

## **COVID-19 Employee Testing Policy Guidance for Employee Non-Compliance**

### **Purpose**

To provide general guidance to participating County departments for non-compliance by employees who are required to test under the COVID-19 Employee Testing Policy (“Testing Policy”).

For County employees who are subject to testing under the Safe Opening of Harris County COVID-19 Employee Testing Policy, have not been exempted according to policy, and who fail or refuse to comply with the policy requirements, it is recommended that the department follow its disciplinary procedures, beginning at the lowest level corrective action and progressing as necessary for compliance. The below procedure sets out *an example* of a progressive discipline process, but departments should rely on and comply with their existing disciplinary framework.

It is strongly recommended that departments do not address initial infractions by issuing suspensions or terminations of employment. As indicated by the example, an employee should initially receive (documented) counseling as to the policy requirements. At this time, and before progressing to any formal discipline (such as a written warning or suspension), employees must be made aware that non-compliance with the Testing Policy may result in discipline up to and including termination of employment. It may be advisable to provide the employee with a copy of the Testing Policy and the applicable disciplinary policy.

If an employee must be suspended, the suspension should be unpaid. For suspensions issued for failure to supply test results, it is recommended to issue a suspension equivalent to the number of days remaining in the testing week. Therefore, if an employee who works Monday through Friday is expected to provide test results weekly on Tuesday but fails to do so, the employee should be suspended for five working days: Tuesday, Wednesday, Thursday, Friday, and Monday. The employee may return to work the following Tuesday, when the next testing week begins. *However, in compliance with the Fair Labor Standards Act, unpaid suspension of salaried/exempt employees must be in one full workweek increments.*

Some disciplinary policies may permit Department Heads to combine or skip disciplinary steps depending on the facts of each situation and the nature and severity of the offense. Some of the factors that should be considered are whether the offense is repeated despite counseling and the impact the conduct and performance issues have on the organization.

Nothing in this guidance provides any contractual rights regarding employee discipline or counseling, nor should anything in this guidance be read or construed as modifying or altering the employment-at-will relationship between Harris County and its employees.

Copies of any Testing Policy acknowledgment forms, disciplinary actions, and documents supporting the disciplinary action should be placed in the employee’s personnel file.

### **Example Procedure**

#### ***Step 1: Counseling and verbal warning***

*This is recommended for an employee for their first non-compliance infraction under the program.*

Step 1 creates an opportunity for the immediate supervisor or human resources representative to discuss the COVID-19 Employee Testing Policy with the employee and explain to the employee how to obtain a COVID-19 test. The employee should be notified that failure to comply with the COVID-19 Employee Testing Policy will subject the employee to further disciplinary action, including termination.

Written documentation of the verbal counseling should be given to the employee, and the employee should sign this document to demonstrate their understanding of the COVID-19 Employee Testing Policy requirements.

**Step 2: Written warning**

*This is recommended for an employee for their second non-compliance infraction under the program.*

Employees who have a second non-compliance infraction, should be given a written warning and notified that failure to comply with the COVID-19 Employee Testing Policy will result in further disciplinary action, including an unpaid suspension and final warning or termination of employment.

**Step 3: Suspension and final written warning**

*This is recommended for employees who continue to be non-compliant.*

Employees who continue to be non-compliant should be given a final written warning and an unpaid suspension. In compliance with the Fair Labor Standards Act (FLSA), unpaid suspension of salaried/exempt employees must be in one-week increments.

**Step 4: Termination of employment**

*This is recommended for employees who continue to be non-compliant after given a written warning or unpaid suspension.*

Employees who continue to be non-compliant without justification are considered to have engaged in insubordination. Department Heads should consider terminating these employees' employment for failure to adhere to the COVID-19 Employee Testing Policy.

Generally, Department Heads should try to exercise progressive discipline by first providing warnings, issuing a final written warning and suspending the employee from the workplace before proceeding to a recommendation to terminate employment. However, Department Heads may combine and skip steps depending on the circumstances of each situation and the nature and severity of the offense. Furthermore, employees may be terminated without prior notice or disciplinary action, where warranted.