

Osage Nation

Human Resources Policy and Procedure

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Workplace Policies	Approval Date: April 11, 2019
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Termination Hearing	Revision Date: May 14, 2019 Revision Date: August 9, 2019

Employees faced with termination are entitled to a hearing by an impartial party.

In cases where a termination is imminent, the Director/Supervisor and a Human Resources Representative will meet with the employee and inform them of the upcoming termination as well as their ability to appeal the decision regarding the upcoming termination. Should the employee wish to challenge the impending termination, they may request a hearing through the Human Resources Department. The termination will not be carried out until the conclusion of the hearing.

- For the purposes of this policy the term “employee” means a regular full-time or regular part-time employee of the Osage Nation.
- Termination hearings will be conducted by a Hearing Officer who will oversee the proceedings and make a final recommendation to the Human Resources Director and Chief of Staff/Director of Operations.
- Employees facing possible termination may be suspended without pay, pending the outcome of the termination hearing.
- Employees are given the opportunity to advocate for themselves or be represented by legal or non-legal counsel at their own expense, including the ability to hear the charges, evidence and witnesses against him/her, and provided the opportunity to question witnesses.
- It is a violation of this policy for any employee of the Osage Nation to interfere with, threaten, coerce, restrain, discharge, or otherwise take action against any employee or other person because he/she has filed a complaint, gave or will give testimony, or otherwise appeared in a termination hearing.
- Retaliation or punishment of an employee seeking resolution by using established or prescribed procedures is strictly prohibited.

Scope of Authority

The Hearing Officer shall recommend a remedy or remedies consistent with the finding of the hearing subject to the following considerations and limitations:

- Employees bear the burden of proof to show, by a preponderance of the evidence that they have wrongfully been subject to an imminent decision to terminate.
- Equitable relief may be suggested by the Hearing Officer to the Human Resources Director and Chief of Staff/Director of Operations, as follows:
 - Consideration of retro pay, in compensation, for suspension period.
 - The Hearing Officer shall not recommend any remedy that is inconsistent with the laws of the Osage Nation or as expressly provided for in this policy.

Proceedings of the Hearing Officer

The Hearing Officer’s responsibilities and obligations include, but are not limited to the following:

- The proceedings are confidential.
- The proceedings will be audio/video recorded.
- The proceedings will only focus on the termination of the employee
- The Hearing Officer may ask questions of either party and request additional evidence at any time.
- The Hearing Officer may instruct the parties that sufficient information has been heard to make a recommendation, or that the information is not relevant. Aside from relevancy issues, formal rules of evidence do not apply.
- The Hearing Officer has the authority to extend/waive time limitations if it is believed that information offered is relevant and probative of the issues presented as defined below.
- The Hearing Officer shall be responsible to make determinations of whether information is relevant to the hearing. Hearing Officer shall consider whether the proposed evidence (either witness testimony or documentary evidence) relates to the disciplinary action and whether it will affect the Hearing Officer's recommendation. Only witnesses who have had direct involvement in the incident leading to the termination will be allowed to participate and all questions should directly relate to said termination.
- The Hearing Officer may ask questions of Human Resources staff relating to employment policies & procedures.

Notification of Termination

At the time an employee is notified of a decision to terminate, the employee shall be informed of the hearing process.

Procedure for Requesting a Termination Hearing

- The employee will receive a Request for a termination hearing form upon termination to complete and return to Human Resources within five (5) business days of notification of the decision to terminate. Failure to request a hearing within this time frame will result in the forfeiture of a hearing.
- If the termination is conducted via mail or phone, or the employee does not attend the termination meeting or leaves prior to being informed of the termination hearing process, a termination hearing request form will be sent by certified mail to the address on file in Human Resources with the due date of five (5) business days from the date of the decision to terminate. Failure of the employee to respond within the given timeframe will result in forfeiture of the termination hearing.

Termination Hearing Process

- Human Resources will notify the Hearing Officer of the request for a termination hearing. The Hearing Officer will set a date and Human Resources will send by certified mail a letter to each party with notification of the scheduled Hearing date as well as other relevant information.
- Ten (10) days prior to the hearing, the employee and Director/Supervisor shall each provide the Human Resources Department with a list of witnesses they intend to call at the hearing. They shall also present copies of any documentary evidence that they would like to submit to the Hearing Officer.

- Both parties may amend or supplement their original witness list and/or submit additional documentary evidence within five (5) days after receiving the other party's list of witnesses and evidence.
- Failure to abide by any of the above time requirements will prohibit the non-compliant party from introducing documentary evidence or presenting witnesses to the Hearing Officer. For the purposes of this procedure, "days" shall be calculated using business days.
- The Hearing Officer will review records submitted by the employee and supervisor prior to appearance at the Hearing.
- Human Resources staff shall appear and be available to advise all participants with regard to policy & procedure.
- The Director/Supervisor or representative shall present to the Hearing Officer the reasons why management believes that the decision to terminate should be upheld. The Director/Supervisor or Representative may call witnesses at this time. This presentation shall not exceed two hours without the Hearing Officer's permission.
- When the Director's/Supervisor's presentation has concluded, the employee shall present to the Hearing Officer the reasons why he/she believes the decision to terminate should not be upheld. The employee may call witnesses at this time. This presentation shall not exceed two hours without the Hearing Officer's permission.
- Both parties shall have the ability to ask questions of any witnesses.
- The Hearing Officer may ask questions of either party and may call for any additional information as deemed necessary in reaching a decision. If it requires information that is not readily available, the Hearing Officer may accept into record such additional information or choose to suspend the meeting and reconvene when the information is available.
- After both parties have made their presentations, and if the Hearing Officer has no additional questions, then both parties shall have the opportunity to make brief and concise final comments not to exceed fifteen (15) minutes.
- At the conclusion of the presentation of testimony and evidence, the Hearing Officer will privately deliberate and make a recommendation within five (5) business days.
- No record of the deliberation will be made.
- The recommendation of the Hearing Officer shall describe the facts of the case and determine whether the facts support a violation of Osage Nation policy & procedure, Federal or Tribal Law, or funding agency regulation.

Final Decision

Upon receipt of the recommendation from the Hearing Officer, a determination will be made within five (5) business days whether to uphold or overturn the pending termination. The decision will be made by an impartial decision maker. The decision to terminate employees that are in the organizational structure of the Director of Operations will be made by the Chief of Staff. The decision to terminate employees that are in the organizational structure of the Chief of Staff will be made by the Director of Operations. The decision to terminate employees that fall under boards and commissions will be made by either the Director of Operations or the Chief of Staff.

Human Resources will mail a certified letter to the employee, using the address on file, stating the decision of the Human Resource Director and Chief of Staff/Director of Operations.