

## **CONGRATULATIONS! YOU'RE A STEWARD!**

**The job you've taken on is not an easy one, but it is an important one and can be rewarding. As a MCO Steward, you are a vital link in the communication system by passing on information from the state level organization out to the members, and channeling feedback and issues back to the Central Office. Without your help, the most crucial mechanism as far as our membership is concerned, the grievance procedure would come to a screeching halt.**

**This booklet will provide you some of the tools necessary to get your job done. If you have any questions, ask your chapter leadership, or call Central Office. We're here to help you. Good Luck!**

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## **DEFINITION OF AN IDEAL UNION STEWARD**

*A union steward is a person of trust representing their fellow officers in the work place. Acting as an official representative of their shift, provide democratic leadership in the promotion of member solidarity in the affairs of the international union, state union, local chapter, and union movement in general. As they are dedicated to protect and advance the rights and dignity of all members in the work environment, the steward must also be a devout and constant advocate of the high ideals and principles of the labor movement within the greater community in which they live.*

## **RESPONSIBILITIES OF THE STEWARD**

The job of the steward is a varied one. Some of the responsibilities are:

- Problem solver.
- Intermediary between shift command and members.
- Coordinates with the Chapter President, concerns of their shift for labor/management.
- Coordinates with Chief Steward regarding grievances involving members on shift.
  - Investigates grievances on their shift.
  - Initiates grievances for individual members.
  - Follows up on grievances for members on the shift.
- Assures contract is being administered fairly and procedures are followed.
- Lends a friendly ear.
- Educates members regarding newest developments from Central Office in Lansing.
- Carries the Union message.

## MCO Steward Reference Guide

### DEALING WITH PEOPLE

Be honest with yourself and maintain Union policy.

Educate yourself on Union matters.

Serve as an example to your members.

Get acquainted with new members.

Provide leadership.

Keep workers informed on Union policies and activities.

Give members satisfaction by listening to all problems.

Have thorough discussions with members on complaints.

Have a sympathetic attitude.

Exercise patience and don't lose your temper.

Understand other causes for problems.

Keep personal feelings and Union politics out of grievances.

Be tactful and frank.

Don't promise victories.

Be hopeful.

Know how to handle disagreements.

Accept all complaints including those not covered by contract.

Don't stall on grievances.

Don't discriminate in settling grievances.

Don't pass the buck.

Keep members informed on progress of grievances.

Know sources of information and don't fail to get it when the member seeks it.

Don't assume responsibilities of management.

Encourage members to attend Union meetings, Union affairs, and Union classes.

Encourage members to take advantage of Union privileges.

Fight propaganda.

Know how to refer to the Union contract and by-laws of the Local and the International Constitution.

Keep your sense of humor.

## **A GOOD LISTENER**

**The most important and most basic skill a Steward needs is good listening ability. Without it, no other Steward's duties can be carried out. Here are some tips on good listening:**

1. Silence is golden. You can't listen while you're talking.
2. Look the speaker straight in the eye. It shows that you are concerned. You are also less likely to be distracted by other things around you.
3. Try to find a quiet, private place to talk. It helps a person relax.
4. Don't interrupt - give the member a chance to say what's on their mind. This is especially important if the member is upset.
5. Don't second guess and assume you know what the member is going to say before it's said. If you put words in the member's mouth, you're likely to be wrong.
6. Ask clarifying questions which encourage the member to explain more. This will help you determine the validity of the member's complaint. It may be a valid grievance or a subject for labor/management. Sometimes the issue can be resolved by talking to shift command.
7. Avoid lecturing. Don't give advice or provide answers before the member has explained the entire situation.
8. Keep cool with the angry member --two angry people make for big fireworks! Be patient and let the member blow off steam.
9. Repeat or rephrase what the member tells you every now and then. This confirms that you have been listening correctly and shows the member you are listening.
10. Practice good listening --not only with members, but at work and home. You'll be surprised what you can really hear.
11. Tell the truth and always encourage the Grievant to tell the truth.

## **UNION STRUCTURE & AGENCY SHOP**

Michigan Corrections Organization's right to bargain is covered under the State of Michigan Civil Service Employee Relations Policy AGENCY SHOP conditions. All members of our bargaining unit who are not union members must pay a service fee (usually equal to union dues) to MCO for services provided. Article 5 of our contract describes the automatic dues deduction process handled by the departmental payroll system. Failure to submit either dues or fees may be cause for dismissal. Agency fee payers are entitled to the same representation as union members. They are covered by the contract, and have a legal right to fair representation, so you must give their concerns equal consideration.

Agency fee payers are not entitled to vote on contracts, vote for, or be elected to Union office, and are not eligible for the SEIU benefits like legal services, the credit card or travel program.



## **DUTY OF FAIR REPRESENTATION**

The duty of fair representation (DFR) comes in two parts. The first is the obligation to represent all bargaining unit members fairly and in good faith. The second is to protect the bargaining unit from employer unfair labor practices, or, as they're called in Civil Service, prohibitive practices.

*This section describes those duties. Read it carefully.*

### **What is the Duty of Fair Representation?**

MCO's right of exclusive representation carries with it a duty of fair representation: it must represent all unit employees, covered by the contract, fairly and in good faith. A breach of the DFR occurs when MCO's conduct is arbitrary, discriminatory, in bad faith, or grossly negligent. Furthermore, MCO's conduct cannot be perfunctory, that is, merely going through the motions of representing an employee and superficially handling a grievance.

**DFR is breached where MCO's:**

*1. Actions are attributable to improper motives or fraud:* An employee is denied a grievance because of efforts to bring in another union, their intra-union political activities, non-membership in MCO, or based on sex, color, race, or personal animosity.

*2. Conduct is wholly arbitrary; there is no basis upon which conduct can be explained:* if MCO refused to process a grievance without any inquiry at all or if there is a contract or internal union policy which clearly and unambiguously supports the employee's position and MCO, without explanation, refused to support the employee.

*Note:* If MCO's investigation reaches a conclusion that is later found to be erroneous, so long as the MCO's contract interpretation has some basis in reason, their refusal to process the grievance will not be considered arbitrary.

*3. Conduct is grossly negligent; there is a reckless disregard of the interests of the unit employees:* MCO breaches DFR by failing to notify the employee their grievance will not be taken to arbitration, thereby leading them to reject a settlement offer they would have otherwise accepted.

*4. Conduct improperly undercuts an employee's grievance:* Gross negligence in meeting grievance time limits.

*Note:* Just because MCO invokes the grievance procedure does not mean we are precluded from settling the grievance or agreeing with the employer's position. Regarding settlements, MCO can consider the costs of further processing the grievance and decide to accept less than the employee seeks.

### **Avoiding Duty of Fair Representation Charges**

The following guidelines are intended to assist stewards in handling grievances in a manner designed to avoid meritorious DFR lawsuits and ULP charges.

1. All grievances should be carefully investigated to determine their merit.
2. Records of such investigations should be recorded in writing and maintained.
3. Maintain adequate communication with the grievant to assure them of the local's concern, efforts and good faith.
4. Private Counsel for the grievant should be treated courteously.
5. Process the grievance promptly. Contract time limits should be scrupulously observed and any continuances confirmed in writing.
6. Treat all members of the bargaining unit equally. Decisions to pursue grievances or arbitration must be made solely on the merits.
7. The opinion of local union officers and sometimes a labor attorney should be obtained in borderline cases.
8. Have a valid reason for any action taken on a grievance.
9. The decision on whether or not to arbitrate should be made at the appropriate union level.
10. A decision to discontinue a grievance and the reason (simply stated) must be communicated to the grievant.

*Note: If a grievance lacks merit and cannot be won, drop it. Don't let an attorney or the threat of a lawsuit influence MCO's judgement. It is MCO's right and obligation to keep the grievance procedure free of non-meritorious grievances. However, the grievant must be informed and MCO should maintain a written record of the objective reasons why it failed to file or dropped the grievance.*

## **UNFAIR LABOR PRACTICES: RIGHTS OF EMPLOYEES**

Although it has been heavily used as a guideline, the National Labor Relations Act does not provide any protection to employees in public service, including MCO members. Public service employees are covered by the Public Employees Relations Act. Civil Service employees in the State of Michigan are covered by the Rules of the Civil Service Commission of the State of Michigan. The Civil Service Commission has sole authority to promulgate the rules covering employment for the State, and gets that authority from the State Constitution.

These rules are enforced for MCO members by the Michigan Civil Service Commission-appointed Employment Relations Board.

### **Unfair Labor Practices by the Employer**

These are actions the employer is prohibited from doing to bargaining unit members or MCO as a whole.

Section 6-11.1 - to interfere with, restrain, or coerce employees in the exercise of rights granted by this rule;

Section 6-11.2 - to dominate, interfere, or assist in the formation, existence, or administration of any employee organization;

Section 6-11.3 - to discriminate against an employee because that employee has filed any affidavit, petition or complaint, or given any information or testimony or because that employee has formed, joined or chosen to be represented by any employee organization; and

Section 6-11.4 - to refuse to bargain in good faith or meet and confer with recognized employee organizations as required by this rule.

*Historically, MCO has used the filing of unfair labor practice charges as a last resort and only after all efforts to resolve our dispute with MDOC have failed. Charges against the employer can only be filed by MCO's Director.*

## **RIGHT TO REPRESENTATION AND INFORMATION**

MCO members have the right to representation at interviews or meetings where the employer is gathering information that could lead to *their* discipline. This right is guaranteed by our contract in articles 8, 9, 10.

MCO members also have the right to access information necessary for bargaining and contract enforcement. Most information must be provided at our request if it is for one of these purposes. The FOIA requirements are also at our disposal, but should *only* be used as a last resort because of the expense and paperwork involved.

### **MCO'S RIGHT TO INFORMATION CONTROLLED BY THE EMPLOYER**

In general, MCO is entitled to information controlled by the employer which MCO believes it needs in order to administer the contract and for use in the grievance and arbitration procedure.

#### **MCO has the right to receive information to:**

1. Prepare a grievance case.
2. Determine whether or not to arbitrate a case.
3. Prepare for arbitration.

#### **Types of Information to Which You Are Entitled**

1. Job descriptions and job evaluation information
2. Seniority lists
3. Overtime and annual leave lists
4. These are only examples. You may also have access to logbooks, daily reconciliation sheets, etc.

Note: The employer cannot refuse to supply information because it could be obtained from the members themselves. Although members might supply the information, the employer is still required to provide it to MCO.

### **When and How the Employer Must Furnish Information**

1. MCO must request the information under Article 9.
2. If information is complicated, the employer must provide it in written form. Sometimes they can just report orally without providing it in writing, or they can let a representative of MCO view and copy the information.
3. The employer is not required to provide information in the exact form requested by MCO, especially if it would be very expensive or burdensome to assemble the information as requested.
4. How long can the employer delay before providing the information? One decision held that a 15-day delay was not untimely. However, other decisions have ruled that a 45-day, 2 month and 5 month delays were unlawful.
5. Management must supply the information even if the contract is silent.

**You have a right to access information by law. Under the National Labor Relations Act, Section 8(A) (3) (duty to bargain), an employer has an obligation to provide the union access to information. Additionally, MCO's Contract, Article 9, states the employer must provide information requested for the purpose of investigating possible contractual violations.**

*Note: If the employer refuses to provide information or delays in the production, a grievance can be filed under Article 9. First, though, contact MCO Central Office for assistance.*

## **INTERVIEWING SKILLS**

**This section covers some of the skills used for communicating with our members and supervisors. These techniques can help you get the information you need from your discussions.**

## **GRIEVANCE INTERVIEWING: WHAT NEEDS TO BE ACCOMPLISHED**

There are three main objectives of grievance interviewing: (A) getting the facts; (B) assuring the member that they are getting attention, and (C) getting acceptance of any action necessary.

### **A. Getting the Facts**

Facts are hard to get. Often you get only half the story, either because they think you know the background or because the members realize that some of the facts may be unfavorable to them. Often they are too excited to tell the complete story. Sometimes they can't speak English well. This checklist is helpful to stewards in their interviews:

- Who is involved?
- What did they say or do?
- When did it happen?
- Where did it happen?
- Why did it happen - what was the underlying cause?
- What do you want from the Department in the way of a remedy?
- Which clauses or provisions of the contract have been violated?

When you need facts that cannot be obtained from the aggrieved member or other member(s) be sure to exercise your right to obtain information from the employer under the contract.

### **B. Giving the Member Attention**

Research shows that the union is often judged by the tact that its stewards show in handling members when they have grievances. Many members want to use their stewards as a sounding board. If so, listen to them. Remember, if the member thinks they are not getting proper attention, they will be upset at both you and the union.

### **C. Getting Acceptance of Any Action Necessary**

In a democratic union, you should explain to the aggrieved member carefully what you can and cannot do for them in handling the grievance. Explain the steps you are going to take, so the grievant has a better understanding of the process.

For instance, you might tell the aggrieved member:

"As far as I can see you have no case here because . . . If you disagree with me, you can always take it up with the grievance committee or the staff representative."



"I think you have a strong case and I'm going to take it up with the supervisor at once."

If the grievance is completely unjustified, be sure to explain why. Point out the reasons. Refer to the contract. If the member is still unhappy, explain the right to appeal. For instance, "John boy, I don't think you have a leg to stand on. But if you'd like, you have the right to appeal my decision."

However, if you agree to handle the case be sure to keep the member informed of the progress you make, even if you only say, "I haven't had a chance to take the matter up yet, but I will as soon as I can."

If you aren't successful with management, let the aggrieved member know at once and also inform them what further appeal steps can be taken, if any.

### **THE ART OF INTERVIEWING**

In investigating problems or concerns brought to you by your members, a steward relies heavily on good interviewing skills. Here are a few suggestions on how to conduct a successful interview.

#### **1. Find the right place and time for the interview.**

A steward needs to know convenient places in or near their workplace where the steward and member can talk in private. Sometimes this means taking time at lunch to listen to a member's concern. Try to gauge how much time you will need to spend with the member. If you feel rushed because of time pressures it is likely that you will not have a very productive interview.

#### **2. Just the facts Ma'am...**

Your primary objective is to get the Grievant to explain the facts of their case.

Listening is not easy. This is particularly true when we feel threatened by what is being said to us--for instance, when we are being criticized. Under these circumstances our normal impulse is to defend ourselves rather than to listen.

Listening requires an active effort to convey that you understand and are interested in what the other person is saying--almost like you are helping them say it. A friendly facial expression and an attentive but relaxed attitude are important. Be sure to restate to the Grievant what they said to you to make sure you have a clear understanding of what they conveyed to you about their case.

## **THINGS TO AVOID IN INTERVIEWING**

### **1. Judgment.**

Criticizing or moralizing puts the interviewee on the defensive. Even if they do not argue back, they will edit what they say in order to win the interviewers approval. The member will concentrate on proving that they are right rather than on giving an honest explanation. Putting a person on the defensive makes it harder to find out what they really think.

### **2. Arguing.**

Little is gained from argument, at least at the early stages of an interview. Yet, there is a strong human tendency to correct the other person when they say something that is obviously wrong. Moreover, if the interviewer is attacked personally, they must exercise tremendous restraint not to answer back.

### **3. Providing Advice.**

When you finally get the complete picture as the member sees it, you may be able to provide advice or information not previously been available. But again, it is often better to help the member work through their problems. In any event, you should hold off giving advice until after the interviewee has told their entire story and until you have all the facts.

## **HOW TO DEAL WITH THE SUPERVISOR**

### **Before You See the Supervisor - Prepare Your Case and Ask Yourself These Questions:**

- Have I gotten all the facts from the member?
- Do I have all the other information I need?
- Have I checked the contract?
- Have I explained the case to the member?
- What questions do I want to ask the supervisor?
- What points do I want to get across to the supervisor? What should I expect the supervisor will argue?

### **REMEMBER In the Grievance Procedure the Supervisor and Steward are Equals.**

The supervisor and the steward share the responsibility for settling grievances. Try to establish a friendly but businesslike relationship. There is no reason to bow or scrape or to have a

chip on your shoulder. If the supervisor is unreasonable, you can always go to the next step. Ask him/her about the incident that gave rise to the grievance. They may have facts you don't.

**State the Facts and Tell the Supervisor How the Union Wants the Grievance Settled.**

- IF they try to sidetrack you by discussing other issues . . . Let the supervisor talk, but don't be misled and lose sight of your position. Stick to your case and bring him or them back in a tactful but firm way.
- IF they want to trade -- you win one grievance and the supervisor wins one . . . Insist on settling each grievance on its merits. This is the only just way to settle a grievance.
- IF they make you angry -- Beware! Few people can think straight when they are angry and this is a victory for the supervisor if you lose your temper.
- IF the supervisor stalls--Try to push for an immediate answer. If you cannot get a decision, try to set a definite time, as early as possible, for the answer.
- IF you and the aggrieved member disagree . . . Don't ever disagree in front of the supervisor. Determine the way you will present your case before you see the supervisor. If you hit a snag, adjourn. You have a right to do this. Then straighten out your case and resume talks with management.
- IF you win your point . . . Once you've won, stop talking. Don't continue to hash it over. Be sure to inform the member about it if they weren't with you.
- IF you can't settle the grievance . . . Take the case to the next step in grievance procedure right away. Let the supervisor know you are going to do this. Be sure to keep the member informed.

**HANDLING THE SUPERVISOR**

Many stewards, even those who recognize the importance of using tact in dealing with fellow members, yell and bluster at their supervisor. In doing so, they may make the job harder. It is much wiser to develop a relationship in which the supervisor is willing to cooperate with you and to handle grievances quickly and fairly. In some cases, this is hard to accomplish. Still, you may not get anywhere if you go out of your way to antagonize the supervisor.

Have a strong, well-prepared case that is put together properly with accurate facts. However, grievances that are settled in a friendly manner usually stay settled longer.

## MCO Steward Reference Guide

If possible, try to remain on friendly terms with supervisors. This will help you, especially when you have a weak, borderline case or MCO's policy is not well developed. A relationship where each side is trying to rub the other's nose in the dirt hurts both.

### **A FEW SUGGESTIONS ABOUT HANDLING GRIEVANCES WITH SUPERVISORS:**

1. **Start by telling the supervisor the problem as the aggrieved sees it.** Imply that you have an open mind.
2. **After that, let them talk.** Encourage them to state their position completely. If they want to use you as a sounding board, all the better. Every supervisor thinks they have the most difficult job in the world. They will feel better and more reasonable after they get their gripes off their chest.
3. **Show them that you understand their position, even if you don't agree with it.** This shows that you are being reasonable.
4. **Stick to the point.** Avoid raising questions of principle. If they say, "I don't want the union interfering in everything I do," don't argue back, but say, "I can understand now you feel. I certainly am going to try to keep the number of grievances to a minimum. I think we can eliminate them altogether if we try to find a constructive solution for each problem as it comes up. For instance, in the case we have here, I think it is just a question of the meaning of the contract. It is much easier to find solutions to specific problems than to settle the great issues that may have divided MCO and management at your facility for years.
5. **Do not discuss personalities.** Don't make belittling remarks that have nothing to do with the case at hand.
6. **Unless you are anxious to take the case to a higher level at once, don't force the supervisor to say "no."** If you are not getting anywhere, let him think it over for a while. He/her may mellow later on. On the other hand, don't let him stall too long. Remember, there are time limits at each step.
7. **If you can't reach a satisfactory settlement, don't think the world will end.** You can always appeal the case. That's what the other steps of the grievance procedure are for.

### **SUMMARY**

Interviewing is a form of communications and like all forms of communications it is most effective when it is two-way. A good interview is more than a one-way process in which the interviewee tells their story to the interviewer; the interviewer must in turn be constantly communicating their interest in the interviewee as a person and what they have to say.

It is not enough for the steward to understand their members; the steward must also give her the feeling that they are sincerely trying to help them. The steward must not only listen, but must communicate the feeling to the members that they are being heard.

A properly conducted interview is a critical element in building solidarity.

## **EMPLOYEE DISCIPLINE**

**One of the most important responsibilities of a steward when representing a member at a disciplinary conference, is knowing the employee hand book and the employee disciplinary code. Proper representation and documentation is crucial to preventing discipline from being assessed, and successfully grieving the action. You won't always win because employee misconduct does occur. Often it is frustrating because administrators may have their mind made up about what action they are going to take regardless of what you have to say. But you still have a crucial job to do. Your purpose is to ensure the contract is followed and to safeguard the due process rights of our members. Help the grievant tell their side of the story, keep records on their position and yours, and gather information to be used in the grievance process if necessary.**

**This section contains information on how to defend a member in a discipline case, including what is required of the employer to uphold discipline. Become familiar with Article 10 of the contract as it outlines the procedures and rights of employees in disciplinary matters.**

## GENERAL GROUND RULES IN DISCIPLINARY CASES

1. **The employer is entitled to prescribe reasonable rules of conduct.** The employer enjoys considerable discretion in making this determination.
2. **The member has a right to know what is expected of him.** Therefore, the employer has an obligation to give adequate notice of the rules, unless they are so self-evident as not to require notice, i.e. Theft, possession/use of drugs, and assault.
3. **The employer must avoid arbitrary, hasty, or capricious action when confronted with unsatisfactory conduct.** The tendency for supervisors to overreact against what they regard as a challenge to their authority is one of the persistent problems of workplace discipline. To guard against this tendency, collective bargaining agreements frequently provide that an employee will not be discharged until after a preliminary suspension.
4. **Disciplinary suspension policies should be consistent.** It does not mean, however, that a mechanical uniformity of treatment must be achieved, regardless of differences in the background or circumstances of particular cases. What is important is consistent purposes rather than uniform penalties.
5. **The punishment should fit the crime.** There is a controversy among arbitrators as to whether they have authority to mitigate penalties where a member is guilty of the offense charged and the penalty is regarded as excessive.
6. **Proper discipline should be corrective rather than punitive.** The purpose is to instill self discipline in the working force. Both employer and our members lose when a member is terminated. The employer must recruit and train a replacement and must often reckon with ill will on the part of the discharged member's fellow workers, while the member loses their seniority and all the valuable rights associated with it. Therefore, discharge should normally be invoked only as a last resort, after it has become clear that corrective measures will fail.
7. **It is as much an act of discrimination to impose equal penalties for unequal violations as to impose unequal penalties for equal violations.**

### **PROCEDURAL REQUIREMENTS: DUE PROCESS**

Since the function of discipline is to promote efficient operation of the facilities, the employer must be concerned not only with the effect of a penalty on our members, but its effect on MCO as well.

Procedural requirements are essential safeguards in the due process system of protection for our members. They include:

1. Formal charges, which must include the nature of the misconduct, and be included with the notice of disciplinary conference.
2. Reasons (all of them) should be provided at the time the charges are made. All of the employer's evidence for the case, including statements that are beneficial to the member, must be included in the disciplinary packet. Subsequent charges or documents are generally irrelevant.
3. The member must be given an opportunity to protest and defend their actions.
4. MCO must be given full opportunity to prepare their defense. At a minimum we are entitled to 30 minutes to consult before the conference.
5. The "burden of proof" rests on the employer in discipline cases.
6. Members, with very few exceptions, must demonstrate compliance with the rules and act in good faith. When MCO relies on the exception the "burden of proof" shifts to us.
7. Established time limits must be complied with. The employer has 21 calendar days to begin an investigation once they have reason to believe misconduct has occurred. They have a "reasonable" time to complete the investigation. Once the conference has been held, they must notify the member within 10 days of any recommendation for discipline this has been ruled by an arbitrator (*case number 54 390 00852 02*) as being a de minimis violation. They must initiate the discipline within 45 calendar days of the disciplinary conference or there will be NO disciplinary action taken.
8. Centralized exercise of judgment will replace supervisor's individual conception of what is fair and just.



## **DEFENSES AGAINST GENERAL TYPES OF INSUBORDINATION**

### **1. REFUSAL TO OBEY AN ORDER**

Defenses:

- a) The safety or health of the member or another law-abiding individual would have been jeopardized if they had complied with the order.

### **2. FAILURE TO OBEY A DIRECT ORDER**

Defenses:

- a) The order was not clear, or was misunderstood by the member.
- b) The member was not familiar with the work assigned.

### **3. VIOLATIONS OF DEPARTMENTAL RULES**

Defenses:

- a) The employee was unaware of the rule.
- b) The rule was unreasonable.
- c) The rule was not clear.
- d) The rules was not uniformly administered.
- e) Impossible to comply with rule.

### **4. USE OF PROFANE, OBSCENE, ABUSIVE, OR THREATENING LANGUAGE**

Defenses:

- a) They were only using acceptable prison talk.
- b) The supervisor was guilty of provoking the outburst.
- c) Denial of the use of alleged language.

## 5. ACTUAL OR THREATENED ASSAULT ON SUPERVISOR

Defenses:

- a) The supervisor provoked them.
- b) Self-defense.
- c) The alleged assault occurred off prison property, or outside regular working hours.
- d) The alleged assault was a personal matter, not related to the work relationship with the supervisor.
- e) The member denies the assault occurred.

### **PROPRIETY OF DISCIPLINE: SEVEN TESTS FOR JUST CAUSE**

In a case involving discharge, Arbitrator Carroll Daugherty (42 LA 555) outlined a series of questions to test whether "just cause" existed. They are not all inclusive or necessarily correct. However, their usage can be helpful in determining the worth of a grievance and affording clues as to the best way to win a grievance involving discipline. The very nature of the questions and the sequence in which they have been set forth invite usage. Here are the questions and the notes as determined by the Arbitrator:

### **THE QUESTIONS:**

#### **1. Did the employer give forewarning of the possible or probable disciplinary consequences of the member's conduct?**

Note 1: There must have been actual oral or written communication of the rules and penalties to the member, i.e. Work rules, disciplinary grid.

Note 2: A finding of lack of such communication does not always require a "no" answer to question one. This is because certain offenses, such as insubordination, coming to work intoxicated, drinking or using drugs on the job, and theft of property from the employer or fellow employees are so serious that any member of society is expected to know such conduct is offensive and heavily punishable.

Note 3: Absent any contractual prohibition or restriction, the employer has the right

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to unilaterally promulgate reasonable rules and give reasonable orders. They need not have been negotiated with the union.

**2. Was the employer's rule or order reasonably related to the orderly, efficient, and safe operation of the company's business.**

Note: If an employee believes the rule or order is unreasonable, they must nevertheless obey (in which case they may file a grievance) *unless* they sincerely feel that obeying the rule or order would seriously and immediately jeopardize their personal safety or that of another law-abiding individual. Given a firm finding to that effect, the member may properly be said to have had justification for his disobedience.

**3. Did the employer, before administering discipline to a member, make an effort to discover whether the member did in fact violate or disobey a rule or order?**

Note 1: This is the member's "day in court" principle. A member has the right to know with reasonable precision the offense with which they are being charged, and to defend their behavior.

Note 2: The employer's investigation must normally be conducted *before* its disciplinary decision is made.

Note 3: There may, of course, be circumstances under which the employer must react immediately to the member's behavior. In such cases, the normally proper action is to suspend the member pending investigation, with the understanding that: (a) the final disciplinary decision will be made after the investigation, and (b) if the member is found innocent after the investigation, he will be restored to his job with full pay for time lost.

**4. Was the employer's investigation conducted fairly and objectively?**

Note: During the investigation the employer's representative may be both "prosecutor" and "judge." But, they may not *also* be a witness against the member.

**5. During the investigation did the employer obtain substantial evidence or proof the employee is guilty as charged?**

Note: It is not required that the evidence be "beyond a reasonable doubt." However, the evidence must be truly substantial and not flimsy.

**6. Has the employer applied its rules, orders, and penalties even-handedly and without discrimination to all employees?**

Note 1: A "no" answer to this question requires a finding of discrimination and warrants a modification of the discipline, usually because of disparate treatment.

Note 2: If the employer has been lax in enforcing its rules and orders, and decides thereafter to apply them rigorously, the employer may avoid a finding of discrimination by warning all employees beforehand of its intent to begin enforcing said rules.

**7. Was the degree of discipline administered by the employer reasonably related to: (a) the seriousness of member's proven offense, and (b) the member's record during his service with the employer?**

Note 1: A trivial proven offense does not merit harsh discipline unless the member has properly been found guilty of the same or other offenses a number of times in the past. There is no rule as to what number of previous offenses constitutes a "good," a "fair," or a "bad" record. Reasonable judgment must be used. Remember, MDOC's disciplinary grid states you may be discharged after your fourth or fifth offense, regardless of the severity.

Note 2: A member's record of previous offenses may never be used to discover whether he was guilty of the immediate or latest offense. The *only* proper use of their past record is in determining the severity of discipline *after* they have been found guilty of the immediate offense.

Note 3: Given the same proven offense for two or more employees, their respective records provide the only proper basis for "discriminating" among them in the administration of discipline for that offense. If employee A's record is significantly better than those of employees B, C and D, the employer may properly give a lighter punishment than it gives the others for the same offense. This does not constitute discrimination or disparate treatment.

A "no" answer to any one or more of the above questions normally signifies that just and proper cause did not exist. In other words, the employer's disciplinary decision contained elements of arbitrary, capricious, unreasonable, or discriminatory action to such an extent that the decision constituted an abuse of managerial discretion warranting the Arbitrator to substitute his judgment for that of the employer.

## **THE GRIEVANCE PROCEDURE**

**Grievance handling is one of the most important responsibilities you will face as a steward. It is the one area where people are specifically affected by your action or inaction. The following pages describe what a grievance is, how to investigate one, how to write one, and how the procedure works. READ IT CAREFULLY!! It will make your job much easier if you know the details of how the process works.**

**This first section defines what a grievance is, and the categories under which they fall.**

## **THE IMPORTANCE OF THE GRIEVANCE**

To most union members, their union's effectiveness is judged by its ability to settle grievances. Grievances and their handling are important not only because of the time they consume, but because they go to the very heart of unionism -- protecting the rights of the worker on the job, much the same way the American judicial system protects the rights of the citizen.

The steps of the grievance procedure give the member a chance to appeal his or her case through an organized channel of complaint, even up to the ranks of top management. The theory behind the grievance procedure is to resolve a dispute at the lowest level possible. If it cannot be resolved with those immediately involved, it is appealed to higher steps, removing the issue from those most closely involved in hopes that they can be objective in finding the fair solution.

Without the collective support of the union behind its members, the individual member would have little or no chance to force management to treat him or her fairly. With the joint support and resources of the union, a member can depend on the collective help of the union to see that each is given a fair shake.

## **TYPES OF GRIEVANCES**

A grievance is the violation of our member's rights on the job. Most often, grievances involve contract violations -- sometimes clear cut, sometimes hazy. For this reason, MCO representatives must be familiar with the wording of our contract. When a grievance is brought to a steward, they should first look to the contract for a violation. In some cases, vague wording in a contract will lead to a different interpretation by MCO and management

However, grievances do not necessarily involve contract violations. In some cases, the grievance will involve a new procedure or contract issue too new to be covered in our contract. Other regulations never fall within the contract bounds, yet their violation still constitutes a valid grievance. The responsibilities of management to its members exceed those outlined by the contract.

When a steward is presented with a grievance, they should, after checking for contract violation, ask themselves the following questions:

1. Is it a violation of the contract?
2. Is it a violation of federal or state law?
3. Is it a violation of established past practice?
4. Is it an area of management's responsibility to the member?
5. Is it a violation of management's rules or procedures?

If the answer is yes to any of the above questions, a grievance probably exists.

## **Gripes vs. Grievances**

In distinguishing between gripes and grievances, stewards should remember that grievances usually involve contract violations, violations of law or agency regulations, unilateral changes in workplace conditions or violations of health and safety standards.

At times, however, even the most valid complaint simply doesn't measure up to a legitimate grievance. Common sense and precedent may be the only methods for determining whether such a complaint amounts to a grievance. If the complaint is valid, it might be a proper issue to talk about at a labor management meeting.

However, to keep their credibility and effectiveness with the membership as well as management, the steward should make every effort to assure that most of the grievances they handle are "legitimate."

## **THE GRIEVANCE PROCESS**

Article 9 of the Contract contains the current language regarding grievance procedure time limits.

Grievances are handled at the Facility through step one as of April 2009. As soon as you get the step one answer, send that and the rest of the package to MCO Central Office. Include a recommendation on whether it should be appealed to step two. If a step one answer is not given to the member, make a notation on the grievance form so Central Office does not send it back, requesting an answer. The grievances will then be reviewed by the Grievance Committee, a rotating group of Chapter Presidents, Vice Presidents, and Chief Stewards. The Committee will decide whether or not to appeal the case to step two. (Note: Forensic Center and Huron Valley Center grievances will continue to be appealed to step three by the Chief Steward or Chapter President.) If the Committee turns down the case, the grievant will be notified by mail and given a chance to appeal the case to the MCO Executive Board. If the case is appealed the grievant will be mailed a postcard.

MCO Central Office receives all step two answers. After a step two answer is received, the grievance goes before another Grievance Committee and a determination is made whether to send the grievance to Pre-Arbitration. As with appeals to Second step, if the Committee turns down the grievance, that decision is appealable to the State Executive Board by the Grievant. The Executive Board's decision is final.

A Grievance Log should be developed by your Chapter to keep track of your grievances. This helps you keep the grievant informed of the progress of their grievance, and can aid you in determining how many grievances have been filed that year as well as the types of issues being grieved. It can also be a good defense against Duty of Fair Representation law suits if we can show through the logs that the case was handled in a timely manner.



## **WHAT THE GRIEVANCE PROCEDURE DOES**

It is important that members, as well as stewards, understand the importance and steps of the grievance procedure to MCO. Important grievances and arbitration decisions should be discussed at monthly membership meetings and members should be made aware of how the outcome will affect them, directly or indirectly.

The four major aims of the grievance procedure and their importance to the union structure can best be summed up as:

1. It protects the members' democratic rights on the job and prevents discrimination or arbitrary action by management.
2. It gives the member a voice involving a disagreement with management.
3. It gives the contract guts and insures that the contract is properly applied.
4. It gives one member the organized support of all members. Alone, no member has sufficient strength against the organized power of management. Acting through the grievance procedure, they have the collective support of all MCO members as represented by the full resources of MCO.

## **STEPS IN THE GRIEVANCE PROCEDURE**

The grievance procedure begins with those closest to the dispute -- both on the part of MCO and management. If they are unsuccessful in resolving the dispute, the grievance moves to continually higher representatives, much like the appeal system of the courts. The entire process takes four or five steps before it reaches the final stage of arbitration. Here is the general procedure:

1. Member and steward go to immediate supervisor with grievance.
2. Steward or Chief Steward discusses with the Warden or Personnel Officer or other designee.
3. Chief Stewards or Chapter Presidents meet with Department Labor Relations Representative for Second step conferences.
4. If the grievance goes further, MCO Labor Relations Representatives meet with Department Labor Relations in an attempt to resolve the grievance.
5. Arbitration hearing is the final step in the process.

As the grievance goes to higher levels, the original steward should make it their business to keep track of progress and to keep the grievant informed. The grievant will also receive a postcard from MCO Central Office when the grievance is appealed to Second Step or Pre-Arbitration, and they will receive a copy of the Request for Arbitration if the case cannot be resolved at an earlier step.

Our contract sets time limits for each step in the grievance procedure. It states that the grievance may be taken to the next step when the employer does not timely supply MCO with an answer at the lower level. MCO also has the responsibility of notifying the employer if it plans to take the grievance further. If not, the employer may assume MCO has dropped charges.

**GRIEVANCE PROCEDURE: POINTS TO REMEMBER**

1. EXHAUST EACH STEP before advancing to the next.
2. KEEP TRACK OF TIME LIMITS -- Don't let one slip by. Ask for time extensions when in doubt, and, if necessary, remind MCO representatives at higher steps of impending limits. Time extensions by either party should be put in writing. **\*Refer to the timeline chart on page 5-24\***
3. EDUCATE GRIEVANTS AND OTHERS you represent about the procedure. Encourage them to come to you first.
4. DON'T PROMISE WHAT YOU MIGHT NOT BE ABLE TO DELIVER by over assuring the grievant that their case will be won. You can't guarantee it and it might be setting up high expectations that will not be met.
5. KEEP THE GRIEVANT POSTED on the progress of the grievance. Don't always wait for the grievant to ask what's happening.
6. KEEP WRITTEN RECORDS, including notes on verbal settlements. Inform officers and other leaders of important settlements.  
**\*Refer to the Grievance log on page 5-25\***
7. PROBLEMS THAT ARE NOT GRIEVANCES CAN BE HANDLED OUTSIDE of the grievance procedure. You can refer them to the appropriate people or handle them yourself.
8. ACTIVELY ENFORCE THE CONTRACT. Don't always wait for someone to grieve a violation.
9. FAIR REPRESENTATION demands that every member have equal access to the grievance procedure. Don't dismiss any complaint out of hand.
10. AT THE SAME TIME, DEVELOP THE ABILITY TO SAY "NO" to non-meritorious grievances and explain to the member your reasoning.
11. ATTEMPT TO LEARN how arbitrators view grievances. This will help you prepare better grievances and avoid arbitration.

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12. LOOK AT ALL THE IMPLICATIONS of a grievance. It may be that handling a problem through the grievance procedure may hurt more members than it helps.
13. REMEMBER THAT MCO's ABILITY TO SERVE all members is weakened when the various parts of the organization are not coordinated. Communications with others is essential to solidarity. Leaders and members should know their responsibilities, as well as their rights, in the grievance procedure.

### **WRITING THE GRIEVANCE**

The first rule is to be brief. Fill out the form completely and legibly, always include if possible articles and sections that are applicable and include only the information necessary to explain the issue. Examples of different types of language are included, as are some general tips. There are also some notes on quality and measurability in information that may be helpful to you in writing the grievance.

A well written grievance can be much easier to win than one where the violation and expected solution are not clear. Choice of words in the remedy requested is especially important in order to gain the most possible in the case. Make every effort to avoid name calling and emotional phrases when filling out the grievance as it only detracts from the merit of the case.

Along with the sample language is a list of the information that will be needed to prove the case. Keep in mind that this is sample language only, and that your individual case may be different. If you have any questions, contact your chapter president or MCO Central Office.

### **TEN POINTS TO WRITING A GRIEVANCE**

1. **LIMIT DETAILS TO BASIC INFORMATION.** Use the 5 W's as a guide so you will provide only enough information to identify the grievance.

2. **OMIT MCO's ARGUMENTS, EVIDENCE AND JUSTIFICATION FOR ITS POSITION.** Many times this information is used by the employer in preparing their case against MCO. Arguments, evidence and justification for the grievance should be used in oral arguments with management.

3. **DON'T LIMIT CONTRACT VIOLATIONS.** In stating why there is a grievance, you can use the phrase, "violates the spirit of the contract," and the words, "including Article\_\_\_\_\_". You can also use "violates Article\_\_\_\_\_ and other relevant articles and sections of the contract." This may allow you to add additional violations of the agreement if they are found later.

4. **DON'T LIMIT THE REMEDY.** If a member has been discharged, ask for immediate reinstatement with full back pay and all rights, privileges and benefits restored, and the entire matter expunged from the member's record. This makes it possible for the member to receive his or her job back, plus back pay, seniority, vacation time, fringe benefits, etc. But you have to ask for them.

5. **AVOID PERSONAL REMARKS.** The grievance states MCO's position, not the steward's or the grievant's opinion. Avoid the use of phrases like "I think" or opinions about management officials.

6. **CONSULT WITH THE GRIEVANT.** Go over the written grievance with the member, explaining what the requested remedy is, and make certain the grievant fully understands.

7. **HAVE THE GRIEVANT SIGN THE GRIEVANCE.** This guarantees that the member has seen and read the grievance and offers legal protection for MCO when determining the final settlement of the grievance.

8. **SOLIDARITY.** Explain the grievances to the members to make certain they understand and support your efforts.

9. **REPORT ACTIONS.** Keep the grievant up-to-date on each action.

10. **ARBITRATION.** Remember to prepare each case and each grievance on the assumption that this may be the case that goes to arbitration. Information not included during the grievance process normally cannot be introduced at the arbitration step.

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How the grievance is investigated and written often will determine whether a grievance is won or lost. In its "Manual for Shop Stewards," the AFL-CIO suggests the following steps in the initial investigation of a grievance:

1. *Conduct an interview.* Listen carefully to the worker's statement, writing down such things as dates, names, and places.

2. *Ask questions for clarification or additional information.* A good place to begin is with the FIVE W's:

*WHO was involved?* This calls for identification items, such as names, clock number, department.

*WHY is there a grievance?* Here list the basic complaint, such as seniority by-pass, past practice violation or safety problem.

*WHEN did it happen?* Determine the date and time that the incident or violation occurred or began, not the date the grievance is filed.

*WHERE did it happen?* Record the location of the facility, block, member parking lot, etc.

3. *Examine employer records on similar issues.*

4. *Distinguish between a fact and an opinion.*

5. *Determine which facts are relevant to the matter under discussion.* Two written records should be kept on each grievance, one for presentation to management and one for MCO only. The grievance to management should be brief and direct, including only an outline of the facts and the settlement desired. Unnecessary details will only detract from the main issue of the grievance and may give the employer an opportunity to sidetrack the issue. Other details relevant to the situation may be brought up during discussion of the grievance with management.

The written record for use by the steward and MCO should be more complete. It should be detailed and include all the background information the steward will need when presenting the case, and should include pros and cons of the grievance, in anticipation of management's stand on the issue. Also, these written records should be maintained for later use. The information may be useful for future grievances of a similar nature. It may also help the negotiating team at the time of contract renewal and will be valuable to convince the non-believers that MCO is acting on their behalf.

### STEWARDS CHECKLIST

There are several things you should check before filing a grievance, including:

1. Was there sufficient proof or was management's action based on hearsay?
2. Did management investigate and verify the charge before taking action or did they "shoot from the hip" first and investigate after the fact. Did grievant get his day in court?
3. If so, did management selectively stack the deck by over--emphasizing certain facts or points (perhaps taken out of context), while down-playing those factors which would favor the grievant so as to belatedly "Justify" their premature charge?
4. Did management overreact (emotionally rather than objectively)?
5. If so, was the discipline punitive and vindictive rather than corrective and remedial?
6. Did management apply its rules, orders and penalties even handedly?
7. Did management punish everyone for the infractions and deficiencies of a few?
8. Is the penalty too severe? Does the punishment fit the crime?
  - a) Is it appropriate?
  - b) Is it reasonably related to the seriousness of the offense, infraction, omission, or deficiency?
  - c) Is it appropriate and reasonable in the light of grievant's past record and years of service?
9. Is the grievant's (as well as management's representative's) story, attitude, demeanor and image creditable? (To an arbitrator?)
10. Was the discipline timely?
11. Was the penalty consistent with the principle of progressive discipline?

## GENERAL PRINCIPLES OF GRIEVANCE HANDLING

These observations on the handling of grievances in labor/management relations have been compiled as a set of general principles which union leaders will find useful in the process of grievance representation. They are sound and reasonable. Individual leaders may also know, and observe, additional principles that serve them best in each unique situation. A clear understanding of the concept embodied in these principles serves to assist the union leader toward achieving a more successful record in contract administration.

*1. Investigate at the first step as though the grievance is a potential arbitration case.* It is better to be prepared for arbitration and not go, than to go to arbitration unprepared.

- A good investigation will expedite settlement.
- A good investigation tells you early what to do -- push on or drop.
- A good investigation helps the steward's confidence and the confidence of the members in the steward.

*2. Most grievances are easiest to settle at the initial informal stages.*

- Greater flexibility exists without formal written exchanges. "The facts are fresh," witnesses are available, and sometimes it's easier to keep a person on the job than to get their job back.
- Serious discussion can occur in an informal setting at the initial stage; Stewards usually maintain an effective working relationship with the supervisor.
- MCO members should be constantly encouraged to notify their steward immediately following an incident, or when they feel they have a grievance.

*3. Who is the grievant?* In answer to this question, the grievant may be any of the following:

- The person (or member).
- A group of persons (or members).



## Grievance Procedure

- MCO.

Many labor leaders hold that the Union cannot fail to process a grievance that violates the contract even though an aggrieved member is not willing to proceed.

4. *Who is affected by a grievance?*

- Individual: The grievance may affect only one person.
- Group: This type of grievance would affect individuals in an RDO group, “A” or “B” overtime groups, etc.

5. *MCO owns the grievance.* As the representative organization, MCO owns the grievance. Some factors we consider when deciding on a course of action are:

- Are all MCO members affected?
- How will MCO be affected if the grievance is (or is not) processed? How will the collective bargaining agreement be affected if contract violations go unchallenged?
- Will MCO’s equity be maintained by the final decision of whether to process or not?

6. *Members are entitled to good representation.* Duty of fair representation requires good and effective representation. The representative must be:

- Competent (meet time limits)
- Non-discriminatory
- Not Arbitrary
- Not Capricious
- Conduct a full and fair investigation.

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7. *Representation and the presentation of the grievance must be impersonal.*

- It is better to say, "The Union's contention is," rather than "I contend," "the Union's position," instead of "my position."
- Personal likes (or dislikes) or friendships must not enter into the process.

8. *Pressure is what settles grievances.* Though skill and tactics are important factors in successful grievance handling, pressure enters into the process at almost every stage.

- Sometimes pressure is generated by the members on the steward.
- Pressure on management's chain of command is often needed, and stewards usually exert this pressure. (Regarding this point, stewards should be guided more by "what is right and necessary" than on trying to be a "good guy/gal.")

9. *Taking the grievant (member) along.* In terms of principles, policies vary on whether the grievant should "go along" through the steps. Some factors to consider:

- Will the member injure the case?
- Does the steward want witnesses other than grievant?
- Is MCO's policy known to both steward and grievant?

No member should be denied the right to be a part of the process. A decision on whether the grievant goes along is easier to make when the grievant is continually counseled and apprised of the progress of the grievance.

10. *A successful grievance procedure is one that settles grievances.*

- It requires commitment and compromises from both sides.
- Management has the power to establish the tone or atmosphere in which grievances are processed.
- MCO can respond to change the attitude of management. Many times the procedure will generally be somewhere between a very formal "legalistic"

approach and an informal, "problem solving" method.

*11. Maintain a record of grievances.* Even when grievances are settled before the "written step," a record should be kept. The record should reflect both MCO's gains and losses. Other hints:

- Local chapters should have a filing system.
- Records are needed for guidance on future grievances, establishing precedents, for negotiations, and in formulating demands.
- Any written presentation to management should be brief, concise state grievance and remedy desired, avoid writing down your argument.

## GATHERING INFORMATION

### The Quality of Information

When collecting information for handling grievances, a steward must constantly search for useful facts. What information is useful in this particular grievance? Training and practice with specific grievances will teach stewards to answer that question, but some general guidelines might help.

Two elements make information useful in grievances. They are:

1. The information can be measured accurately.
2. The meaning of the information is clear.

### Can Information Be Measured?

There are many ways of measuring information. Distance can be measured in inches, feet, yards, miles, etc. Time is measured in seconds, minutes, hours, days, years, etc. These measures are used in many grievances. Some others include:

| <u>Information</u>     | <u>Method of Measurement</u>                                  |
|------------------------|---|
| Seniority              | Years, months, and days.                                      |
| Absenteeism:           | Number of days used.  |
| Tardiness              | Number of days tardy.   |
| Other Jobs Held        | Job titles, period of time on each<br>Job, Job specifications |
| Performance Counseling | Type of counseling  |
| Discipline             | Number, Kind of violation(s).                                 |

In each type of information, the investigator can produce a number or a measurement that can be compared with other cases. For example, a member who has been absent five days in the past six months has fewer absences than someone with seven absences. Every reasonable person who looked at that record will agree that five absences are less than seven absences in a six month period. The same can be said for each of the kinds of information shown above.

"Wait!!!" an experienced steward says. "You may have a number of some kind, but that does not tell you the reasons for absence. Some reasons are better than others. A member with seven absences may have legitimate reasons than someone with five absences does not have. With each kind of information listed above, you have to know the reasons for each record." Absolutely right! You have to know the meaning of most kinds of information. Also, how many days absent constitutes "absenteeism?" This bears more investigation.

### **Avoid Using Vague Words: Challenge the Meaning**

Some words, frequently used to describe a person or a type of behavior, have little or no use in processing grievances. They include the following:

|               |                |
|---------------|----------------|
| Personality   | Responsibility |
| Dependability | Morale         |
| Ability       | Character      |
| Attitude      |                |

Whenever one of those words is used to the detriment of your grievant, insist on more precise, measurable words.

### **SOURCES OF INFORMATION**

People who can supply information:

The member who is filing the grievance.

The member's fellow co-workers.

Other witnesses to the grievance.

Fellow stewards, -- they can supply ideas about similar grievances in the past.

The member's personnel file.

Persons in supervisory positions -- it is usually best to speak to management about a grievance before you actually fight the case. Learn management's views so that you will have a better idea of its reasoning. You also can get a clearer idea of the facts after hearing them from both the member and the supervisor. This should be achieved at the first step.

Departmental records.

## **CONTRACT ENFORCEMENT AND GRIEVANCE HANDLING**

### **Keeping the Records You Need**

Each Chapter needs detailed grievance records that make sense in order to function properly. You need complete information on each current grievance filed so it's easy to find. You also need good files on past grievances and contract problems. Don't trust your memory when there's a question on what happened months or years ago.

*Grievance records are the property of MCO.* Keep them in the union filing system. When an officer or chief steward goes out of office, they must turn all the files over to their successor. A few basic suggestions are given below...

A. Good grievance files provide:

1. Records and data for possible use in arbitration.
2. Records of what was settled and done in the past.
3. Background for negotiation problems or contract language that causes trouble can be brought up at negotiations.
4. Useful records if the question of the duty of fair representation is raised.

B. What KIND of files do you need to process grievances?

1. Files on current unsettled grievances --
  - a. File by date or number.
  - b. Flag for time limits.
  - c. File supporting documents or records with the grievance form.
2. Minutes or notes on grievance meetings -- particularly third step.
3. Files on all settled grievances, with notes -- (include those dropped).
4. Files for arbitration cases for future reference.
5. Tickler -- a system to remind you when time limits are approaching.

## HOW TO PRESENT GRIEVANCES EFFECTIVELY

When the steward meets with the supervisor to discuss grievances, he is acting in his official capacity as an MCO representative and therefore has equal status with the supervisor. After getting the member's version, the steward must go to the supervisor to get the other side. How many grievances will be settled at this level depends upon the authority vested in the supervisor by management. However, despite the supervisor's limitation, each grievance should first be taken to him before going to the higher levels of management, unless the grievance is the result of higher management decisions or involves a discharge (discharge grievances go directly to the third step). Depending on the relationship the steward develops with the supervisor, many grievances can be resolved at the early stages of the process. It is always best if the steward, grievant and supervisor can adjust a grievance in the early stages of the grievance procedure.

During the presentation of the grievance, at any level, MCO representatives must be careful to remain on the subject, keep from losing tempers and avoid personality clashes. Other points to remember are:

1. *Follow the grievance procedure and observe the time limits.* Don't try to "skip" steps, or go over the head of the immediate supervisor. Start with them as provided in the procedure.
2. *Stick to the facts.* Argue the case intelligently
3. *Don't get excited!* Don't start a fight!
4. *Don't show less respect for the supervisor than you want shown to you.* And don't let the supervisor show less respect to you than you give to the supervisor.
5. *Listen to the employer's side carefully.* Don't talk yourself out of the case.
6. *Don't bluff. Don't threaten.* You might get called on it.
7. *Don't permit delays.* If the contract says you must get an answer on step two within fifteen days, get it, or proceed to the next step. If the employer asks for a "reasonable" extension of the time limits, and is willing to grant extensions to MCO when requested, grant them, but follow up promptly on them when the extension expires.
8. *Don't barter.* Settle each grievance on its merits. If you can, take up only one grievance at a time to eliminate this possibility.
9. *Stick to the fight.* Don't lose heart. You haven't "lost" until the final step of the

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grievance procedure has been completed, and even then, the fact of processing the grievance may deter management from doing the same thing again. Or they may even, after the grievance has been adjudicated, grant the relief requested.

*10. Try to settle grievances at the lowest possible level, involving the fewest number of people.* The aggrieved would like a decision as soon as possible. And the higher the case goes, the tougher it becomes to get a favorable decision.

*11. When you go in with a committee, don't argue among yourselves.* If a point of difference arises, take a recess (don't ask if you can) and resolve the difference.

*12. Get the decision in writing, whatever it is.* Be certain to report back to the aggrieved on any meeting which the member may not have attended, or on any developments which may occur with the grievance.

## **TIPS FOR GRIEVANCE HEARINGS**

### **Dealing with the Grievant**

Your main job is getting all the facts and deciding on the remedy to be requested. But you also need to do some things for the grievant.

1. Be sympathetic and understanding. This grievance may be a very serious thing for the grievant. Also, they may be very nervous about talking to management.

2. Do not try to predict a result. Tell them we will do the best we can. Then explain what must happen for us to win.

3. Explain the steps in the grievance procedure. Explain who will be at the meetings and how the meeting will be conducted.

4. The grievant must be kept informed about their grievance. Members should know everything you are doing about the grievance.

5. Be prepared to do more talking than the grievant at the grievance meeting because the grievant may be afraid, too emotional, or to upset too express themselves well.



## Dealing with Management

### 1. How to Act

Should you be "tough," or a "nice guy (gal)?" There is no right way that works for everyone in every situation. Some experienced representatives normally take a firm, tough approach. Others take a friendly approach that tends to relax the supervisor. Either approach can get similar results. However, sometimes being too tough or insistent will get a supervisor defensive and afraid to agree to anything, or get them mad and just start an argument. On the other hand, being a "nice guy" with the a supervisor that bulldozes over a member's rights and tries to dictate everything--even control the whole grievance meeting--is a waste of time.

### 2. What Do You Do

- a. You have to use a style that you are comfortable with. You won't convince anyone how tough you are if you fake it, especially if normally you are easygoing and friendly. Also, if you feel very strongly about a grievance and are a direct "no-nonsense" person, you shouldn't try to fake being nice. It won't work very well for you.
- b. See what style is most needed in each situation. On a simple item that doesn't seem to be the supervisor's fault, and should be easy to settle, you can be easy going. But on a serious grievance, like harassment, you may have to be firm and willing to ask tough questions and defend the grievant from a hostile supervisor.
- c. Let the supervisor know that if the grievance isn't settled at the first step, you'll probably go to the next step, but that you'd rather resolve it. Ask the supervisor what he thinks would be a good remedy if he disagrees with yours.
- d. Ask them why they can't agree to your remedy. Maybe one part of it is not agreeable or maybe they need something in return for giving the remedy.

### Summary (Checklist)

- Use a style with which you are comfortable.
- Use a style that fits the situation.
- Conduct the meeting in a businesslike manner.
- Adjust your style if necessary to how the supervisor reacts. Make sure the supervisor knows what you want.
- Don't box yourself into only one solution.
- Don't make it unnecessarily hard for the supervisor to agree with you.

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Don't be afraid to switch tactics.

If a supervisor is trying hard to resolve things, tell them you appreciate it.

Let the supervisor know you are willing to go further with the grievance if necessary. Sell your remedy.

Ask the supervisor why they can't agree to your remedy.

Ask the supervisor for their remedy to the grievance.

Everything can't be resolved at the first step, don't be discouraged.

### **STEWARDS CHECKLIST FOR HANDLING GRIEVANCES**

#### **1. GET THE FACTS**

Listen carefully to the grievant.

Take good notes.

Get the 4 w's (who, what, where, when) by asking specific questions of the grievant.

Find out why the grievance occurred.

Determine the remedy desired.

#### **2. PREPARE THE GRIEVANCE**

Check rules and policies (contract, seniority agreements, department policies, other laws appropriate to your unit).

Check grievability.

Check policy and practices.

Check previous grievance settlements for precedent.

Check the experiences of others in similar cases.

Seek advice if necessary from other stewards, chief steward, or MCO Labor Reps. Explain the case to the grievant.

#### **3. PRESENTING THE GRIEVANCE**

Outline what you will present, and practice what you will say. Remember, the supervisor and steward are equals.

Don't get sidetracked or angry.

Get the supervisor to answer why. Anticipate supervisor's arguments.

Set a definite time for an answer from the supervisor.

Make sure everyone understands the desired remedy.

#### **4. FOLLOW UP**

Review supervisor's answer.

## Grievance Procedure

Make decisions to appeal to the next step within time limits.

*Get the decision in writing, whatever it is.* Be certain to report back to the aggrieved on any meeting which they may not have attended, or on any developments which may occur with the grievance.



# THE GRIEVANCE PROCEDURE



**Grievance Initiation Process....** If you believe you have been unjustly disciplined, or management has violated a contractual term that affects you or the membership, you have a right to challenge it through the grievance process.

**The 21 Calendar Day Rule...** The most important thing to remember in filing grievances is the respective TIME LIMITS!!! If you miss the time limits you automatically LOSE the grievance. Remember the "21 calendar day rule." You must file the written grievance within 21 calendar days from the time you first became aware or should have known there was a violation.

You can, and should, attempt to resolve the issue orally with your boss, if possible. But keep in mind, that the clock is ticking on the 21 calendar day rule from the time you first became aware or should have known there was a violation.



Members should try and resolve grievances with their shift command, whenever possible. You can do this either orally or in writing. If you can't resolve it the written grievance must be filed to the Step 1 official (Personnel Office) within 21 calendar days from the time you first became aware or should have known there was a violation.

21 Calendar Days

If you do not believe your boss can settle the grievance, you can file it directly to Step 1 (Personnel Office). It still must comply with the 21 calendar day rule.

You should receive a Step 1 answer within 21 calendar days from the time you presented the grievance. If you don't, do not wait to file it to Step 2. You only have 45 calendar days from either the date you receive the Step 1 answer, or, if not given an answer, from the date the Step 1 answer was due.



45 Calendar Days

This is the step in which the Department's Labor Relations Office & MCO handle the file. Grievances can be filed directly to Step 2 only if a resolution cannot be granted at Step 1. Cases involving discharge and suspensions over 3 days are typically filed directly to Step 2.

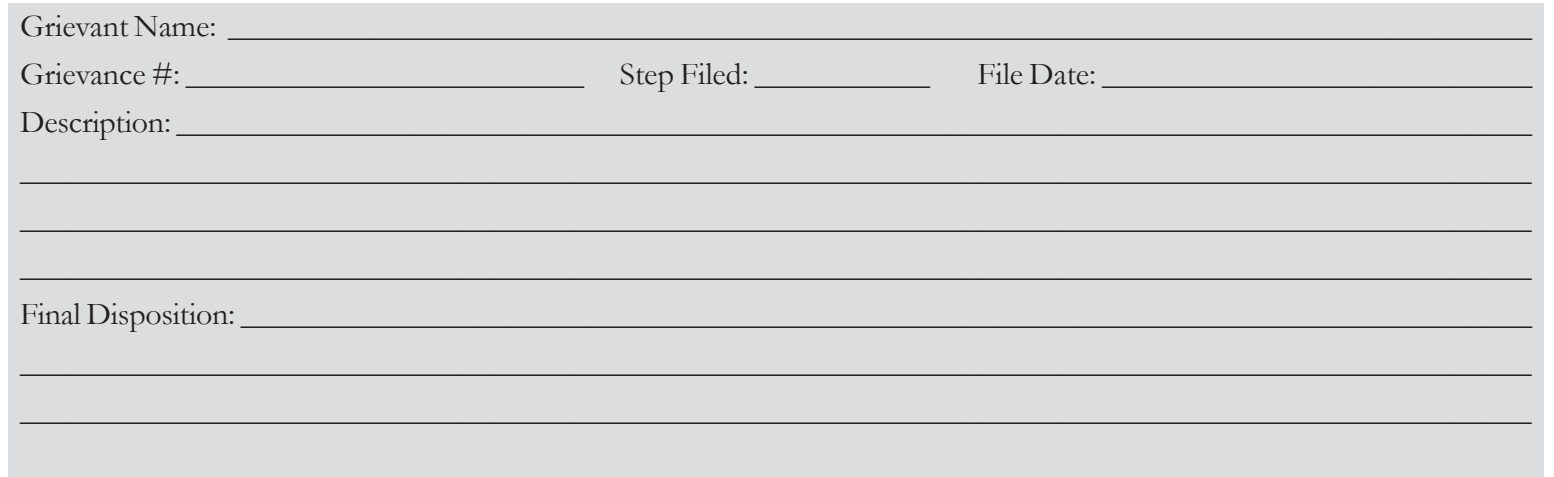
Remember, the grievance must be filed to Step 2 within 45 calendar days from either the date you receive the Step 1 answer, or, if not given an answer, from the date the Step 1 answer was due.



Many times grievances are filed to Step 2 when they should have been filed at Step 1. In these cases Labor Relations will remand the grievance back to Step 1. When you are notified of a grievance being remanded, you must pay careful attention to time limits. Because the Employer does not waive time limits when remanding, the grievance must still be processed under the 21 calendar day time limits of Step 1.



*FACILITY:* \_\_\_\_\_

[illegible]

|                          |                                    |
|--------------------------|------------------------------------|
| Grievant Name: _____     |                                    |
| Grievance #: _____       | Step Filed: _____ File Date: _____ |
| Description: _____       |                                    |
| _____                    |                                    |
| _____                    |                                    |
| _____                    |                                    |
| Final Disposition: _____ |                                    |
| _____                    |                                    |
| _____                    |                                    |

[illegible]

## **PAST PRACTICE**

**Past practice grievances can be difficult to handle because there is no express contract or policy language to support your case. It is, however, an important consideration because of the many practices and procedures that exist outside the contract -- everything our members do in a day cannot possibly be written in contract form.**

**This section describes what a past practices is, and what it takes to win a grievance on a past practice violation.**

## **GUIDES TO THE USE OF PAST PRACTICE**

When interpreting the working, intent, and application of contractual provisions, arbitrators may be guided by past practice under the contract.

### **What is the definition of Past Practice?**

One definition is that *"A practice is a reasonable uniform response to a recurring situation over a substantial period of time, which has been recognized by the parties implicitly or explicitly, as the proper response."*

The term, practices, usually refers to local practices and working conditions which can vary considerable at different facilities within the same Department. They are often a customary way, not necessarily the best way, of handling a given problem. A method of handling a problem cannot be considered a practice if it is only one of several ways of doing it.

The practices must be recurring and deal with the same type of situation. It must have existed over a substantial period of time. The lax enforcement of a rule may not constitute a valid practice since there may not be acceptance, either implicit or explicit. Lax enforcement might, nonetheless, be used in some cases to build proof of discriminatory or inequitable treatment.

Generally, the burden of proof is on MCO to show that the practice in fact does exist. This is frequently difficult to do since MCO may not have very complete records, and the employer is able to provide evidence of different practices.

If the practice is unclear or conflicting, the arbitrator is not likely to place weight on it either way.

### **What is the importance of Past Practices in Collective Bargaining?**

Past practices have made the following contributions to the development of industrial self government.

1. It can be an aid to the interpretation of ambiguous contract language.
2. Even where contract language is clear and agreed upon, past practice may modify it.



3. Past practice is important in defining jobs and classification lines that may affect layoffs, wages, and promotions.
4. Under some circumstances, a long history of past practice indicates a mutual agreement even though the contract is silent.
5. Past practice is not binding and cannot be enforced when it is clearly contrary to the contract.

The validity of a past practice argument can only be determined by complete knowledge of the details of the individual agreement in effect at the facility, camp, or center.

### **Other Possible Limitations on the Use of Past Practices**

If MCO has raised the issue of a past practice at contract negotiations and made it one of its demands, it is possible for the Department to eliminate the practice if MCO does not win its demand and have the practice placed in the contract. Arbitrators usually cannot "give the Union what it could not win at the bargaining table." If the Department continues the practice well beyond negotiations, it may be possible to show the arbitrator that the practice has remained in effect and should be upheld.

### **Zipper Clauses:**

Management often relies on the management's rights clause in the contract to show that it has the right to make changes in working conditions not set forth in the contract. Because arbitrators have ruled in the Union's favor on some past practice, management now is attempting to zip up the contract by having language in the contract which states that both sides agree that all working conditions and agreements between the parties are in the contract. This type of language makes it more difficult for MCO to win past practice grievances.

### **Example of Zipper Clause:**

The parties acknowledge that during negotiations which resulted in this agreement, each had the unlimited right and opportunity to make decisions and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the right and opportunity are set forth and solely embodied in this agreement.

Therefore, the Department and the Union, for the life of this agreement, each voluntarily and unqualifiedly waives the right, and each agree that the other shall not be obligated to bargain collectively with respect to any subject matter referred to, or covered in this agreement, or with



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respect to any subject or matter not specifically referred to or covered in this agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this agreement.

## **HANDLING PAST PRACTICES DISPUTES**

Unilateral management policy changes with regard to past practices can be successfully resolved in the grievance procedure. There are interesting cases published in the Bureau of National Affairs' Labor Arbitration Reports involving past practice arbitration disputes in which the arbitrator ruled to continue a past practice even where existing contract language was to the contrary. However, they are exceptions rather than the rule, and usually involved extenuating circumstances that had weakened the contract.

The following are considerations which may weaken or strengthen your case in individual past practice disputes:

1. Does the agreement contain a clause recognizing that existing customs, precedents, customs, conditions, practices and unwritten agreements not affected by the agreement shall continue for the life of the contract?
2. Is the past practice something that is of considerable benefit to employees?
3. Are existing conditions of such a nature that continuation of the past practice is reasonable and logical? Or, alternatively, have conditions changed so as to render the old practice or system inadequate?
4. Have previous grievances been filed and satisfactorily settled relative to the past practice?
5. Is there evidence that the past practice has been discussed and orally agreed to by the parties?
6. Has the past practice been consistently applied over a long period of time to an identifiable group of workers, or to all members within the bargaining unit?
7. Does the past practice represent a violation of a work rule or policy which has not been enforced by management over a long period of time?
8. Did management give written notice to employees, or discuss a change in policy with MCO before making the change in past practices?
9. Does the past practice contribute to inefficient or uneconomical operation of the organization? Or, alternatively, is the practice one which does not harm the employer?
10. Is the past practice one of which management was fully aware and made no previous attempt to limit or prevent?

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11. Does the past practice represent a mutually accepted waiver or abandonment of a written agreement between the parties of demonstrable long standing?
12. Does the past practice violate a local, state or federal statute?
13. Is management misinterpreting the agreement to eradicate or change a past practice?
14. Is the past practice or benefit an inconsequential matter of little importance to employees?
15. Is the past practice or policy one which benefits the employer and to which the Union has clearly agreed to for a considerable period of time?
16. Does change to past practice impose a serious burden upon members' working conditions? Or, alternatively, on the employer?
17. Has the changed practice involved insertion of changed contract language, the intent of which was not clear to the Union at the time of negotiation?
18. Does the past practice involve misuse or abuse of original agreement made orally between workers and Union and management?
19. Did the Union propose and fail to secure a contract clause relative to the past practice in negotiations?
20. Is there a contract clause that specifically allows the employer to change past practices or precedents?
21. Is the past practice one which creates unsafe or dangerous conditions? The preceding general considerations were gleaned from the RCA series referred to in the opening paragraph. An almost identical series of reports (they may report different cases, however) is published by the Commerce Clearing House, Washington, D.C. 20004, titled Labor Arbitration Awards. Both have good indices for hunting up cases of almost every specific type a Union officer is likely to become involved in.

### **CHECKLIST FOR PAST PRACTICE**

1. Is the language of the contract plain and clear?
2. Is the contract silent? If so, is this because MCO has agreed the matter has been reserved for management's decision or right?
3. Does the contract, though not expressly embody the practice, refer to it and contemplate its continuance?
4. Has the practice been consistently followed in the past?
5. How often has the practice been used?
6. How did it originate?
7. Has a contract been negotiated since the practice began without repudiating or limiting it?
8. Has it been clearly enunciated and is it fully understood by both parties?
9. Was there any intention of giving new meaning to the contract through establishing the practice?
10. Does the practice deny either party of its rights under the law?

If there has been a consistent past practice which is at variance with "plain and clear" contract language, some arbitrators will take the view that the contract is law and must be the guiding principle. A few will look at the contract as a living document and will rule that the parties must have meant to modify the contract to adjust to existing conditions.

If there has been a consistent past practice where the contract language is silent or unclear, arbitrators as a rule take the view that past practice in this case is the ruling factor.

Inconsistent past practice has no weight where the contract language is clear. When the language is silent or unclear and the inconsistent practice has been clearly preponderant in respect to the total practices, then made the past practice should be given much weight in the decision.

## Discrimination

Some point during your tenure as a steward you will come across a discrimination allegation involving one or more of our members. When a discrimination complaint is made, a steward should direct the member to a facility harassment coordinator to file the proper paperwork. Under Article 24, the employer will investigate the complaint; however a member does have the right to file a grievance on their behalf. The following outline identifies the projected areas, sexual discrimination, legal history, and the defense. This outline will help you to identify the member's complaint so you can get them in contact with the appropriate personnel.

## **DISCRIMINATION TRAINING OUTLINE**

### **I. Defining the Concept of Discrimination**

- a. Rule:
  - i. CBA, Article 24, Non-Discrimination
    - 1. Protected areas:
      - a. race,
      - b. color,
      - c. religion,
      - d. national origin,
      - e. sex,
      - f. sexual orientation,
      - g. ancestry,
      - h. disability,
      - i. age,
      - j. political belief or
      - k. genetic information that is unrelated to the person's ability to perform the duties of a particular job or position.
  - ii. PD 02.03.109, Discriminatory Harassment -- Attachment
  - iii. Civil Service Rules – CSR 1.03 Attachment
  - iv. Employee Handbook – Rule # 3
  - v. State and Federal Law [more narrowly construed]
    - 1. State Law: Elliot-Larsen Civil Rights Act 453 of 1976 / Amended by PA 202 of 1980
    - 2. Federal Law: Title VII of the Civil Rights Act of 1964, 42 USC 2000E
- b. Often Too Broadly Construed
  - i. Might be another Employee handbook violation, however. (#1 and #5)
- c. Sexual Discrimination
  - i. CBA defines it:
    - 1. For the purposes of this policy, sexual harassment is unwanted conduct of a sexual nature which adversely affects another person's conditions of employment and/or employment environment. Such harassment includes, but is not limited to:
      - a. Repeated or continuous conduct which is sexually degrading or demeaning to another person.
      - b. Conduct of a sexual nature which adversely affects another person's continued employment, wage, advancement, tenure, assignment of duties, work shift or other conditions of employment.
      - c. Conduct of a sexual nature that is accompanied by a threat, either expressed or implied, that continued employment, wages, advancement, tenure, assignment of duties, work

shift, or other employment conditions may be adversely affected.

ii. Legal History

1. *Meritor Savings Bank v. Vincent*

- a. Important, why? [MDOC cites it]
- b. Spelled out two types of harassing behavior
  - i. Quid pro quo:
    - 1. Conduct of a sexual nature that is accompanied by a threat, either expressed or implied, that continued employment, wages, advancement, tenure, assignment of duties, work shift, or other employment conditions may be adversely affected.
  - ii. Hostile Work Environment:
    - 1. Conduct of a sexual nature which adversely affects another person's continued employment, wage, advancement, tenure, assignment of duties, work shift or other conditions of employment.
- c. Not everything is actionable
- d. You do not need economic or tangible loss

**II. Grievability**

- a. CBA Article 24
- b. Counsel
  - i. CBA; Employer will investigate these claims (p. 121, last sentence)
  - ii. Refer to harassment counselor
    - 1. 180 Day Rule for EEOC complaint
  - iii. Include in grievance

**III. Defending against the allegation**

- a. Investigate:
  - i. Facts
    - 1. Probably will never have to defend quid pro quo charges:
      - a. Quid pro quo harassment can only occur if “an individual is in a position to offer tangible job benefits in exchange for sexual favors, or, alternatively, threaten job injury for failure to submit.” *Haseley v. Kelly Services, Inc.* 2003 WL 22204743, 2 (Mich. App.) (Mich.App.,2003)
    - b. More likely hostile work environment

2. Look to the nature and scope of the conduct
  - a. Purpose?
    - i. Isolated
  - b. Does it target a particular class
  - c. Is it continuous

ii. Rule

1. Break down the rule (hostile work environment):
  - a. Hostile work environment:
    - i. Conduct of a sexual nature
    - ii. which adversely affects
    - iii. another person's continued
    - iv. Employment, wage, advancement, tenure, assignment of duties, work shift or other conditions of employment.

b. Defenses:

i. Active participant (not "unwelcomed")

1. [Plaintiff] employee's alleged participation in sexual behavior or comments, standing alone, did not necessarily defeat her claim of hostile work environment; rather, it was merely a factor in determining whether ... conduct or comments were "unwelcome." *Grow v. W.A. Thomas Co.* 236 Mich. App. 696, 601 N.W.2d 426 (Mich.App.,1999)
2. Employer's showing that female employee often engaged in sexual conduct herself made her conduct relevant to the question whether ... alleged acts were "unwelcome," ... *Grow v. W.A. Thomas Co.* 236 Mich. App. 696, 601 N.W.2d 426 (Mich.App.,1999)

ii. No showing adverse affect

1. In the sexual harassment action brought under the Civil Rights Act (CRA), plaintiff bore the burden of establishing the following element, [among others], of a hostile work environment: the unwelcome sexual conduct or communication was intended to or in fact did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment. *Grow v. W.A. Thomas Co.* 236 Mich. App. 696, 601 N.W.2d 426 (Mich.App.,1999)

iii. Isolated incident

1. If isolated, how does it affect "continued employment" element?
2. The Michigan Supreme Court has found that there is a "nearly universal consensus of federal authority holding that generally a single incident of sexual harassment will not create a hostile work environment," but the court also recognized that "single incidents may create a hostile work environment-rape and violent sexual assault are two possible scenarios." *Radtke v. Everett*, 442 Mich. 368, 394, 501 N.W.2d 155 (Mich.1993).



- a. One such **extremely traumatic experience** may, therefore fulfill the statutory requirements. *Id.* at 395, 501 N.W.2d 155. Myers v. Office Depot, Inc. 2007 WL 2413087, 5 (E.D.Mich.) (E.D.Mich.,2007)

- i. *Radtke*

- 1. Physically restrained for one minute and kissed!
    - 2. That qualifies as hostile work environment!!!

- iv. **Equal Opportunity Harasser**

- 1. "Equal opportunity harasser... is not actionable. While [Defendant's] actions may have been annoying or offensive, they were not on the basis of sex, since he "harassed" members of both sexes and plaintiff has **not proven that the actions towards the plaintiff were on the basis of sex.** Thus, the plaintiff does not have a hostile work environment claim." Myers v. Office Depot, Inc. 2007 WL 2413087, 4 (E.D.Mich.) (E.D.Mich.,2007)

- a. **Same defense applies to all protected classes.**

- b. **Offender must act with animus based on the class.**

- c. Same analysis in defending against allegations in violation of other class protections.

#### **IV. Disparate Treatment v. Discrimination**

- a. **Disparate treatment** practices are facially neutral in their treatment of different groups but that in fact falls more harshly on one group than another and cannot be justified by business necessity. Farmington Educ. Ass'n v. Farmington School Dist. 133 Mich.App. 566, 571, 351 N.W.2d 242, 245 (Mich.App.,1984)
  - i. Proof of discriminatory motive is not required under a disparate impact theory. *Id.*

## **FILLING OUT THE GRIEVANCE FORM**

It is extremely important that the grievance form be filled out accurately and completely. Here are some pointers:

**Name:** The grievant's full name, or yours for a group grievance, followed by "et al.", which means "and all others".

**Address:** The grievant's home address NOT THE FACILITY ADDRESS

**Employee ID number:** Must be filled in, as we use this to identify specific individuals.

**Date:** The date the grievance is filed.

**Statement of grievance:** Never leave this blank with the simple statement "see attached". A good statement of grievance will not take more space than that provided on the form. The statement itself should be short and to the point. State **what** is wrong, and leave the **why** statements, or arguments to attached pages. At least that way if the grievance gets separated from the other documentation, we know what the grievance is about.

**Just and fair solution:** What will resolve the issue. Keep in mind that contractually, we do not have the right to request an apology from a supervisor, nor demand that one be disciplined. Always add the statement "to be made whole" to anything else you ask for, so you don't eliminate possible solutions.

## **SAMPLE GRIEVANCE LANGUAGE**

Here are examples of wording you might use when writing some of the more common grievances. THESE ARE GENERAL EXAMPLES ONLY, AND THE FACTS IN YOUR CASE MAY REQUIRE SOME VARIATION. Contact your Chapter President or MCO Central Office for assistance.

The form also lists the information that will be necessary to defend your case at the higher levels of the procedure. Enclose the documents with the grievance chain when you send it to Central Office after you receive your Step 2 answer.

As you write grievances on other issues, it might save you some trouble on future cases if you include a copy of the grievance at the back of this section. That way you won't have to recreate the language each time.

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ISSUE: Disciplinary suspension

CONTRACT ARTICLE(S) AND SECTION(S): 10, and all other relevant.

***NOTE: remember to research the article and the section***

EMPLOYEE'S STATEMENT OF GRIEVANCE: I was unjustly issued a \_\_\_\_ day suspension on (date) for an alleged violation of work rule # \_\_\_\_.

A JUST AND FAIR SOLUTION TO MY GRIEVANCE IS: Remove all record of this action from my files, pay all back wages and benefits lost because of this action, and to be made whole.

### DOCUMENTATION NECESSARY TO PROVE CASE:

- 1). Copy of original grievance and answers obtained so far.
- 2). Disciplinary packet.
- 3). CS 301 Departure report.
- 4). CAJ 231.
- 5). Summary of Disciplinary Conference.
- 6). Seniority and Sick Leave hours.
- 7). Any case(s) you may have showing disparate treatment for similar violation.
- 8). If the employee has chosen one of the new disciplinary options.

ISSUE: Dismissal

CONTRACT ARTICLE(S) AND SECTION(S): Article 10, and all other relevant.

***NOTE: remember to research the article and the section***

EMPLOYEE'S STATEMENT OF GRIEVANCE: I was unjustly dismissed for allegedly violating work rule number \_\_\_\_.

A JUST AND FAIR SOLUTION TO MY GRIEVANCE IS: Immediate reinstatement with full back pay and benefits, including interest, removal of all reference to this issue from my file and employee history, and to be made whole.

DOCUMENTATION NECESSARY TO PROVE CASE:

- 1). Copy of original grievance and answers obtained so far.
- 2). Disciplinary packet.
- 3). CS 301 Departure Report.
- 4). CAJ 231.
- 5) Summary of Disciplinary Conference
- 6) Seniority and Sick Leave hours
- 7) Any case(s) you may have showing disparate treatment for similar violations

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ISSUE: Supervisors doing bargaining unit work

CONTRACT ARTICLE(S) AND SECTION(S): Art. 2 and all other relevant.

***NOTE: remember to research the article and the section***

EMPLOYEE'S STATEMENT OF GRIEVANCE: On   (date)  , supervisor   (name)   was assigned to the \_\_\_\_\_ position on the \_\_\_\_\_ shift, which should have been filled by a bargaining unit member.

A JUST AND FAIR SOLUTION TO MY GRIEVANCE IS: Pay 8 hours at overtime rate or 12 hours comp time to the appropriate person on the overtime equalization list, and to be made whole.

DOCUMENTATION NECESSARY TO PROVE CASE:

- 1). Copy of original grievance and answers obtained so far.
- 2). Daily staffing sheets for day and shift in question.
- 3). Documentation on the number of supervisors assigned to the facility.
- 4). "A" overtime equalization list.

ISSUE: Involuntary reassignment

CONTRACT ARTICLE(S) AND SECTION(S): Art. 15 and all other relevant.

***NOTE: remember to research the article and the section***

EMPLOYEE'S STATEMENT OF GRIEVANCE: My (shift/RDO) was changed involuntarily from \_\_\_\_\_ to \_\_\_\_\_ in violation of contract.

A JUST AND FAIR SOLUTION TO MY GRIEVANCE IS: Restore me to my previous (shift/RDO), pay me for any overtime I should have earned, and make me whole.

DOCUMENTATION NECESSARY TO PROVE CASE:

- 1). Copy of original grievance and answers obtained so far.
- 2). Schedule of who was moved, and what seniority is, including seniority of person who should have been moved.
- 3). Overtime list if applicable.

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ISSUE: Overtime - voluntary

CONTRACT ARTICLE(S) AND SECTION(S): Art. 17 and all relevant.

***NOTE: remember to research the article and the section***

EMPLOYEE'S STATEMENT OF GRIEVANCE: I was passed over for overtime for the A list. A "B" list officer was used instead.

A JUST AND FAIR SOLUTION TO MY GRIEVANCE IS: Payment for the overtime I would have received had I been called, and to be made whole.

### DOCUMENTATION NECESSARY TO PROVE CASE:

- 1). Copy of original grievance and answers obtained so far.
- 2). Equalization list, and name of the person who worked.
- 3). Daily reconciliation sheets for the day in question.
- 4). Any case(s) you may have showing disparate treatment.

ISSUE: Annual leave

CONTRACT ARTICLE(S) AND SECTION(S): Art. 28, and all other relevant.

***NOTE: remember to research the article and the section***

EMPLOYEE'S STATEMENT OF GRIEVANCE: (Briefly describe whatever the problem is - i.e. the formula is incorrect, or the book is passed out of order, or a specific time was denied.)

A JUST AND FAIR SOLUTION TO MY GRIEVANCE IS: Grant the requested time off and (if necessary) re-pass the book in the corrected manner, and make me whole.

DOCUMENTATION NECESSARY TO PROVE CASE:

- 1). Copy of original grievance and answers obtained so far.
- 2). Any relevant documents.



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ISSUE: Sick leave

CONTRACT ARTICLE(S) AND SECTION(S): Art. 29, and all other relevant.

***NOTE: remember to research the article and the section***

EMPLOYEE'S STATEMENT OF GRIEVANCE: I was denied sick leave for (date) even though (I had proper documentation, I called in prior to shift, etc.).

OR

I was required to bring in documentation for my sick day of (date) unfairly and unjustly.

A JUST AND FAIR SOLUTION TO MY GRIEVANCE IS: Grant me sick leave for the day in question, bringing me to full pay status,

OR

cease requiring me to provide medical proof for routine absences

...and make me whole.

DOCUMENTATION NECESSARY TO PROVE CASE:

- 1). Copy of original grievance and answers obtained so far.
- 2). T & A record.
- 3). Any Doctor's excuses
- 4). Individual who denied the sick leave
- 5). Any case(s) you may have showing disparate treatment.

# REGULATION

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|---|--|---|---|
| <b>SPDOC No.:</b><br><br>12-11  | <b>Effective Date:</b><br><br>July 8, 2012   | <b>Index Reference:</b><br><br>Unfair Labor Practices | <b>Regulation Number:</b><br><br><b>6.02</b>                        |
| <b>Issued By:</b><br><br>Executive  | <b>Rule Reference:</b><br><br>Rules: 6-8 (Recognition Rights for Labor Organizations)<br>6-11 (Unfair Labor Practices for the Employer)<br>6-12 (Unfair Labor Practices for Employees or Labor Organizations)<br>6-13 (Unfair Labor Practice Procedures) |   | <b>Replaces:</b><br><br>Reg. 6.02<br>(SPDOC 07-14, October 7, 2007) |
| <b>Authority:</b> Regulations are issued by the State Personnel Director under authority granted in the Michigan Constitution and the Michigan Civil Service Commission Rules. Regulations are subordinate to the Commission Rules. |  |   |   |
| <b>Subject:</b><br><br><b>UNFAIR LABOR PRACTICE CHARGES</b>   |  |   |   |

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## **1. PURPOSE**

This regulation provides procedures for filing an unfair labor practice (ULP) charge.

## **2. CIVIL SERVICE COMMISSION RULE REFERENCE**

**Note:** This Section 2 reprints only selected Commission Rules for quick reference by the reader. Additional Rules (that are not reprinted below) may apply. The complete, current version of the Rules can be found at [www.michigan.gov/mdcs](http://www.michigan.gov/mdcs).

**Rule 6-8 Recognition Rights for Labor Organizations****6-8.1 Rights of Exclusive Representatives**

*An exclusive representative (1) has the duty of fair representation of all employees in the unit, (2) may engage in collective bargaining with the employer, and (3), when mutual agreement is reached, may submit to the civil service commission for approval a written collective bargaining agreement regarding proper subjects of bargaining.*

\* \* \*

**Rule 6-11 Unfair Labor Practices for the Employer****6-11.1 Coercion**

*It is an unfair labor practice for the employer to interfere with, restrain, coerce, discriminate against, or retaliate against employees in the exercise of rights granted by these rules.*

**6-11.2 Interference**

*It is an unfair labor practice for the employer to dominate, interfere with, or assist in the formation, existence, or administration of a labor organization.*

**6-11.3 Discrimination**

*It is an unfair labor practice for the employer to discriminate or retaliate against an employee because that employee has (1) filed an affidavit, petition, or complaint; (2) given information or testimony; (3) formed, joined, or chosen to be represented by a labor organization; or (4) participated in a campaign or election to certify, change, or decertify an exclusive representative.*

**6-11.4 Refusal to Bargain in Good Faith**

*It is an unfair labor practice for the employer to refuse to bargain in good faith over mandatory subjects of bargaining as required by these rules.*

**Rule 6-12 Unfair Labor Practices for Employees or Labor Organizations****6-12.1 Coercion**

*It is an unfair labor practice for employees or labor organizations to interfere with, restrain, coerce, discriminate against, or retaliate against employees in the exercise of their rights as granted in these rules.*

**6-12.2 Interference**

*It is an unfair labor practice for employees or labor organizations to interfere with, restrain, coerce the employer with respect to rights protected in this policy or with respect to the orderly selection of a representative to carry out its obligations under these rules.*

**6-12.3 Refusal to Bargain in Good Faith**

*It is an unfair labor practice for employees or labor organizations to refuse to bargain in good faith with the employer over mandatory subjects of bargaining as required by these rules.*

**6-12.4 Striking**

*It is an unfair labor practice for employees or labor organizations to call, institute, manage, or conduct, or participate in a strike for any purpose.*

**Rule 6-13      Unfair Labor Practice Procedures**

*An employer, employee, or labor organization may file an unfair labor practice complaint with the state personnel director. The director has the authority to investigate, obtain facts, statements, or affidavits, make determinations of violations, and assess appropriate penalties.*

**3. STANDARDS****A. Filing.**

1. **Delegation.** The State Personnel Director delegates administration of unfair labor practice (ULP) charges to the Civil Service Hearings Office (CSHO).
2. **Time Limits.** An employee, employee organization, or employer may file a written unfair labor practice charge with the CSHO within six weeks of becoming aware of the cause of the charge. A ULP charge can be filed up to six months after the ULP occurred, if good cause for the untimely filing is demonstrated. No charge can be filed for a ULP that occurred more than six months before the filing date. If an administrative officer finds good cause and accepts a late appeal, any party may request the assigned hearing officer to review the finding *de novo*.
3. **Charges.** A ULP charge filing must include the following:
  - a. The name and signature of the charging party and the name of any representative filing the charge.
  - b. The name of the charged party (i.e., respondent).
  - c. A citation of the specific ULPs, as defined in rules 6-8, 6-11 and 6-12, that are alleged to have occurred.
  - d. A clear, concise, and complete statement of facts supporting each alleged ULP, including dates and locations of each alleged act.
  - e. A proof of service of the charge upon the respondent.
4. **Service.** When submitting a ULP charge to the CSHO, the charging party must simultaneously serve a copy of the charge upon the respondent.
5. **Administrative Review.** If a charging party does not meet the filing requirements in this regulation, the CSHO shall issue a notice of deficiency and allow the party 14 calendar days to correct the deficiency.
6. **Administrative Dismissal.** An adjudicating officer may administratively dismiss a ULP charge for any of the following reasons:
  - a. **Not authorized.** The charging party is not authorized to file the charge against the respondent. This includes attempts to file ULP charges based on the rights of other parties, such as ULP claims filed by an employee based on Rules 6-11.2, 6-11.4, and 6-12.3 or claims filed by the employer based on Rules 6-8.1 and 6-12.1.
  - b. **Failure to state a claim.** The charging party has not alleged a violation of a right specifically enumerated in rules 6-8, 6-11, or 6-12.
  - c. **Lack of jurisdiction.** Civil Service lacks jurisdiction over a necessary party or the subject matter of the charge.

- d. **Untimeliness.** The charging party has not filed in a timely manner.
- e. **Barred by prior claim.** Substantially the same charge was adjudicated to finality in another action between the same parties.
- f. **Noncompliance.** The charging party has failed to timely correct a deficient filing.

#### B. Answering.

Each respondent may file a signed, written answer to the charge with the CSHO within 28 calendar days of the mailing date of the charge. A copy of the answer must be simultaneously served upon the charging party and a proof of service submitted to the CSHO. The Office of the State Employer or an exclusive representative may file a motion to intervene in a ULP charge with the CSHO. If assigned for hearing, the hearing officer shall rule on the motion to intervene. Failure to intervene will preclude involvement in any further appeals.

#### C. Hearings.

1. **Scheduling.** If the ULP charge meets the requirements of this procedure, the CSHO shall designate an impartial hearing officer and schedule a hearing to take evidence on the charge. The administrative officer may offer voluntary mediation to the parties.
2. **Testimony.** At the hearing the parties may call, examine, and cross-examine witnesses and may introduce into the record documentary and other evidence.
3. **Applicability of Regulation 8.01.** The following procedural sections of Regulation 8.01, *Grievance and Grievance Appeal Procedures*, shall apply to hearings under this regulation, except that references to "grievance," "grievances," and "grievance appeal" therein shall be replaced with "ULP charge," and "grievant" therein shall be replaced with "charging party":
  - a. § 4.B.4, *Mediation*.
  - b. § 4.B.6, *Limitation on Communications*.
  - c. § 4.B.7, *Disqualification of Hearing Officer*.
  - d. § 4.B.8, *Prehearing Conference*.
  - e. § 4.B.9, *Submissions to Hearing Officer; Proof of Service*.
  - f. § 4.B.10, *Summary Disposition without a Hearing*.
  - g. § 4.B.11, *Hearing Procedures*.
  - h. § 4.B.12, *Orders of Appearance, Subpoenas, and Discovery*.
4. **Decision.** The hearing officer shall issue a written decision. The hearing officer shall dismiss or sustain each charge in whole or part. The hearing officer shall order that the respondent (1) cease and desist any ULPs found and (2) take action to remedy their effects. The hearing officer shall not award any attorney fees, witness fees, costs, or other expenses.

#### D. Appeals.

The decision of a hearing officer in a ULP charge must contain notice of the right of interested parties to file an application for leave to appeal to the Civil Service

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|--------------|--|-------------|

Commission within 28 calendar days after the date the final decision of the hearing officer is issued, as provided in rule 6-14.3. A ULP decision becomes final and binding on the parties 29 calendar days after its issuance, unless the decision provides for a later effective date or a timely appeal is filed. A decision is automatically stayed pending resolution of a timely application for leave to appeal.

**E. Authorized Representation in ULP Charges.**

The provisions of § 4.D of Regulation 8.01, *Grievance and Grievance Appeal Procedures*, shall apply to representation and administrative leave under this regulation, except that references to "grievance," "grievance appeal," and "grievance regarding a prohibited subject of bargaining under an exclusive Civil Service procedure" therein shall be replaced with "ULP charge," and "grievant" therein shall be replaced with "charging party." If a charge is against a labor organization, the employee cannot designate an employee or agent of the labor organization as his or her authorized representative without the written consent of the labor organization.

**CONTACT**

Questions regarding this regulation should be directed to the Civil Service Hearings Office, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, MI 48909; by telephone, at (517) 241-9096 or (800) 788-1766; or by e-mail to [MCSC-Hearings@mi.gov](mailto:MCSC-Hearings@mi.gov).

# REGULATION

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|---|---|---|--|
| <b>SPDOC No:</b><br><br>07-14   | <b>Effective Date:</b><br><br>October 7, 2007   | <b>Index Reference:</b><br><br>Discriminatory<br>Harassment | <b>Regulation Number:</b><br><br><b>1.03</b>                       |
| <b>Issued By:</b><br><br>Executive  | <b>Rule Reference:</b><br><br>Rules: 1-8 (Prohibited Discrimination)<br>2-10 (Whistleblower Protection) |   | <b>Replaces:</b><br><br>Reg. 1.03<br>(SPDOC 04-16, August 1, 2004) |
| <b>Authority:</b> Regulations are issued by the State Personnel Director under authority granted in the Michigan Constitution and the Michigan Civil Service Commission Rules. Regulations are subordinate to the Commission Rules. |   |   |  |
| <b>Subject:</b><br><br><b>INVESTIGATING REPORTS OF DISCRIMINATORY HARASSMENT</b>  |   |   |  |

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### **1. PURPOSE**

This regulation outlines a procedure for appointing authorities to investigate reports of discriminatory harassment.

Improper discrimination may take a number of forms, including **discriminatory harassment**. The state has an obligation to investigate reports of discriminatory harassment and to take prompt and appropriate remedial action, if necessary.

State classified employees are protected from improper discrimination based on any of the following factors:

- |                |                             |                         |
|----------------|-----------------------------|-------------------------|
| (1) Age        | (5) Genetic information     | (10) Religion           |
| (2) Color      | (6) Marital status          | (11) Sex                |
| (3) Disability | (7) National origin         | (12) Sexual Orientation |
| (4) Height     | (8) Partisan considerations | (13) Weight             |
|                | (9) Race                    |                         |

## 2. **CIVIL SERVICE COMMISSION RULE REFERENCE**

Note: This Section 2 reprints only selected Commission Rules for quick reference by the reader. Additional Rules (that are not reprinted below) may apply. The complete, current version of the Rules can be found at [www.michigan.gov/mdcs](http://www.michigan.gov/mdcs).

### ***Rule 1-8 Prohibited Discrimination***

#### ***1-8.1 Prohibited Discrimination***

*Neither civil service staff nor an appointing authority shall do any of the following:*

- (a) Fail or refuse to hire, recruit, or promote; demote; discharge; or otherwise discriminate against a person with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position.*
- (b) Limit, segregate, or classify an employee or applicant for employment in a way that deprives or tends to deprive the employee or applicant of an employment opportunity or otherwise adversely affects the status of an employee or applicant because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position.*

#### ***1-8.2 Accommodation of Disabilities***

*Civil service staff and appointing authorities shall accommodate a person with a disability as provided in the civil service rules and regulations.*

#### ***1-8.3 Discriminatory Harassment***

- (a) **Discriminatory harassment prohibited.** Discriminatory harassment is prohibited in the classified service. A classified employee who engages in discriminatory harassment may be disciplined by the appointing authority, up to and including dismissal.*
- (b) **Requirement to report.** A classified employee who is subjected to discriminatory harassment or who observes discriminatory harassment in the workplace shall report the discriminatory harassment to the appointing authority through reporting procedures established by the appointing authority.*
- (c) **Regulations and action.** The state personnel director shall issue regulations governing reporting and investigating discriminatory harassment. The regulations must require each appointing authority to make good faith efforts to eliminate and prevent discriminatory harassment in the workplace. The regulations must require the following minimum actions by each appointing authority.*
  - (1) Each appointing authority shall assign one or more investigators to investigate reports of discriminatory harassment by employees.*
  - (2) Each appointing authority shall investigate all reports of discriminatory harassment.*



- (3) *If a report of discriminatory harassment is substantiated or there is reasonable cause to believe that an allegation of discriminatory harassment is true, the appointing authority shall take appropriate corrective and remedial action.*

#### **1-8.4 Bona Fide Occupational Qualification**

*An appointing authority may establish a bona fide occupational qualification based on religion, national origin, sex, sexual orientation, age, marital status, height, or weight, only if it is consistent with applicable law and is approved in advance by the state personnel director.*

#### **1-8.5 Elimination of Present Effects of Past Discrimination**

*An appointing authority may adopt and carry out a plan to eliminate the present effects of past discriminatory practices with respect to religion, race, color, national origin, sex, or disability if the plan is approved in advance by the state personnel director and is otherwise consistent with applicable law.*

#### **1-8.6 Seniority and Merit System**

*Notwithstanding any other provision of these rules, Civil service staff or an appointing authority may apply different standards for compensation or different terms, conditions, or privileges of employment under a bona fide seniority or merit system approved by the civil service commission or the state personnel director.*

#### **1-8.7 Agency Work Rules**

*This rule does not limit the authority of an appointing authority to issue an agency work rule that regulates verbal or physical conduct or communication that does not rise to the level of prohibited discrimination or discriminatory harassment as defined in these rules.*

### **Rule 2-10 Whistleblower Protection**

#### **2-10.1 Reprisal Prohibited**

*An appointing authority shall not engage in reprisal against an employee for disclosing a violation or suspected violation of any of the following:*

- (a) A state or federal law.*
- (b) A lawful regulation or rule promulgated by a political subdivision of the state of Michigan.*
- (c) A civil service rule or regulation.*

#### **2-10.2 Application**

*An employee who reports, or who is known by the appointing authority to have indicated an intent to report, violations or suspected violations is protected by this rule, unless the employee knew the report was false. This protection extends to an employee who participates in, or who was known by the appointing authority to have indicated an intent to participate in, a court proceeding or an investigation, hearing, or inquiry conducted by a public body.*

#### **2-10.3 Forms of Reprisal**

*Reprisal includes actions such as discharge, threats of discipline, or arbitrary and capricious changes in the conditions of employment.*

### 3. **DEFINITIONS**

#### A. Civil Service Commission Rule Definitions

1. ***Appointing authority*** means each of the following:
  - (a) *A single executive heading a principal department.*
  - (b) *A chief executive officer of a principal department or autonomous entity headed by a board or commission.*
  - (c) *The state personnel director.*
  - (d) *A person designated by any of the preceding as responsible for administering the personnel functions of the department, autonomous entity, or other agency.*
2. ***Disability***
  - (a) ***Disability*** means any of the following:
    - (1) *A determinable physical or mental characteristic of a person, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:*
      - (A) *substantially limits one or more of the major life activities of the person, and*
      - (B) *is unrelated to (1) the person's ability to perform the duties of a particular job or position or (2) the person's qualifications for employment or promotion.*
    - (2) *A history of a determinable physical or mental characteristic described in subsection (a)(1).*
    - (3) *Being regarded as having a determinable physical or mental characteristic described in subsection (a)(1).*
  - (b) *Disability does not include either of the following:*
    - (1) *A determinable physical or mental characteristic caused by the current illegal use of a controlled substance by the person.*
    - (2) *A determinable physical or mental characteristic caused by the use of alcohol by the person if that physical or mental characteristic prevents the person from performing the duties of the person's job.*
3. ***Discriminatory harassment*** means *unwelcome advances, requests for favors, and other verbal or physical conduct or communication based on religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, disability, or genetic information under any of the following conditions:*
  - (a) *Submission to the conduct or communication is made a term or condition, either explicitly or implicitly, to obtain employment.*
  - (b) *Submission to or rejection of the conduct or communication by a person is used as a factor in decisions affecting the person's employment.*

- (c) *The conduct or communication has the purpose or effect of substantially interfering with a person's employment or creating an intimidating, hostile, or offensive employment environment.*
4. **Genetic Information** means information about a gene, gene product, or inherited characteristic of an individual derived from the individual's family history or a genetic history.
  5. **Genetic test** means the analysis of human DNA, RNA, chromosomes, and those proteins and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. A genetic test must be generally accepted in the scientific and medical communities as being specifically determinative for the presence, absence, or mutation of a gene or chromosome in order to qualify under this definition. Genetic test does not include a routine physical examination or a routine analysis including, but not limited to, a chemical analysis of body fluids unless conducted specifically to determine the presence, absence, or mutation of a gene or chromosome.
  6. **Sexual orientation** means actual or imputed heterosexuality, homosexuality, or bisexuality.
  7. **Unrelated to the person's ability** means, with or without accommodation, a person's disability does not prevent the person from performing the duties of a particular job or position.

## 4. **STANDARDS**

### A. **Reporting Process.**

#### 1. **Obligation to Report Discriminatory Harassment.**

- a. **All employees.** A classified employee is obligated to report to management in writing in either of the following circumstances:
  - (1) If the employee is subjected to unwanted discriminatory harassment in the workplace by a supervisor, manager, co-worker, or other person.
  - (2) If the employee witnesses a supervisor, manager, co-worker, or other person in the workplace engaging in discriminatory harassment of another person.
- b. **Supervisors and managers.** A supervisor or manager who witnesses a subordinate employee engaged in discriminatory harassment of another person is obligated to report the behavior and to take prompt and appropriate remedial action.

#### 2. **To Whom to Report Discriminatory Harassment.**

- a. If an employee is harassed or witnesses discriminatory harassment of someone else, the employee shall report the discriminatory harassment in writing to a supervisor or an investigator designated by the appointing authority.

- b. If an employee is harassed or witnesses discriminatory harassment by the employee's own supervisor, the employee is not required to report unwelcome conduct to that supervisor. The employee shall report the unwelcome conduct in writing directly to a higher level supervisor or an investigator.
  - c. If an employee is harassed or witnesses discriminatory harassment by an investigator, the employee is not required to report unwelcome conduct to that investigator. The employee shall report the unwelcome conduct in writing directly to a supervisor, another investigator, or the appointing authority.
3. **When to Report Discriminatory Harassment.** The employee is encouraged to report any discriminatory harassment immediately. However, in any event, the employee must report any discriminatory harassment within 180 calendar days after the alleged harassment.
4. **Confidentiality.** To protect the interests of all involved, the appointing authority shall maintain confidentiality to the extent practicable and appropriate under the circumstances.
5. **Use of Grievance Procedure.** Although an employee who is subjected to unwanted discriminatory harassment is obligated to report the harassment as provided in this regulation, the employee may also file a grievance regarding the harassment as authorized in the rules and regulations governing grievances or an applicable collective bargaining agreement.
6. **Reporting Other Types of Discrimination.** If an employee becomes aware of improper discrimination other than discriminatory harassment, the employee may use the procedures provided in this regulation to report the discrimination.

## **B. Investigative Procedures.**

1. Each appointing authority shall make a good faith effort to eliminate and prevent discriminatory harassment in the workplace.
2. Each appointing authority shall investigate all reports of discriminatory harassment, regardless of the source of the report. If a report of discriminatory harassment is substantiated or there is reasonable cause to believe the allegations are true, the appointing authority shall take prompt and appropriate remedial action.
3. If, at the time of the alleged harassment, the alleged harasser was an employee of an agency other than the one receiving the report, the report must be referred to the agency employing the alleged harasser for investigation.
4. Each appointing authority shall appoint one or more investigators with the authority to investigate any report of discriminatory harassment. The appointing authority shall assure the availability of sufficient investigators, considering the location and hours of the agency's operation. If more than two investigators are appointed, the appointing authority shall designate a coordinator of investigators.

5. Each appointing authority shall notify all employees under its authority of the prohibitions against discriminatory harassment. The notice must identify the persons to whom employees may file a report of discriminatory harassment. The notice must also describe the process for filing such a report.
6. Each appointing authority shall implement an education and training program for all new and continuing employees on the definitions of discriminatory harassment and the need to make good faith efforts to eliminate and prevent discriminatory harassment in the workplace.
7. Each appointing authority shall provide additional training for each investigator, coordinator of investigators, manager, and supervisor on techniques and procedures for investigating reports of discriminatory harassment and recognizing and remedying discriminatory harassment.
8. Each appointing authority shall keep adequate records of reports and investigations regarding discriminatory harassment. The records must include the following, if available:
  - a. Any statements of the person making the report, the alleged harasser, or any witnesses.
  - b. Other documents supporting conclusions reached by investigators.
  - c. Relevant disciplinary reports and performance evaluations.
  - d. The final investigatory report.

### **C. Guidelines for Investigating Reports.**

#### **1. Receiving the Report and Beginning the Investigation.**

- a. **Notice to Person Making Report.** Before taking a statement, the investigator shall advise the person making the report of the following:
  - (1) The employer has a duty to investigate all allegations of discriminatory harassment, even if the person making the report does not want the investigation to go forward.
  - (2) The identity of the person making the report and charges may be disclosed as part of the investigation, even if the person does not want the identity or charges disclosed.
  - (3) The person making the report will be protected from retaliation for filing a report in good faith.
- b. **Signed Statement.** The investigator shall require the person making the report to sign a statement describing the specific acts of discriminatory harassment that occurred. The investigator shall document any refusal to provide a signed statement. If a person reports the harassment of another person, the investigator shall also ask the person allegedly harassed to sign a statement.

## 2. The Investigation.

- a. **Report.** After receiving a report, the investigator shall detail in writing the unwelcome conduct that is alleged to constitute discriminatory harassment. The report must include each of the following, if available:
  - (1) The signed statement provided by the reporting employee and any person allegedly harassed (or notation of any refusal to submit such a statement).
  - (2) The types of conduct alleged.
  - (3) The frequency of occurrence.
  - (4) The names of witnesses.
  - (5) The dates on which the alleged harassment occurred.
- b. **Details.** The investigator shall ascertain the specific context in which the alleged conduct occurred, including, but not limited to, the following:
  - (1) The nature and general description of the workplace and the specific location and circumstances in which the alleged harassment occurred.
  - (2) Any physical evidence of the alleged harassment.
  - (3) What action was taken by the person allegedly harassed.
  - (4) Whether the person allegedly harassed told the alleged harasser by word or behavior that the alleged harasser's conduct was unwelcome.
- c. **Action to Stop Harassment.** If the harassment is alleged to be continuing or the person allegedly harassed needs protection, the appointing authority shall consider taking immediate action to ensure that the alleged harassment does not continue. Possible actions include, but are not limited to, (1) change of location of the work station of the alleged harasser or the person allegedly harassed, (2) "no contact" orders to both parties, (3) temporary reassignment of the alleged harasser or the person allegedly harassed, or (4) suspension of the alleged harasser during the pendency of the investigation.
- d. **Statement of Alleged Harasser.** The investigator shall interview the alleged harasser and require the alleged harasser to sign a statement regarding the allegation. The investigator shall document any refusal to submit a signed statement. The investigator shall advise the alleged harasser that (1) the interview is for investigating a claim of discriminatory harassment, (2) the alleged harasser is required to keep confidential any information regarding the investigation, (3) no person may retaliate against the person reporting the alleged harassment or any witness, and (4) any retaliation is a separate basis for investigation and, if substantiated, potential discipline.
- e. **Statements of Other Witnesses.** The investigator may obtain signed statements from witnesses who can refute, corroborate, or support any

of the allegations of the person making the report or the alleged harasser. If a signed statement is requested, the investigator shall document any refusal to provide a statement. The investigator shall warn witnesses that (1) the witness is required to keep confidential any information regarding the investigation, (2) no person may retaliate against the person making the report or other witnesses, and (3) any retaliation is a separate basis for investigation and, if substantiated, potential discipline.

- f. **Confidentiality.** To the extent practicable, the investigator shall distribute and collect any signed statements or other documents in a manner that will protect confidentiality of the information.
  - g. **Preservation of Records.** The investigator shall preserve all records of all investigative steps for 3 years after the final decision.
3. **Final Investigative Report.** After completing the investigation, the investigator shall transmit a final investigative report to the appointing authority or other designated authority.

#### **D. Further Action.**

- 1. **Action by Appointing Authority.** The appointing authority shall review the final investigative report submitted by an investigator. If the appointing authority substantiates the report of discriminatory harassment or determines that there is reasonable cause to believe that the allegations reported are true, the appointing authority shall take prompt and appropriate remedial action.
- 2. **Notice.** After the investigation, the appointing authority shall advise the person making the report and the alleged harasser whether the investigation substantiated the report, did not substantiate the report, or was inconclusive.
- 3. **Discipline.** The appointing authority or other approved manager may discipline a classified employee for engaging in discriminatory harassment, as provided in the Civil Service rules and regulations and agency work rules governing discipline.
- 4. **Supplemental Investigation.** If, during the course of an investigation, credible information indicates that a manager or supervisor with responsibility for taking remedial action in a harassment situation failed to take prompt and appropriate remedial action, the appointing authority shall separately investigate the behavior of that manager or supervisor.

## **CONTACT**

Questions regarding this regulation should be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; or by telephone at (517) 373-3024.

## MCO RESOURCE GUIDE

- A. American Income Life Insurance Co. (AIL) - Call 1-800-707-0902 x112 with questions or complaints regarding AIL's accidental death and dismemberment coverage. (NOTE: This is not the state's life insurance plan. Call the Employee Benefits Division at 800-505-5011 if you have questions on the state's plan.)

- B. Civil Service Classification, Employment and Selection Issues

Contact: Michigan Department of Civil Service  
Central Processing Division  
(517) 373-3048

Call this office regarding qualifications, employment lists, exams and other related matters. If you need to speak with another office in the Bureau, Central Processing will refer you to the correct individual. If you have access to the Internet, visit Civil Service's web site for employment information at [www.michigan.gov/mdcs](http://www.michigan.gov/mdcs). Call (517) 373-3030 or 1-800-788-1766 to speak with the Office of Employment Information. A career planning professional can provide up-to-date employment information and assist with career planning. There is an appeal procedure for Civil Service Bureau actions. If you dispute a decision and you are unable to resolve it, you may file a technical appeal. The appeal must be filed within fourteen calendar days from the date the decision is issued. If you have questions on this process, contact Mr. Richard Crittenden, Technical Appeal Officer at (517) 335-4970. If you disagree with the decision from the Technical Appeal Officer, you may file an application for leave to appeal with the Employee Relations Board. (NOTE: Civil Service Rules are constantly changing on this procedure.)

- C. Compensation Plan - Call Civil Service's Human Resource Office at (517) 373-6695 to obtain a current copy of the Compensation Plan. It will be provided at no cost until the supply is exhausted, or go to [www.michigan.gov/mdcs](http://www.michigan.gov/mdcs) for a copy.

- D. Continuation of Group Insurance (CGIS)/COBRA

1. For questions please contact Kim Dewey 373-2605 or [deweyk@michigan.gov](mailto:deweyk@michigan.gov)

- E. Deferred Compensation Plans - Both Plan I/457 and Plan II/401(k) are administered by ING. See Section T #3 for contact numbers.

- F. Disability Management

1. Departmental Coordinator/Return To Work

- a. Department of Corrections – Jim Thelen (517) 373-4173
- b. Department of Community Health – David Underwood (517) 335-3455

2. Reasonable Accommodations - Contact:

- a. Personnel office at your facility



b. Reasonable Accommodation Representative at your facility  
c. Beth Beauchine 373-7400 / 335-2579 [beauchineb@michigan.gov](mailto:beauchineb@michigan.gov) or Ken Swisher 241-9090 / 373-0438 [swisherk@michigan.gov](mailto:swisherk@michigan.gov)

d. For questions regarding the Americans With Disabilities Act (ADA), call the Great Lakes ADA & Accessible IT Center at 800-949-4232; its web site address is [www.adagreatlakes.org](http://www.adagreatlakes.org). Additional information is available from the ADA Technical Assistance Program's national web site at [www.adata.org](http://www.adata.org). An ADA home page operated by the U.S. Department of Justice is another resource. The web site is [www.usdoj.gov/crt/ada/adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm). You may also wish to contact the Michigan Protection & Advocacy Service, Inc. It is a non-profit organization and provides free legal advice. Call 1-800-288-5923 for information.

3. Handicapper Status – Contact:

Michigan Department of Civil Service

P. O. Box 30002

Lansing, MI 48909

(517) 373-3030 or 373-3031 - Call either number and request an application for handicapper status.

4. Vocational Rehabilitation – Vocational rehabilitation is a benefit for those receiving workers' compensation. Contact your CMI claims examiner for information regarding this benefit. If you have issues or problems, you may wish to speak with David Campbell, Director of Vocational Rehabilitation at the Michigan Workers' Compensation Agency, by calling 517-322-1721. For those who are receiving LTD, requests for vocational rehabilitation will be handled by Michigan Rehabilitation Services (MRS), part of the Michigan Department of Career Development. MRS may be reached by calling (800) 605-6722. Anyone may call (800) 285-9675 to reach Michigan Works!, a program partially funded by the federal government, to give assistance on job searches, resume writing and training. Every Michigan County has an office. The web site for Michigan Works! is [www.michiganworks.org](http://www.michiganworks.org).

5. Michigan Commission on Disability Concerns

Michigan Dept. of Labor and Economic Growth

201 N. Washington Square, Suite 150

Lansing, MI 48909

(877) 499-6232 (Toll Free)

[www.michigan.gov/dleg](http://www.michigan.gov/dleg)

This Commission is a state agency that advocates on behalf of all people with disabilities.

G. Discrimination and Harassment Issues - If you feel that your contractual rights have been violated, you may file a grievance. Other avenues of redress include contacting the Michigan Department of Civil Rights at (517)335-3165 or the U.S. Equal Employment Opportunity Commission at (313) 226-4920. The toll free number for the EEOC is (800) 669-4000. The federally maintained web site for the EEOC is [www.eeoc.gov](http://www.eeoc.gov). If you have questions regarding the various forms of illegal discriminatory harassment and civil rights complaints, call the specific departmental representative:

1. Department of Corrections- Joanne Bridgford at 517-373-3654 or 1-800-326-4537. She is the Discriminatory Harassment Program Coordinator. The Civil Rights Coordinator is Mike Hosey, (517)373-6387. The EEO Officer is Joanne Bridgford, 517-373-3654.
2. Department of Community Health- Joe Collins (517)241-0228. He is the Human Resources Director for the DCH.

H. Employee Service Program

Contact: Michigan Department of Management and Budget  
Office of the State Employer  
Capitol Commons Center  
400 S. Pine Street  
Lansing, MI 48913  
(800) 521-1377 (Lansing Office)  
(517) 373-7630 (Lansing Office)  
(800) 872-5563 (Detroit Office)

In addition to the Lansing and Detroit locations, an outreach office is located in Northville.

- I. Family Medical Leave Act - You may call the Wage and Hour Division of the Department of Labor with questions or to file complaints. The contact number is 1-866-487-9243. Visit OSE's website for a four part Q&A presentation on the FMLA at [www.michigan.gov/ose](http://www.michigan.gov/ose). Consult the MCO Security Agreement on this topic. The FMLA law and regulations can be accessed by visiting the following federal web site: [www.dol.gov/esa/whd/fmla](http://www.dol.gov/esa/whd/fmla) or go to [www.michigan.gov/mdcs](http://www.michigan.gov/mdcs). Depending on your state department, you may call Joanne Bridgford of the DOC at 517- 373-3654 or David Underwood of DCH at 1-517-335-3455. In addition, Cheryl Schmittiel (517-373-6229 or 517-373-7400), of the Office of the State Employer, can be contacted with questions.

J. Flexible Spending Accounts - Contact:

1. For general information, call Paula Robinson at (517) 1 800-505-5011.
2. For questions regarding Dependent Care Spending Account reimbursement, call Wage Works at 1 877 924-3967.
3. The supervisor at Employee Benefits handling these accounts is Deborah Fogg; call 1-800-505-5011 to reach her.

- K. Health Care Facility Complaint Hotline - If you were hurt on the job and feel that you received inadequate care from the employer's health care provider, you may file a complaint with the Michigan Department of Licensing and Regulatory Affairs Call 1 (800) 882-6006 and request that a complaint form is mailed to you.

L. Health Care Issues - Contact:

1. Personnel Office at your facility or MI HR Service Center at 1-800-766-6447.
2. Dept. of Civil Service  
Group Insurance Section

Employee Benefits Division  
P.O. Box 30002  
Lansing, MI 48909  
(517) 373-7977 Local Lansing number  
(800) 505-5011 Toll free number  
(The Director of EBD is Susan Kant)

3. State Health Plan PPO (SHP)

- a. Blue Cross Blue Shield of Michigan  
State of Michigan Service Center  
P.O. Box 80380  
Lansing MI 48908-0380  
Attn: State of Michigan Customer Service Center  
(800) 843-4876 -Toll free number

Call BCBSM if you are enrolled in the SHP. If you need a list of health care providers who participate with BCBSM, you may access its web site and conduct a provider search at [www.bcbsm.com](http://www.bcbsm.com). If you are not connected to the Internet, call BCBSM's toll free number, and a Customer Service Representative will send you the information.

If you submitted a claim and payment was denied, call BCBSM's toll free number to investigate. If you do not reach an acceptable resolution, you may appeal the decision to the Customer Service Unit. Submit all pertinent information to that office at the address above. If the claim is again denied, you may file a written complaint with the Director of the Employee Benefits Division at the following address. The letter should be thorough, and supportive documents must be attached as well as copies of all appeal decisions of the plan administrator.

Submit these documents to: Director, Employee Benefits Division, Dept. of Civil Service, P.O. Box 30002, Lansing MI 48909.

You may challenge the decision of the Director of the Employee Benefits Division by filing an appeal with the State Personnel Director whose decision is final. The address is: State Personnel Director, Dept. of Civil Service, P. O. Box 30002, Lansing, MI 48909.

See Civil Service Regulation 5.18 for additional information.

BCBSM has arranged for Wright and Filippis to administer the durable medical equipment, prosthetics and orthotics and medical supply benefits program known by the acronym SUPPORT. If you need to contact the SUPPORT program, call 1-800-321-8074. Tre Wilson is the Blue Cross Blue Shield contact, and he can be reached at 517-322-4611 if you need assistance. The Wright and Filippis contact is Jerry Mato at 248-829-8518.

- b. Preferred Provider Organization (PPO) - The following special services are provided by particular vendors for SHP enrollees.

MEDCO

PO BOX 747000

Cincinnati OH 45274-7000

866-229-5806

The web site is: [www.medco.com](http://www.medco.com)

If you are having problems getting disputes settled, call Medco customer service at the number above.

Pharmacy QUESTIONS contact 800-843-4876

Mental Health /Substance Abuse

Magellan Behavioral Health of Michigan, Inc.

34705 West Twelve Mile Road, Suite 148

Farmington Hills, MI 48331

The toll free number is (866) 503-3158.

The claims address is:

Magellan Claims

Attn: State of Michigan Claims Unit

P.O. Box 2278

Maryland Heights, MO 63043

The web site is [www.magellanassist.com](http://www.magellanassist.com).

The account manager is Gary Reidenbaugh. If you are experiencing problems or have complaints, call him at (248) 489-2835.

4. HMOs - All HMOs are required to have an internal grievance procedure for disputed claims. Contact your HMO to institute such a process. If your claim is rejected after the internal review, you may request an external review by appealing to:

State of Michigan

Department of Labor and Economic Development

Customer Services/Benefit Inquiry Section

Michigan Division of Insurance

P.O. Box 30220

Lansing MI 48909-7720

(517) 241-4854 or toll free (877) 999-6442

5. Dental Care - The State Dental Plan and the Preventive Dental Plan are administered by:

Delta Dental Plan of Michigan

P.O. Box 9085

Farmington Hills MI 48333-9085

(800) 524-0150

(248) 489-2020 -- If you are in Farmington Hills' local calling area

(517) 349-7787 -- If you are in Lansing's local calling area

You may send written inquiries to the following address (Include your group name [State of Michigan], your number [8700], your social security number and your daytime telephone number.)

Delta Dental Plan of Michigan  
Customer Service Department  
P.O. Box 30416  
Lansing MI 48909-7916

If you are enrolled in the Midwestern Dental Plan, the following information applies:

Southeast Michigan Service Area  
(800) 544-6374  
Lansing Service Area  
(517) 394-1495

6. Vision Care - This benefit is administered by BCBSM. See #3a for address and toll free contact number.

M. Longevity Pay - Information on this topic is found in the MCO contract and the Civil Service Rules and Regulations. You may also wish to contact Personnel. The state's HRMN project necessitated some changes to the longevity schedule in the fall of 2000. Eligibility for payment is established after completion of five full years of service rather than six. Bracket groupings were also revamped.

N. Long Term Care Insurance - For information on this topic, call MetLife at (800) 438-6388 or visit its website at <http://stateofmichigan.metlife.com>.

O. Long Term Disability - Contact:

1. Personnel Office at your facility.
2. Department of Management and Budget  
Employee Health Management  
P.O. Box 30026  
Lansing MI 48909  
(517) 241-9090 (Ask for Ken Swisher) [swisherker@michigan.gov](mailto:swisherker@michigan.gov)

Call this office regarding LTD enrollment and eligibility. Go to [www.michigan.gov/ose](http://www.michigan.gov/ose), and click on "About Us", which brings a new screen. On that screen, click on Employee Health Management for access to the LTD Plan booklet.

3. Citizens Management, Inc. (CMI)  
P.O. Box 740  
Howell, MI 48844-0740  
(800) 324-9901- (The supervisor is Tiffany Miles who may be reached at ext. 3144.)

A member may call the above toll free number to check on the status of a claim, address questions regarding payments, pose general questions or request an appeal of a denial of benefits. CMI became the administrator for LTD benefits on 10-1-05. CMI is also the vendor for the workers' compensation plan for the state.

4. Ken Swisher, Director  
Office of the State Employer  
Employee Health Management  
P.O. Box 30026  
Lansing MI 48909  
(517) 373-0438  
swisherk@michigan.gov

As the Director of Employee Health Management, Mr. Swisher is the state's liaison with CMI. Contact Mr. Swisher with questions and concerns regarding the LTD plan, as well as complaints and comments regarding CMI and its handling of your LTD claim.

Appeals of determinations made by CMI are directed to Mr. Swisher for reconsideration, after exhaustion of CMI's internal claims appeal procedure. His decision may be appealed to the State Personnel Director. The address is:

State Personnel Director  
Dept. of Civil Service  
P. O. Box 30002  
Lansing, MI 48909

See Civil Service Regulation 5.18 for additional information.

5. Toni McFarland - Same address as #2  
(517) 335-4274  
Diana Lindquist- Same address as #2  
(517) 335-1787

Contact Ms. McFarland and the Employee Health Management office staff with questions on rehabilitation, case management, reasonable accommodations and return to work. Diana Lindquist also handles LTD issues.

- P. MI HR Service Center - Call the Michigan Human Resource Service Center at 1-877-766-6447 between 7am and 6pm, Mon through Fri. regarding benefit changes, payroll deductions, personal information changes and many other topics.

- Q. Military Leave - Contact:

1. Personnel office at your facility.
2. Local Guard/Reservist Office
3. The National Committee for Employer Support of the Guard and Reserve  
1555 Wilson Blvd, Suite 200  
Arlington VA 22209  
(800) 336-4590
4. [www.dol.gov/vets](http://www.dol.gov/vets) -U. S. Dept. of Labor website.
5. Call to military duty- If you have paycheck concerns, contact the Dept. of Civil Service at 517-373-3044 and speak with Rosemary Anzicek. Or e-mail her at [anzicekr@michigan.gov](mailto:anzicekr@michigan.gov). If you

are an employee of the DOC, you may also contact Marilyn Hancock with questions. She can be reached at 517-373-4247.

- R. Optional Coverages - This voluntary program will be offering a variety of coverages. As of 2006, the options will include supplemental term life insurance, universal life insurance, critical illness insurance and auto /home insurance. The vendor for these plans is Voluntary Benefits Solutions and may be reached by calling 1-888-825-8395. Information is also available at the Dept. of Civil Service's website at [www.michigan.gov/mdcs](http://www.michigan.gov/mdcs). Click on "Employee Benefits" on the left side of the screen and then on "New! Voluntary Benefits", which appears on the left menu of the new screen.

- S. Pre-Paid Legal Services - (800) 654-7757

- T. Retirement Questions - Contact:

1. Personnel Office at your facility.

2. Defined Benefit Pension Plan

Retirement Bureau  
State Employees Retirement System  
Department of Management and Budget  
General Office Building  
7150 Harris Drive  
P.O. Box 30171  
Lansing MI 48909  
322-5103 - Local Lansing number  
(800) 381-5111 - Toll free number

Call the Retirement Bureau if you have questions. Information on covered, regular and disability retirement is contained in a booklet printed by the Retirement Bureau and entitled "Retirement Guidelines". Contact the Retirement Bureau for a copy, or go to its website listed below. Visit the Retirement Bureau's web site at [www.michigan.gov/ors](http://www.michigan.gov/ors).

3. Defined Contribution Retirement Plan

This is the primary retirement plan for all new employees hired after 3-30-97 and the group of employees who voluntarily switched from the Defined Benefit Plan. The administrator for this retirement plan, as well as for deferred compensation, is ING who may be reached by calling (800) 748-6128. The Michigan representative for ING is Hedy Schiller; call (517) 636-6070 to speak with her or Lynne Bemrose (517) 636-6076. Responsibility for both deferred compensation and defined contribution was transferred from Treasury to DMB's Office of Retirement Services on Oct. 1, 1999. Elaine Lewter is the Plan Administrator. Her office number is (517) 322-5685. General questions on the Defined Contribution Plan may be addressed to the Retirement Bureau by calling (800) 381-5111. The web site for information on defined contribution and deferred compensation can be reached through the Retirement Bureau's website at [www.michigan.gov/ors](http://www.michigan.gov/ors)

U. Social Security - For information on Social Security benefits, call (800) 772-1213.

V. Union Plus - Call 1-888-993-8886 for a referral to attorney in your area. You will receive a free initial consultation and a 30% discount on any subsequent work.

W. Workers' Compensation - Contact:

1. Personnel Office at your facility.
2. Ken Swisher, Director  
Office of the State Employer  
Employee Health Management  
P.O. Box 30026  
Lansing MI 48909  
(517) 373-0438  
swisherk@michigan.gov

NOTE: Jim Thelen, State Administrator also handles questions regarding workers compensation he can be reached at 517-373-4173.

3. Workers' Compensation Agency  
Michigan Department of Labor and Economic Growth  
2501 Woodlake Circle  
Okemos, MI 48864  
(517) 241-9393- Local Lansing number  
(888) 396-5041- Toll free number

There are nine offices throughout the state. If you need a copy of the workers' compensation statute, call (517) 322-1441 and request that a copy of the Workers' Disability Compensation Act of 1969 and Administrative Rules be mailed to you.

That office can also send you a brochure, which lists the locations and telephone numbers of the eight other offices. Members may call these offices, or the toll free number, and speak to a mediator in order to get answers to general questions. This is also the office with which you would speak regarding dispute mechanisms available to employees who have a contested claim.

The website for the Workers' Compensation Agency is [www.michigan.gov/wca](http://www.michigan.gov/wca). Much information awaits you, including the statute, many workers' compensation forms, a publication entitled "A Summary of Your Rights and Responsibilities Under Workers' Disability Compensation", a 50-page document entitled "An Overview of Workers' Compensation in Michigan" and information on mediation and vocational rehabilitation.

4. Citizens Management, Inc. (CMI)  
P.O. Box 740  
Howell, MI 48844-0740  
(800) 324-9901  
The fax number is (517) 540-3100.



This company administers workers' compensation claims. Call CMI regarding the status of your claim, compensation issues, disputes, mileage reimbursement as well as other questions. Injured employees are assigned to adjusters on the basis of their specific department. The claim supervisor at CMI is Marsha McCord, and she can be reached at extension 3140 at the toll free number above.

5. Contact Ken Swisher at the Office of the State Employer with complaints and concerns regarding CMI and its handling of your workers' compensation claim. Call 517-373-0438. He is the Director of the Employee Health Management Division, and is the state's liaison with CMI. His e-mail address is swisherk@michigan.gov.
6. Crime Victims Compensation - If you were assaulted by an inmate and sustained an injury rendering you unable to work for at least two consecutive weeks, you may be eligible for a monetary award in addition to workers' compensation. Contact the following office for information at 517-373-7373 and reference Public Act 247 of 1989, which amended Public Act 223 of 1976:

Michigan Department of Community Health  
Crime Victim Services Commission  
320 South Walnut St.  
Lansing, MI 48913

Another point of contact for information is to call Janine Washburn of the Victim Compensation Unit at 517-334-9182.

The web site may be accessed at [www.michigan.gov/mdcs](http://www.michigan.gov/mdcs). Click on the second bullet on the left side of the screen entitled "Physical Health & Prevention". On the new screen, click on "Crime Victim Services." An application, a brochure and explanatory information is available.

X. Tuition Reimbursement- Contact Jan Hoag (517) 636-6172

## Test Questions

### **MCO Stewards Test: It's Time To See What You've Learned**

***Directions:*** Choose the best answer for each question below. This test includes information from the Steward Reference Guide and the Collective Bargaining Agreement.

1. A chief concern of most members is how well the union settles grievances:
  - a. false
  - b. true
2. An investigative interview is an interview in which the employer:
  - a. gathers information that will lead to a member being disciplined
  - b. can ask an employee anything
  - c. offers the member a promotion
  - d. asks the member questions they may have direct knowledge of
3. A member is entitled to union representation whenever a supervisor routinely meets with them to discuss training, instruction or correction of work techniques:
  - a. true
  - b. false
4. A member must make a clear, affirmative request for representation during an investigative interview:
  - a. true
  - b. false
5. MCO has the right to management-controlled information:
  - a. to prepare for an arbitration
  - b. to prepare a defense for a disciplinary conference
  - c. to prepare for negotiations
  - d. all of the above

6. Which Article entitles an MCO steward access to management-controlled information pertinent to a grievance:
  - a. Article 5
  - b. Article 9
  - c. Article 10
  - d. Article 12
7. When a steward is dealing with a supervisor on a grievance, the steward should consider themselves as:
  - a. equal to the supervisor
  - b. a subordinate to the supervisor
  - c. equal to the Warden
  - d. a corrections officer, unless it's at a Labor/Management Meeting
8. Questions that determine whether an incident is grievable include:
  - a. a violation of state or federal law
  - b. a violation of a primary or secondary agreement
  - c. a violation of a letter of understanding
  - d. all of the above
9. On November 1, 1999, a four-year employee receives a 90-day interim conditional service rating one week after his fourth anniversary with the DOC. If they successfully complete the interim service rating when does the officer receive his fifth year step increase:
  - a. November 1, 2000 of the following year
  - b. 90 days after his/her normal 5<sup>th</sup> year anniversary
  - c. When he completes his conditional interim service rating
  - d. February 1, 2000, unless they are disciplined again in the year 2000
10. Informal grievance handling:
  - a. occurs before or takes the place of a written presentation
  - b. may be performed by the steward
  - c. may be performed by the member
  - d. all of the above

11. A member was disciplined for being out of uniform. Sixty days prior to the new uniform policy went into effect, the employer sent MCO a copy. Thirty days before the new rules became effective, the employer informed the membership in writing and at pre-shift of the new policy. According to the above information, which rule of just cause has been satisfied:
  - a. proof
  - b. equal treatment
  - c. investigation
  - d. notice of change in policy
12. To challenge the **penalty** portion of just cause discipline, a steward should ask:
  - a. did the member know they were violating a work rule
  - b. was the level of discipline equal to the seriousness of the violation
  - c. was the amount of discipline consistent with the member's record
  - d. was the inspector nice to the member
  - e. a, b and c
13. Sources of information for a grievance include:
  - a. supervisors
  - b. witnesses and other MCO officers
  - c. MCO and departmental records
  - d. all of the above
14. A member can present their grievance to their supervisor at:
  - a. 1<sup>st</sup> step
  - b. 2<sup>nd</sup> step
  - c. 3<sup>rd</sup> step
  - d. arbitration
15. Jurisdiction of a grievance, including settling it, is retained by MCO in Article:
  - a. 10
  - b. 9
  - c. 8
  - d. 12

16. A member has grieved a counseling memo they received. Appeals stop after:
- a. step 1
  - b. step 2
  - c. step 3 or re-determination procedure
  - d. pre-arbitration
  - e. a and c
17. The employer has denied a probationary MCO member's grievance on an unsatisfactory initial service rating at Step 3. The member has no further recourse through MCO:
- a. true
  - b. false
18. If the employer does not answer a grievance within time limits, the grievance may be automatically appealed to the next step:
- a. true
  - b. false
19. A status MCO member who has been discharged believes just cause is lacking. They may file a grievance directly to Step 3:
- a. true
  - b. false
20. Every Step 1 grievance **must** involve a conference with the supervisor, grievant, and an MCO rep:
- a. true
  - b. false
21. A member attending their disciplinary conference is entitled to MCO representation
- a. true
  - b. false
  - c. true, unless there are no MCO reps at work

22. An investigative interview can be conducted during a disciplinary conference:
- a. true
  - b. false
23. Formal notification of a disciplinary conference must include:
- a. copies of any and all documents in the employer's possession pertaining to the charges
  - b. the range of possible disciplinary action
  - c. a description of the specific conduct or activity for which the action is being considered
  - d. notification of the member's right to union representation
  - e. all of the above
24. An MCO member may waive their right to attend a disciplinary conference:
- a. true
  - b. false
25. A disciplinary conference can be held while a member is on extended sick leave for at least three weeks:
- a. true
  - b. false
26. A member was a witness to an incident where two prisoners injured one another. The member shall have the opportunity to confer with a MCO representative, if readily available, before submitting a critical incident report:
- a. true
  - b. false
  - c. true, unless the employer believes the member is involved in the incident
  - d. false, unless the member asserts their Garrity rights
27. The following are considered to be disciplinary actions:
- a. written reprimand
  - b. suspension without pay
  - c. conditional interim service rating
  - d. a and b

28. The arguments, evidence and justification for MCO's position on a grievance should be:
- a. included on the grievance itself
  - b. saved for the grievance conference
  - c. saved for the opening statement at an Arbitration hearing
  - d. provided to MCO's labor rep
  - e. b and d
29. A grievance may involve:
- a. an individual
  - b. a group
  - c. the entire union
  - d. all of the above
30. A chapter's chief steward, shift steward and grievant find themselves disagreeing at a grievance conference. They should:
- a. hash it out at the conference
  - b. ask management for a recess and attempt to settle it outside the room
  - c. inform management they are taking a recess and attempt to settle it outside the room
  - d. ask management for help in solving your disagreement
31. Essential elements of the definition of past practice include:
- a. a reasonable uniform response to a recurring situation
  - b. occurs over a substantial period of time
  - c. has been recognized by the parties through previous actions and discussions as the proper response
  - d. letters of agreement or understanding
  - e. a, b, and c
32. A patient knocks down a forensic security aide who is an MCO member. The member tells the steward he wants to write a grievance on the grounds of inadequate staffing. Does the employee have a grievance:
- a. yes
  - b. no
  - c. more information is required to decide

33. A member became ill and left in the middle of the shift, leaving it below critical compliment. The shift supervisor had supervisors in excess and assigned a first line supervisor to fill in for the sick employee. What article should be investigated?
- a. Recognition, Article 2, Section D
  - b. Union Rights, Article 6
  - c. Assignment, Vacancy and Transfer, Article 15, Section B
  - d. Management Rights, Article 4
34. Should the local Chapter file a grievance:
- a. yes
  - b. no, unless the supervisor was limited term
  - c. yes, only after an immediate attempt to resolve the issue with management
35. Officer Jimmy shook down a prisoner's room and found two exacto knives. He confiscated them and wrote a ticket. The hearing officer found the prisoner not guilty because he possessed a hobby craft card which authorized his possessing the knives. Jimmy is hot and wants MCO to take action. As a steward, you consult Article 12, Health and Safety, and recommend:
- a. taking Jimmy's issue to labor/management
  - b. grieving the issue
  - c. filing an appeal directly to the RPA
  - d. kicking the hearing officer's ass
36. Officer John H. Ost, a six-year member, just discovered from another officer on shift that he was not receiving the full pay for performing CRR duties for the last 18 months. He went to Personnel and asked why. Human Resources employee R. Scholtz told Officer Ost that they must have forgotten to change his records. What is Officer Ost entitled to if he writes a grievance:
- a. nothing, because he should have been aware of what his correct pay should be
  - b. 180 days of CRR pay because the mistake was not a mechanical one
  - c. 18 months of pay plus punitive damages
  - d. a promotion to the next sergeant's position



37. Camp Waterloo has historically had fixed days off. Cotton, the facility Camp Waterloo is annexed to currently has rotating days off. The Warden decides to unilaterally change Waterloo from fixed RDO's to rotating RDO's without consultation with MCO. The local Steward at Camp Waterloo grieves the change. This grievance would apply to:
- a. Camp Waterloo only
  - b. Cotton Facility only
  - c. All the facilities in Jackson
  - d. All facilities in the State
38. There is an RUO (E-10) vacancy on the 2-10 shift at your facility. RUO Fleury is the only RUO on the RUO shift transfer list. Officer Kowitz is the only C/O on the shift transfer list. Officer Tylutki works at another facility as an RUO and also wants the position. RUO Fleury turns down the transfer. The employer may:
- a. force RUO Fleury to take the transfer because his name has not been de-activated
  - b. promote Officer Kowitz to an RUO and transfer him
  - c. allow Officer Tylutki to transfer in from Timbaktu
  - d. allow Officer Grieshaber to promote on shift to RUO
  - e. b, c, or d
39. The 2-10 Sally port is up for Bid. The bidders are; Officer Grieshaber, a CO on the 2-10 with 2 years of seniority; Officer Johnson, a CO on the 2-10 shift with 3 years of seniority; and Officer Douglas, the bid officer on 9 post for the last six months. He has 26 years of seniority and is willing to give up his bid for the new one. The facility may:
- a. choose Officer Grieshaber
  - b. choose Officer Johnson
  - c. choose Officer Douglas
  - d. choose Officer Henderson, a CO on the 2-10 shift that didn't bid
  - e. a and b

40. A Chief Steward who used super seniority to get on the day activity shift, lost his bid for re-election on September 15. His seniority will not allow him to stay on that shift and he will have to go back to first shift. He had originally been awarded the week of November 15<sup>th</sup> for his vacation. What happens to his vacation?
- a. he takes it with him
  - b. the vacation period is put up for bid and will be awarded by seniority
  - c. the vacation period is put up for bid and will be awarded on a first come basis
  - d. the vacation period is used for incidental days only
  - e. none of the above

**Bonus Question**

Does the former Chief Steward have a grievance because he does not have a vacation.

- a. yes
- b. no
- c. no, unless they take it with them
- d. depends on whether or not he has greater than 40 hours of comp and annual leave combined