

Step I Appeal Guidelines

These guidelines are established pursuant to Tennessee Code Annotated, § 8-30-318 in order to maintain statewide consistency in Step I Appeal Discussions, furthering the spirit and legislative intent of the Tennessee Excellence, Accountability, and Management Act (T.E.A.M. Act). Agencies, employees, and other party representatives shall utilize these guidelines to set expectations for participants in the discussion.

For the purposes of these guidelines, any mention of “the parties” shall mean the department’s commissioner, commissioner’s designee, employee, employee representative, manager, or department representative.

Prior to the Step I Appeal Discussion

- The appointing authority (or designee) shall ensure that the parties have reasonable notice of the date, time, and location of the scheduled Step I Appeal Discussion. If the employee is represented, the agency shall make reasonable efforts in ensuring the representative/attorney receives logistical information regarding the Step I Appeal Discussion. Agencies should grant employees reasonable time to prepare for these discussions and grant additional time, if requested, as long as doing so does not unreasonably interfere with the agency’s statutory twenty (20) calendar days.
- Parties should provide the appointing authority (or designee) as much notice as practicable if they are unable to attend the scheduled discussion.
- The appointing authority (or designee) has the discretion to reschedule the discussion to accommodate a request by either party, for good cause, as determined by the appointing authority (or designee). In any event, the rescheduled date must provide the agency with sufficient time to issue their decision within the statutory twenty (20) calendar days.
- The Step I Appeal Discussion should be held in person unless doing so is impracticable (due to distance, safety, etc.). In those instances, the appointing authority (or designee) may schedule the discussion to take place via phone or video conference upon agreement of the parties and notate the reasoning in the Step I Appeal Decision.
- The appointing authority (or designee) shall provide a copy of these guidelines to the parties prior to the Step I Appeal Discussion.
- Prior to the Step I Appeal Discussion, the agency must make all reasonable efforts to provide copies of all documentation and/or materials to be discussed or reviewed by the parties at the Step I Appeal Discussion to the employee. If a document or other evidence is part of an active criminal investigation or prosecution by any law enforcement agency, or is otherwise

deemed confidential under existing law, then the document does not have to be provided in advance of the Step I Appeal Discussion. However, the employee may be allowed to view the document or other material during the discussion or be provided a substantive summary (or redacted report). Any documentation or material in the possession of the appointing authority (or designee) prior to the discussion that was not provided to the employee, cannot be used in issuing the Step I Appeal Decision. These materials include but are not limited to documents and/or materials used in issuing the disciplinary action (e.g., emails, performance documentation, internal memoranda, etc.).

Employees must be given the opportunity to view confidential information, or a redacted version. Agencies shall have employees sign an acknowledgment certifying they have reviewed all known information used during the Step I Appeal proceeding.

- In preparation for the Step I Appeal Discussion, the appointing authority (or designee) shall review the discipline issued by the agency, the Step I Appeal Form and any additional information submitted by the employee with the Step I Appeal. The appointing authority (or designee) may conduct any necessary investigation, to include review of any relevant policies, procedures, or investigative memoranda.

During the Step I Appeal Discussion

- At the commencement of the Step I Appeal Discussion, the appointing authority (or designee) shall ask each party to identify themselves and their role in the discussion. While attorneys or representatives may attend the Step I Appeal Discussion,¹ the appointing authority (designee) has the sole discretion to maintain the order and decorum of the Step I Appeal Discussion. Attorneys or representatives are expressly prohibited from representing employees or management during the Step I Appeal Discussion.¹
- Appointing authorities and Step I Appeal Designees shall keep in mind that the presence of more than one (1) representative of the relevant agency, excluding the Step I Appeal Designee, who actively participates in the appeal (i.e., not present for observational/training purposes) allows the employee's non-lawyer representative the opportunity to actively participate in the Step I Appeal Discussion.
- An employee's representative may observe the discussion, and nothing in these guidelines prohibits a representative from providing assistance to an employee during the presentation of his or her information during the Step I Appeal Discussion (if deemed necessary by the designee) or responding to a question or comment from the appointing authority (or designee). A representative may request to speak to his or her party at any time; provided, however, the appointing authority maintains the discretion to disallow unduly burdensome

¹ Co-workers shall not serve as an employee's representative.

interruptions. Upon the request of either party, a break can be taken from the discussion.

- Prior to presentation of information by the parties, the appointing authority (or designee) shall inform the parties of the purpose of the discussion, which is for the employee to present additional information for consideration in reviewing the merits of the discipline.
- The order of the discussion shall be as follows:
 1. The appointing authority (or designee) shall present the discipline issued to employee and the basis and merits for disciplining the employee. The appointing authority (or designee) shall discuss the documents received and reviewed prior to the discussion. The appointing authority (or designee) will state each item that has been reviewed or provided in preparation for the Step I Appeal Discussion and have the employee acknowledge receipt via signature.
 2. The employee shall present any information and/or documentation showing why the agency issued the disciplinary action in error. The employee's appeal shall include a written statement including a statement detailing why the discipline issued was in error and should be overturned or reduced. The employee shall provide the appointing authority (or designee) and agency management with copies of all documents or other evidence supporting the employee's allegations if such information has not previously been made available.
 3. Following the presentation of information by the employee, agency management will present any information and/or documentation supporting the agency's decision to discipline. The appointing authority (or designee) shall ensure the employee has had an opportunity to review all the information prior to the discussion. If such documentation contains confidential information, the documents may be redacted or collected at the conclusion of the discussion; provided, however, that the employee has been given adequate time to review the information prior to the Step I Appeal Discussion.
 4. At any time during the presentation of information by the employee or the agency, the appointing authority (or designee) may ask questions of either party or employee representative to obtain additional information or gain clarification.
 5. At the conclusion of the discussion, the appointing authority (or designee) shall apprise the parties of next steps, including the appointing authority's ability to independently obtain additional information following the Step I Appeal Discussion to address issues, concerns, or discrepancies raised during the Step I Appeal Discussion and timeline for completion. The appointing authority must provide the employee/agency with a due date for a decision to be issued.

After the Discussion

- If additional information is obtained after the Step I Appeal Discussion, the appointing authority (or designee) shall provide copies of the information to agency management and/or employee as soon as practicable after receipt. If the information obtained contains confidential information, the agency shall make such information available to the employee for review at the earliest opportunity, but the employee may not retain a copy of such confidential information if determined by the agency as a legal risk. However, for such confidential information, appointing authorities may instead provide substantive summaries or redacted reports, if applicable. Agency management and/or employee may submit supplemental responses to the additional information no later than three (3) business days after receipt from the appointing authority. This requirement will not alter the agency's statutory twenty (20) calendar day timeframe.
 - The appointing authority shall issue a Step I Appeal Decision letter to agency management and employee within the time frame provided by statute (twenty (20) calendar days after the appeal is received by the agency). The Step I Appeal Decision letter shall address each argument provided by the parties and how the information presented affected the decision of the agency. The letter shall also contain information on filing a Step II Appeal, if applicable.
 - In issuing the Step I Appeal Decision letter to the employee, the appointing authority will submit the information to the employee via their preferred method of communication.
 - Employees should note that in the event the agency fails to issue a written decision by the deadline, the employee has the ability to appeal to Step II Appeal. In the absence of a Step I Appeal Decision, the employee will have fourteen (14) calendar days from the date the Step I Appeal Decision was due, plus three additional days if mailed (excluding holidays), to file a Step II Appeal.

Questions regarding these guidelines should be presented to the Office of General Counsel at (615)-741-4841 or DOHR.Step2Appeals@tn.gov.