

Executive Directive

PD-21, “Anti-Discrimination in the Workplace”



April 24, 2025 (rev. 1)
Supersedes January 1, 2025

Authority

1. 18 U.S.C. § 2241-2248
2. Equal Pay Act of 1963, 29 U.S.C. § 206(d)
3. Age Discrimination in Employment Act of 1967 as amended, 29 U.S.C. § 621-624
4. 42 U.S.C. § 2000e-2000e-17
5. 42 U.S.C. § 2000ff-2000ff-11
6. Americans with Disabilities Act, as amended, 42 U.S.C. § 12101-12213
7. Title VII Civil Rights Act of 1964, as amended
8. 28 C.F.R. § 115.76
9. 29 C.F.R. § 1620
10. Genetic Information Nondiscrimination Act (GINA), 29 C.F.R. § 1635
11. Tex. Gov't Code § 571.0302
12. Tex. Gov't Code § 614.023
13. Tex. Labor Code §21.001-.556
14. Tex. Labor Code §301.153-157
15. Tex. Penal Code § 39.03
16. 40 Tex. Admin. Code §819.12
17. 40 Tex. Admin. Code §819.25
18. BP-01.03
19. BP-02.08

Applicability

Texas Department of Criminal Justice (TDCJ)

Employment At Will Clause

This directive **does not** constitute an employment contract or a guarantee of continued employment. The Texas Department of Criminal Justice (TDCJ) reserves the right to change the provisions of this directive at any time.

Nothing in this directive limits the executive director's authority to establish or revise human resources policy. This directive guides the operations of the TDCJ and **does not** create a legally enforceable interest for employees or limit the executive director's, chief officers', or division directors' authority to terminate employment at will.

Policy Statement

This directive outlines the Equal Employment Opportunity (EEO) structure used by the TDCJ. The goal of this directive is to ensure that EEO allegations are promptly

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received, thoroughly investigated, and appropriately addressed in accordance with the standards set by the Equal Employment Opportunity Commission (EEOC) and the Texas Workforce Commission - Civil Rights Division (TWC-CRD).

The TDCJ has zero tolerance for sexual harassment and all forms of discrimination based on race, color, religion, sex, national origin, age, disability, genetic information, pregnancy, and all other protected classes covered by state and/or federal laws (collectively "protected class"). Retaliation for opposing or reporting discrimination, for associating with someone who has opposed or reported discrimination, or for being a witness in an EEO investigation is prohibited. Employees shall follow the guidelines within this directive for the reporting of such discrimination in the workplace to ensure prompt remedial action and to help maintain a work environment free from any form of employment discrimination. Allegations of conduct prohibited by this directive will be investigated by the Workplace Resolution's EEO Section of the Human Resources (HR) Division. Behavior that does not rise to the level of EEO may be addressed through [PD-22](#), "General Rules of Conduct and Disciplinary Action Guidelines for Employees."

This directive is published on the TDCJ website, [Texas Department of Criminal Justice Personnel Manual](#). A copy of the published excerpt from [PD-21](#) is included in the TDCJ Direct Hire Packet provided to newly hired and rehired employees during the Direct Hire Session conducted in accordance with [PD-97](#), "Training and Staff Development."

Definitions

The following terms are defined for the purpose of this directive and are not intended to be applicable to other policies or procedures.

"Active Period"

Each violation number has an assigned period of time during which incurring another substantiated violation becomes a subsequent, thereby increasing the offense level. The duration of periods may be one year, two years, or life of personnel file.

"Business Day"

Monday through Friday, excluding state and national holidays for which TDCJ administrative offices are closed or days when offices are closed at the direction of the executive director.

"Cause"

Indicates the degree to which allegations are supported by credible evidence gathered during an EEO investigation.

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"Complainant"

Employees, applicants, or other individuals who have formally submitted a written complaint against a TDCJ employee.

"Considerations"

Factors to be reviewed that may influence the severity of a disciplinary action.

"Credible Evidence"

Evidence that carries more weight and is more convincing than the opposing evidence, making the facts more likely to be true. Evidence can be testimonial, physical, or circumstantial.

"Disciplinary Packet"

A cumulative set of documents containing supporting documentation that includes the PERS 495, "EEO Investigation," the PERS 184, "Notification of Conduct Review," and the PERS 185, "Determination Form." Additionally, if applicable, the PERS 495a, "EEO Investigation Extension," the PERS 186, "Dismissal Recommendation," or the PERS 327, "Rehire Review Required," may be included.

"Employee"

A person employed by the TDCJ on a full-time, part-time, or temporary basis.

"Equal Employment Opportunity Commission"

A federal agency charged with enforcing federal laws prohibiting discrimination in employment and investigating alleged EEO violations of such laws. The EEOC is separate from the agency's HR Workplace Resolution Section.

"High-Level Investigation"

Investigation involving (a) a Behavioral Intervention Plan Fact-Finding Inquiry, (b) a Risk Management Incident Review, (c) an Office of the Inspector General (OIG) Investigation, (d) a Serious Incident Review, (e) an EEO Investigation, or (f) an Executive Administration Investigation surrounding a given allegation.

"Hostile Work Environment"

An environment driven by persistent or severe actions which create an intimidating, offensive or abusive work atmosphere.

"Interim Remedial Action"

Any temporary measures implemented by a warden or department head in coordination with an intake officer before or during an EEO investigation to protect involved parties, maintain workplace stability, and preserve the integrity of the investigation. Action may involve separating the complainant and the respondent or altering their reporting structure, as documented on PERS 496, "Interim Remedial Actions."

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"Misconduct"

The manner in which an employee negatively behaves on a particular occasion or in a particular context.

"Other Individual"

Includes a contract employee, applicant, employee of a vendor, intern, or volunteer. The definition does not include an individual under the supervision or custody of the TDCJ.

"Quid Pro Quo"

A form of sexual harassment where a person in a position of power offers or demands sexual favors or other inappropriate actions as a condition for employment decisions and benefits.

"Respondent"

Employee accused of violating or engaging in unacceptable performance or misconduct prohibited by this directive or regulations of the EEOC or TWC-CRD.

"Supporting Documentation"

Encompasses all written materials and evidence used in making determinations during a review. This may include, but is not limited to, records of progressive corrective actions, witness statements, and any other pertinent evidence. Supporting documentation is cumulative. All documents added throughout each step are considered supporting documentation and make up the disciplinary packet.

"Texas Workforce Commission, Civil Rights Division"

A state agency charged with enforcing state laws prohibiting discrimination in employment and investigating alleged violations of such laws. The TWC-CRD is separate from the agency's HR Workplace Resolution Section.

"Unacceptable Performance"

Employee's inability to complete tasks and responsibilities associated with their assigned job duties.

"Violation"

An infraction listed in the PD-21 Code of Conduct and Performance Standards. This may consist of one or a combination of (a) engaging, attempting, or conspiring to engage in a specific prohibited behavior; (b) aiding others in engaging, attempting, or conspiring in a specific prohibited behavior; or (c) failing to act where required by order, policy, or procedure.

"Work Cycle"

The consecutive set of days during which the hours worked are computed to determine wage and time compensation.

"Workday"

Sunday through Saturday including holidays and office closures.

Discussion

This directive outlines the required communication, the investigative process, and disciplinary actions surrounding **EEO violations**. Through timely and accurate reporting, TDCJ can address alleged **violations** and conduct EEO investigations with respect to all involved parties.

I. Overview of Roles

A. TDCJ Employees

All TDCJ **employees are** representatives of the agency and expected to uphold the agency's commitment to anti-discrimination in accordance with the PD-21 Code of Conduct and Performance Standards in this directive.

Employees are responsible for knowing the violations in this directive and for seeking clarification if needed. Being unaware of the existence of a violation is not a defense. Since no single document can cover every situation, **employees** are responsible for having a working understanding of current TDCJ directives and standard operating procedures.

All **employees** shall receive training regarding the provisions of this directive in accordance with [PD-97](#).

B. Equal Employment Opportunity – Designated Agency Official

An Equal Employment Opportunity – Designated Agency Official (EEO-DAO) is a TDCJ official designated by the executive director. They perform conduct reviews for **EEO violations** and, in some cases, non-EEO **violations**. EEO-DAOs represent the TDCJ during dismissal mediations and respond to grievances regarding EEO disciplines.

EEO-DAOs require special training that is provided by the HR deputy director over Workplace Resolution or their designee.

C. Conduct Official

The conduct official oversees the disciplinary process for **violations** outlined in [PD-22](#).

If the identified **violation** has a non-EEO finding, the case will be forwarded to a conduct official. They may address the **unacceptable performance** or **misconduct** through progressive corrective actions or determine if a conduct review is warranted within the guidelines of PD-22.

D. Conduct Assessor

The conduct assessor is a supervisor generally in an **employee's** chain of supervision. They serve as the first line of defense in maintaining a workplace environment free from discrimination. Their responsibility is to initially address and promptly report potential EEO **violations**, and provide **employees** with the avenues through which they can submit a complaint, ensuring a fair and impartial process that serves the best interest of both the **employee** and the agency.

E. Human Resources

The following HR roles have integral parts in EEO investigations:

1. Intake Officers

Intake receives all written complaints and routes them to the appropriate area for resolution. **Employees** and other individuals are encouraged to contact Intake if they have questions or concerns about the complaint and reporting process.

2. EEO Investigators

EEO investigators are responsible for investigating all EEO allegations and evaluating the **credible evidence** of each case. Additionally, EEO investigators facilitate the dispute resolution process and review anonymous complaints related to time.

3. EEO and Respective Human Resources Specialists

The respective HR specialist and the EEO specialist coordinate the scheduling process to ensure all parties are informed. If requested, the respective HR specialist may also attend the conduct review.

4. Disciplinary Team

The disciplinary team within Human Resources Headquarters (HRHQ) conducts a thorough technical review of disciplines and coordinates the dismissal approval process.

F. Employee Representative

During the conduct review, an **employee** may elect to speak on their own behalf or may be represented by a designee of their choice in accordance with the PERS 184, "Notification of Conduct Review."

G. Witnesses

Witnesses with firsthand knowledge of the events under review may be requested to provide written statements in accordance with the PERS 184.

II. Protected Activities, Classes, and Prohibited Actions

A. Protected Activities and Classes

Protected activities are actions **employees** may engage in that are protected by state or federal laws. This may include filing an EEO complaint, participating in an EEO investigation, opposing or reporting discrimination, or requesting an accommodation.

A protected class refers to people shielded against discrimination under state or federal laws. If **employees** believe they have been subjected to discrimination based on their membership in a protected class, they may submit a complaint internally or externally.

Discrimination can occur when both the victim and the person inflicting the discrimination belong to the same protected class or are participating in the same protected activity. Discrimination may involve treating someone unfavorably because they are married to, or associated with, a person belonging to a protected class or because they are participating in the same protected activity.

Protected classes are as follows:

1. Age

The Age Discrimination in Employment Act (ADEA) forbids age discrimination against people who are age 40 or older.

2. Disability

Employees or **other individuals** that are identified to have a disability under [PD-14](#), "Americans with Disabilities Act and Employment of Persons with a Disability," and the Americans

with Disabilities Act, as amended, are protected against discrimination.

3. Genetic Information

Title II of the Genetic Information Nondiscrimination Act (GINA) prohibits the use of genetic information in making employment decisions; restricts employers from requesting, requiring, or purchasing genetic information; and strictly limits the disclosure of genetic information.

4. National Origin

National origin discrimination involves treating **employees** or **other individuals** unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background.

5. Pregnancy

Pregnant workers are protected from discrimination through Title VII of the Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act, as amended.

6. Race/Color

Race discrimination involves treating **employees** or **other individuals** unfavorably because they are of a certain race or because of personal characteristics, such as hair color or hair texture, commonly or historically associated with race. This may include unfavorable treatment because of skin color.

7. Religion

Religious discrimination involves treating **employees** or **other individuals** unfavorably because of their religious belief. This includes people who belong to traditional, organized religions, and others who have sincerely held religious, ethical or moral beliefs.

8. Sex

Sex discrimination prohibits an employer from treating an employee differently, or less favorably, because of their sex.

9. Any other category protected by state or federal laws.

B. Types of Discrimination

TDCJ has a strict policy against all types of employment discrimination. All EEO violations have the potential to be illegal, as they may violate laws and regulations related to EEO. Regardless of whether the violation is deemed illegal, all EEO violations are subject to disciplinary action in accordance with this directive.

Below are the various types of discrimination:

1. Discrimination

Discrimination includes treating other employees differently relating to hiring, firing, pay, job assignments, promotions, layoffs, training, benefits, and any other aspects of employment that are based on their membership in a protected class or engagement in a protected activity.

2. Harassment

Harassment is unwelcome verbal, written, or physical conduct toward an **employee** or **other individual** based on their membership in a protected class. A harasser can be an **employee** or **other individual**.

The intentions behind harassment may include:

- a. Creating a **hostile work environment**;
- b. Unreasonably interfering with an individual's work performance; or
- c. Adversely affecting an individual's employment opportunities.

Harassment may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with one's work performance. Harassment that does not rise to the level of EEO may be addressed through PD-22.

3. Sexual Harassment

Sexual harassment of any kind towards the same or opposite sex includes **quid pro quo**, unwelcome sexual advances, requests for

sexual favors, and other verbal or physical conduct of a sexual nature. It is a **violation** when there is straight forward, or implied insinuations made to affect an individual's employment.

Sexual harassment may include, but is not limited to:

- a. Verbal, written, or electronic sexually suggestive or obscene comments, jokes or propositions including letters, notes, emails, text messages, invitations, gestures or inappropriate comments about another **employee** or **other individual's** clothing.
- b. Visual contact, such as leering or staring at an **employee** or **other individual's** body, gesturing, displaying sexually suggestive objects, sharing pictures of scantily clad or minimally dressed individuals, or displaying sexually suggestive material.
- c. Suggesting or implying that failure to accept a request for a date or sexual act would result in an adverse employment consequence with respect to any employment practice such as a performance evaluation or promotional opportunity.
- d. Continuing to engage in certain behaviors of a sexual nature after an objection has been made by the target of such behavior.

4. Retaliation

Retaliation occurs when an **employee** or **other individual** is treated less favorably or subjected to an adverse action as a result of their participation in a protected activity. Any action meant to deter a reasonable person from filing a complaint may also be considered retaliation.

Retaliation may be a verbal or physical act which could include an unjustifiable discipline, performance evaluation, or transfer with the intention of making an **employee's** work more difficult. It may also include intimidation or inappropriately refusing to cooperate or discuss work-related matters with an **employee**.

5. Equal Pay/Compensation Discrimination

The Equal Pay Act requires equal pay for equal work. All forms of pay are covered, to include salary, overtime pay, merit

compensation, and benefits. A reduction of pay is not permitted to equalize an inequality.

Abuse of TDCJ time shall be reported to Intake. This may be EEO or non-EEO related depending on the nature of the allegation.

Procedures

I. Complaint and Reporting Process

Providing false information in any complaint, report, investigation, or conduct review is strictly prohibited, all of which are **violations** of PD-22. TDCJ is committed to maintaining the confidentiality of all parties involved in EEO investigations to the extent allowed by law.

A. Complaint Guidelines

An EEO complaint arises when an individual perceives they have been subjected to unfair treatment linked to a protected class or activity. A complaint should clearly outline the nature of the alleged discrimination and identify the specific protected class or activity being targeted. Any HR representative may be contacted for assistance with submitting a complaint.

If the **complainant** is alleging an EEO **violation** committed by more than one **respondent**, the **complainant** shall submit separate signed, written complaints identifying each **respondent's** alleged **unacceptable performance or misconduct**.

B. Employee Complaint Process

TDCJ **employees** and **other individuals** are encouraged to contact Intake if they witness or experience any form of discrimination. Your voice is essential in helping the agency create a safe and respectful environment for everyone. By notifying Intake of possible EEO **violations**, you not only protect your rights but also contribute to a culture of accountability and integrity. The TDCJ is committed to addressing these issues promptly and confidentially, ensuring that all allegations are taken seriously. Although anonymous complaints are accepted, the scope of the investigation may be limited due to the inability to communicate with all relevant parties.

C. Supervisor Reporting Process

Supervisors play a crucial role in maintaining a workplace free of discrimination. By promptly addressing any instances of discrimination, supervisors help uphold the agency's values and legal obligations. Supervisors should strive to create an environment in which **employees** feel free to raise concerns and are confident those concerns will be addressed. Supervisors shall report all witnessed or reported allegations of **EEO violations**, even when the affected **employee** requests the information remain confidential or that no action be taken. The **employee** shall be advised of the guidelines outlined within this policy and may be referred to Intake for additional guidance. If a supervisor does not report an allegation, they may be subject to disciplinary action.

Supervisors who have witnessed or been made aware of an EEO allegation shall take the following steps:

1. Have private individual conversations with all individuals involved. The goal of the conversation should be to check in with everyone involved regarding the incident.
 - a. In the conversation with the potential **complainant**, inquire how the incident has affected them, inform them of the avenues through which they can submit a complaint, and your obligation to report to Intake.
 - b. In the conversation with the potential **respondent**, inform them of how the **unacceptable performance** or **misconduct** was inappropriate in the workplace, and of your obligation to report to Intake.
 - c. If the supervisor deems it necessary to use **interim remedial action**, they shall consult with Intake and obtain approval from their warden or department head before implementing any action. If an **interim remedial action** is used, a completed PERS 496, "Interim Remedial Action" shall be provided to all parties and Intake.

Supervisors who have witnessed or been made aware of an EEO allegation shall report to Intake within 72 hours. Formal reports are recommended to be submitted by supervisors in writing through the online [EEO Complaint Form](#), however, they may also call the after-hours phone number. Contact information for Intake may be found on the [Workplace Resolution Intake](#) page.

D. Complaint and Reporting Avenues

1. Internal

TDCJ requires all formal complaints to be submitted in writing through the online [EEO Complaint Form](#), email, mail, or in person using a PERS 497, "Statement Form," and a PERS 497a, "Additional Statement Form," if needed. TDCJ encourages submitting all allegations directly to Intake. However, if you feel more comfortable, you may also contact any TDCJ HR office or a supervisor.

Employees or **other individuals** may contact the Office of the Inspector General (OIG) if the allegation involves a potential criminal act. If Intake initially received the complaint, they shall forward a copy to OIG. If OIG initiates an investigation, they shall communicate with Intake so that the HR EEO investigation is temporarily suspended until the OIG investigation is completed. Once OIG communicates to HR when their investigation has concluded, HR shall then resume their EEO investigation.

2. External

Employees may choose to file a complaint externally with the [Equal Employment Opportunity Commission](#), the [Texas Workforce Commission – Civil Rights Division](#), or file a court claim.

a. Notice of an External Complaint

Upon receiving notice of an external complaint, Intake shall determine whether there is an existing EEO complaint filed within TDCJ by the same **employee**. If so, Intake shall then close the case if it is based on the same or a similar allegation. Upon closing the case, the **complainant** and **respondent** shall both be notified separately.

b. External Mediation Time Reporting for **Complainant**

If the **complainant** is on the TDCJ payroll at the time of the external mediation, the **complainant's** appearance at the mediation is considered official business. The **complainant** shall provide advance notice of the scheduled mediation to their supervisor so adequate staffing may be ensured.

Time reported includes the time an **employee** is required to be at the mediation including travel time to and from the location. The **complainant** shall be reimbursed for any

reasonable and necessary expenses in accordance with the TDCJ *Travel Guide*. For time related to **employee** participation in judicial proceedings, see [PD-57](#), "Employee Participation in Legal or Legislative Proceedings or Jury Services."

Time for an **employee** to observe another **employee's** mediation shall not be reported as time worked. A former **employee** who attends an external mediation conducted by the EEOC or TWC-CRD will not receive travel expenses or compensation for participating in external mediation.

c. Continuation of Internal EEO Investigation

On a case-by-case basis, HR and the Office of the General Counsel (OGC) may decide to open an internal investigation based on identifying a new **violation** from any external investigation findings. If a new **violation** is identified, they shall coordinate to determine the appropriate action.

II. Human Resources Responsibilities

The complainant and the respondent shall each receive a copy of their respective documentation. Neither shall receive copies of the others' documentation.

A. Workplace Resolution Responsibilities

Upon receipt of a complaint or report, the intake officer shall determine if it contains an EEO allegation and, if so, take the following actions within five **business days**:

1. Complaint Submitted by **Employee**

- a. If the complaint is identified as a grievance, the intake officer shall process the complaint in accordance with [PD-30](#), "Employee Grievance Procedures."
- b. The intake officer shall ensure the **complainant** has been notified of the following:
 - i. The **complainant's** right to file with the EEOC and TWC-CRD; and
 - ii. The **complainant's** option to contact the OIG if the **complainant** elects to pursue criminal charges.

- c. The intake officer shall prepare a blank PERS 496 and send it to the warden or department head. The warden or department head shall discuss separately any applicable **interim remedial action** and non-disclosure instructions with both the **complainant** and the **respondent**. They shall be provided with a signed copy of the PERS 496, and copies shall be emailed to the respective HR specialist and the EEO investigator.

2. Report Submitted by Supervisor

The intake officer shall verify if an interim remedial action was issued and if a completed PERS 496 was received. If a PERS 496 was not received, the intake officer shall inquire if interim remedial action is necessary. If the supervisor decides to implement an interim remedial action, the intake officer shall follow Procedures Section II.A.1.c.

The complaint or report shall be reviewed by the manager of Workplace Resolution to determine if an EEO investigation is warranted. If so, an EEO investigator shall be assigned. If the case is not deemed EEO, the intake officer shall forward the complaint to the warden or department head for review and resolution.

Once an EEO investigator has been assigned, they shall send a notification letter to both the **complainant** and the **respondent**. The letter shall outline the non-disclosure directive, provide the contact information for the assigned EEO investigator, and specify the nature of the allegation.

B. Investigation

The investigation and review process must be completed within **65 business days** from the date the complaint was assigned to an EEO investigator.

Within this timeframe, the investigation shall be completed within **45 business days** from when the notification letter is issued to the **respondent**. If additional time is needed, a 30-business day extension can be requested on a PERS 495a, "EEO Investigation Extension," or, if an interim remedial action was implemented, on the PERS 496. The extension must be approved by the HR director or their designee before the 45-business day period expires. Once approved, separate copies shall be sent to the complainant and respondent. The Workplace Resolution Manager and the Support Manager has **15 business days** to provide their review and recommendation. The EEO-DAO or conduct

official shall also have five **business days** to review the case and decide if a conduct review is warranted.

Upon being assigned to an EEO investigator, a plan shall be formed defining the issue, the development of a witness list, sources for information and evidence and interview questions targeted to elicit crucial information and details.

Upon conclusion of the investigation, a PERS 495, "EEO Investigation," shall be completed. The EEO investigator shall oversee the investigation and attach their internal fact-finding documentation to the PERS 495.

The PERS 495 has three sections, and guidelines for who completes each section are outlined as follows:

1. Section I – Investigation Information

The EEO investigator shall document the case number and the earliest incident date. The **complainant** and **respondents'** names and job titles shall be documented. A signed written statement from the **complainant** and **respondent** shall be obtained and attached by the investigator. Additionally, names of any witnesses on behalf of the **complainant** or the **respondent** shall be listed and their statements attached.

2. Section II – Review of the Investigation

- a. The EEO investigator shall attach their internal fact-finding documentation and submit to the Workplace Resolution manager.

Within 15 **business days**, the Workplace Resolution manager shall review the investigation to determine if the facts support or do not support the allegation. The manager shall then identify the EEO violations. The case is submitted to the Support manager for review and recommendation of one of the following outcomes:

- i. **EEO Cause Finding**

If the Support manager concurs with the identified **EEO violations**, they shall assign an EEO-DAO to the case and proceed under this directive. If appropriate, prior to assigning an EEO-DAO, the case may be reviewed for up to 10 **business days** by OGC.

ii. Non-EEO Cause Finding

If the Support manager concurs with the identified non-EEO **violations**, they shall send the case to the warden or department head of the **respondent** to address the findings under PD-22. The warden or department head will assign a conduct official.

iii. No Cause Finding

If the support manager concurs that no **violation** occurred and no action should be taken, the case is closed and communicated to all parties involved.

3. Section III – EEO-DAO or Conduct Official Recommendation

An EEO investigation is considered complete when it results in an EEO **cause**, non-EEO **cause**, or no **cause** finding. Even if a **complainant** withdraws a complaint, the investigation will proceed if the claim is deemed credible.

The EEO-DAO or conduct official has five **business days** to consider the investigation and HR's review to determine how the case will proceed.

a. EEO-DAO

When the EEO-DAO agrees with HR's **cause** finding, one of the following shall apply:

- i. Submit the completed PERS 495 form to Workplace Resolution for scheduling a conduct review,
- ii. If the **respondent** is an **employee** within the six-month new hire probationary term, a recommendation for Administrative Separation shall be made in accordance with [PD-24](#), "Administrative Separation." No conduct review is warranted, or
- iii. If the violation is not severe enough for dismissal or disciplinary action, they shall send the case to the conduct assessor for progressive corrective action from PD-22. No conduct review is warranted.

When the EEO-DAO disagrees with HR's recommendation, one of the following shall apply:

- i. They may close the case with no action; or
- ii. If the EEO-DAO deems the identified violation is non-EEO, they may proceed with a conduct review for disciplinary action in accordance with PD-22.
- iii. If the EEO-DAO identifies a non-EEO violation in addition to the EEO violation, they may proceed with a conduct review to address both in accordance with both this directive and PD-22.

b. Conduct Official

The PERS 495 from the EEO investigation shall be utilized. The conduct official shall complete Section III of the form. When the conduct official agrees with HR's **cause** finding, one of the following shall apply:

- i. **Respondent** may receive progressive corrective action as outlined in PD-22; or
- ii. **Respondent** may receive a discipline as outlined in PD-22.

When the conduct official disagrees with HR's recommendation, they may close the case with no action.

C. Dispute Resolution

Dispute resolution may be requested by a warden or department head upon the conclusion of an investigation where the case is found to be non-EEO, or with a no **cause** finding. The **complainant** and **respondent** would participate in the dispute resolution process in accordance with [PD-35](#), "Independent Dismissal Mediation and Dispute Resolution."

III. Conduct Review

EEO-DAOs, conduct officials, and employees should be familiar with Section VI, outlined within the PERS 184. The conduct review will be carried out with the utmost professionalism, integrity, and respect for all parties involved. A conduct review ensures that a **respondent** charged with an alleged **violation** has the opportunity to present their defense to the EEO-DAO.

A. Documentation

The conduct review process utilizes two primary documents: the PERS 184, "Notification of Conduct Review" and the PERS 185, "Determination Form." The PERS 184 functions as the official notification to a **respondent** that a conduct review has been initiated, ensuring the **respondent** is informed of the process and its implications and provides a comprehensive set of guidelines that covers expectations for **respondents** undergoing a conduct review. The PERS 185 shall be used by the EEO-DAO or conduct official to document any disciplinary action and length of time associated with each action that are determined at the conclusion of a conduct review.

B. Notification

1. Notification Documentation

The EEO specialist shall submit the PERS 495 and a copy of the internal fact-finding documentation to the respective HR specialist. The respective HR specialist shall complete and provide the notification documents to the **respondent** within 10 **business days** from the date the EEO-DAO signs the PERS 495. Separate sets of notification documentation will be required for each conduct review. These documents shall be sent to the **respondent** via email with a delivery receipt or certified mail with a return receipt if unable to present in person. The notification documentation shall consist of the following:

- a. A PERS 184; and
- b. A copy of the EEO investigation and disciplinary packet.

2. Proof of Receipt

A delivery receipt email or certified mail receipt serves as proof of receipt and shall be attached to the PERS 184. If the notification documentation was provided to the **respondent** in person, the signed and dated PERS 184 shall serve as the proof of receipt.

C. Scheduling

A single conduct review shall be conducted per incident regardless of the number of **violation** charges. This applies even if multiple incidents were investigated through one investigation. If multiple conduct reviews are held on the same date, a break shall occur between each

conduct review. The conduct reviews should be prioritized chronologically beginning with the earliest incident.

The conduct review will be scheduled on an **employee's** regularly scheduled workday at a time determined by the EEO-DAO. Prior to scheduling, the **respondent** must receive the notification documentation at least 48-clock hours in advance, unless waived, but no later than five **workdays** after receipt of the notification. By waiving the right to a 48-clock hour notice, a **respondent** agrees the waiver applies throughout the entire disciplinary process, including any rescheduled conduct reviews. Any **cause** for delay in scheduling or completing a conduct review shall be documented by the EEO-DAO.

D. Rescheduling

If a conduct review must be rescheduled, regardless of the reason, the **respondent** must have a 48-clock hour notice prior to the rescheduled conduct review unless initially waived.

Once rescheduling is approved by the EEO-DAO, the PERS 184 shall be updated to indicate the new location, date, and time. The EEO specialist and the respective HR specialist shall ensure procedures outlined in Procedures Section III.B.2 are followed. If the conduct review is not held within five workdays of the original receipt or 15 workdays for reconvened conduct reviews, the EEO-DAO shall provide justification on the PERS 184.

Whether the request to reschedule is approved or denied, the respective HR specialist shall ensure all parties are notified. If the request is denied, the EEO-DAO shall provide written justification to the respective HR specialist to be included in the EEO disciplinary packet.

Acceptable reasons for rescheduling are as follows:

1. **Respondent** waives the 48-clock hour notice;
2. Insufficient 48-clock hour notice;
3. Incomplete notification documentation;
4. Reevaluation of violation - requires a new PERS 184;
5. Mischaracterized violation - requires a new PERS 184;
6. Emergency security situations;

7. Adverse weather conditions;
8. Approved sick leave or hospitalization;
9. Unforeseen circumstances; or
10. Reconvened conduct reviews.

E. Attendance

1. **Respondent** Attendance

In the event of any of the following:

- a. **Respondent** departs before conclusion;
- b. **Respondent** refuses to sign; or
- c. **Respondent** fails to attend;

the EEO-DAO shall conclude the conduct review and document the event on the PERS 185 **employee** signature line. In addition, a neutral third party's initial and date are required on the form.

2. Human Resources Specialist

Upon request of the EEO-DAO, an HR specialist may be present during a conduct review.

F. Review

The EEO-DAO shall begin the conduct review at the designated location, date, and time. They shall advise the **respondent** of the alleged **violation**, ensure the **respondent** was notified within 48 clock hours and confirm receipt of notification documentation. If either was not provided, immediately conclude the conduct review. The respective HR specialist shall provide the **respondent** with the complete notification documentation and follow the rescheduling procedures outlined in Procedures Section III.D.

Upon confirmation of the aforementioned, the conduct review shall proceed as outlined in the Conduct Review Process guide. Additional steps are as follows:

1. Emphasize that any protest made shall pertain only to TDCJ policy and procedural-related issues.

2. Determine if the **violation** occurred based on the sum of **credible evidence** and the EEO investigation.
3. **Reevaluation of Violation**

Verify if an alleged violation should be modified to a different **violation** number based on **credible evidence** and the EEO investigation presented in the PERS 495. The PD-21 Code of Conduct and Performance Standards and Recommended Guidelines shall be used as a reference when reevaluating **violations**.

- a. If the evaluation results in a same or lower-level **violation**, the conduct review shall continue and the reevaluation along with justification shall be documented in Section I of PERS 185.

A lower-level **violation** will have a shorter **active period**. Within the two-year **active period** range, the lower **violation** will be when dismissal occurs on the fourth offense.

- b. If the evaluation results in a higher-level **violation**, the conduct review shall immediately be concluded and rescheduled. The respective HR specialist shall follow rescheduling procedures outlined in Procedures Section III.D.

A higher-level **violation** will have a longer **active period**. Within the two-year **active period** range, the higher **violation** will be when dismissal occurs on the third offense.

IV. Determination

Once a defense has been presented by the **respondent**, or their representative, the EEO-DAO shall make a determination based on the findings of the conduct review. The determination will remain confidential throughout the process. The EEO-DAO has the flexibility to use a single disciplinary action, or a combination of disciplinary actions based on the severity of the **violation**. Upon the conclusion of the conduct review, the EEO-DAO shall record their recommendation.

A. Documentation

The determination process utilizes three primary documents: a PERS 185, PERS 186, "Dismissal Recommendation," a PERS 327, "Rehire Review Required," and all **supporting documentation**. The PERS 185 is

the form that indicates the EEO-DAO's findings and selected disciplinary action(s).

B. Findings

Findings have two categories: unsubstantiated or substantiated. These reflect the determination reached based on the **credible evidence** gathered during the investigation. **Violations** are considered unsubstantiated until proven to be substantiated.

1. Unsubstantiated

An unsubstantiated finding indicates the **credible evidence** provided was insufficient to prove the allegation. This does not mean the allegation did not occur. Instead, it indicates that there was not enough **credible evidence** to reach a finding.

In cases where the EEO-DAO determines the allegation against a **respondent** is unsubstantiated, the following shall be indicated on the PERS 185:

- a. The EEO-DAO shall mark "unsubstantiated" and provide justification.
- b. If deemed appropriate, the EEO-DAO may recommend additional training.
- c. No disciplinary action will be taken.
- d. All parties involved shall be notified of the outcome.

2. Substantiated

A substantiated finding indicates enough **credible evidence** was provided to confirm the allegation more than likely occurred, as reported.

In cases where the EEO-DAO determines the allegation against a **respondent** is substantiated, the following shall be indicated on the PERS 185:

- a. The EEO-DAO shall mark "substantiated."
- b. Specifics regarding disciplinary actions shall be outlined in Section III of the PERS 185.

When an EEO violation is found to be substantiated, the **respondent** shall complete the *EEO Disciplinary Compliance*

training module (EEO/DAIS) within seven **business days** of the conduct review.

C. Reconvened Conduct Review

When a finding or disciplinary action cannot be determined during the initial conduct review, the conduct official may choose to reconvene. Justification for reconvening shall be documented on the PERS 184. The respective HR specialist shall follow the steps outlined in Procedures Section IV.D and update the information in Section III of the PERS 184.

D. Considerations

1. The EEO-DAO shall consider the following in determining the appropriate disciplinary action to ensure a fair, consistent, and transparent approach:

- a. Severity of the **violation**;
- b. History of EEO investigations;
- c. Previous disciplines within the **active period**;

At the discretion of the conduct official, when an additional **violation** is incurred within the **active period**, the most severe option of the given offense may be used;

- d. Self-reporting of **violation**;
 - e. Cooperation during the investigation and conduct review; and
 - f. Changes in line of supervision or job requirements.
2. If an **employee** has multiple substantiated **violations**, the EEO-DAO shall consider imposing a disciplinary action under a higher offense, as shown in the PD-21 Code of Conduct and Performance Standards and Recommended Guidelines.
3. If the **respondent** holds a supervisory position, a more severe disciplinary action may be warranted. Supervisors are expected to demonstrate the highest standards of conduct. They are viewed as role models for **employees** and should conduct themselves in the same manner they expect **employees** to perform. The time held as a supervisor will hold more weight than total state service time.

E. Disciplinary Action

The EEO-DAO shall consult the PD-21 Code of Conduct and Performance Standards and Recommended Guidelines as a reference point for the length of each disciplinary action while retaining the discretion to tailor disciplinary measures to each case's unique circumstance. Each disciplinary action is independent and may be used as a stand alone or in conjunction with others for the appropriate offense.

1. Probation

a. Imposition

Probation may be imposed independently or in conjunction with suspension without pay, reduction in pay, or demotion. The duration of probation does not have to be the same as any other disciplinary action.

b. Implications

When an EEO-DAO places a **respondent** on probation, it places a higher level of accountability on the **respondent**. During a probationary period, the **respondent** must not incur another substantiated **violation**. Doing so will result in a recommendation for dismissal.

While on probation, the **respondent** is not eligible to receive the following:

- i. Merit compensation;
- ii. Salary adjustment increase (except a legislatively mandated increase);
- iii. Promotion;
- iv. Transfer (other than an emergency transfer);
- v. A reduction-in-force hiring preference; or
- vi. Tuition reimbursement.

For procedures relating to the effects of disciplinary probation on salary rate increases, refer to [PD-72](#), "Employee Salary Administration," [PD-89](#), "Salary Equity

Adjustments," [PD-90](#), "Merit Compensation," and [AD-11.78](#), "Tuition Reimbursement Program."

2. Suspension Without Pay

a. Imposition

Suspension without pay may be imposed on a first, second, or third offense. It can be imposed independently or in combination with probation, as deemed appropriate.

The conduct assessor shall indicate the suspension without pay in the **respondent's** time keeping application. Suspension without pay shall begin at the beginning of a **respondent's work cycle**. The **respondent** shall not be allowed to accrue compensatory time or overtime within the work cycle affected by suspension without pay.

b. Implications

While on suspension without pay, the **respondent** shall not be permitted access to secure TDCJ premises. **Respondents** shall be allowed to perform necessary tasks, such as turning in state property or going to the **respondent's** TDCJ housing. The **respondent** shall immediately turn in their ID card and state issued keys to their respective HR specialist. In addition, if the **respondent** is suspended for more than five **workdays**, the **respondent** shall immediately turn in any other state issued items or equipment, such as uniforms and parking permits, to their respective HR specialist.

3. Reduction In Pay

a. Imposition

Reduction in pay may be imposed on a second or third offense. It can be imposed independently or in combination with probation or suspension without pay, as deemed appropriate.

b. Implications

Pay may be reduced by 3.4%, 6.8%, or 10.2% within the **respondent's** current salary group. The effective date for a reduction in pay will be based on payroll deadlines. If reduction in pay is imposed in conjunction with suspension

without pay, the suspension without pay shall be completed before the reduction in pay begins.

4. Demotion

a. Imposition

Demotion may be imposed on the third offense. It can be imposed independently or in combination with probation, suspension without pay or, reduction in pay, as deemed appropriate.

Demotion is a permanent change in the duty assignment of a **respondent** from one classified position to another classified position in a lower salary group, for example, B15 to A14, or B15 to B14. Returning to the same position will require an employee to requalify or reapply.

b. Position Availability

Prior to imposing a demotion, the EEO-DAO shall ensure a valid payroll position vacancy exists and the authority to fill the position has received budget approval. A demotion will result in the **respondent** remaining in the same career field and if permitted under the same chain of supervision unless:

- i. The **respondent** meets the minimum qualifications for a position outside the **respondent's** current career field;
- ii. The demotion is coordinated with the Recruiting and Hiring Section, HR Division; and
- iii. The division director or designee for the position to which the **respondent** is being demoted concurs with the placement into the position.

c. Implications

Demotion is a change from one position to a lower position with the effect of decreasing salary by 1-3 pay groups.

If suspension without pay is imposed in conjunction with a demotion, the suspension without pay shall be completed before the demotion takes effect.

If a **respondent** currently under a reduction in pay receives another substantiated violation warranting demotion, the demotion will outweigh the existing reduction in pay. In this case, the reduction in pay shall be escalated to a demotion, effectively ending the previous reduction in pay.

5. Dismissal

Dismissal, being the most severe disciplinary action, requires a rigorous approval process. This multi-step procedure ensures that termination decisions are made with careful consideration, fairness, and are in compliance with agency policies and applicable laws.

F. Human Resources Specialist

1. EEO Disciplinary Packet Submission

Once the EEO-DAO has made a determination, and the PERS 185 is completed, the EEO disciplinary packet shall be submitted to the respective HR specialist. The disciplinary action is entered into the Payroll Personnel System Disciplinary Action Update (PPS DISCAU) screen and, if necessary, a payroll status change is completed. A copy of the PERS 185 shall be provided to the **respondent**. The **EEO disciplinary packet** shall be emailed within five **business days** to the respective EEO investigator and disciplinary team at HR_Discipline@tdcj.texas.gov. Upon receipt of the packet, the EEO investigator shall notify the **complainant** of the outcome.

2. Payroll Status Changes

For suspension without pay, reduction in pay, and demotion, the respective HR specialist shall coordinate with the **respondent's** respective time keying team within HRHQ to ensure a payroll status change is processed with payroll. During the post conduct review, the disciplinary team shall coordinate payroll status changes with the **respondent's** respective time keying team for processing with payroll.

G. General Provisions

1. Deviation

If a deviation is made above or below recommended guidelines, a justification must be provided in Section IV of the PERS 185.

If a deviation is made below recommended guidelines where it is indicated as dismissal only, written approval must be obtained from the executive director, appropriate chief officer, or respective division director and attached to the PERS 185.

2. Effective Date

Disciplinary action takes effect based on the dates indicated on the PERS 185. At the end of the conduct review, the EEO-DAO shall outline all disciplinary actions and effective dates with the **respondent**.

3. Interruptions Due to Leave Without Pay

Probation or reduction in pay that is interrupted by more than one calendar month of leave without pay (LWOP), the number of months missed will extend the duration of the disciplinary action. The conduct assessor shall indicate LWOP in the time keeping application to ensure the respective HR specialist or the respective time keying team are notified of the **respondent's** return to work.

V. Post Conduct Review

A. Documentation

Post conduct review processes may utilize the PERS 186 or PERS 327.

B. Technical Review Process

The primary objective of this review is to audit the overall EEO disciplinary process, facilitate the dismissal approval process, and ensure compliance with TDCJ policies and procedures, and state or federal laws. The disciplinary team shall conclude the technical review within **30 business days**.

1. Compliance Review

The disciplinary team shall conduct a comprehensive review of the full EEO **disciplinary packet**. During the technical review, a discipline can be found in compliance or out of compliance. When an EEO discipline is found in compliance, the disciplinary team shall follow the record retention guidelines outlined in Procedures Section VII.B. Reasons for finding an EEO discipline to be out of compliance are as follows:

a. **Mischaracterized Violation**

A mischaracterized **violation** is when a more appropriate **violation** number applies to the incident. The disciplinary team shall indicate "out of compliance" on Section VI of the PERS 185, provide justification, and communicate the change to the **respondent**, respective HR specialist, and the EEO-DAO. The respective HR specialist shall follow rescheduling procedures outlined in Procedures Section III.D. This action provides the **respondent** time to prepare a new defense relating to the recharacterized **violation**.

b. **Reassessment of Disciplinary Action**

Reassessment is when a higher or lower disciplinary action is identified and is more appropriate to the incident. When an EEO discipline is found to be out of compliance, the disciplinary team shall indicate "out of compliance" on Section VI of the PERS 185 and provide a counter recommendation. This shall be sent via email to the EEO-DAO. The EEO-DAO shall provide a response.

i. If the EEO-DAO concurs with the disciplinary team's counter recommendation, they shall indicate concurrence in Section VI of the PERS 185 and return the form to the disciplinary team.

ii. If the EEO-DAO non-concurs with the disciplinary team's counter recommendation, the EEO-DAO shall indicate non-concurrence and email the disciplinary team the updated PERS 185 and justification. If the disciplinary team maintains their original non-concurrence, they shall forward the PERS 185 and the EEO-DAO's non-concurrence justification to the HR director for review.

(a) If the HR director concurs with the disciplinary team, they shall contact the respective division director to determine a final resolution.

(b) If the HR director non-concurs with the disciplinary team's recommendation, that becomes the final resolution.

The final resolution shall be communicated back to the disciplinary team who will then attach the email documentation to the PERS 185 and email a copy to the EEO-DAO and the EEO investigator. The disciplinary team will notify the **respondent**, update PPS DISCAU, and follow the procedures outlined in Procedures Section IV.F.2.

- c. Other reasons for being out of compliance shall be indicated in Section VI of the PERS 185 as "Other" with a justification included.

C. Dismissal Approval Process

The disciplinary team shall coordinate routing of the dismissal in accordance with the PERS 186.

1. Concurrence

Dismissal action shall be completed within 30 **workdays** of a **respondent** waiving or forfeiting mediation, or mediation was concluded.

Upon approval of the dismissal recommendation, the disciplinary team shall ensure the following actions are completed:

- a. Email the final outcome to the respective HR specialist and time keying team;
- b. Follow the procedures outlined in Procedures Section IV.F.2.; and
- c. Email a copy of the decision and support documentation to the **respondent** with a delivery receipt or via certified mail with a return receipt.

2. Non-Concurrence

In the event a dismissal recommendation is not approved, an alternate disciplinary action shall be determined by the EEO-DAO and coordinated through the disciplinary team. Within 24 hours, the disciplinary team shall follow the procedures outlined in Procedures Section IV.F.2. and email a copy to the EEO-DAO. The disciplinary team shall communicate the updated disciplinary action to all parties involved.

D. Rehire Review

The rehire review process is designed to ensure thorough vetting of potential rehires that left the agency under questionable circumstances, thereby maintaining the integrity and safety of the workplace. HRHQ Recruiting and Hiring Section is responsible for coordinating the detailed review of a potential rehire application.

1. Required

A rehire review is mandatory when a **respondent** separates under any of the following circumstances:

- a. Ongoing **high-level investigation**;
- b. Pending city, county, state, or federal criminal charge;
- c. Ongoing unit or department investigation;
- d. Pending conduct review or disciplinary action; or
- e. Post-resignation investigations reveal information that can impact reemployment with the TDCJ. Such findings should be detailed in the investigation documentation or in a separate inter-office communication.

In such cases, a warden, section manager, or EEO-DAO shall provide relevant documentation to their respective HR specialist to submit a PERS 327.

The PERS 327 shall be attached to the investigation documentation, **disciplinary packet**, and the **respondent's** resignation letter, if applicable. The documentation is forwarded for approval to the respective division director or their designee and the HR director. Once approved, all documentation is emailed to the disciplinary team.

2. Not Required

If no investigations or disciplines are pending, a rehire review shall not be required.

3. Rehire Review Required Provisions

If the **respondent** applies for reemployment with the TDCJ, employment may only be offered with prior approval by the

hiring division. If approved, the following factors shall be considered:

- a. If applicable, the TDCJ official who approves the offer of employment shall determine whether the investigation that was ongoing at the time of separation shall be completed, with the understanding that completion of the investigation may result in the **respondent** being subject to the disciplinary process.
- b. If the **respondent** separated employment while under disciplinary action and returns within two years, the **respondent** will be required to complete the previously imposed disciplinary action up until the two-year mark. After the two-year mark, previously imposed disciplinary action no longer applies.

VI. Appeals

Appeals are made through a **respondent** filing a grievance or opting for a dismissal mediation.

A. Grievance

Should new evidence or procedural irregularities be discovered, a grievance may be initiated. A dismissal recommendation may not be grieved until a conduct review is concluded.

For grievance guidelines refer to [PD-30](#), "Employee Grievance Procedures."

B. Dismissal Mediation

For mediation guidelines refer to [PD-35](#).

VII. Documentation Provisions

- A. Throughout the disciplinary process, management and **employees** shall record factual details such as dates, times, witness statements, and other key information on all documentation. "Actionable Items, Documents, and Timelines" may be used as a reference for a summary of actions and timelines within the disciplinary process.

B. Record Retention

All disciplinary documentation shall be maintained by the respective HR specialist in the **respondent's employee** file. Documentation relating to the disciplinary process shall be maintained according to the TDCJ Records Retention Schedule. Completed disciplines shall be sent to HRHQ Business Operations to be entered into the **respondent's** master personnel file.

C. Records Request

To obtain copies of an EEO investigation file, **employees** may submit a public information request in accordance with [ED-15.12](#), "Public Information Requests." Documentation may not be available until the conduct review is concluded.

D. Refusal to Sign

If the **respondent** refuses to sign any document, it shall be recorded on the **employee** signature line as "**employee** refused to sign" and the date shall be indicated. In some cases, a neutral third party may be required to sign for confirmation.

VIII. Equal Employment Opportunity Notification and Summaries

A. EEO and Non EEO Cause Finding Outcomes

Upon EEO receiving the outcome of a conduct review, the following supervisors are notified:

1. Individuals to be Notified of EEO Outcome

Following the conduct review, Workplace Resolutions shall provide the outcome of an investigation and a completed PERS 496 to the **complainant** and **respondent's** warden or department head. The PERS 496 shall indicate what effective date any **interim remedial actions** should conclude.

2. EEO Executive Summaries

EEO investigation summaries are submitted monthly to the executive director, chief officers, and the appropriate division director.

Executive Directive

PD-21, "Anti-Discrimination in the Workplace"

IX. Forms / Documents

The related forms and documents listed below are available by following the hyperlink.

- A. [PD-21 Code of Conduct and Performance Standards and Recommended Guidelines](#)
- B. [Actionable Items, Documents, and Timelines](#)
- C. [Conduct Review Process](#)
- D. [EEO Intake Flyer](#)
- E. [PERS 497, Statement Form](#)
- F. [PERS 497a, Additional Statement Form](#)
- G. [PERS 496, Interim Remedial Actions](#)
- H. [PERS 495a, EEO Investigation Extension](#)
- I. [PERS 495, EEO Investigation](#)
- J. [PERS 184, Notification of Conduct Review](#)
- K. [PERS 185, Determination Form](#)
- L. [PERS 186, Dismissal Recommendation](#)
- M. [PERS 327, Rehire Review Required](#)

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