retaliation for reporting fraud, waste, or misuse of County resources (i.e. whistleblowing), violation of Civil Service Rules or Countywide policies, performance and behavioral issues, improper personnel practices, examination improprieties, and preferential treatment, should be referred to the Department of Human Resources. For additional information, please refer to the Department of Human Resources Resource Guide for Investigations.
- Welfare fraud, when no County employee is implicated, should be reported to the Department of Public Social Services' Welfare Fraud Hotline at (800) 349-9970.
- Physical security incidents defined as an incident placing a person or property at risk that required action by law enforcement, should be reported to the Sheriff's Security Operations Unit at (213) 974-7926 or (213) 974-2628. Immediate building security issues should be reported to the Sheriff's County Services Bureau (24-hour Watch Commander) at (213) 974-8000.
- Allegations of Living Wage violations should be reported directly to Internal Service Department's Countywide Contract Compliance Section at:

Living Wage Hotline: (888) 550-9243 or
e-mail: LWO-Construction-info@isd.lacounty.gov

- Allegations of discrimination, sexual harassment, unlawful harassment (other than sexual), retaliation and inappropriate conduct towards others based on a protected status, should be reported to the Countywide Equity Oversight Panel (CEOP) County Intake Specialist Unit at:

CEOP: (855) 999-2367, or filed online at ceop.bos.lacounty.gov

15.2.1 General Policies

Departments may delegate the reporting of such misconduct to subordinate staff. However, it is recommended that managers at the level of Administrative Deputy or above be thoroughly familiar with these guidelines. Department Human Resource (DHR) Managers should also find the guidelines helpful in dealing with employee disciplinary actions.

Departments should report any known or suspected matter of impropriety by a County employee or individuals or firms providing goods or services under contract. Although the following are types of allegations which should be acted upon, they are meant as examples only and do not constitute the entire range of misconduct which should be reported:

Theft	Misappropriation of resources (including IT)
Embezzlement	Personnel improprieties
Substance abuse	Conflict of interest
Nepotism	Filing fictitious claims
Kickbacks	Unauthorized use of County equipment
Work hour abuse	Workers' Compensation abuse

In accordance with [Board of Supervisors Policy Manual, Policy 9.040](#), departments must immediately notify the OCI when it is suspected that a County employee or contractor has engaged in criminal activity. If necessary, the OCI will contact the appropriate law enforcement agency.

County departments, districts and agencies must report all complaints of abuse of authority by law enforcement, security or safety personnel, including those that are provided under contract.

A department should not hesitate to act even if facts initially appear inadequate or do not appear to meet certain perceived standards for evidence. The best course of action is for management to timely request assistance from their departmental human resources units, OCI, or DHR when they are made aware of a problem. Upon suspecting or discovering a reportable offense, the initial step a department should take is to contact the A-C's OCI.

Individuals who report allegations of misconduct to the OCI may remain anonymous. Department personnel making referrals should have all supporting information (e.g. relevant documents, names and contact information for potential victims, witnesses, subjects, etc.) readily available for OCI staff. It is critical that the name(s) of any employee(s) involved in misconduct and the type(s) of misconduct be documented. To ensure proper handling of a reportable offense to the OCI, departments are instructed:

- **NOT** to investigate the matter;
- **NOT** to contact any employee or other individual(s) under suspicion;
- **NOT** to disturb or otherwise compromise any physical evidence.

Because of the confidential and sensitive nature of investigations, departments should avoid taking any action that will alert the suspected employee to any impending

investigation. Since preservation of evidence is critical, any action affecting the employee and his/her job surroundings may compromise the investigation, void a potentially successful prosecution, and jeopardize possible restitution.

Upon receiving notifications of irregularities from departments, the OCI will advise departments on the course of action to be taken. In certain situations, and per the “New 90-Day Standard for Administrative Investigations,” issued by the CEO and DHR on January 27, 2012, departments may be directed to complete their own investigations and report the results, including corrective or disciplinary action taken, in writing to the OCI within 90 days of receipt of the referral. In all other situations, the OCI will assign staff to conduct a preliminary investigation and, as appropriate, advise the department on a recommended course of action, and/or make referrals to the proper law enforcement agencies.

As per [Board of Supervisors Policy Manual, Policy 9.040](#), County departments, special districts, commissions, and other entities under the control of the Board of Supervisors, and their respective officers and employees, shall fully cooperate with official investigations, which entails providing the Office of County Investigations, as designee of the A-C, with access to and the authority to examine and reproduce any records or property relevant to the investigations, except to the extent prohibited by law. The Board of Supervisors must approve any request to withhold access to records, information or facilities not otherwise legally restricted from the A-C.

Furthermore, per [DHR Policies, Procedures, and Guidelines \(PPG\) No. 910 \(“Employees Cooperation in the Administrative Investigation Process”\)](#), all County employees are required to fully cooperate with internal administrative investigations in their respective departments and those being conducted by agencies within, or external to, the County. Failure to cooperate when ordered to do so and when properly advised of their rights may subject employees to disciplinary action, up to and including discharge.

15.2.2 Reporting Misuse of Information Technology

Every employee has a responsibility to maintain and enhance the County’s public image and to use County information technology resources such as Internet, e-mail, and other technology-based hardware and software, in a productive, professional manner. Any use not related to County business purposes must be minimal or incidental and should not result in a calculable monetary loss to the County. The Board of Supervisors has adopted several policies for using technology-based resources.

The following Board policies specifically cover misuse of County information technology resources as well as address preventative security measures and guidelines: *(Note: For a comprehensive overview of all Countywide information technology policies, see [Chapter Six of the Board of Supervisors Policy Manual](#)).*

[BOS Policy Manual, Policy 6.100](#) – Information Security Policy

[BOS Policy Manual, Policy 6.101](#) – Use of County Information Assets

[BOS Policy Manual, Policy 6.103](#) – Information Security Incident Reporting and Response

[BOS Policy Manual, Policy 6.104](#) – Information Classification Policy

[BOS Policy Manual, Policy 6.105](#) – Internet Technology Audit and Risk Assessment Policy

Examples of violations of the Board Countywide Information Technology Policies include, but are not limited to the following:

- Revealing your password to others.
- Utilizing another employee's password to gain access to County computing devices.
- Failing to render unreadable and unrecoverable information or software on County computing devices prior to disposition by salvage, sale, donation, or destruction.
- Using the County's Internet or Information Technology resources for illegal purposes, such as, but not limited to:
 - a. The unauthorized copying of copyrighted materials, including the downloading and/or distributing of licensed software, movies, music, etc., as well as the uploading of software purchased by and licensed by the County.
 - b. The posting or e-mailing of scams such as pyramid schemes.
 - c. The posting or transmitting of any message or material which is libelous or defamatory.
 - d. The posting or transmitting of any message, data, image, or program which is indecent, obscene, or pornographic.
 - e. Posting or e-mailing any offensive material or remark, including but not limited to remarks about an individual's race, age, disability, religion, national origin, physical attributes, or sexual preference.

The County has the right to administer any and all aspects of County information access and use including the right to monitor Internet, e-mail and data access to ensure compliance with the County information technology policies. Suspected violation of these policies related to abuse must be reported to the OCI in accordance with the provision covered in these policies.

15.2.3 Dealing With Employees Under Investigation

Dealing with employees under investigation is one of the most difficult tasks that departments may face, and the proper handling of the suspected employee is critical. Some investigations can be conducted while the suspected employee remains in the assigned work area. If the suspected employee is unaware of the investigation, department management should not take any action that might alert the employee.

In some situations, an employee under investigation must be removed from the normally assigned work area. This may become necessary to stop any unlawful activity or misconduct and to protect possible evidence. When removal is required, it is important that it be done expeditiously and with minimal disturbance. The department should follow the advice of County Counsel, the DHR and the A-C's OCI when considering the following options:

- **Reassignment**

The reassignment of an employee is usually the most appropriate option when it is least likely to raise a question and/or disrupt the productivity of other employees. However, if reassignment will not clearly limit the employee's access

to their normally assigned work area, or if the seriousness of the matter under investigation is significant, then other options should be considered. In some circumstances (and per [DHR-PRG No. 810 “Ordered Absence from Regular Work Location”](#)) it may be in the best interest of the County to reassign the employee to their home or other non-County work location, or to relieve the employee of all job assignments. This action should not exceed 30 calendar days.

▪ **Suspension**

Under Civil Service Rule 18.01, an employee may be suspended without pay for up to 30 days pending completion of an investigation or filing of charges. Where the basis of the suspension becomes a criminal charge, the suspension may extend up to 30 days beyond the period of adjudication (that is, up to 30 days after the case is resolved in the courts, etc.). This can be many months or, in some cases, years. For this reason, and because suspension requires certain disclosures to the employee (based on due process requirements) that may compromise an investigation, it must be a very carefully considered option.

Except in special circumstances, suspension with pay (Ordered Absence) is not recommended. It is preferable to reassign a suspected employee to another work area and assign other duties as required. If necessary, employees under investigation may be managed by using provisions contained within [DHR-PPG No. 810](#).

▪ **Ordered Absence**

An employee can be reassigned to his/her home or other non-County work location, with pay, pending the completion of the investigation. This action is known as an Ordered Absence from Regular Work Location and is taken pursuant to [County Code Section 2.06.070](#), Civil Service Rule 15.01, and [Policy Procedure and Guidelines \(PPG\) 810](#), which give department heads the authority to assign the work of the department to employees and reassign employees based on the needs of the service. This action is usually taken for the following reasons:

- To prevent the interference in an investigation of allegations of misconduct
- To prevent the risk of harm or danger to the employee, other employees or the public
- To reduce the risk of damage or loss to County property or records
- To reduce the County's liability for potential actions of employees

▪ **Discharge**

Discharge before completing an investigation is generally not a viable option because documentation supporting such action may not be obtained until after the completion of the investigation. Moreover, such premature action could violate the due process rights of the subject employee. In addition, ongoing criminal investigations could be seriously jeopardized by such action because the grounds for discharge must be disclosed at the time of termination.

▪ **Resignation in Lieu of Prosecution**

This is **not** an option. Department personnel are prohibited from negotiating a resignation in lieu of initiating an investigation with employees suspected of

committing a crime. This can cause subsequent problems if the specific circumstances are not properly investigated or documented because these employees can return to County employment in another department. Unaware of the previous misconduct, the new department may place these employees in positions where that misconduct can be continued. Additionally, resignation in lieu of discharge does not prevent prosecution for criminal acts. The District Attorney is the only agency empowered to determine if a complaint should be prosecuted. Therefore, departments must notify the OCI, even if an employee resigns prior to a formal investigation being requested.

15.2.4 Rights and Duties of Employees Under Investigation

Employees under investigation are afforded a variety of rights and protections. Some are basic to all employees, such as the right against self-incrimination. Other rights and protections are specific to groups of employees, such as rights covered in Memoranda of Understanding or laws pertaining to peace officers and firefighters (Public Safety Officers Procedural Bill of Rights and Firefighters Procedural Bill of Rights).

There are laws, regulations, and court decisions regarding the number of interrogators who may be present during an interview, when representation is permitted, time constraints for completing the investigation, and how much information must be divulged to the employee during the interview. The laws and regulations regarding these rights are complex and the interpretation and application of said laws and regulations are modified frequently by court decisions.

Disciplinary actions and/or criminal prosecution may be jeopardized if these rights are not observed. Because of the complexity of these laws and regulations, only a trained investigator should conduct a discussion of alleged improprieties with the employee, particularly if the investigation involves criminal matters. Additionally, depending on the nature of the investigation (i.e., criminal vs. administrative), trained investigators can define the limits of lawful search and seizure and control the amounts of information disclosed to the employee. A proper interrogation will ensure that both the employee's rights and the County's best interests are safeguarded. Departments should note that [Board of Supervisors Policy Manual, Policy 9.040](#) designates the Sheriff, the District Attorney, and the A-C as the only County agencies with the authority to conduct criminal investigations.

Employees are also granted protection against video/audio surveillance under certain circumstances. The [April 21, 2011, "Guidelines for Administrative Investigations Update"](#) states that departments should "never undertake any type of video/audio surveillance unless authorized by the [Auditor-Controller] in advance". The A-C will consult with County Counsel and the District Attorney to preserve employees' rights and to mitigate any potential legal liability to the County. When requesting authorization to conduct a video surveillance (without sound), departments should provide the Office of County Investigations with the following information:

- Specific complaint under investigation.
- Justification for video surveillance (i.e., why no other investigative methods will work).
- Location (provide a specific description, e.g., diagrams, photos, etc.).
- Specific time and duration for video surveillance.

- What activities should normally be occurring in the location to be surveilled.
- Which employees might use the location to be surveilled.

Video recording in rooms with a clear expectation of privacy (such as restrooms) and audio recording of any kind may only be authorized by a court order.

15.3.0 EMPLOYEES REPORTING FRAUD OR MISCONDUCT

15.3.1 Protections

Employees reporting employee misconduct (whistleblowers) have certain protections that departments need to be aware of and ensure compliance with [County Code Section 5.02.060](#) commonly referred to as the "Whistle Blowers' Ordinance" contains two important protections for employees:

- It prohibits the use of threats, official authority or influence to restrain or prevent employees who are acting in good faith from reporting employee misconduct or other improprieties.
- It also prohibits reprisals against employees who have already reported employee misconduct or other improprieties.

Any employee who believes they have been subjected to actual or potential retaliatory conduct as stated above should file a complaint with DHR or the OCI. Any employee who believe they have been subject to actual or potential retaliation because of a protected status (i.e. race, age, gender, etc.) may also file a compliant with the CEOP's CISU at (855) 999-CEOP(2367) or online at ceop.bos.lacounty.gov.

Managers or supervisors who violate this ordinance may themselves be subject to disciplinary action up to and including discharge. [Government Code Section 53296](#), et. seq., provides additional protection for employees reporting fraudulent activities. Specifically, this law provides that officers, managers, or supervisors who, with malicious intent, take "reprisal action," such as taking an adverse personnel action or withholding a favorable personnel action, against employees who report misconduct may be punished by a fine of up to \$10,000, plus one-year imprisonment. In addition, the officers, managers, or supervisors may be held individually liable for damages, including punitive damages and attorney's fees, if the injured person files a lawsuit against him or her.

There may be instances where those who have reported employee misconduct or mismanagement are themselves accused of unrelated misconduct. In those cases, departments should take extra precautions before attempting disciplinary actions against those employees. Even if allegations of misconduct or disciplinary action are not an issue, departments should still remain vigilant that any adverse action involving an employee who has already reported employee misconduct or mismanagement, has a legitimate basis and is supported by reasonable facts to prevent the reception of retaliation.

15.3.2 Fraud Reward Program

On November 3, 1992, the Board of Supervisors approved the County's Fraud Reward Program which authorizes rewards of up to \$1,000 for information resulting in a criminal conviction of a person or persons committing fraudulent activity against the County. The A-C, CEO and County Counsel will review any applications for payment of rewards and

make recommendations to the Board of Supervisors. The Board of Supervisors will review these recommendations and under its sole discretion may order payment as deemed appropriate.

15.4.0 INTERNAL CONTROL CERTIFICATION PROGRAM

The maintenance of a good system of internal controls is a key component of any system established to prevent and/or detect instances of employee misconduct or fraud. The A-C developed the Internal Control Certification Program (ICCP) to assist County departmental managers in evaluating and improving internal controls in all fiscal areas, thereby reducing the risk of error, fraud and other improper activities.

Under the ICCP, each department/district is required to annually review (unless a biennial review has been approved by the A-C) and evaluate controls in key areas and certify that action is being taken to correct any deficiencies or weaknesses noted. A written certification of such review and evaluation must be filed annually by May 15 with the A-C utilizing [the eICCP system](#). If the deadline cannot be met, departments must request an extension, in writing, addressed to the A-C. The A-C may occasionally submit a report to the Audit Committee on the status of ICCP submissions.

The areas subject to review include:

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| Cash Controls | Payroll Controls |
| Expenditure Controls | Trust Controls |
| Capital Assets Controls | Revenue Controls |
| Supplies Inventory Controls | Information System Controls |
| Journal Voucher Controls | |