

# Grievance Procedure

Effective October 1, 2011

Revised April 11, 2014

*The revisions contained herein are applicable to any termination or employee discipline rendered on or after April 11, 2014; or for workplace safety issues reported on or after April 11, 2014.*

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## **I. PURPOSE:**

The City of La Crosse has established this Grievance Procedure for an employee to utilize for matters concerning discipline, termination, or workplace safety covered by this Grievance Procedure. This Procedure provides an employee with the individual opportunity to address concerns regarding discipline, termination or workplace safety matters, to have those matters reviewed by an Impartial Hearing Officer, and to appeal to the Common Council.

An employee shall use the Grievance Procedure for resolving disputes regarding employee termination, employee discipline or workplace safety issues covered by this Procedure. The City of La Crosse expects an employee and management to exercise reasonable efforts to resolve any questions, problems or misunderstandings prior to utilizing the Grievance Procedure. An employee subject to a contractual grievance procedure shall follow the contractual grievance procedure to the extent those procedures cover the matters covered by the Grievance Procedure. An employee subject to statutory dispute resolution procedures shall be subject to those procedures to the extent those procedures cover the matters covered by the Grievance Procedure.

The City of La Crosse reserves all rights and this procedure does not create a contract of employment. Unless required by statute, city ordinance, contract or Employee Handbook, employees of the City of La Crosse are employed at-will and may resign with or without reason. The Employer may terminate the at-will employment relationship at any time with or without reason and without violation of applicable law.

## **II. DEFINITIONS:**

“Termination” means a separation from employment by the employer for disciplinary or quality of performance reasons. “Termination” does not include layoff, furlough or reduction in workforce, job transfer, non-disciplinary demotion, resignation, abandonment, retirement, nonrenewal of contract, death, separation as a result of disability, action taken pursuant to an ordinance created under s. 19.59 (1m), elimination of position due to loss of grant funding, or the end or completion of temporary employment, seasonal employment, contract employment, or assignment.

“Employee Discipline” means an employment action that results in disciplinary suspension, with or without pay, disciplinary termination, or disciplinary demotion. “Employee discipline” does not include counseling, oral reprimands or warnings, written reprimands or warnings, performance improvement plans, performance evaluations or reviews, documentation of employee acts or omissions, administrative leave, non-disciplinary wage, benefit or salary

adjustments, changes in assignment, action taken pursuant to an ordinance created under s. 19.59 (1m), or other non-material employment actions.

“Employee” shall not include limited term employees, seasonal employees, employees subject to a collective bargaining agreement addressing employee discipline, termination and workplace safety, statutorily appointed individuals serving as employees identified specifically in statute as serving at the pleasure of an appointing authority or who are subject to removal under Wis. Stats Chapter 17 or Chapter 62, elected officials, and independent contractors. Those individuals who do not have a process for grieving workplace safety matters shall follow this grievance procedure for workplace safety grievances.

“Administration” means the person or person designated by the City to represent the interests of management in a Grievance matter. The Administration may be represented by counsel at any point in the procedure.

“Workplace Safety” shall be narrowly construed and is not construed to include basic conditions of employment unrelated to physical health and safety. “Workplace Safety” means conditions of employment related to the physical health and safety of employees, as long as such conditions are not enforceable under state or federal law, and includes safety of the physical work environment, the safe operation of workplace equipment and tools, provision of protective equipment, training and warning requirements, workplace violence and accident risk.

“Workplace Safety” does not include conditions of employment unrelated to physical health and safety matters, including, but not limited to, hours, overtime, sick, family, or medical leave, work schedules, breaks, termination, vacation, performance reviews, and compensation.

“Cause” means a lawful rational reason, including but not limited to inefficiency, neglect of duty, misfeasance, malfeasance, violation of city policies or work rules, or communicated expectation of conduct, or other conduct, or the failure to act that is detrimental to the interest of the City.

### **III. TIMELINES AND GRIEVANCE FORMAT:**

1. Written Grievance Submission. The employee must file a written Grievance within twenty (20) calendar days of the termination, employee discipline or actual or reasonable knowledge of the workplace safety issue. The Grievance must be in writing and must be filed with the supervisor and with a copy to the Director of Finance, Deputy Director of Human Resources or their designee. The Grievance shall contain a clear and concise statement of the pertinent facts, the dates the incidents occurred, the identities of the persons involved, documentation related to the Grievance in possession of the Grievant, the steps taken to informally resolve the dispute and the results of those discussions, all reasons why the actions of the supervisor should be overturned, if applicable, and the remedy that should be issued.
2. Administrative Response. The Director of Finance, Deputy Director of Human Resources or their designee and the Department Head shall meet with the Grievant within fifteen (15) calendar days of receipt of the written Grievance to discuss voluntary resolution of the Grievance. If those discussions do not resolve the Grievance, then the

Director of Finance, Deputy Director of Human Resources or their designee will provide a brief written response to the Grievance within ten (10) calendar days of the meeting. The written response shall contain a statement of the date the meeting between the Director of Finance, Deputy Director of Human Resources or their designee, the Department Head and the Grievant occurred, the decision to sustain or deny the Grievance, and the deadline for the Grievant to appeal the Grievance to an Impartial Hearing Officer.

3. Impartial Hearing. The decision of the Director of Finance, Deputy Director of Human Resources or their designee shall be final unless the Grievant files a written appeal requesting a hearing before an Impartial Hearing Officer (IHO). The written appeal shall be filed with the Director of Finance, Deputy Director of Human Resources or their designee and within ten (10) calendar days of the Administrative Response.
4. Appeal for Review. Either party may file a written request for review by the Common Council within ten (10) calendar days of receipt of the IHO's written decision.
5. Decision of Common Council. A decision by the Common Council will be made within ninety (90) calendar days of the filing of the appeal unless the Common Council extends this timeframe.
6. Importance of Timelines and Process. A Grievance will be processed pursuant to the established timelines. A Grievant may not file or advance a Grievance outside of the designated timeframes. The failure of the Grievant to follow the timelines and other requirements in this policy shall result in the IHO not having jurisdiction over this matter. If the Grievant fails to follow the established timeline in this procedure, then the Grievance is considered resolved, and no further action is available. The IHO shall have the authority to determine whether the IHO has jurisdiction, which may be subject to review by the Common Council.

Any period of time described in the Grievance Procedure by reference to a number of days includes Saturdays, Sundays and any City observed holidays. Any period of time described in this procedure by reference to business day does not include Saturdays, Sundays or any City observed holiday. If the date or last date to perform any act or give notice is a Saturday, Sunday or City observed holiday, the act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or City observed holiday.

7. Scheduling. Grievance meetings and hearings may be held during the Grievant's off-duty hours. Time spent in Grievance meetings and hearings on off-duty hours will not be considered as compensable work time.
8. Individual claim. Any Grievance filed regarding workplace safety must relate to issues personal to the Grievant filing the Grievance and may not relate to, without limitation by enumeration, safety of property or third parties. A Grievance filed regarding workplace

safety must be filed by the Grievant claiming the grievant has been personally affected by the alleged workplace safety violation.

A Grievance filed for discipline or termination may only be filed by the employee who is the subject of the discipline or termination.

#### **IV. HEARING PROCEDURE:**

1. Selection of the Impartial Hearing Officer (IHO). Following receipt of the appeal requesting a hearing before an IHO, the Director of Finance, Deputy Director of Human Resources or their designee shall conduct a search and provide the names of three (3) persons, not employees of the City of La Crosse, whom he or she determines are impartial, having no interest in the grievance. This list of the three (3) IHOs shall be provided to the grievant within thirty (30) calendar days of the filing of the employee's appeal.

Within fifteen (15) calendar days of receipt of the IHO list from Human Resources the grievant must notify Human Resources, in writing, as to the selection of the IHO. The list of IHO's may not be appealed. If the grievant fails to select an IHO from the established list and notify Human Resources by the close of the regular business hours on the 15<sup>th</sup> day, then the grievance shall be considered resolved.

2. Pre-Hearing Conference and Timelines. The Administration, Grievant and IHO shall conduct a pre-hearing conference. The IHO shall determine the date for hearing. The IHO shall also assign dates for preliminary matters that may arise prior to the hearing.
3. Conciliation. Prior to the Hearing, the parties and IHO will engage in conciliation meetings to resolve the dispute. In cases involving allegations of workplace safety, the conciliation meeting shall occur not more than ten (10) calendar days after assignment to the IHO. The IHO's involvement in any conciliation process shall not disqualify the IHO from hearing the merits of the Grievance unless all parties agree to replacing the IHO. The replacement of any IHO shall be made from the remaining two IHO's from the original list, in accordance with Article IV, paragraph 1 of this Grievance Procedure.
4. Representation. The Grievant shall have the right to representation during the Grievance Procedure at the Grievant's expense. The representative shall not be a material witness to the dispute.
5. Record of Proceedings. The IHO shall conduct the proceedings and make a record of the proceedings. Following the issuance of the decision, the record shall be provided to the Director of Finance, Deputy Director of Human Resources or their designee of the City of La Crosse for preservation. If a court reporter is utilized the costs shall be equally shared by the grievant and the employer.
6. Burdens of Proof and Procedure. The rules of evidence shall not be strictly followed. Evidence must be relevant, reliable and probative.