



Minnesota Department of Health: Human Resources Complaint Management

2025 Evaluation Report

Program Evaluation Division
Office of the Legislative Auditor
State of Minnesota

Program Evaluation Division

The Program Evaluation Division was created within the Office of the Legislative Auditor (OLA) in 1975. The division's mission, as set forth in law, is to determine the degree to which state agencies and programs are accomplishing their goals and objectives and utilizing resources efficiently.

Topics for evaluations are approved by the Legislative Audit Commission (LAC), which has equal representation from the House and Senate and the two major political parties. However, evaluations by the office are independently researched by the Office of the Legislative Auditor's professional staff, and reports are issued without prior review by the commission or any other legislators. Findings, conclusions, and recommendations do not necessarily reflect the views of the LAC or any of its members.

OLA also has a Financial Audit Division that annually audits the State of Minnesota's financial statements and the financial statements of three state public pension systems. The division also conducts internal control and compliance audits of individual state agencies each year.

OLA also conducts special reviews in response to allegations and other concerns brought to the attention of the office. OLA assesses each allegation and concern to determine what action should be taken. In some cases, a response can wait for a future audit or evaluation; sometimes, OLA decides that a more immediate response is needed and conducts a special review.

For more information about OLA and to access its reports, go to: www.auditor.leg.state.mn.us.

Evaluation Staff

Judy Randall, *Legislative Auditor*
Jodi Munson Rodríguez, *Deputy Legislative Auditor*

Caitlin Badger
Gretchen Becker
Eleanor Berry
Stephanie Besst
Sarah Delacueva
Scott Fusco
Hannah Geressu
Will Harrison
Jenna Hoge
David Kirchner
Adri Lobitz
Kyle Malone
Roman Morris
Mariyam Naadha
Kaitlyn Schmaltz
Laura Schwartz
Caitlin Zanoni-Wells

To obtain reports in electronic ASCII text, Braille, large print, or audio, call 651-296-4708. People with hearing or speech disabilities may call through Minnesota Relay by dialing 711 or 1-800-627-3529.

To offer comments about our work or suggest an audit, investigation, or evaluation, call 651-296-4708 or e-mail legislative.auditor@state.mn.us.



Printed on Recycled Paper

January 2025

Members of the Legislative Audit Commission:

The Minnesota Department of Health's (MDH's) Human Resources Management Division (HR division) receives complaints involving MDH employees and investigates complaint allegations when warranted. While MDH employees, unions, and HR investigators generally shared positive perceptions of the HR division's complaint management, inconsistent documentation and a lack of written procedures made it unclear whether the HR division consistently managed many aspects of employee complaints.

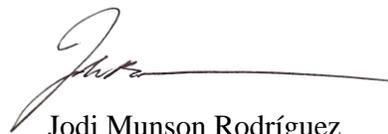
Further, some current and former employees we surveyed indicated that they believed they had experienced retaliation after submitting a human resources complaint. We recommend that MDH develop written procedures to address retaliation and several other aspects of complaint management.

Our evaluation was conducted by Sarah Delacueva (project manager), Stephanie Besst, Ellie Capra, and Jenna Hoge. MDH cooperated fully with our evaluation, and we thank them for their assistance.

Sincerely,



Judy Randall
Legislative Auditor



Jodi Munson Rodríguez
Deputy Legislative Auditor



OLA



Minnesota Department of Health: Human Resources Complaint Management

It was unclear whether the Minnesota Department of Health’s (MDH’s) Human Resources Management Division (HR) consistently managed many aspects of employee complaints, due in part to its lack of written procedures.

Report Summary

Complaint Submission

- The large majority of MDH employees who responded to our survey indicated that they knew how to submit a complaint, but some expressed reluctance to do so. (p. 17)
- Based on survey responses, training seems to be an important factor in supervisors’ understanding of when to refer complaints to HR. (p. 18)

Recommendation ► MDH should require all MDH supervisors to attend periodic training about when to refer employee complaints. (pp. 18-19)

Complaint Management

- Although MDH employees, union representatives, and HR investigators generally shared positive perceptions of the HR division’s complaint management, some expressed less confidence in how the division manages certain steps. (pp. 14-16)
- The HR division does not have written procedures to help ensure consistency in complaint management. (pp. 19-20)
- A lack of documentation often made it unclear whether the HR division took consistent approaches when deciding how to manage complaints. (p. 24)
- While investigators routinely documented delivery of required data practices and antiretaliation notices during *investigation* interviews, they did not document delivery of these notices during *complaint intake*. (pp. 21-22)
- Based on our file review, investigators did not consistently document having acknowledged complaint receipt. (pp. 25-26)

Background

State employees are entitled to certain workplace protections, and state agencies have a duty to enforce these protections. If an employee feels their protections have been violated, they may report their concern to their agency’s HR division. An agency generally cannot discipline an employee for a policy violation without an investigation that substantiates an allegation of wrongdoing. It is illegal to retaliate against an employee who submits a complaint or participates in a complaint investigation.

Minnesota Management and Budget provides best practices for investigations of complaint allegations. Over the last two years, MDH’s HR division developed its current processes for managing complaints. These processes involve (1) receiving complaints; (2) determining if a complaint warrants an investigation; (3) if necessary, investigating a complaint’s allegation(s), and if substantiated; (4) advising on appropriate discipline.

- The HR division notified *subjects* when it closed investigations, but it inconsistently notified *complainants* of both intake closure and investigation closure. (pp. 26-27)

Recommendation ► The HR division should establish complaint management procedures that address the following issues:

Rights and Protections: Investigators should issue, and document the issuance of, verbal and written data practices and antiretaliation notices during both intake conversations and investigation interviews.

Decision Making: Investigators should consider certain factors when deciding whether to (1) investigate complaint allegation(s) and (2) interview people identified as having relevant information, and document these decisions.

Status Notifications: Investigators should communicate with each complainant to acknowledge their complaint and at other predetermined points during complaint management; they should document these communications. (pp. 28-29)

Retaliation

- There is little evidence that the HR division consistently followed up on reports of retaliation that arose during complaint intake or investigation. (p. 32)
- In their survey responses, some current and former MDH employees indicated that they believed they experienced retaliation as a result of submitting a complaint to HR. However, some chose not to report the perceived retaliation. (pp. 33-35)

Recommendation ► The HR division should develop procedures to address retaliation fears or experiences that emerge through complaint intake or investigation. (p. 33)

- Since state law and labor contracts generally include stronger protections for certified employees, probationary employees are particularly vulnerable to retaliation. (pp. 35-36)

Recommendation ► The HR division should develop a procedure for examining instances of noncertification of probationary employees who previously submitted complaints. (p. 36)

Summary of Agency Response

In a letter dated January 29, 2025, Commissioner Cunningham said that “MDH is committed to a fair and equitable human resources complaint management process” and that the department values OLA’s feedback as it “serves as an important tool for growth and development.” The commissioner said that MDH had either begun to implement or would soon implement most of OLA’s recommendations. For example, she reported that MDH has developed a departmentwide complaint and investigation procedure, as well as an internal guidance on which documents must be saved in the HR division’s case management files. Further, Commissioner Cunningham said that MDH has begun developing resources for all department staff to raise awareness of retaliation and instill confidence in staff to come forward to report retaliation. These include “internal news articles outlining the process for filing a retaliation complaint, ...and [MDH’s] process for addressing concerns.”

Table of Contents

1	Introduction
3	Chapter 1: Background
3	Overview of Complaints
4	Role of Minnesota Management and Budget (MMB) in Complaint Management
6	Complaint Management at Minnesota Department of Health (MDH)
13	Chapter 2: Complaint Submission and Management
14	Perceptions of Human Resources (HR) Division Complaint Management
16	Complaint Submission
19	Complaint Management
31	Chapter 3: Retaliation
31	Protecting Employees from Retaliation
33	Employee Experiences of Perceived Retaliation
37	List of Recommendations
39	Minnesota Department of Health Response



OLA

Introduction

The Minnesota Department of Health (MDH) is among Minnesota state government's largest employers; it employs roughly 2,000 people, all of whom are entitled to certain workplace protections, such as freedom from harassment and discrimination. When an employee believes that their workplace rights have been violated, or that a coworker is otherwise breaking department policy or law, the employee may submit a complaint. At MDH, the Human Resources Management Division (HR division or HR) receives complaints, investigates complaint allegations, and presents investigation findings to the relevant decision makers.

Properly managing employee complaints is an important part of maintaining a good relationship between an employer and its workforce. If an employer mismanages or ignores employee complaints, the employer may put itself at legal risk and employee morale may suffer.

In April 2024, the Legislative Audit Commission directed the Office of the Legislative Auditor (OLA) to evaluate MDH's management of human resources complaints. Our evaluation addressed the following questions:

- **To what extent are the Minnesota Department of Health's HR division's processes for addressing complaints fair and thorough?**
- **How well does the Minnesota Department of Health's HR division protect employees from retaliation for submitting complaints?**

To determine standards by which to evaluate the efforts of MDH's HR division, we reviewed relevant policies created by Minnesota Management and Budget (MMB) and the training series that MMB offers for human resources employees. We also interviewed relevant employees at MMB and MDH, including all MDH employees who conduct investigations into complaint allegations.

We surveyed all current MDH employees and a sample of recent former MDH employees to learn about their experiences submitting complaints and their confidence in the HR division to properly manage complaints. We also reviewed HR division files related to all complaints the division received in fiscal years 2023 and 2024, as well as their related investigations.

For this evaluation, we focused specifically on the HR division's processes related to employee complaints; we did not evaluate other HR division functions, such as posting employment opportunities or coordinating employee benefits. Further, we did not systematically evaluate the HR division's decisions to investigate complaint allegations or to substantiate or not substantiate the allegations it investigated. Nor did we evaluate the credibility of the complaints themselves. Finally, we evaluated only MDH. We did not evaluate MMB's guidance to agencies or the complaint processes that other state agencies (such as OLA) use when receiving complaints from MDH or other state employees.



OLA

Chapter 1: Background

State employees are entitled to certain workplace protections under state and federal laws and state policies. When employees feel that a coworker has violated their protections, or has violated other laws or policies, they may submit a complaint. It is illegal to retaliate against an employee for submitting a complaint.¹ Failure to address complaints in an appropriate manner puts an agency at legal risk. Further, how an agency manages complaints can have significant and far-reaching consequences within the agency, such as a lack of trust in the agency and its processes and decreased morale among employees.

In this chapter, we define key terms related to complaints and explain to whom a state employee—including an employee of the Minnesota Department of Health (MDH)—may submit a complaint. We briefly discuss *policies* related to complaints for state employees, including Minnesota Management and Budget’s (MMB’s) role in developing these policies and supporting state agencies as they address the complaints they receive. Finally, we provide an overview of the *processes* that MDH uses to manage complaints.

Overview of Complaints



Definitions of Key Terms

A **complaint** is an allegation or claim of wrongdoing and may be about personnel issues or instances of retaliation, among other things.

A **complainant** is a person who submits a complaint.

A **subject** is a person accused of wrongdoing in a complaint.

Personnel issues include conflicts of interest and ethics violations, discrimination, harassment, performance issues, respectful workplace issues, and violations of policy or law, among other issues.

Retaliation includes adverse actions against an individual because they submitted a complaint, participated in an investigation into a complaint allegation, or opposed behavior that violated law or policy. Adverse actions include discipline, demotion, discharge, exclusion, threats, reprimands, reduced hours, and transfers to less desirable work, among other things. We discuss retaliation in detail in Chapter 3.

Employee complaints may reflect a wide array of concerns about personnel issues or retaliation, which are defined in the box to the left.

Complaints can include allegations of disrespectful or inappropriate treatment, discrimination, or harassment. Employees can also complain about another employee’s job performance or allege that someone has committed fraud, retaliated, or otherwise broken the law.

State employees may submit complaints to various individuals or entities; some individuals or entities address only certain types of complaints. For example, certain employees may submit allegations of labor contract violations (known as grievances) to their unions. Or, if an employee has a complaint about the commissioner of an agency, they may submit the complaint to MMB.² State employees may submit complaints to their supervisor, human resources division, or other agency office.

¹ *Minnesota Statutes* 2024, 181.932, subd. 1.

² In addition, Minnesota statutes outline specific types of complaints that should be submitted to particular agencies. For example, state employees and others should report to the Office of the Legislative Auditor any alleged misuse of state money, resources, and data, as well as alleged violations of the state code of conduct for employees in the executive branch of state government. *Minnesota Statutes* 2024, 3.971, subs. 8a and 9; 43A.38; and 43A.39.

Generally, once a state agency receives a complaint, it is best practice to conduct complaint intake, which involves collecting enough information to determine whether the complaint allegation(s) warrant investigation.³ If an agency conducts an investigation, it should assess evidence to determine whether to substantiate the complaint allegation(s). Once an investigation is complete, agencies generally document the evidence, findings, and determinations in an investigation report. If the agency substantiated any of the allegations, the investigation report becomes the basis for a disciplinary decision, which could range from oral reprimand to discharge.

State law requires an agency to establish “just cause” before it may suspend, demote, or discharge certain permanent state employees.⁴ According to MMB, before an agency disciplines a permanent employee, it is best practice to ensure that it can answer “yes” to the seven questions in the box at the right.



Elements of Just Cause

Notice: Did the employee know and understand the rule?

Reasonable rule: Was the rule reasonable?

Investigation before discipline: Was there an investigation before discipline was administered?

Investigation fair and objective: Was the investigation fair and objective?

Substantial proof: Did the investigation produce evidence of wrongdoing?

Equal treatment: Is the rule enforcement internally consistent?

Reasonable penalty: Is the discipline reasonable in relation to the seriousness of the offense?

— MMB, Investigator Training Series

Role of MMB in Complaint Management

The commissioner of MMB is the “chief personnel and labor relations manager” of employees in the state’s executive branch.⁵ MMB has issued a number of human resources and labor relations policies that explicitly protect and/or govern the behavior of all state employees.

MMB requires executive branch (including MDH) employees to complete annual training sessions on four particular policies, which address the topics of respectful workplace, sexual harassment, harassment and discrimination, and workplace violence.⁶ These trainings explain how employees can submit complaints related to each policy and, in some cases, how supervisors should handle the complaints they receive. Each of the written policies also includes instructions on how to submit complaints about violations of the policy and states that retaliation for reporting policy violations is prohibited.

³ At times in this report, we refer to the activities of complaint intake and investigation collectively as “complaint management.”

⁴ *Minnesota Statutes* 2024, 43A.33, subd. 1.

⁵ *Minnesota Statutes* 2024, 43A.04, subd. 1(a).

⁶ Minnesota Management and Budget, HR/LR Policy 1432, *Respectful Workplace*, revised August 14, 2023; HR/LR Policy 1329, *Sexual Harassment Prohibited*, revised August 14, 2023; HR/LR Policy 1436, *Harassment and Discrimination Prohibited*, revised August 19, 2024; and HR/LR Policy 1444, *Workplace Violence Prohibited*, issued March 4, 2021.

Statutes require that MMB establish best practices for conducting human resources investigations “designed to facilitate effective investigations, without compromising the ability to prosecute criminal cases when appropriate.”⁷ Accordingly, MMB has developed a multipart training series for employees who receive complaints and conduct investigations. MMB initially offered this investigator training as a webinar series in late 2020 and early 2021, and the training has been available as an on-demand video series since that time.⁸ The 14 sessions of the investigator training series cover topics such as planning an investigation, writing an investigation report, and protecting the data created during an investigation.

MMB’s training series establishes the characteristics of a good investigation and other best practices for investigators to use in their work. We used these trainings to develop standards against which to evaluate MDH’s processes, as the box below shows.



Selected Best Practices in Conducting Investigations

- The investigator conducts thorough intake to fully understand allegation(s).
- The investigation subject has the opportunity to tell their side of the story.
- The investigation subject is entitled to union representation (if allowed by their labor contract).
- The investigator talks to all witnesses with relevant information.
- The investigator prepares an investigation report providing evidence of a timely and impartial response to potential misconduct.
- The investigator establishes the elements of just cause before substantiating an allegation.

— MMB, Investigator Training Series

Beyond its training series, MMB has created templates that agencies may use for complaint management. These include a complaint submission form, an investigation plan template, and investigation report templates, among others. MMB has also informed agencies that some of its staff can provide a critical, neutral review of an agency’s investigation report draft, upon request.

⁷ *Minnesota Statutes* 2024, 43A.325.

⁸ MMB again offered the investigator training series as live webinars starting in the summer of 2024.

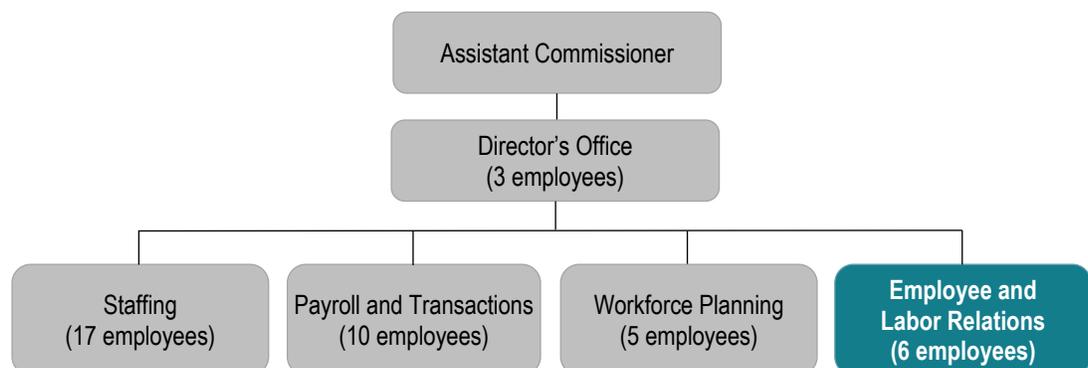
Complaint Management at MDH

As allowed by statutes, MMB has delegated certain administrative functions to MDH’s Human Resources Management Division (HR division or HR).⁹ The HR division is responsible for managing complaints involving MDH employees. In general, MDH’s HR division manages complaints from MDH employees alleging wrongdoing by other MDH employees. Complaints from the public that are unrelated to personnel issues or retaliation are typically addressed through other processes.

Current HR leadership—including the manager who oversees investigations, division director, and assistant commissioner—joined MDH’s HR division in the spring of 2022. One of these individuals told us that, prior to their arrival, there were concerns about the division’s ability to carry out its work because the division had only a handful of employees and historic retention issues. As Exhibit 1.1 shows, by May 2024, the division had grown to more than 40 employees.

The HR division’s Employee and Labor Relations Section manages complaints from MDH employees, among other duties.¹⁰ Since 2022, the investigations manager has established the section’s current complaint management processes, and the department has hired four investigators.¹¹

Exhibit 1.1
MDH HR Division Sections, 2024



Source: Office of the Legislative Auditor.

⁹ *Minnesota Statutes* 2024, 43A.36, subd. 1(a). This delegation is a standard practice for cabinet-level agencies in Minnesota.

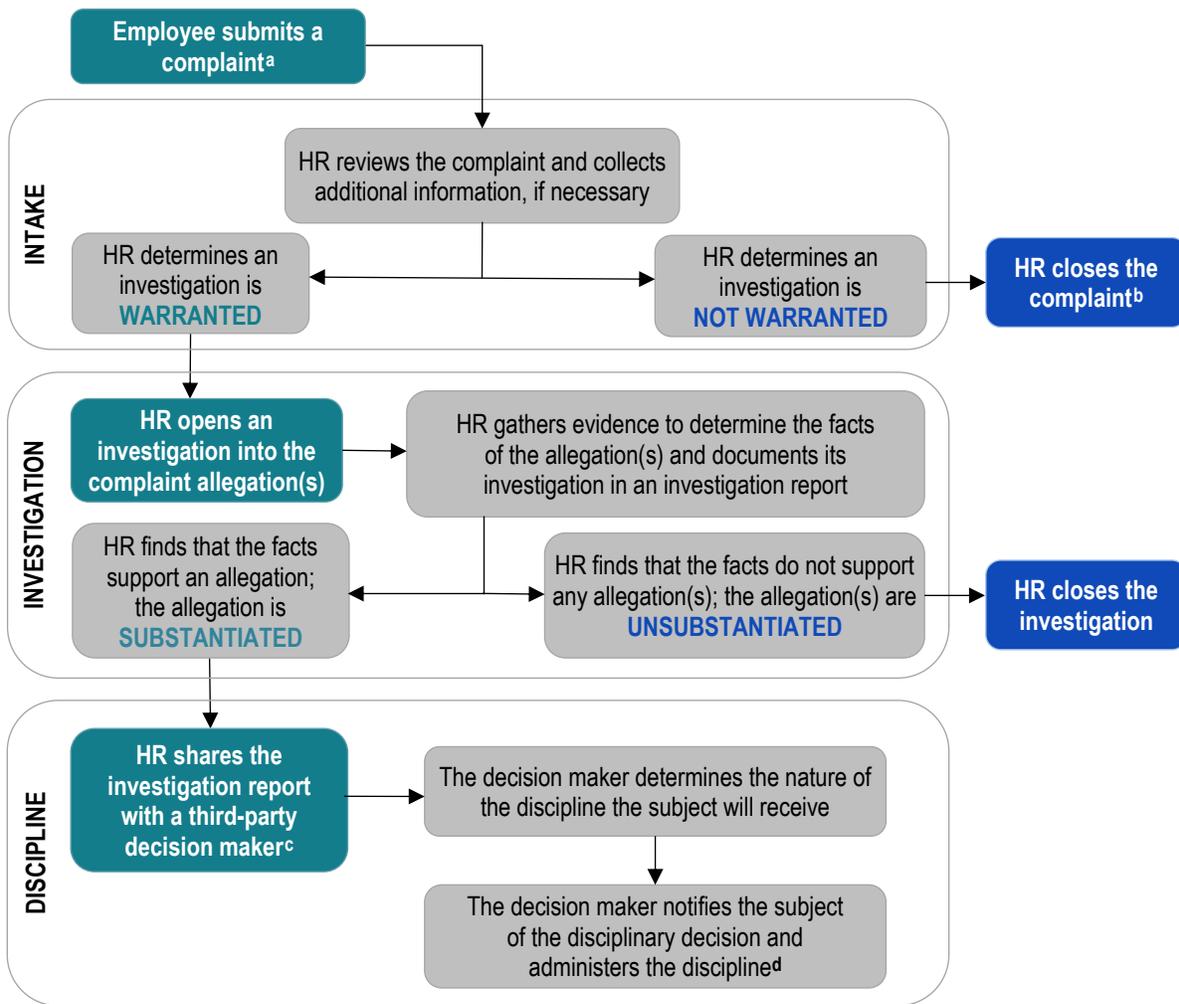
¹⁰ While the Employee and Labor Relations Section manages complaints, we attribute these activities to the “HR division” or “HR” for the sake of simplicity.

¹¹ Employees in the Employee and Labor Relations Section conduct a variety of labor relations activities. We reviewed only their complaint management, and we refer to employees involved in complaint management as “investigators.” One employee in the section primarily addresses issues related to the Americans with Disabilities Act. While MDH has the ability to contract for investigation work, the investigators in its Employee and Labor Relations Section conducted all MDH investigations during the period we reviewed for this evaluation.

Complaint Management Processes

HR investigators manage complaints, beginning when an employee submits a complaint, through—when warranted—investigation of the complaint allegation(s) and consultation on discipline decisions. Based on our review, typical complaint management involves the steps and elements we show in Exhibit 1.2 and describe below: complaint submission, intake, investigation, and discipline.

Exhibit 1.2
Overview of MDH HR Complaint Management



^a An employee may submit a complaint directly to HR or to another MDH employee, such as their supervisor. If an employee outside of the HR division receives a complaint, MDH expects that employee to forward the complaint to HR.

^b HR may close the complaint without taking action or by taking action other than investigation. Other actions may include assigning professional development or coaching, among other things.

^c The decision maker is typically the subject’s supervisor.

^d If a subject does not agree with a disciplinary decision, the subject’s union (if relevant) may file a grievance. We did not review the grievance process as part of this evaluation.

Submission

An MDH employee may submit a complaint to the HR division through a variety of methods, such as in an e-mail or during a one-on-one meeting. The HR division also maintains an online form through which any MDH employee may report concerns and can choose to remain anonymous. An employee may also submit a complaint to their supervisor or another MDH employee. HR division leadership told us that when an MDH employee outside of HR—such as a supervisor—receives a complaint, HR expects the complaint recipient to submit the complaint to the HR division.¹²

During fiscal years 2023 and 2024, the division received 82 complaints that involved MDH employees.¹³ We describe examples of various complaint topics and the frequency with which the division received complaints about each topic in the box below.¹⁴



Complaint Examples	
Topic and Complaint Frequency	Example
Respectful Workplace (38)	An employee complains that their colleague is generally uncooperative and rolls their eyes and huffs when others share ideas in meetings.
Discrimination (12)	An employee complains that her colleagues do not include her in key meetings because she is a woman.
Performance (10)	An employee complains that another employee does not meet minimum job standards.
Harassment (7)	Employees complain that their colleague repeatedly makes sexual comments to them.
Work Hours and Attendance (6)	An employee complains that another employee consistently arrives to their worksite late and departs early.
Retaliation (4)	Employees complain that after they raised concerns about their supervisor, their supervisor excluded them from meetings relevant to their work and removed their access to a key database.

¹² Relatedly, some MMB policies require supervisors to submit certain complaints to HR. Minnesota Management and Budget, HR/LR Policy 1329, *Sexual Harassment Prohibited*, revised August 14, 2023, 4; and HR/LR Policy 1436, *Harassment and Discrimination Prohibited*, revised August 19, 2024, 5.

¹³ In a few cases, the division uncovered an issue through other HR duties or it was not clear how the concern came to the division's attention. We use "receive" to describe all complaints, regardless of their source.

¹⁴ We categorized complaints based on the contents of the division's complaint and investigation files. Some complaints involved more than one type of issue. This list is not comprehensive and includes common complaint categories.

Intake

After receiving a complaint, HR assigns the complaint to an investigator who conducts intake, or collects information from the complainant to understand the allegation(s). This usually includes meeting with the complainant, and it may also include reviewing documents or other evidence.



Intake

The steps an investigator takes to gather information about complaint allegation(s) to determine whether an investigation is warranted.

The HR division concludes intake by determining whether an investigation into the complaint allegation(s) is warranted. According to HR division leadership, in some situations, an investigation may not be the most appropriate response to a complaint. When an investigation is not appropriate, the division may close the complaint and provide mediation, assign training, or take no further action; alternatively, the subject's supervisor may provide coaching or other performance management steps. MMB's investigator training series provides guidance on the conditions that warrant or might not warrant an investigation, which Exhibit 1.3 shows.

Exhibit 1.3

MMB Guidance on When to Investigate

Investigation Warranted	Investigation Might Not Be Warranted ^a
<p>When complaint allegation(s) involve one of the following:</p> <ol style="list-style-type: none"> 1. Discrimination or sexual harassment 2. A significant performance concern that could lead to discipline 3. Misconduct that could lead to discipline 4. A repeated issue or offense 5. Multiple complainants, even if the allegation(s) are not extreme 	<p>For complaints in which, for instance:</p> <ol style="list-style-type: none"> 1. Complaint allegation(s) do not involve a policy violation 2. No discipline would be warranted, even if the allegation(s) were true 3. The subject is no longer employed at the agency

^a This list includes only some of the instances when an investigation might not be warranted.

Source: Office of the Legislative Auditor, based on MMB Investigator Training Series.

Investigation

If the information gathered during intake indicates that an investigation is warranted, HR opens an investigation. During a typical investigation, the investigator gathers and reviews evidence to determine the facts of the allegation(s).

The investigator also conducts interviews with those who may be involved as either the complainant, the complaint subject, or a witness to the alleged wrongdoing. The investigator summarizes their fact-finding activities and conclusions in an investigation report, including whether the evidence substantiated the allegation(s).

In fiscal years 2023 and 2024, the HR division investigated 38 complaints through 26 investigations; as of the end of Fiscal Year 2024, 6 of these investigations were still in progress.¹⁵ The HR division substantiated complaint allegations in most of the investigations it concluded in fiscal years 2023 and 2024, as Exhibit 1.4 shows.

Discipline

The investigator does not determine disciplinary actions; instead, a third-party decision maker (usually the subject's supervisor or another upper-level manager in the subject's division) decides what discipline is appropriate.¹⁶ The primary investigator and a backup investigator meet with the decision maker to review the HR division's investigation report and, if HR substantiated at least one allegation through its investigation, discuss discipline options. During this meeting, the decision maker may ask the primary investigator questions about the investigation. The primary investigator then leaves the meeting. To maintain neutrality, the primary investigator is not involved in determining discipline. Instead, to encourage consistency across disciplinary decisions, a backup investigator provides the decision maker with information about disciplinary actions taken in similar situations. Using this information, the decision maker determines the nature of the discipline.



Investigation

The process through which HR determines (1) the facts of a complaint allegation and (2) whether the allegation of wrongdoing is substantiated.

Exhibit 1.4

Outcomes of MDH HR Investigations, Fiscal Years 2023 and 2024

Outcome	Number
Substantiated	15
Partially substantiated	3
Not substantiated	2

Source: Office of the Legislative Auditor, based on MDH HR division complaint files, fiscal years 2023-2024.

¹⁵ Most complaints involved the concern of one complainant about one subject. However, one complainant could raise concerns about multiple subjects, or multiple complainants could raise concerns about the same subject. Therefore, the HR division may conduct one investigation into multiple related complaints, resulting in different numbers of investigations and complaints investigated. In addition to the complaints HR investigated, it did not investigate 31 complaints. For the remaining 13 complaints, either HR's documentation was unclear about the complaint outcome (10) or the complainant submitted their concern in the final week of our review period (3), leaving little time for HR to have either opened an investigation or closed intake.

¹⁶ The agency may administer discipline only within the parameters of the subject's labor contract. Individual labor contracts specify allowable disciplinary actions.

Exhibit 1.5
MDH HR Disciplinary Decisions,
from Least to Most Severe,
Fiscal Years 2023 and 2024

Discipline	Number
Oral reprimand	3
Written reprimand	8
Suspension	2
Discharge	4

Note: In one investigation, the subject received coaching rather than discipline.

Source: Office of the Legislative Auditor, based on MDH HR division complaint files, fiscal years 2023-2024.

Among the 18 investigations the HR division concluded in fiscal years 2023 and 2024 and substantiated, in whole or in part, the most common disciplinary result was a written reprimand. Exhibit 1.5 lists the discipline that subjects of complaints with substantiated allegations received.

If the investigation subject and their union believe that a disciplinary action violates provisions of the employee’s labor contract, the union sends a formal letter “grieving” the disciplinary decision.¹⁷ When the HR division receives a grievance notice, it meets with relevant MDH management and the union to review the issue. Generally, MDH determines whether to modify the disciplinary decision or deny the grievance. If MDH denies the grievance, the union may take additional steps, including subsequent grievances or arbitration.

¹⁷ A small percentage of MDH employees are not covered by a union and may have different appeal processes. The HR division received three grievances questioning some element of the discipline an employee received after an investigation that began and concluded in fiscal years 2023 or 2024. Grievances were outside the scope of our evaluation.



OLA

Chapter 2: Complaint Submission and Management

Providing employees avenues to submit complaints—and developing procedures to manage these complaints appropriately and effectively—is an important employer duty. If not appropriately addressed, complaints may lead to legal consequences. Unresolved complaints may also have a negative impact on employee satisfaction and organizational performance.

In this chapter, we discuss how Minnesota Department of Health (MDH) employees view Human Resources Management Division (HR division or HR) complaint management practices and the complaint submission process. We also discuss our evaluation of the fairness and thoroughness of the division’s complaint management practices.

To learn about MDH employees’ perceptions, we surveyed all MDH employees as of June 2024.¹ We also surveyed a selection of former employees who left MDH in recent years.² We reviewed the division’s files to determine how consistently investigators followed certain best practices in their management of the complaints that the division received during fiscal years 2023 and 2024.³

Key Findings in This Chapter

- A majority of MDH employees indicated they knew how to submit a complaint, but some expressed reluctance to do so.
- MDH’s HR division does not have written procedures for complaint management.
- We could not determine whether HR consistently managed complaints.
- HR notified complaint *subjects* when it closed investigations, but it inconsistently notified *complainants* of both intake closure and investigation closure.

¹ Of the 2,007 employees who received our survey, 79 percent (1,578) responded. Survey respondents included 300 employees who identified themselves as managers or supervisors, and 1,278 nonsupervisory employees.

² Of the 58 former employees who received our survey, 76 percent (44) responded and reported leaving the department in 2022 or later. We used a nonrepresentative sample consisting of former MDH employees who still worked for the state, as well as a small number of former employees who contacted our office about this evaluation.

³ We reviewed files for all 82 complaints HR received, as well as their associated investigation files. MDH has limited documentation of complaints that occurred before HR division management changed in the spring of 2022.

Perceptions of HR Division Complaint Management

Perceptions of HR’s complaint management can impact employee trust in the division and willingness to submit complaints or participate in investigations. Although Minnesota Management and Budget’s (MMB’s) investigator training series outlines general guidance for HR investigators about how to manage complaints in a timely, fair, and thorough manner, as shown to the right, MDH employees may reach their own conclusions about the division’s complaint management.



Timeliness: MMB does not establish requirements, but its guidance states that investigators should not delay the start of an investigation.

Fairness: MMB instructs investigators to, among other things, remain neutral about complaint allegations, inform investigation participants of their rights and protections, allow all participants to share their perspectives, and excuse themselves from disciplinary decisions.

Thoroughness: MMB guidance directs investigators to consider all evidence, including the testimony of all relevant witnesses, before reaching conclusions.

— MMB, Investigator Training Series

Although MDH employees, union representatives, and HR investigators generally shared positive perceptions of the HR division’s complaint management, some expressed less confidence in how the division manages certain steps.

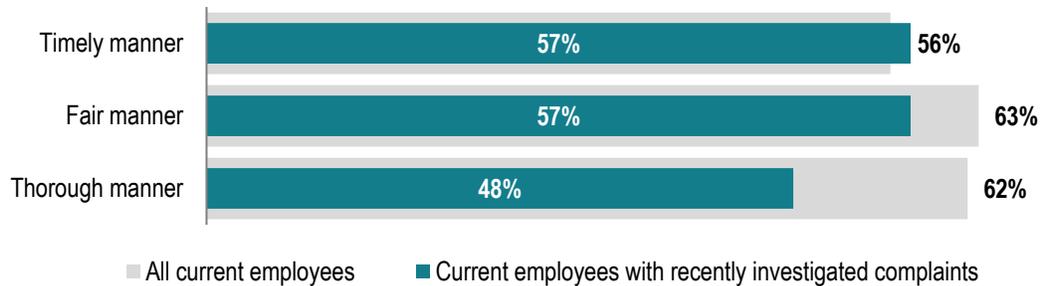
Current Employees. Current MDH employees tended to have positive perceptions of the HR division’s review, or **intake**, of complaints. Among the 1,477 current employees who responded to our survey and had not filed a complaint with HR, 75 percent agreed or strongly agreed that, were they to submit a complaint to HR, the division would review their complaint allegations and appropriately determine whether to investigate. Among the 53 current employees who had submitted a complaint to HR, those who indicated at least one of their complaints resulted in an investigation reported more favorable views of HR’s intake process than those who indicated their complaints did not or may not have resulted in an investigation.⁴

When asked about HR’s **investigation** process, current employees’ perceptions tended to be less favorable than their perceptions of the intake process. As Exhibit 2.1 shows, around one-half to nearly two-thirds of current MDH employees who responded to our survey agreed or strongly agreed that the HR division had investigated or would investigate their complaint allegations in a timely, fair, or thorough manner. However, the handful of current employees with complaint investigation experience were less likely to agree that HR’s investigation process was fair or thorough as compared to all current employees.

⁴ Throughout this chapter, our discussion of current employees with experience submitting complaints or whose complaints HR investigated is limited to employees with complaint experiences exclusively in or since 2022. In other words, when discussing complaint experiences, we generally did not include the perspectives of current employees who submitted complaints under HR’s previous leadership.

Exhibit 2.1

Percentage of Current MDH Employees Who Agreed or Strongly Agreed That the HR Division Investigated/Would Investigate Complaint Allegations in a:



Notes: “All current employees” includes responses from roughly 1,572 employees. “Current employees with recently investigated complaints” includes responses from 21 current MDH employees who said they had submitted complaints to the HR division that resulted in investigations.

Source: Office of the Legislative Auditor, based on our survey of current MDH employees, 2024.

In response to our survey questions, some employees shared positive comments about the HR division’s complaint management, while others expressed frustration. For example, when asked what the HR division does well, some employees said the HR investigators withheld judgement when listening to them, asked for additional evidence, or provided timely responses. Some employees, however, expressed that the division could reduce the lengthiness of some processes, shared concerns about whether the division managed issues in a fair and objective manner, or said the division could communicate better.⁵



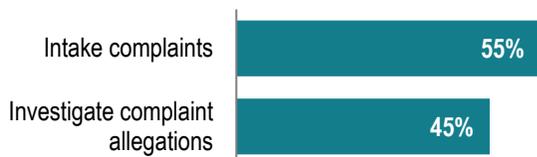
They were quick to respond and compassionate while listening.

I answered “unsure” to many of the questions because all I know is that I made a complaint, it was shared with labor relations staff, it took several weeks for them to investigate, I was never asked for additional information and no one was asked to provide information as a witness, and then I was simply told they were done.

— Current MDH Employees

Exhibit 2.2

Former MDH Employees Who Agreed or Strongly Agreed with the Statement: “While at MDH, I had confidence in HR to...”



Source: Office of the Legislative Auditor, based on our survey of former MDH employees, 2024.

Former Employees. As shown in Exhibit 2.2, a greater portion of former MDH employees who responded to our survey reported having confidence in HR to **intake** complaints than to **investigate** allegations. A few former employees expressed a perceived lack of transparency about whether HR had investigated complaint allegations, which could explain this decrease in confidence. On the other hand, a few former employees reported that HR was professional in its complaint management and provided timely responses.

⁵ State law places some limits on the information investigators can share about complaints and complaint management. *Minnesota Statutes* 2024, 13.43, subs. 2, 4, and 8.

Unions. We corresponded with representatives from three unions that together represent nearly 80 percent of MDH employees, none of whom shared negative perceptions of HR. When asked how MDH’s HR division compared to similar divisions at other agencies, one union representative shared that they thought the HR division was performing similarly to or better than others. This representative also expressed that, based on interactions with the HR division, they generally thought the division addressed complaints in a fair and thorough manner. A representative from the second union shared that those in the union were not aware of “any widespread issues” with the HR division. A representative from the third union shared that union staff and members had not had “any negative experiences” with the HR division.

HR Investigators. MDH’s HR investigators spoke positively about the HR division’s processes. All four investigators told us they generally believed the division’s processes were fair and thorough. Some investigators commented that they thought the division’s processes were consistent with MMB standards. Additionally, investigators emphasized that the division’s processes were unbiased and included checks and balances, such as collaborating during complaint intake, reviewing each other’s investigation efforts, and using separate investigators to present an investigation’s findings and potential discipline options to decision makers (per MMB guidance). Furthermore, each investigator told us they felt adequately trained in division processes.

Complaint Submission

As mentioned in Chapter 1, complainants can use different avenues to submit complaints to HR. For example, complainants may contact HR division staff through e-mail, HR’s online form, or a scheduled meeting. Employees may also submit complaints to other MDH staff, such as their supervisor, who should then direct the complaints to HR.

Employee Understanding of the Submission Process

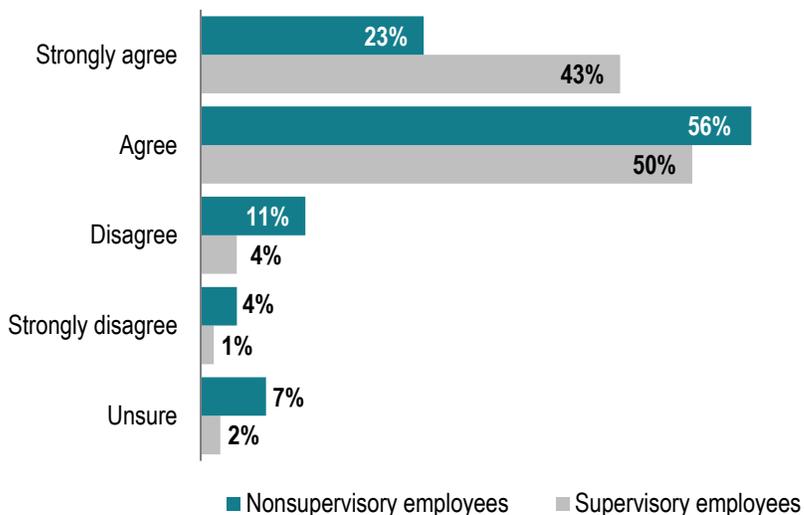
The first step to effectively managing complaints is to ensure that employees know how to submit them. If employees do not understand how to submit complaints, the HR division may not be aware of their concerns and thus unable to address them.

MDH and MMB provide training and information to MDH employees about how to submit complaints. The HR division publishes monthly newsletters and other online resources that are available to all MDH employees. Our review of these resources from February 2023 to August 2024 showed that the division frequently provided information about how and where to submit complaints. For example, the division typically included in its newsletter a link to its online complaint form. Additionally, according to HR investigators, they share information about complaint management processes at division meetings and monthly trainings for MDH supervisors. Furthermore, as discussed in Chapter 1, state employees are required to annually complete training about certain state policies; these training sessions routinely remind employees that they can report concerns to HR.

The large majority of MDH employees who responded to our survey indicated that they knew how to submit a complaint, but some expressed reluctance to do so.

Of the current MDH employees who responded to our survey (1,578), more than 80 percent (1,284) agreed or strongly agreed that they knew how to submit a complaint about a personnel issue. However, compared to supervisory employees, nonsupervisory employees were somewhat more likely to indicate uncertainty about how to submit a complaint, as shown in Exhibit 2.3.

Exhibit 2.3
Survey Question: I know how to report a complaint about a personnel issue.



Source: Office of the Legislative Auditor, based on our survey of current MDH employees, 2024.

Of the 1,578 survey respondents, 144 said they considered but did not submit at least one complaint about an incident that happened in or since 2022. The reasons they cited for not submitting their complaints included:



[I did not submit a complaint because I did not think anything would happen, was worried about retaliation.

I didn't feel that I personally had enough proof and I was aware that at least one other person made a complaint, so I figure that would take care of it.

— Current MDH Employees

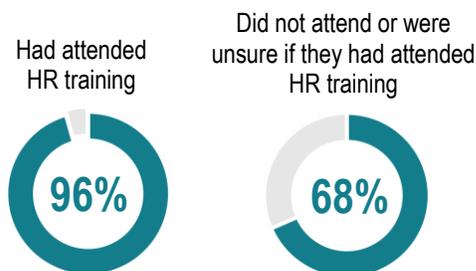
- Fear, including of retaliation.
- The perception that submitting the complaint was not worthwhile or nothing would happen.
- The sense that submitting it was unnecessary because others had already complained.
- Apprehension about reporting issues that involved their supervisors or other upper-level managers.
- A preference to wait until they had more documentation.
- A preference not to involve others.

Supervisor Understanding of the Submission Referral Process

MMB requires supervisors to refer certain complaints to HR.⁶ Further, it is important that supervisors know when to refer employee complaints to HR because supervisors appear to be common recipients of complaints. Of the current MDH employees who responded to our survey and said they had submitted a complaint (in or since 2022) to someone other than the HR division, 70 percent (33) said they submitted their complaint to their supervisor.⁷ Some respondents explained that they submitted their complaint first to their supervisor because they were following what they believed was the appropriate reporting path. If supervisors are uncertain about when to refer or do not refer complaints to HR, employee complaints may not reach the division as expected.

Based on survey responses, training seems to be an important factor in supervisors’ understanding of when to refer complaints to HR.

Exhibit 2.4
Percentage of Supervisors who Agreed or Strongly Agreed That They Knew When to Refer Employee Complaints to HR



Note: In response to our survey, 205 supervisors reported having attended an HR training; 92 reported they had not.

Source: Office of the Legislative Auditor, based on our survey of current MDH employees, 2024.

Overall, 87 percent (260) of MDH supervisors reported knowing when to refer employee complaints to HR, and optional HR training sessions appear to be a common source of this knowledge. Of the 205 supervisors who indicated they had attended an optional HR training, almost all said they knew when to refer a complaint to the HR division, as Exhibit 2.4 shows.⁸ Of the supervisors who reported uncertainty about when to refer complaints, the majority (29 of 38) had not attended or were unsure whether they had attended an HR training.

RECOMMENDATION

MDH should require all MDH supervisors to attend periodic training about when to refer employee complaints.

Although MMB’s required annual training includes information about complaint submission, additional HR training may improve supervisors’ understanding of when to refer employee complaints. To help reduce gaps in knowledge among supervisors, MDH should consider requiring supervisors to attend HR training as part of the onboarding or promotion process.

⁶ Minnesota Management and Budget, HR/LR Policy 1329, *Sexual Harassment Prohibited*, revised August 14, 2023, 4; and HR/LR Policy 1436, *Harassment and Discrimination Prohibited*, revised August 19, 2024, 5.

⁷ A total of 47 respondents said that they had submitted at least one complaint to someone other than the HR division, either instead of or in addition to submitting the complaint to HR.

⁸ We were unable to verify the extent to which supervisors and others at MDH have or have not forwarded complaints to the HR division.

While the HR division already offers training to supervisors, attendance is optional. Requiring attendance at training sessions would help ensure that supervisors understand the complaint process, even if they use it infrequently. The required training would also provide supervisors the opportunity to meet, ask questions, and establish relationships with HR employees. These interactions may increase the willingness of supervisors to approach HR with questions and direct others to the division, as appropriate.



...conflict resolution between employees might be the most challenging part of supervising, and even though I really enjoyed and learned a lot from [state supervisor training], I think additional trainings in the areas that are both frequent and challenging would be helpful.

— Current MDH Employee

Complaint Management

Exhibit 2.5
MDH HR Complaint Management Processes



For a typical complaint, the HR division’s two main activities, which we broadly refer to as “complaint management” and show in Exhibit 2.5, are intake and investigation. During the *intake* process, HR determines whether a complaint’s allegation(s) warrant an investigation. If HR determines it is warranted, the division opens an *investigation* to determine whether to substantiate the alleged wrongdoing.

The HR division does not have written procedures to help ensure consistency in complaint management.

Rather than develop their own procedures to manage complaints, the investigations manager told us the division generally uses MMB policies and its investigator training series. However, MMB’s training series provides minimal guidance on complaint intake. Further, some MMB policies require state agency HR divisions to develop their own procedures.⁹

Currently, the HR division decides how to manage complaints during conversations between investigators and their manager. HR investigators told us their manager guides their complaint management decisions, such as determining whether to open an investigation or collect additional information.

Without written procedures, the HR division risks managing complaints inconsistently. Some HR investigators described their efforts as collaborative and shared that they use each other as resources when managing complaints. Each investigator told us that new investigators start by shadowing more experienced investigators. One investigator also said that she and her colleagues review each other’s investigation reports. While it may be true that investigators learn from each other, they may inadvertently transmit bad habits or forget or misremember unwritten processes. For example, the investigations

⁹ Minnesota Management and Budget, HR/LR Policy 1444, *Workplace Violence Prohibited*, revised March 4, 2021, 5; HR/LR Policy 1329, *Sexual Harassment Prohibited*, revised August 14, 2023, 5; and HR/LR Policy 1436, *Harassment and Discrimination Prohibited*, revised August 19, 2024, 7.

manager told us that when they compiled investigation files for our review, they discovered that investigators were not consistently using certain complaint acknowledgement and closure templates.

Written procedures could also help mitigate risks associated with employee turnover. The investigations manager is the primary resource for investigators and the primary decision maker for how to manage complaints. If this manager were to leave MDH, they would take with them the experience, knowledge, and judgment that is currently critical to the HR division's complaint management decisions. Written procedures could help ensure that investigators manage complaints fairly and thoroughly regardless of leadership changes.

Finally, the HR division's lack of written complaint management procedures makes it difficult for HR to demonstrate that it manages complaints fairly and thoroughly. In our review of the division's complaint files, we frequently found that investigators did not clearly or consistently document certain complaint management activities, such as how they made complaint decisions and whether they communicated with complainants. In the remainder of this section, we discuss how the HR division's lack of written procedures contributes to issues in three areas of complaint management: rights and protections for investigation participants, complaint management decisions, and status notifications. We conclude by recommending HR adopt procedures to address these issues.

Rights and Protections

Employees who participate in the HR division's complaint intake and investigations are entitled to certain rights and protections. According to state law, when someone is asked to provide certain information about themselves to the state, they must be informed how that information will be used, whether they are required to provide the information and the consequences for doing or not doing so, and who else may access the information.¹⁰ Additionally, state law and policies protect employees who submit complaints or participate in the division's complaint intake or investigations from retaliation.¹¹ Finally, the labor contracts that apply to most MDH employees entitle the subject of an investigation to union representation and the right to be informed of allegation(s) against them.¹²

¹⁰ *Minnesota Statutes* 2024, 13.04, subd. 2. This is known as a Tennessen warning, or more informally, a data practices notice.

¹¹ *Minnesota Statutes* 2024, 181.932. Minnesota Management and Budget, HR/LR Policy 1432, *Respectful Workplace*, revised August 14, 2023, 2; HR/LR Policy 1329, *Sexual Harassment Prohibited*, revised August 14, 2023, 5; HR/LR Policy 1436, *Harassment and Discrimination Prohibited*, revised August 19, 2024, 6; and HR/LR Policy 1444, *Workplace Violence Prohibited*, issued March 4, 2021, 5. We defined retaliation in Chapter 1 and discuss it in further detail in Chapter 3.

¹² Minnesota Management and Budget, *Agreement Between Minnesota State Employees Union, AFSCME, Council No. 5, AFL-CIO and the State of Minnesota, July 1, 2023 through June 30, 2025*, art. 16, sec. 2; *Agreement between the State of Minnesota and the Middle Management Association, July 1, 2023 through June 30, 2025*, art. 6, sec. 4; *Unit 14: General Professional Labor Agreement between the State of Minnesota and the Minnesota Association of Professional Employees, July 1, 2023 through June 30, 2025*, art. 8, sec. 2; and *Agreement between the State of Minnesota and the Minnesota Nurses Association, July 1, 2023 through June 30, 2025*, art. 15, sec. 2, A. These unions represent about 90 percent of MDH employees.

Delivery of Data Practices and Antiretaliation Notices

While investigators routinely documented delivery of required data practices and antiretaliation notices during *investigation* interviews, they did not document delivery of these notices during *complaint intake*.

During Complaint Intake

While the HR investigations manager told us investigators verbally provided complainants with required notices of their rights and protections during intake, the manager shared that they did not *document* these verbal deliveries. Because state law requires those who provide certain information about themselves to be informed of how the information will be used, HR investigators must provide data practices notices before beginning intake conversations.¹³ Similarly, state law and MMB policy prohibit retaliation, and MMB guidance directs HR to inform complainants of this right.¹⁴ In our review of the 82 complaints submitted in fiscal years 2023 and 2024, we did not find documentation that the HR division delivered data practices and antiretaliation notices during complaint intake.

The HR division lacks written procedures guiding the delivery of data practices and antiretaliation notices, and only within our evaluation period did the HR division establish the expectation that investigators use a template e-mail for intake. The written template, which investigators are expected to use to schedule intake conversations, includes data practices and antiretaliation notices.

If investigators do not consistently inform complainants of their rights and protections, some complainants may be reluctant to bring forward complaints or participate in investigations. For example, the investigations manager told us that many complainants expressed concerns about retaliation as part of filing a complaint. If those with information about an alleged issue withhold information or do not come forward, there is a risk that the HR division may not become aware of or have the information it needs to determine when to investigate complaints.

During Investigations

According to our review of the 20 investigations that the HR division opened and closed in fiscal years 2023 and 2024, the division documented delivering data practices and antiretaliation notices for the vast majority of these investigations' 74 interviews. For 81 percent (60 of 74) of these investigation interviews, interviewees signed and dated **data practices notices** on or before the date of the interview, as Exhibit 2.6 shows. In the remaining 14 cases, the participant either signed the data practices notice *after* the interview, or the interview date was unclear, preventing us from evaluating the

¹³ *Minnesota Statutes* 2024, 13.04, subd. 2; and 13.43, subds. 2, 4, and 8.

¹⁴ *Minnesota Statutes* 2024, 181.932. Minnesota Management and Budget, HR/LR Policy 1432, *Respectful Workplace*, revised August 14, 2023, 2; HR/LR Policy 1329, *Sexual Harassment Prohibited*, revised August 14, 2023, 5; HR/LR Policy 1436, *Harassment and Discrimination Prohibited*, revised August 19, 2024, 6; and HR/LR Policy 1444, *Workplace Violence Prohibited*, issued March 4, 2021, 5.

Exhibit 2.6**Most investigation interviewees signed a data practices notice by the interview date.**

Note: The HR division conducted 74 investigation interviews over 20 investigations.

Source: Office of the Legislative Auditor, based on MDH HR division investigation files, fiscal years 2023-2024.

timing of the delivery of the data practices notice. The HR division documented providing interview participants with an **antiretaliation notice** in 93 percent (69 of 74) of investigation interviews.¹⁵

The HR division’s relatively consistent delivery of data practices and antiretaliation notices during investigations may be related to the division’s use of investigation templates that include these notices. The division has template scripts and notices—including for data practices and antiretaliation—for its investigators to use during investigation interviews with various types of participants, and the investigations manager told us that investigators use these consistently.

Employee Understanding of Required Notices

Inconsistent delivery of data practices and antiretaliation information could influence employees’ understanding of important rights and protections. Among our survey respondents, 106 reported that they had met with HR investigators as a complainant, subject, or witness, in or since 2022. Although the majority of them reported understanding their rights and protections related to confidentiality or antiretaliation, about one-third of these employees said they either did not understand these elements in some or all instances or were unsure if they had understood. Furthermore, three-quarters (79) of these survey respondents said they did not recall the division providing them with a written or oral antiretaliation notice.

Subjects’ Rights

Investigation subjects also tend to be entitled to certain rights during an investigation. To ensure that subjects understand why they are involved in an investigation, labor contracts generally require—and MMB training instructs—investigators to inform subjects of the allegation(s) against them.¹⁶ Most labor contracts that cover MDH employees and MMB policy require investigators to also provide union-represented

¹⁵ Unlike data practices notices, antiretaliation notices did not appear in each investigation file as a signed document. Rather, the investigation reports tended to include either a blanket statement that antiretaliation notices had been provided to each interviewee or a statement to that effect at the beginning of each individual interview summary. The only investigation reports in which the HR division did not document delivering antiretaliation notices were those investigations into speeding, which the division documents in a condensed investigation report. The investigations manager told us that investigators would still have provided antiretaliation information per their template and script, even though the condensed reports omitted mention of the investigators delivering these notices.

¹⁶ Minnesota Management and Budget, AFSCME agreement, art. 16, sec. 2; and Middle Management Association agreement, art. 6, sec. 4.

investigation subjects the opportunity for a union representative to attend the subject's investigation interview.¹⁷ A subject may waive this right in writing before an interview.¹⁸

The HR division informed investigation subjects of specific legal rights.

In our review of the investigations the HR division conducted in fiscal years 2023 and 2024, the division adhered to requirements to inform subjects of certain rights during investigations. The division allowed all eligible subjects to have union representation during investigation interviews. In the instances when a subject waived their right to union representation, the division's files supported that it received the subject's signed waiver. Additionally, HR's investigation reports documented that investigators provided subjects with information regarding the investigation topic or allegation(s) against them and allowed the subjects the opportunity to explain themselves.

Complaint Management Decisions

When managing complaints, HR investigators collect information to make decisions about alleged wrongdoing. For example, during intake, investigators gather information to decide whether to open an investigation. During an investigation, investigators decide whom to interview and what evidence to collect, so they can determine whether the complaint allegation(s) should be substantiated.

In its training series, MMB instructs HR investigators to consider all evidence before reaching conclusions. MMB's training also recommends investigators document their decision making and complaint management actions, such as in investigation reports. Such documentation can demonstrate that HR's complaint management is thorough and consistent regardless of investigator, complainant, and complaint type.

While the HR division's investigation reports were generally clear, concise, and objective, HR's general lack of procedures and limited documentation made it difficult to assess how the division reached various complaint management decisions. The division's investigation reports were generally consistent with MMB's investigation report template. The reports also demonstrated analysis of relevant evidence to support the investigators' determinations about alleged wrongdoing and did not include instances of investigators opining on allegations. While the reports themselves were generally appropriate, it was difficult to assess other aspects of the division's complaint management.

¹⁷ Minnesota Management and Budget, AFSCME agreement, art. 16, sec. 2; Middle Management Association agreement, art. 6, sec. 4; Minnesota Association of Professional Employees agreement, art. 8, sec. 2; Minnesota Nurses Association agreement, art. 15, sec. 2; and HR/LR Policy 1376, *Right to Representation (Weingarten Rights)*, revised December 1, 2014.

¹⁸ Minnesota Management and Budget, AFSCME agreement, art. 16, sec. 2; Middle Management Association agreement, art. 6, sec. 4; Minnesota Association of Professional Employees agreement, art. 8, sec. 2; and Minnesota Nurses Association agreement, art. 15, sec. 2, A.

We could not determine whether the HR division took consistent approaches when deciding how to manage complaints.

As discussed, HR does not have written procedures that guide investigators' complaint management activities or decision making. Instead, the investigations manager directs complaint management decisions. In the complaint files we reviewed, the HR division did not document their rationale for these decisions.

Opening investigations. Investigators did not clearly document the evidence they reviewed or factors they considered when deciding whether to open an investigation. Based on our review, HR opened investigations into slightly less than one-half of the complaints it received during fiscal years 2023 and 2024. In a few instances, we questioned why investigators did not pursue additional information during the intake process or open investigations. For example, in at least two instances there was little evidence that investigators continued intake or investigated allegations after the complainants left MDH. We question these decisions, as it does not seem reasonable to conclude that the issues stopped merely because the complainants left the department, especially when complainants named others, still employed, as witnesses or subjects.

Pursuing additional evidence. As part of MMB's guidance to consider all evidence before reaching conclusions, MMB instructs investigators to ask every investigation participant if they know of additional evidence or witnesses. Doing so gives complainants, subjects, and witnesses the opportunity to share relevant information, which investigators are to consider before reaching a decision about whether to substantiate an allegation.

Investigators did not appear to ask interviewees if they knew of others with relevant information in

59%

of investigation interviews.

While one of the HR division's investigation scripts includes questions about additional witnesses and evidence, it was unclear from the investigation files the extent to which investigators used these scripts. In more than one-half of investigation interviews (44 of 74), investigators' documentation did not indicate whether they asked the interviewees about others with information.¹⁹ In instances when the investigators asked about and documented that the interviewees named other witnesses, investigators interviewed all additional witnesses named in 59 percent of the investigation interviews (10 of 17).²⁰ Although investigators may have been justified in not interviewing certain named witnesses, investigators did not document their rationale for these decisions, which is inconsistent with MMB's direction to document decision making.

¹⁹ Occasionally, interviewees incidentally, rather than in response to an investigator's questioning, named others with relevant information. However, per MMB guidance, investigators should explicitly ask interview participants about other information or witnesses.

²⁰ We did not include instances where the description of a witness was not detailed enough for us to determine whether the investigator had interviewed the additional witness.

Status Notifications

Status notifications help MDH employees who submit a complaint or are involved in an investigation understand the status of the complaint. Because state law generally protects complaint data, investigators are limited in the information they can share.²¹ However, the HR division may notify a complainant that investigators have received and reviewed their complaint. The division may also notify a complainant or an investigation subject when it concludes an investigation.

Complaint Receipt Acknowledgement

MMB's Respectful Workplace policy encourages state agency HR divisions to, "as a matter of best practice," acknowledge receipt of a complaint related to the policy.²² This policy encourages HR divisions to include in their acknowledgement (1) the date the complaint was submitted; (2) information related to the division's authority to determine whether to investigate; (3) a statement that if an investigation is warranted, HR will conduct it in a timely, fair, and objective manner; and (4) a statement about data practices.

A complaint receipt acknowledgement can assure a complainant that the division has received and will review their complaint. An acknowledgement can also help a complainant understand what will happen with their complaint, including the communication a complainant should or should not expect from the division.

Based on our file review, investigators did not consistently document having acknowledged complaint receipt.

For fiscal years 2023 and 2024, investigators did not document having acknowledged 20 percent (14 of 69) of complaints.²³ While the HR division recently implemented use of a template to schedule intake conversations, the template does not provide information regarding the division's complaint management processes. Regardless, even in cases when investigators acknowledged complaints, we did not find evidence that investigators routinely used this template.

Of the 53 current MDH employees who responded to our survey and indicated they had submitted a complaint to HR in or since 2022, some reported that they had not heard from the division regarding the status of their complaint. About one-third (17) of these respondents said they were unsure whether the HR division investigated their complaint. Of those who were unsure, slightly more than half commented about the division's lack of follow up.

²¹ *Minnesota Statutes* 2024, 13.43, subds. 2, 4, and 8.

²² Minnesota Management and Budget, HR/LR Policy 1432, *Respectful Workplace*, revised August 14, 2023, 4.

²³ While the HR division received 82 complaints in fiscal years 2023 and 2024, we excluded from this analysis complaints for which a response was either not possible or unnecessary, such as complaints submitted anonymously or speeding violations reported through state vehicle monitoring. We considered a complaint acknowledged if the division e-mailed with the complainant or retained notes from a conversation with the complainant.

Some current MDH employees' open-ended survey responses mentioned ways the division could improve its communication with complainants. Many respondents suggested the HR division should acknowledge receiving complaints. Respondents suggested the division explain its processes and what complainants can expect to happen after submitting a complaint.



I [feel] a little worthless when they haven't even acknowledged I sent in a complaint. Hopefully I did it the correct way.

ANY kind of communication to reassure people that their concerns have been heard, are being weighed, and that HR is considering all possible responses/steps they need to take would be helpful.

— Current MDH Employees

Without an acknowledgement of complaint receipt from the HR division, complainants may be unsure whether the division received and is taking efforts to understand or address their concerns. Such uncertainty may undermine employees' confidence in the division to manage complaints fairly and thoroughly and may reduce employees' inclination to report issues to the division.

Intake and Investigation Closure

MMB's investigator training series establishes the expectation that investigators notify both the subject and complainant when they close an investigation.²⁴ MMB also provides a closure notice template that investigators may use.

For certain types of complaints, state law requires a similar *intake* closure notification when HR conducts intake and decides an investigation is not warranted.²⁵ Such a notice can confirm for complainants that the HR division took their concerns seriously and may help complainants decide if they want to pursue other avenues for their complaints.

The HR division notified *subjects* when it closed investigations, but it inconsistently notified *complainants* of both intake closure and investigation closure.

Intake status. Although the HR division adopted a complaint closure notice template in 2022, the division inconsistently used it. Among the 24 complaints the division received in fiscal years 2023 and 2024 and decided *not* to investigate, investigators communicated about intake closure with 46 percent (11 of 24) of complainants.²⁶ In three of these instances, the investigator sent a closure notice only after the complainant followed up to request a status update.

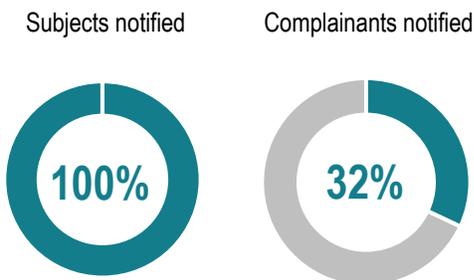
²⁴ Some labor contracts also require agencies to notify investigation subjects of investigation closure. Minnesota Management and Budget, AFSCME agreement, art. 16, sec. 3; Middle Management Association agreement, art. 6, sec. 4; and Minnesota Nurses Association agreement, art. 15, sec. 2, A.

²⁵ *Minnesota Rules*, 3905.0500, <https://www.revisor.mn.gov/rules/pdf/3905/>, accessed April 18, 2024.

²⁶ HR either coached or advised 2 of these 11 complainants as a means of closing their complaint. We excluded from this analysis 7 complaints for which HR could not have responded because either the complainant was anonymous or had left MDH.

Exhibit 2.7

While the MDH HR division notified all subjects of investigations closure, it rarely notified complainants.



Note: The HR division conducted 20 investigations involving 22 complainants whom the division could have reasonably notified of investigation closure.

Source: Office of the Legislative Auditor, based on MDH HR division investigation files, fiscal years 2023-2024.

Investigation status. The HR division more consistently provided investigation closure notices to subjects than complainants, as Exhibit 2.7 shows. For the 20 investigations HR completed in fiscal years 2023 and 2024, the division notified each investigation subject through either (1) a notice describing the discipline or coaching for the subject as a result of a substantiated investigation, or (2) an investigation closure notice in the cases when the division did not substantiate any of the allegations.²⁷ In contrast, the division notified only 7 of the 22 complainants of investigation closure.²⁸

The inconsistency with which the HR division delivers status updates to complainants may be a result of its lack of written procedures to guide investigators’ processes. Currently, the division has no procedures for when to acknowledge complaint receipt or notify a complainant that it has closed an intake or investigation. Additionally, the division does not formally track any of these communications.

If the HR division does not notify complainants of key status updates, complainants may be unsure whether their concerns have been addressed or if they should pursue other options to resolve their issues. It may also reduce trust in the division. Although law limits the details the division can share about complaints, status updates are allowed.²⁹ A general notification about closure may alleviate uncertainty, assure complainants that the HR division reviewed their concerns, and, if their concerns persist, allow them to pursue additional support or action elsewhere.



I received a phone call from an HR representative.... However, I have heard nothing from HR since then. As a result, I am unsure of how they handled it and whether or not anything is being done.

I am not sure the reported complaint was addressed.... I was told basically I would not find out if there was any investigation as it is protected info. This leaves me with a lot of mistrust.

— Current MDH Employees

²⁷ As we mentioned in Chapter 1, it is possible for a complainant to raise issues about multiple subjects. For this analysis, one of the investigations included multiple subjects, but HR provided the investigation closure notice only to the primary subject of the investigation. The discipline notice is administered by the disciplinary decision maker in consultation with HR.

²⁸ We excluded from this analysis seven complainants for whom a response was either not possible or unnecessary, such as speeding violations reported through state vehicle monitoring. The number of complainants does not match the number of investigations because some investigations involved more than one complainant. In only two cases did HR notify the complainant independently; in the remaining five, the complainant was included on the subject’s discipline notice because the complainant was the subject’s supervisor or another upper-level manager in the subject’s division.

²⁹ *Minnesota Statutes* 2024, 13.43, subd. 2, classifies the status of a complaint as public information. However, details of the investigation outcomes and discipline decisions remain not public until the disciplinary action’s final disposition.

Recommendations

As we have discussed, the HR division's lack of written procedures poses risks to the division's complaint management, especially by making it difficult to demonstrate that investigators act fairly and thoroughly. Without documented expectations, investigators may inconsistently provide complainants and subjects information about their rights and protections. Investigators may also consider different information when deciding whether to open an investigation or interview certain witnesses, which may result in inconsistency across investigators, complaints, and complainants. Furthermore, investigators' communication with complainants and subjects about the status of their complaints or investigations may vary. Such discrepancies can ultimately influence MDH employees' perception of the division and their willingness to share concerns with HR.

RECOMMENDATION

The HR division should establish complaint management procedures that require investigators to:

- **Issue, and document the issuance of, verbal and written data practices and antiretaliation notices during intake conversations and investigation interviews.**
- **Consider certain factors when deciding whether to (1) investigate complaint allegation(s) and (2) interview people identified as having relevant information, and document these decisions.**
- **Notify each complainant when they receive and close a complaint and at any other determined points, and document when they issue such acknowledgment(s).**

We recommend the HR division establish written procedures to guide investigators' complaint management. Such procedures would help ensure the division's complaint management is consistent, fair, and thorough. In particular, developing procedures in the following areas could address issues identified in our evaluation.

Rights and Protections. Due to the limited evidence we found that investigators routinely delivered required notices to intake participants, we recommend that the HR division require investigators to consistently use intake and interview scripts and templates that include information about rights and protections. Investigators should consistently document providing these notices. Investigators should also be prepared to discuss and answer questions about these notices to ensure investigation participants understand the information.

We also recommend the HR division create and provide written resources about rights and protections to intake and investigation participants. Investigators could provide a know-your-rights fact sheet during an in-person meeting or send the fact sheet via e-mail before virtual meetings. Participants could refer to this resource if they later have questions or other concerning experiences.

Decision making. Because it was unclear whether the HR division followed consistent processes to decide how to manage complaints, we recommend the division document procedures that identify factors investigators and their manager should consider when deciding whether, for example, to investigate a complaint's allegation(s). We recognize that a complaint's unique circumstances may necessitate different approaches, but procedural guidance would encourage greater consistency across decisions.

Additionally, we recommend the HR division decide the extent to which investigators should be required to document their complaint management decisions. While MMB guidance encourages investigators to document complaint management decisions, the division should decide for itself the level of documentation it requires and develop a procedure that reflects those expectations.

Status Notifications. Because HR inconsistently (1) acknowledged complaint receipt and (2) notified complainants of intake and investigation closure, we recommend the HR division establish a procedure that requires investigators to provide status notifications at predetermined points. The division should require investigators to notify every complainant when the division receives their complaint. Such notifications can preempt complainants' potential questions, ease their worries, and increase trust in the HR division. The procedure should also require investigators to track or document when they provide the acknowledgment.³⁰ By tracking delivery of complaint receipt acknowledgements, the division can ensure continuity of efforts, especially if the division needs to reassign complaint or investigation duties. This documentation would also allow the division to evaluate the timeliness of its complaint intake.



Complaint Receipt Acknowledgement Components

1. The date the complaint was submitted.
2. Information related to the HR division's authority to determine how it manages complaints.
3. A statement that if an investigation is warranted, HR will conduct it in a timely, fair, and objective manner.
4. A statement about data practices.

— MMB Respectful Workplace Policy

Additionally, we recommend the HR division determine standard elements to include in its complaint receipt acknowledgements and update its template. We believe it is reasonable for the template to include each of the elements outlined in MMB's Respectful Workplace policy.³¹ Further, we suggest adding an overview of general expectations for future conversations with and notifications from the division.

A description of the division's complaint management processes can improve a complainant's understanding and may reduce follow-up inquiries that the division may not be able to answer due to data protections.

The HR division should determine and establish within this procedure the stages at which investigators must provide status updates to complainants. The division should decide whether it will notify complainants when it closes their complaint without an investigation. If it decides to issue notifications at such a point, it should do so uniformly. The procedure should require, and template notices should include, information specified by union contracts and allowed by statute.³²

³⁰ HR told us it is in the process of implementing a tool that investigators can use to document complaint management information.

³¹ Minnesota Management and Budget, HR/LR Policy 1432, *Respectful Workplace*, revised August 14, 2023. Although MMB explicitly encourages these elements in just one of its human resources and labor relations policies, the elements are widely applicable and would be useful information for all complainants.

³² *Minnesota Statutes* 2024, 13.43, subd. 2.



OLA

Chapter 3: Retaliation

As described in Chapter 1, retaliation includes adverse actions against an individual because they reported a complaint or participated in an investigation into a complaint allegation. State law and policies prohibit employers or employees from engaging in retaliatory behavior.¹

Preventing retaliation is an important employer responsibility. Employers who engage in retaliation may be required to compensate or reinstate employees who lost wages, benefits, or their positions due to retaliation. Additionally, when employees fear or experience retaliation, they may become less likely to speak up about wrongdoing they have witnessed or experienced in the workplace. Without employee reports, human resources divisions may be unaware of and thus unable to address retaliatory behavior, which may reduce employee confidence in human resources. A workplace free from retaliation is more likely to be one in which employees feel safe *and* are held accountable for their actions.

In this chapter, we review the efforts of the Minnesota Department of Health's (MDH's) Human Resources Management Division (HR division or HR) to address retaliation. We then examine employee experiences of perceived retaliation.

Protecting Employees from Retaliation

The Occupational Safety and Health Administration (OSHA) recommends practices to foster workplaces free of retaliation.² One practice is for senior leadership to demonstrate their commitment to take retaliation seriously.³ For example, leadership can do so by ensuring that processes for reporting

Key Findings in This Chapter

- There is little evidence that MDH's HR division consistently followed up on reports of retaliation.
- In their survey responses, some MDH employees indicated that they believed they experienced retaliation as a result of submitting a complaint to HR.



Retaliation

Adverse actions taken against an individual because they submitted a complaint, participated in an investigation into a complaint allegation, or opposed behavior that violated law or policy. Adverse actions include discipline, demotion, discharge, exclusion, threats, reprimands, reduced hours, and transfers to less desirable work, among other things.

Adverse actions may also constitute retaliation if these actions might deter someone from reporting a complaint, participating in an investigation, or opposing prohibited behaviors.

¹ *Minnesota Statutes* 2024, 181.932. Minnesota Management and Budget, HR/LR Policy 1432, *Respectful Workplace*, revised August 14, 2023, 2; HR/LR Policy 1329, *Sexual Harassment Prohibited*, revised August 14, 2023, 5; HR/LR Policy 1436, *Harassment and Discrimination Prohibited*, revised August 19, 2024, 6; and HR/LR Policy 1444, *Workplace Violence Prohibited*, issued March 4, 2021, 5. We focused on retaliation against MDH employees for reporting a complaint to the HR division.

² Occupational Safety and Health Administration, *Recommended Practices for Anti-Retaliation Programs*, 2017, 1.

³ *Ibid.*, 4.

retaliation are implemented and evaluated or by meeting with employees to create and implement antiretaliation policies and procedures.⁴ OSHA also recommends that employers clearly define and make accessible the roles and responsibilities of those who may receive or address retaliation reports and investigate reports of retaliation using an established process.⁵ OSHA cautions that failure to quickly respond to retaliation reports can discourage employees from raising issues.⁶

As discussed in Chapter 2, MDH’s HR division does not have written procedures to guide complaint management. The investigations manager said they train investigators to bring employee complaints or fears of retaliation to the manager to determine next steps.

To evaluate efforts to protect MDH employees from retaliation for submitting complaints, we reviewed HR’s response to mentions of retaliation in its fiscal years 2023 and 2024 complaint files.⁷

There is little evidence that the HR division consistently followed up on reports of retaliation.



[The HR division could improve its complaint management by clearly indicating how they will protect us from retaliation and then actually following through, putting real safeguards in place.

— Current MDH Employee

Based on our review of the division’s files, there were few instances in which HR undertook specific efforts to learn about or protect employees from perceived retaliation. According to our review, four complainants reported allegations of retaliation. The files show that HR asked questions about retaliation for only one of these four complaints. When describing their broader concerns, at least 13 other complainants mentioned fears or experiences of retaliation. However, HR seemingly followed up on a complainant’s retaliatory concerns for only one of the complaints; in this instance, HR documented having asked who the complainant thought was being retaliatory and what they had noticed.⁸

Although reporting a fear of retaliation is different than reporting an experience of it, the State of Minnesota has a zero-tolerance policy for engaging in retaliatory behavior.⁹ Therefore, it is reasonable to expect HR to follow up on all reports of perceived or potential retaliation.

⁴ Occupational Safety and Health Administration, *Recommended Practices for Anti-Retaliation Programs*, 2017, 4.

⁵ *Ibid.*, 7-8.

⁶ *Ibid.*, 8.

⁷ We reviewed files for all 82 complaints HR received, as well as their associated investigation files. MDH has limited documentation of complaints that occurred before HR division management changed in the spring of 2022.

⁸ Complainants sometimes shared these retaliation concerns during intake conversations. HR’s documentation of these conversations generally did not include questions asked by investigators or enough context for us to determine whether they followed up on the complainant’s mention of retaliation.

⁹ *Minnesota Statutes* 2024, 181.932. Minnesota Management and Budget, HR/LR Policy 1432, *Respectful Workplace*, revised August 14, 2023, 2; HR/LR Policy 1329, *Sexual Harassment Prohibited*, revised August 14, 2023, 5; HR/LR Policy 1436, *Harassment and Discrimination Prohibited*, revised August 19, 2024, 6; and HR/LR Policy 1444, *Workplace Violence Prohibited*, issued March 4, 2021, 5.

RECOMMENDATION

The HR division should develop procedures to address retaliation fears or experiences that emerge through complaint intake or investigation.

The HR division should consider fears and experiences of retaliation as indicators of potential issues and opportunities to educate MDH employees about appropriate behavior, complaint reporting and management, and employee rights and protections. If the division continues to take limited action in response to retaliation concerns, employees may lack confidence in the division to protect them from retaliation. In turn, employees may become less willing to report fears or experiences of retaliation, resulting in HR being unaware of and thus unable to address it.

To ensure employees are protected from retaliation, the HR division should develop procedures for its investigators to follow when managing complaints that involve fears or experiences of retaliation, regardless of whether retaliation is a specific allegation or a concern that arises incidentally. For example, procedures could include questions to ask about the perceived retaliation and factors to consider when evaluating whether a retaliation risk exists. The procedures may also outline strategies to protect an employee and alleviate their fears, such as continued contact after complaint resolution. Although we recognize complaint circumstances vary, following such procedures can ensure HR manages retaliation consistently and thoroughly and takes measures to protect employees.

Employee Experiences of Perceived Retaliation

In our surveys of current and former MDH employees, we asked respondents about any retaliation they perceived and what made them decide not to report it, if applicable.¹⁰

In their survey responses, some current and former MDH employees indicated that they believed they experienced retaliation as a result of submitting a complaint to HR.

Among the 53 current MDH employees who reported that they had submitted a complaint in or since 2022, 10 of them indicated that they had experienced retaliation as a result of submitting that complaint. A handful of former employees also reported that they experienced retaliation while at MDH. Additionally, some respondents relayed instances of their coworkers experiencing perceived retaliation after reporting complaints. For example, one current employee said, “I have heard stories from

¹⁰ For our survey of current employees, 2,007 employees received our survey and 79 percent (1,578) responded. Survey respondents included 300 employees who identified themselves as managers or supervisors, and 1,278 nonsupervisory employees. For our survey of former employees, we used a nonrepresentative sample consisting of former MDH employees who still worked for state government, as well as a small number of former employees who contacted our office about this evaluation. Of the 58 former employees who received our survey, 76 percent (44) responded and reported leaving the department in 2022 or later.

co-workers who have filed [a] complaint with HR who stated that they experienced retaliation after filing the complaint. ... I think many feel that reporting complaints to HR is either futile or will put them at risk of further punitive action.”

In general, respondents’ descriptions of perceived retaliation, some of which we show in the box below, included changes in how they were treated by others; their workload; their employment status, position, or advancement opportunities; or a combination thereof.¹¹ For example, one employee said, “I am assigned more work duty. I requested [a] breakdown of my workload and have not received the requested written information.”



[I was i]solated from colleagues and supervisor.... I missed out on training and professional growth because of the isolation.

After HR contacted my supervisor, he went out of his way to find anything to use against me.

Three weeks after I filed the complaint I was fired for [a] vague reason.

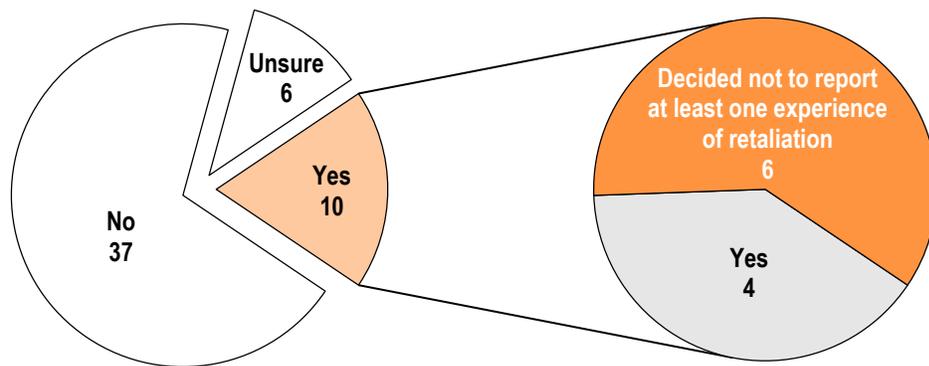
— Current and Former MDH Employees

Further, a few of these survey respondents indicated that they chose not to report these instances of perceived retaliation to the HR division, as shown in Exhibit 3.1. This lack of reporting did not seem related to a lack of understanding about how to report retaliation. Seventy-five percent of both current and former MDH employees who responded to our survey indicated they knew how to report a complaint if they experienced retaliation at MDH. Instead, employees attributed not reporting perceived retaliation to their impressions of the HR division. For example, some cited a lack of confidence in HR or the perception that HR does not protect employees.

Exhibit 3.1 Current Employees with Complaint Experience (N=53)

Survey Question: Do you believe you experienced any retaliation as a result of reporting a complaint to the HR division?

Survey Question: Did you report this retaliation?



Note: This exhibit includes current employees who reported a complaint to HR only in or after 2022.

Source: Office of the Legislative Auditor, based on our survey of current MDH employees, 2024.

¹¹ We did not independently verify the details provided by survey respondents.

There may be a relationship between employees not reporting retaliation and the extent of the HR division's efforts to protect employees from it. As discussed earlier, in our review of the division's files, HR generally did not appear to conduct follow-up to understand alleged fears or experiences of retaliation. The lack of follow-up may lead some employees to not report perceived retaliation (as suggested by responses to our surveys).

When such retaliation concerns do not reach HR, the division may not perceive retaliation to be an issue and thus may not prioritize developing relevant division procedures to address it. In turn, employees may not know how HR protects them from retaliation, which may undermine employees' willingness to report concerns.

Retaliation Against Probationary Employees

Typically, employees who join a state agency or move to a new role within an agency must serve a probationary period.¹² The probationary period serves to ensure that the employee can successfully complete the duties of the position.¹³ The initial probationary period concludes when the agency certifies the employee (i.e., makes them a permanent employee), does not certify the employee (i.e., dismisses the employee from their position or returns them to their previous position), or extends the probationary period.

Since state law and labor contracts generally include stronger protections for certified employees, probationary employees are particularly vulnerable to retaliation.

Since they are not yet permanent employees, statutes allow agencies to discipline or dismiss probationary employees without demonstrating the elements of just cause that we discussed in Chapter 1.¹⁴ Through our surveys and conversations with current and former MDH employees, some shared that employees in their probationary period may face unique experiences with retaliation. We heard several examples of supervisors allegedly using an employee's probationary status to retaliate against the employee. We also learned that fear of such retaliation was a factor in some probationary employees deciding not to submit complaints to HR. Employees, including those quoted in the box that follows, shared that employees on probation who voiced concerns experienced or risked retaliation by means of noncertification.

¹² *Minnesota Statutes* 2024, 43A.16.

¹³ *Minnesota Statutes* 2024, 43A.02, subd. 32.

¹⁴ *Minnesota Statutes* 2024, 43A.02, subd. 30; and 43A.33, subd. 1.



My supervisors have, on several occasions, threatened us with the probation period if we challenge the changes in our work activities. This practice is unfair and inequitable.

I am aware of a staff person (who was in their 6-month probationary period) who recently reported a complaint against their supervisor to [the HR division].... about a month later, the supervisor terminated the staff person who had reported the complaint.... [HR]'s job should include understanding and seeing the full picture of the timing of the submission of the complaint and then the termination request, as suspect and rife with possibility of being retaliatory on the part of the Supervisor- not to say that it is for-sure retaliation, however there is a question of was this retaliation, which should be enough to pause the termination from moving forward.... Supervisors have the power to terminate staff who submit complaints, particularly staff who are in their 6-month probationary period.

A colleague submitted a complaint about their supervisor.... They were in the probationary period of their full-time position. Their employment was terminated about two weeks after submitting the complaint, by the supervisor about whom the complaint was made, in consultation with HR. This made me question the commitment of MDH to the anti-retaliation policy.

I am still on probation so have no contractual protections against supervisor retaliation. I had one interaction with HR where I asked for a discussion with my supervisor to understand the reasons for probation extension and benchmarks that I needed to meet to get off probation. The HR representative was hostile to me and seemed more concerned with protecting the institution than resolving our issues.

— Current MDH Employees

RECOMMENDATION

The HR division should develop a procedure for examining instances of noncertification of probationary employees who previously submitted complaints.

While it is legal to dismiss a probationary employee without establishing the elements of just cause, it is not legal to retaliate against an employee for submitting a complaint.¹⁵ As we mentioned in Chapter 2, our review of the HR division's files from fiscal years 2023 and 2024 showed that the division chose not to continue its efforts once a complainant left MDH. This practice, however, creates an opportunity for supervisors to preemptively dismiss probationary employees who they know or suspect have submitted complaints.

When a probationary employee submits a complaint and is then dismissed from their position at MDH, the HR division should investigate both the original complaint and whether the dismissal might be retaliatory. Even if such retaliation is difficult to prove, HR's procedures should include monitoring for patterns of behavior (such as numerous noncertified employees or frequent extensions of employees' probation under the same supervisor) that may suggest a supervisor is using noncertification inappropriately.

¹⁵ *Minnesota Statutes* 2024, 181.932, subd. 1.

List of Recommendations

- The Minnesota Department of Health (MDH) should require all MDH supervisors to attend periodic training about when to refer employee complaints. (pp. 18-19)
- The Human Resources (HR) division should establish complaint management procedures that require investigators to:
 - Issue, and document the issuance of, verbal and written data practices and antiretaliation notices during intake conversations and investigation interviews.
 - Consider certain factors when deciding whether to (1) investigate complaint allegation(s) and (2) interview people identified as having relevant information, and document these decisions.
 - Notify each complainant when they receive and close a complaint and at any other determined points, and document when they issue such acknowledgment(s). (pp. 28-29)
- The HR division should develop procedures to address retaliation fears or experiences that emerge through complaint intake or investigation. (p. 33)
- The HR division should develop a procedure for examining instances of noncertification of probationary employees who previously submitted complaints. (p. 36)



OLA



Protecting, Maintaining and Improving the Health of All Minnesotans

January 29, 2025

Ms. Judy Randall
Legislative Auditor
Office of the Legislative Auditor
658 Cedar St. Room 140
Centennial Office Building
St. Paul, MN 55155-1603

Dear Ms. Randall,

Thank you for the opportunity to review and respond to the recommendations in the evaluation of the Human Resources Complaint Management for the Minnesota Department of Health (MDH). MDH is committed to a fair and equitable human resources complaint management process, as demonstrated through its investment in resources and process improvement initiatives.

We greatly value and appreciate your feedback as it identifies areas for improvement (i.e. training, documentation, and communication) and serves as an important tool for growth and development. Please be assured that we take your input seriously and remain committed to our efforts of continuous improvement in our work. We will use this opportunity to further refine our processes to enhance the quality of our efforts in complaint management.

MDH appreciates the time and attention employees, union partners, and enterprise collaborators took in providing honest, candid, and informative feedback by the survey tool used through the discovery process for this program review. The survey positively reflected our dedication to our valued relationships with union partners and are proud to see that reflected in their positive responses.

Recommendation:

Minnesota Department of Health (MDH) should require all MDH supervisors to attend periodic training(s) about when to refer employee complaints. (pp.18-19)

Response:

The survey validated our efforts in providing quality training to MDH supervisors and managers through our HR/Labor Relations training series, which launched August 2023, confirming our training is effective for those who have taken it. The MDH Strategic Plan 2024-2027, incorporates strategies to launch job-embedded professional learning communities for new supervisors that include human resources topics and leadership best practices. Strategies within the strategic plan will include opportunities to ensure all staff know about, have access to, and feel comfortable accessing internal and external resources to manage workplace conflicts. MDH intends to implement requiring new supervisors and managers to take these HR/Labor Relations training courses as part of their new supervisor/manager training plan, as early as March/April 2025.

Recommendation:

The Human Resources (HR) division should establish complaint management procedures that require investigators to:

- Issue, and document the issuance of, verbal and written data practices and antiretaliation notices during intake conversations and investigation interviews.
- Consider certain factors when deciding whether to (1) investigate complaint allegations and (2) interview people identified as having relevant information, and document these decisions.
- Notify each complainant when they receive and close a complaint and at any other determined points, and document when they issue such acknowledgement(s). (pp. 28-29)

Response:

MDH recognizes the importance of consistently documenting verbal notices/conversations, as well as written notices or acknowledgements sent via Microsoft Office meeting invites. The Labor Relations unit has already begun to implement steps uniformly to ensure documentation is saved in a consistent manner within case management files. The Labor Relations unit has drafted a complaint and investigation internal guidance document, which specifically notes which documents are to be saved within the case management files and will be used by each staff member, this document is in the final stages of finalization and will be completed by mid-February. Additionally, an agency-wide complaint and investigation procedure has been created, and will go to MDH's Policy, Procedures, and Standards Committee for approval this spring 2025.

As of October 2024, MDH has implemented verbal and written data practices and antiretaliation notices during intake discussions and meeting invites, consistent with existing templates that have been used since May 2022 for investigation meeting invites and used during investigation interviews. Additionally, all Labor Relations staff are currently expected to send written acknowledgment and closure notices for all complainants who have submitted complaints at the

time of complaint and closure of complaint, which has been added to the complaint and investigation internal guidance document for reference and consistency. This was reiterated to Labor Relations staff as being a requirement in October 2024.

Minnesota Management and Budget provided investigations training to enterprise-wide Human Resources/Labor Relations staff which now identifies an expectation that investigators include written statement outlining the justification for not interviewing named witnesses. As of November 2024, following MMB's training, MDH has incorporated this into its investigation process. MDH also implemented additional tracking standards to include noting why a complaint is moved to investigation, versus other means of addressing the concerns, in December 2024.

It is important to MDH to "ensure knowledge and understanding is shared across the agency, rather than held by a select few subject matter experts" [MDH Strategic Plan, 2024-2027]. We are committed to providing opportunities to increase knowledge and documented processes to ensure HR/Labor Relations staff understand the considerations needed to make sound decisions on whether a complaint is managed through workplace investigation, or through other performance management measures.

Recommendation:

The HR division should develop procedures to address retaliation fears or experiences that emerge through complaint intake or investigations. (p. 33)

Response:

In November 2024, MDH has begun developing additional resources to address employee concerns of retaliation, raise awareness of retaliation, instilling confidence to staff in coming forward to report retaliation, and to minimize instances of retaliation in the workplace. Resources include written internal news articles outlining the process for filing a retaliation complaint, defining what retaliation may include, and the process for addressing concerns. MDH also provided training to supervisors and managers in November 2024, during our monthly HR/Supervisor and Manager forum on complaint, investigations, and retaliation and is highlighting retaliation as a concern during HR/Labor Relations training series courses. MDH will continue its long-standing commitment to ensuring a workplace free of discrimination, harassment, and retaliation in the workplace.

Recommendation:

The HR division should develop a procedure for examining instances of noncertification of probationary employees who previously submitted complaints. (p. 36)

Response:

MDH has utilized a thorough review process for all non-certifications, since May 2022, which requires all non-certifications to come to the Employee and Labor Relations unit, within Human Resources Management, to be reviewed prior to taking action. This review includes verifying the employee has received appropriate training, resources, and/or mentorship, as well as confirming the employee has received coaching and/or redirection in the areas where their performance is lacking. Based on this information, the Employee and Labor Relations representative may provide guidance to proceed with a non-certification or may recommend additional performance management efforts be made to assist the employee towards success. The recommendation may also include a probation extension to allow for additional time. Due to the fact that Employee and Labor Relations is reviewing all non-certifications prior to implementation and are also the unit who manages the complaint and investigations process, complaint or investigation data is reviewed as a consideration in the recommended course of action. This effort reduces the likelihood that retaliation may occur resulting in unwarranted non-certifications.

We appreciated your staff's time and professionalism during this audit. We will actively address all identified recommendations and take the necessary steps to ensure timely remediation.

Sincerely,

A handwritten signature in black ink that reads "Brooke A. G" followed by a long horizontal flourish.

Brooke Cunningham

Commissioner
Minnesota Department of Health
P.O. Box 64975
St. Paul, MN 55164-0975

Forthcoming OLA Evaluations

Community Benefit Expenditures at Nonprofit Hospitals
Department of Employment and Economic Development
Grants Management
Department of Natural Resources Land Acquisition
Guardianship of Adults

Recent OLA Evaluations

Agriculture

Pesticide Regulation, March 2020
Agricultural Utilization Research Institute (AURI),
May 2016

Criminal Justice and Public Safety

Driver Examination Stations, March 2021
Safety in State Correctional Facilities, February 2020
Guardian ad Litem Program, March 2018
Mental Health Services in County Jails, March 2016

Economic Development

Minnesota Investment Fund, February 2018
Minnesota Research Tax Credit, February 2017
Iron Range Resources and Rehabilitation Board (IRRRB),
March 2016

Education (Preschool, K-12, and Postsecondary)

Minnesota Department of Education's Role in Addressing
the Achievement Gap, March 2022
Collaborative Urban and Greater Minnesota Educators
of Color (CUGMEC) Grant Program, March 2021
Compensatory Education Revenue, March 2020
Debt Service Equalization for School Facilities,
March 2019
Early Childhood Programs, April 2018
Pepich Center for Arts Education, January 2017
Standardized Student Testing, March 2017
Minnesota State High School League, April 2017
Minnesota Teacher Licensure, March 2016

Environment and Natural Resources

Aggregate Resources, January 2025
Petroleum Remediation Program, February 2022
Public Facilities Authority: Wastewater Infrastructure
Programs, January 2019
Clean Water Fund Outcomes, March 2017
Department of Natural Resources: Deer Population
Management, May 2016

Financial Institutions, Insurance, and Regulated Industries

Department of Commerce's Civil Insurance Complaint
Investigations, February 2022

Government Operations

Grant Award Processes, April 2024
Oversight of State-Funded Grants to Nonprofit
Organizations, February 2023
Sustainable Building Guidelines, February 2023
Office of Minnesota Information Technology Services
(MNIT), February 2019

Health

Minnesota Department of Health: Human Resources
Complaint Management, January 2025
Emergency Ambulance Services, February 2022
Office of Health Facility Complaints, March 2018
Minnesota Department of Health Oversight of HMO
Complaint Resolution, February 2016

Human Services

Department of Human Services Licensing Division:
Support to Counties, February 2024
Child Protection Removals and Reunifications, June 2022
DHS Oversight of Personal Care Assistance, March 2020
Home- and Community-Based Services: Financial
Oversight, February 2017

Jobs, Training, and Labor

Worker Misclassification, March 2024
Unemployment Insurance Program: Efforts to Prevent
and Detect the Use of Stolen Identities, March 2022

Miscellaneous

Minnesota Housing Finance Agency: Down Payment
Assistance, March 2024
RentHelpMN, April 2023
State Programs That Support Minnesotans on the Basis
of Racial, Ethnic, or American Indian Identity,
February 2023
Board of Cosmetology Licensing, May 2021
Minnesota Department of Human Rights: Complaint
Resolution Process, February 2020
Public Utilities Commission's Public Participation
Processes, July 2020
Economic Development and Housing Challenge Program,
February 2019
Minnesota State Arts Board Grant Administration,
February 2019
Board of Animal Health's Oversight of Deer and
Elk Farms, April 2018
Voter Registration, March 2018

Transportation

Metro Mobility, April 2024
Southwest Light Rail Transit Construction: Metropolitan
Council Decision Making, March 2023
Southwest Light Rail Transit Construction: Metropolitan
Council Oversight of Contractors, June 2023
MnDOT Workforce and Contracting Goals, May 2021
MnDOT Measures of Financial Effectiveness,
March 2019
MnDOT Highway Project Selection, March 2016

OLA | OFFICE OF THE
LEGISLATIVE AUDITOR



Office of the Legislative Auditor
Suite 140
658 Cedar Street
Saint Paul, MN 55155