

State of Wisconsin

DOA – DIVISION OF PERSONNEL MANAGEMENT

- EMPLOYEE MANAGEMENT BULLETIN -

Date: 10/27/2021

Locator No. DPM-0558-ER

Subject: Establishment of a COVID-19 Testing
Discipline Track

The purpose of this bulletin is to notify agencies of the creation of a separate discipline track for situations involving employee failure to follow COVID-19 testing protocols.

On September 24, 2021, the Department of Administration announced that effective October 18, 2021, weekly COVID-19 testing will be required for executive branch employees who have not self-reported their vaccine status or have not been fully vaccinated against COVID-19.

For those situations where an employee fails to follow COVID-19 testing protocol, a separate discipline track is being implemented. The COVID-19 discipline track will be applicable to all State of Wisconsin limited term, permanent, probationary, and unclassified employees who fail to follow COVID-19 testing protocol.

COVID-19 Testing Protocol – Discipline Track

The COVID-19 discipline track is separate and distinct from the State of Wisconsin discipline track in Wisconsin Human Resource Handbook Chapter (WHRHC) 410 Employee Work Rules and Discipline Procedures. Discipline issued under either track shall not apply, for progression purposes, across tracks. For example, if an employee is already at the first level of Chapter 410 discipline, and the employee fails to be tested for COVID-19, the employee would not move to the second level of Chapter 410 discipline. Instead, the employee would start at the beginning of the COVID-19 discipline track. A second failure to be tested would move the employee to the second level of the COVID-19 discipline track but would not move the employee on the Chapter 410 discipline track.

The COVID-19 specific discipline track is applicable to only those situations which solely involve an employee's failure to follow designated COVID-19 testing protocols. Multiple employee infractions, one of which involves failure to follow COVID-19 testing protocols in conjunction with failure to follow WHRHC 410 guidelines, would result in utilizing the discipline track and progression specified in WHRHC 410 Employee Work Rules and Discipline Procedures.

COVID-19 testing protocol violations which result in a violation of Work Rule #2 – Failure to comply with written agency policies or procedures and/or Work Rule #3 Disobedience,

insubordination, inattentiveness, negligence, failure, or refusal to carry out written or verbal assignments, directions, or instructions; should utilize the COVID-19 discipline track. All other work rule and serious acts of misconduct violations that arise out of the COVID-19 testing process should utilize the WHRHC 410 discipline track.

COVID-19 Testing Protocol – Limited Term, Permanent, Probationary, and Unclassified Employee Progression Schedule

The COVID-19 testing protocol track/schedule of progressive discipline for limited term, permanent, probationary, and unclassified employees will be followed unless the facts of the specific situation warrant a different level of discipline.

The COVID-19 testing track/progression schedule will be as follows:

- First Violation: Letter of Expectation (no disciplinary action)
- Second Violation: One (1) day suspension without pay
- Third Violation: Three (3) day suspension without pay
- Fourth Violation: Five (5) day suspension without pay
- Fifth Violation and Additional Violations: Repeat five (5) day suspension without pay

There is not a limit to the number of 5-day suspension repeats that may occur for COVID-19 protocol violations.

Limited term, probationary, and unclassified employees may be issued disciplinary suspensions for violating COVID-19 testing protocols.

Letters of discipline issued under the COVID-19 discipline track shall follow the standards set forth in WHRHC 410 Employee Work Rules and Discipline Procedure, with the exception that limited term and probationary employees, and some unclassified employees shall not have reference to grievance rights included in their disciplinary letters.

WHRHC 410.060 earn back provisions do not apply to the COVID-19 testing protocol track/progression schedule.

COVID-19 Testing Protocol - Investigation/Pre-disciplinary Meeting

The investigation and pre-disciplinary process for employees who do not follow COVID-19 testing protocol shall utilize the guidelines set forth in WHRHC 412 Investigation and Pre-disciplinary Procedure.

Investigations and pre-disciplinary procedures for represented Public Safety Employees in positions classified as State Patrol Troopers and State Patrol Inspectors may be impacted by their collective bargaining agreement.

A structured fact finding, or formal investigation must occur prior to issuing a Letter of Expectation. A structured fact finding, or formal investigation must occur prior to issuing limited term and probationary employee suspensions.

One management employee is allowable for COVID-19 investigation fact findings, interviews, and pre-disciplinary meetings. Supervisors are not excluded from investigating COVID-19 protocol violations.

COVID-19 Testing Protocol - Unfit for Duty

All employees who are scheduled to be in the office and/or interact in-person with coworkers, customers, or clients and who fail to follow COVID-19 testing protocol may be deemed unfit for duty for the date/s they are scheduled to be in the office and/or interacting in-person with coworkers, customers, or clients. Depending on the circumstances of the situation employees may be in unpaid status until they comply with COVID-19 testing protocol, and subject to discipline for insubordination and failure to follow policy/procedures.

Employees required to work on-site in 24/7 institutions who fail to follow COVID-19 testing protocol may be deemed unfit for duty, sent home and may be subject to discipline for insubordination and failure to follow policy/procedure. Employees will be in unpaid status until they comply with COVID-19 testing protocol.

Employees who are determined to be unfit for duty and placed onto leave without pay (LWOP) will not have their LWOP count against applicable attendance policies or procedures.

Questions regarding this directive may be directed to:

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Resources:

WHRH Chapter 410 – Employee Work Rules and Discipline Procedure
WHRH Chapter 412 – Investigation and Pre-disciplinary Procedure
Division of Personnel Management COVID-19 -
<https://dpm.wi.gov/Pages/Employees/Coronavirus-COVID-19.aspx>