

May 26, 2021

TO: County Personnel Policy Board Members

SUBJECT: Personnel Policy Board Meeting
Thursday, June 3, 2021
1:30 p.m., Commissioners Hearing Room
County-City Building, Room 112

A G E N D A

ITEM 1: Approval of Minutes from the May 19, 2021 meeting.

ITEM 2: Request to amend the Workplace Response to COVID-19 Human Resources Policy Bulletin.

ITEM 3: Request for appeal hearing – Kaela Howard – Corrections

ITEM 3: Miscellaneous Discussion

PC: Department Heads
Kristy Bauer
Tom McCarty
Kaela Howard

Human Resources Policy Bulletin

Lancaster County

Number: 2021-2

Date: June, 2021

| Reference: | Title: |
|---|--------------------------------|
| Americans with Disabilities Act, Rehabilitation Act, 29 CFR Part 1630 EEOC Guidance, "Pandemic Preparedness in the Workplace and the Americans With Disabilities Act", Updated in Response to COVID-19 Pandemic, March 19, 2020 Supercedes Personnel Policy Bulletin 2020-6 | WORKPLACE RESPONSE TO COVID-19 |

I. PURPOSE

The purpose of this policy is to help prevent workplace exposures to COVID-19 and to establish criteria for daily symptom self-screening of County employees. This policy is based upon the Centers for Disease Control and Prevention's interim guidance for businesses and employers responding to COVID-19¹.

II. POLICY

A. Employees with these symptoms² may be infected with COVID-19:

1. New onset of a sustained persistent nonproductive cough (a dry cough lasting longer than 24 hours)
2. Unresolved or new onset shortness of breath or difficulty breathing
3. Measured temperature of 100.4°F or higher
4. Sustained (longer than 2 hours) chills or repeated shaking with chills
5. Muscle pain or body aches
6. Headache
7. Sore throat
8. New loss of taste or smell
9. Congestion and/or runny nose
10. Nausea or vomiting

¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

² Symptoms are based on those the Lincoln-Lancaster County Health Department have identified are most common of those infected in Lancaster County and the CDC's list of symptoms consistent with COVID-19, which can be found at https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fabout%2Fsymptoms.html.

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11. Diarrhea

B. Daily Symptom Self-Screening

Before arriving to work, employees shall self-screen for the following symptoms:

1. A fever higher than 100.4 F or, using fever-reducing medications (i.e Tylenol®, Acetaminophen, Advil®, Ibuprofen) in the last 24 hours to control a fever higher than 100.4 F;
2. Unresolved or new onset of shortness of breath or difficulty breathing;
3. New onset of sustained persistent nonproductive cough (a dry cough lasting longer than 24 hours);
4. New onset of loss of taste or smell; and
5. Two or more of the following prolonged (symptom(s) lasting for longer than 24 hours) and unexplained (no other reasonable cause) symptoms:
 - i. Sore throat
 - ii. Sustained (longer than 2 hours) chills or repeated shaking with chills
 - iii. Headache
 - iv. Muscle pain
 - v. Congestion and/or runny nose
 - vi. Nausea, vomiting, or diarrhea

If an employee has any of these symptoms, the employee shall not report to work and shall contact their personal physician. The employee should not return to work until the employee satisfies the conditions promulgated by the Return to Work Protocol below.

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C. Return to Work

The employee may return to work if they meet the following criteria:

1. At least 10 days have passed since symptom(s) first appeared;
2. They have had a measured temperature < 100.4°F for at least 24 hours without the use of fever-reducing medications; and
3. There has been improvement in the remaining symptom(s).

D. Masks

1. Fully vaccinated³ employees are not required to wear a mask or physically distance in the workplace with the following exception:
 - i. Employees working at the Lancaster County Department of Corrections, the Youth Services Center, and the Mental Health Crisis Center are required to wear a mask, in addition to other forms of Personal Protective Equipment (PPE) that may be required by Department or Office policy. These County Departments or Offices may except certain non-custodial settings from this requirement.

³ People are considered fully vaccinated for COVID-19 2 weeks after their second dose in a 2-dose series, such as the Pfizer or Moderna vaccines, or 2 weeks after a single-dose vaccine, such as Johnson & Johnson's/Janssen vaccines. <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>

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2. Employees who are not fully vaccinated are recommended to wear a mask when interacting with co-workers, members of the public or in group meetings larger than 2 people.
3. If an employee is required to wear a mask or chooses to wear a mask, the mask shall be appropriate for the workplace and any inappropriate depictions or materials on them will not be allowed.
4. If an employee believes he or she is disabled or has been diagnosed with a disability and needs a reasonable accommodation to the requirements in Section D(1)(i), the employee should contact the City-County Human Resources Department to request a reasonable accommodation.

V. SANCTIONS

Employees who violate any provision of this policy may be subject to disciplinary action up to, and including, dismissal from employment.

VI. DURATION

This policy is effective June 8, 2021 and hereby rescinds and supersedes previous Workplace Response to COVID-19 Human Resources Policy Bulletin 2020-6. This policy is temporary in nature and may be terminated at any time for any reason by the Lancaster County Board of Commissioners.

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Doug McDaniel
Human Resources Director

Date

Rick Vest, Chair
Board of County Commissioners

Date

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February 11, 2021

VIA EMAIL

Mr. Doug McDaniel
Lincoln-Lancaster County Human Resources Director
555 S. 10th Street
Lincoln, NE 68508
DMcDaniel@lincoln.ne.gov

2021
FEB
11
AM 10:00

RE: Grievance Appeal of Kaela Howard and FOP #32

Dear Doug,

This firm represents Fraternal Order of Police Lodge #32 and Corrections Officer Kaela Howard ("Grievants"). On February 10, 2021, Lancaster County Department of Corrections Director Brad Johnson issued Officer Howard a 4-day suspension. A true and correct copy of the disciplinary action letter is attached hereto.

Pursuant to Article 8, Section 2 of the bargaining agreement between Lancaster County and FOP #32, Grievants hereby give notice of their appeal of the suspension to the Personnel Policy Board, for the reason that the suspension of Officer Howard: is not supported by just cause; is not necessary to correct employee behavior; is not proportionate to the actions alleged; is not consistent with prior discipline; is not progressive; fails to give consideration to mitigating factors; and is arbitrary and capricious.

We request that the appeal be scheduled for hearing before the Lancaster County Personnel Policy Board in accordance with Article 8, Section 2 of the bargaining agreement between FOP #32 and Lancaster County.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. McCarty', with a horizontal line drawn through the middle of the signature.

Thomas P. McCarty
For the Firm

ENCLOSURE

Lancaster County

Department of Corrections

3801 West O Street
Lincoln, NE 68528
(402) 441-1900
Fax: 441-8946

Brad Johnson, Director

February 10, 2021

Kaela Howard
Correctional Officer
Lancaster County Dept. of Corrections
3801 West O Street
Lincoln NE 68528

RE: Disciplinary Action

Dear Officer Howard:

On February 1, 2021, you received a letter proposing to suspend your employment for six (6) working days without pay pursuant to Lancaster County Personnel Rule 11.2(d) and Article 30, Section 3, of the 2020-2021 Bargaining Agreement between the Fraternal Order of Police Lodge #32 and the County of Lancaster. A meeting regarding the proposed discipline was held on February 8, 2021. During the meeting, you, Union Attorney Tom McCarty and Union Representative Dan Goodman presented information concerning the alleged violations. Specifically, you claimed that the envelope you retrieved from the inmate did not contain legal material. You stated that you looked in the envelope and only saw drawings and hand written letters. In fact, this envelope was clearly marked as Madison County Public Defender and it did contain a letter addressed to the inmate on letter head from the Madison County Public Defender's office, clearly making at least some of the contents legal and privileged communications.

You also conceded that you did in fact give this legal material to an inmate to deliver to another officer as you felt you couldn't deliver it yourself in a timely manner.

After consideration of the facts before me and the information you and your attorney presented, I have determined that there were no mitigating factors. However, considering that your last suspension was five years ago I will amend my six days proposed suspension to four days. Therefore, you will be suspended a total of four (4) working days. The imposition of this four days suspension without pay will be on February 23 – 26, 2021. I have determined that you violated the following Lancaster County Personnel Rules and Department policies:

I have determined that you will serve a suspension of four (4) day for violating the following Lancaster County Personnel Rules and Department Policies:

1. Lancaster County Personnel Rule 11.2 (h)(4), "The employee has engaged in any conduct unbecoming an officer or employee of the County which reflects on the County adversely"; and
2. Lancaster County Personnel Rule 11.2 (h)(5), "The employee has violated any department, division, or institution regulation or order..."; and
3. Lancaster County Personnel Rule 11.2 (h)(8), "The employee has been incompetent or inefficient in the performance of the duties of his position"; and
4. Lancaster County Department of Corrections Policy 2.7 (B)(1), "Employees are expected to conduct themselves at all times, both on and off duty, in a professional manner that shall reflect favorably on the Department and County..."; and

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5. Lancaster County Department of Corrections Policy 2.7 (B) (13), "Employees shall not neglect any required duty as outlined in their job description and shall abide by all department polices, post orders and similar legitimate job requirements"; and
6. Lancaster County Department of Corrections Policy 4.3 (F)(1), "When unclaimed property is discovered, staff shall forward it to the property officer and document it in an Investigative Report."

I have made my decision based on the facts set forth below:

On December 28, 2020, you were assigned as the first shift ground floor rover. At about 1330 you discovered unclaimed property that belonged to an inmate who had been released as a transfer to Madison County. This unclaimed property consisted of Legal Mail from the Madison County Public Defender's office. You gave this property to another inmate who was going to the clinic with instruction to deliver it to the clinic officer.

Lieutenant Mueller was contacted about the incident and began searching for the property's location. He eventually found it on the booking counter at which point he gave instructions to the booking officer on how to handle it and it was eventually placed into unclaimed property by Sgt. Miller. In addition, you did not document the discovery of the property in an investigative report, you had to be instructed to do so several days later by Lt. Mike Mueller.

On December 23, 2020, you were counseled by Sgt. Lybarger for stating "fuck you" to him in an angry tone. This was in response to him asking if you were "ok" following a use of force class the previous day.

On November 7, 2019, you were counseled by Lt. Will McGlothlin and Human Resource Manager Kendra Knauss regarding your unwillingness to receive instruction and corrective guidance. During the discussion you told both of them "I don't care" and refused to read the document presented to you.

On February 5, 2016, you were suspended for 5 days for violating Lancaster County Personnel Rule, 11.2 (h)(4)(5) and (8), Lancaster County Department of Corrections Policy 2.7 (B)(1) and (B)(13) as well as Facility Procedure 11.C.1 (D). This incident also involved the mishandling of property.

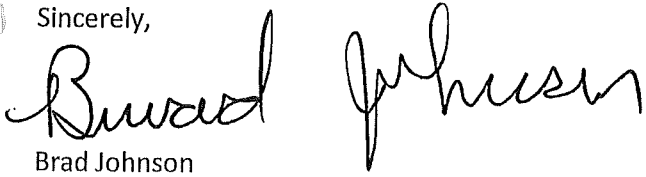
On January 13, 2015, you were suspended for 3 days for violation of Lancaster County Department of Corrections Policy 2.7 (B)(8) and (B)(13), and Lancaster County Personnel Rule 11.2(h)(5) and (8). This involved an incident where you failed to assist staff with a combative inmate.

On December 8, 2014, you were suspended for 1 day for violations of Lancaster County Department of Corrections Policies 2.14(A)(1), 2.7(A)(11), (D)(2), and (D)(3), and Lancaster County Personnel Rule 11.2(h)(4). This incident pertained to you making an inmate clean urine off of the bottom of your boots as well as unprofessional interaction with a supervisor.

On June 13, 2013 you were suspended for 1 day for violation of Lancaster County Personnel Rules 11.2 (h)(4) and (5), Lancaster County Department of Corrections Policy 2.7 (D)(3) and (5). This involved asking a fellow co-worker about her gender status following a surgery.

You have the right to appeal this unpaid suspension to the Lancaster County Personnel Board in accordance with Personnel Policy Rules, Rule 11.2, Section (d).

Sincerely,

A handwritten signature in black ink that reads "Brad Johnson". The signature is written in a cursive, flowing style.

Brad Johnson
Corrections Director

BJ/kk

cc: Doug McDaniel, Human Resources Director
Kristy Bauer, Deputy County Attorney
Ken Prey, Jail Administrator
Rick Gray, Jail Administrator
Joe Anderson, Corrections Lieutenant
Personnel File