Question 1:

When is it appropriate to place employees on administrative leave for a formal investigation?

Interpretation:

When, in order to conduct an investigation into the actions of an employee, the agency has compelling business reasons to remove the employee from his or her normal work site. Before placing the employee on administrative leave, the agency should first assess the possibility of placing the employee in an alternate duty position or other work arrangement. This allows the employee the opportunity to work and continue being productive during the investigation. However, if the nature of the conduct or the need to ensure the safety and security of clients, staff or the workplace make it impracticable for the employee to remain in active duty, it is appropriate to place the employee on administrative leave. As such, administrative leave should be used in limited circumstances and, pursuant to the rule, only when the nature of the employee’s conduct warrants the agency’s consideration of dismissal as a course of disciplinary action.

As a condition of administrative leave, the employee should be instructed on how and when to contact the agency and of any restrictions on returning to the workplace or contacting agency employees. Additionally, the agency may require the employee to remain available during working hours to respond to inquiries by their supervisor or the individual(s) conducting the investigation.

Upon completion of the investigation, the agency head or designee will notify the employee, in writing, of the findings and management’s decision on the disciplinary action to be taken. Dependent on the employee’s status within the career service, the employee may request a conference (referred to as a pre-determination conference or PDC in some collective bargaining agreements) with management to discuss the findings and provide any evidence refuting the charges contained in the notice of discipline. As this is the employee’s opportunity to discuss the findings with management, the conference is considered part of the investigation process. Therefore, upon conclusion of the conference, and until the agency head or designee has reviewed all the information presented at the conference in order to make the final determination, the employee may remain on administrative leave. However, as soon as possible thereafter the agency should proceed with the dismissal, a lesser form of discipline or no discipline, as warranted.
**Question 2:**

How long may the employee remain on administrative leave?

**Interpretation:**

In order to mitigate the use of administrative leave, the agency should give priority to internal investigations of this nature. The goal in placing the employee on administrative leave is to provide a balance between the needs of the agency to thoroughly investigate an incident before determining what action to take and the negative implications to an employee of being absent from the workplace for an extended period of time as well as the loss of employee productivity. Excessive use of administrative leave for investigations should be avoided and the agency should have clear internal policies that articulate a good faith effort to ensure administrative findings are made in a timely manner. In addition, specific provisions in Article 7 of several collective bargaining agreements address timeframes for investigations.

It is recommended for employee investigations not covered by a collective bargaining agreement that a period of no more than 90 calendar days be set to complete an investigation. If an extension is necessary beyond the initial 90 days (and each subsequent 30 days thereafter as necessary), the agency head or designee should be advised, in writing, as to why an extension beyond that period to complete the investigation period is necessary. Because the use of administrative leave has fiscal implications, keeping the agency head or designee advised during the investigation process will help ensure appropriate use. The agency should also provide the employee with a written notification that the investigation is being extended beyond the initial 90 days (and each subsequent 30 days thereafter as necessary).

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**Statute Citation:**

None

**Rule Citation:**

60L-34.0071(3)(f): Formal investigation: An employee under formal investigation by an agency for violation of a rule or statute for which dismissal is a penalty, shall temporarily be assigned other duties if deemed advisable by the agency, or placed on administrative leave if the employee's absence from the work location is essential to the investigation. The agency shall report in writing to the Department whenever it grants such leave.