

PPM #54

Policy Name: *Disciplinary Corrective Actions and Separations*

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Authorization: 
Nancy Watkins, Undersecretary

I. STATEMENT OF POLICY

It is the policy of The Office of the Lieutenant Governor (OLG) and Department of Culture, Recreation and Tourism (DCRT) to support a disciplinary philosophy that emphasizes counseling, cooperative efforts between employees and supervisors, and supervisory instructional efforts as the primary means of assisting employees in meeting expectations. When there is documented evidence that counseling and supervisory instruction have failed to guide an employee to satisfactory conduct (including performance of duties), however, OLG/DCRT will take disciplinary action. The progressive disciplinary system explained in this policy provides OLG/DCRT with a fair, consistent and systematic approach to employee discipline. While counseling and supervisory instruction are the Department's preferred approach to unacceptable performance, an appointing authority may take disciplinary action, up to and including termination, without prior counseling when the nature of the employee's offense is particularly serious or constitutes gross misconduct

II. STATEMENT OF PURPOSE AND SCOPE

A. Purpose

The purpose of this policy is to establish agency guidance and procedures that ensure compliance with Chapter 12 of the Civil Service Rules.

B. Scope

This policy applies to all offices of the Lieutenant Governor and Department of Culture, Recreation and Tourism and its permanent, classified (full or part time) employees. An appointing authority may separate a non-permanent employee at any time, so while students, temporary, unclassified and probationary employees are governed by the intent of the policy in terms of performance and rules, they are not entitled to the pre-deprivation procedures.

III. DEFINITIONS

- A. **Appointing Authority** - An employee legally authorized to make appointments to positions and take disciplinary action. The Lt. Governor, Secretary, Deputy Secretary, Undersecretary, and Assistant Secretaries (appointing authorities by State statute) may delegate appointing authority status. The “authentic act,” and certified copies, should be maintained in the offices of the appointing authority, delegate, and legal counsel since only the “authentic act” or a certified copy of such may be offered into evidence at Civil Service appeal hearings to verify delegation of authority.
- B. **Cause** - Conduct which impairs the efficient or orderly operation of the public service. A permanent employee may only be disciplined or removed for cause.
- C. **Conduct** - Includes any act, omission, physical condition, legal status, element of behavior, or element of performance.
- D. **Discipline** - Adverse action taken to correct, improve, prevent, or stop unacceptable job performance or behavior. Discipline only includes suspensions without pay, reductions in pay, involuntary demotions, and dismissals. Note that discipline does not include employee “no-fault” removals, improvement letters (letters of warning, counseling, coaching, reprimand, supervisory plans, etc.) or suspensions pending investigation.
- E. **Dismissal** -The separation from employment for disciplinary reasons.
- F. **Removal** - The separation from employment for non-disciplinary reasons.
- G. **Supervisor** - The employee who has the responsibility and authority to schedule or direct the work of other employees and whose recommendations regarding appointment, discipline, performance and/or pay changes are given substantial weight in the final outcome of such decisions. Supervisor also refers to the supervisor on duty at a given time, whether it is the regularly assigned immediate supervisor or a supervisor designated temporarily to act in the absence of the regular supervisor.
- H. **Supervisory File** (also referred to as Supervisor’s PES file or Employee’s Productivity File) - A confidential file maintained by a supervisor to record information on each employee's job performance and work conduct.

IV. RESPONSIBILITIES

A. Appointing Authority

Discipline, removals and separations can only be invoked by a statutory appointing authority (Lt. Governor, Secretary, Deputy Secretary, Undersecretary, and Assistant Secretaries) or an individual delegated appointing authority status.

The appointing authority or his/her legally authorized designee is therefore responsible for:

- ensuring that supervisors are well-trained and held accountable for maintaining an efficient and productive workforce;
- applying fair and consistent treatment to all employees in similar situations;
- reviewing and considering recommendations for discipline, corrective actions and separations for compliance with this policy and Civil Service Chapter 12;
- evaluating documentation of prior counseling and/or corrective actions to determine whether adequate effort has been made by the supervisor to train and counsel the employee on proper conduct;
- considering the effects of unacceptable performance or misconduct when assessing the proposed severity of the recommended action;
- modifying or rejecting recommendations if unsupported, inconsistent or contrary to factual evidence; otherwise, approving recommendations and issuing pre-deprivation, discipline or improvement letters; and
- evaluating the quality and timeliness of the supervisor's performance in training and counseling the employee and in recommending corrective action, separation or discipline in accordance with this policy.

B. Supervisor

The supervisor is responsible for:

- establishing and clearly communicating OLG/DCRT policies, rules, and individual performance expectations; providing adequate training and feedback; regularly monitoring employee performance; assessing reasons that conduct may be deficient and promptly taking action necessary to correct deficiencies;
- promptly and privately counseling the employee upon noting misconduct or performance deficiencies; encouraging the employee to relate obstacles or problems that impact performance and to work with employee by providing necessary retraining and developing problem resolutions;

- maintaining accurate records of performance and counseling sessions in order to support actions recommended;
- recommending to the appointing authority appropriate corrective actions or discipline when it becomes apparent that proper instruction and counseling have failed to guide an employee to satisfactory conduct; and
- advising employees that corrective action and/or discipline will follow if satisfactory conduct is not achieved and demonstrated.

C. Human Resources

The Human Resources Section is responsible for:

- reviewing and discussing performance and/or conduct problems with management at any stage in the disciplinary process;
- carefully evaluating proposed disciplinary actions and written notices to ensure that all policy and procedural requirements are met; and
- monitoring all matters relating to this policy in order to detect disparate treatment, inconsistency and noncompliance with Civil Service Rules and OLG/DCRT policy.

D. Employees

Employees are responsible for:

- complying with Civil Service Rules, department and agency policies, and procedures, and supervisors' instructions pertaining to employee conduct, behavior, and job performance;
- keeping abreast of Department and agency policies, particularly Part V of the OLG/DCRT Employee Handbook regarding Policies, all of which are maintained on the OLG/DCRT intranet; and
- asking supervisors and management for clarification of policies and conduct/performance expectations to ensure understanding of such.

V. PROHIBITED EMPLOYEE CONDUCT

While the following examples are not all inclusive, these are some of the violations which may result in disciplinary action, including dismissal:

- Abusive behavior, such as use of threats, intimidation, vulgar or profane language, derogatory comments or slurs
- Sexual harassment or false accusations of sexual harassment made in bad faith
- Disorderly conduct, fighting or physical harassment

- Failure to comply with attendance policies and procedures, such as excessive absenteeism or tardiness, unauthorized absence, etc.
- Falsification of records, such as time sheets, doctor's slips, expense reports, employment applications, position descriptions, etc.
- Unauthorized use, misuse or abuse of OLG/DCRT property, such as vehicles, telephones, computers, or other equipment
- Theft
- Unsafe work practices
- Failure to perform assigned duties during work time
- Sleeping on the job
- Insubordination or failure to promptly and cooperatively follow direct orders, instructions, or directives given by a supervisor
- Conduct unbecoming of a public employee
- Unauthorized release of confidential information
- Carelessness or negligence in performance of duties
- Possession, use, or under the influence of illegal drugs or alcohol while on duty
- Indecent or immoral behavior while on duty
- Failure to comply with department and/or agency policies and procedures
- Inappropriate or unprofessional behavior or appearance
- Conduct which violates the Code of Governmental Ethics or participation in prohibited political activities
- Failure to cooperate with (or giving false information to) authorized investigations
- Failure to meet performance standards or expectations

VI. PROGRESSIVE DISCIPLINARY SYSTEM

The following steps define the progressive disciplinary system that will normally be used by the department to correct unacceptable conduct. Based on the seriousness of the offense, however, management reserves the right to take any level of disciplinary action, up to and including termination of employment.

A. Verbal Counseling

This action is normally the first step taken to help an employee change unacceptable conduct and/or job performance. It is an informal discussion or coaching session between an employee and his/her immediate supervisor to discuss what the employee is doing wrong, to try to find out why, and to explain what will happen if the behavior continues. Unless the employee is counseled, the employee will consider any misconduct acceptable. Documentation of the meeting should be written by the supervisor and placed in the employee's supervisory file.

B. Improvement Letter

(Letter of Coaching, Counseling, Warning, Reprimand or Supervisory Plan) This action is appropriate when verbal counseling fails, and the same or similar unacceptable job performance or misconduct continues. Improvement Letters and Supervisory Plans are not disciplinary actions and shall be placed in the employee's supervisory file and considered when preparing the employee's next performance rating. These letters are not, however, placed in an employee's official personnel file or any other file that is accessible to the public unless the letters are used to support a subsequent disciplinary action. Improvement Letters shall:

- include expected behavior or standards;
- refer to prior counseling sessions;
- state that the letter is not a disciplinary action, but it will be used to support the severity of any future discipline for the same or similar conduct or performance;
- state the consequences if misbehavior or misconduct continues (“If you fail to make immediate, significant, and sustained changes, you may be subject to disciplinary action, up to and including termination.”)
- advise the employee that he/she has the right to respond in writing by a certain date (provide a reasonable amount of time) and that the response will be filed with each copy of the letter.

C. Discipline

This is an official, adverse action taken to correct, improve, or stop unacceptable conduct/job performance. Only appointing authorities or delegated appointing authorities can take such actions, which include the following:

- **Reduction in Pay.** This action may be used as a permanent or temporary pay reduction. When used as a temporary reduction, it is taken in lieu of a suspension without pay, but unlike a suspension, the employee continues to report to work and to do his/her job. This action is recommended when manpower shortages or further disruption of work must be avoided. An appointing authority should first assess the penalty in terms of the number of work days the employee would be suspended for the offense and then calculate an equivalent monetary amount for the temporary reduction in pay. An employee's pay, however, cannot be reduced below the minimum of his/her pay range or below the minimum wage.
- **Suspension without Pay.** This action temporarily removes an employee from work, without pay, and is used when the visibility of a suspension is needed to impress on the employee (and his/her coworkers) the seriousness of the offense.

It is also used when the employee to be disciplined is at the minimum of the pay range or at minimum wage and cannot sustain a reduction in pay. A suspension without pay cannot exceed 176 work hours, except in rare circumstances, such as a suspension pending criminal proceedings (Civil Service Rule 12.5) which requires prior Civil Service approval. (For an employee who works 8-hour days, 176 hours is equivalent to 22 work days, or about one calendar month.)

- **Involuntary Demotion.** This action permanently moves an employee out of his/her position into a different job that has a lower maximum rate of pay. The employee's pay must be reduced by a minimum of 7%. This is appropriate when; an employee cannot satisfactorily perform the duties of the job but could perform a lower level job. This is an alternative to dismissal, and the employee must qualify for the lower level job.
- **Dismissal.** This action separates the employee from employment for cause. Dismissal is appropriate when an employee knowingly and/or willingly violates published laws, rules, regulations, or operating procedures; when an employee's conduct has been such that his/her contribution to the department and the fulfillment of its mission does not meet department standards; when the employee is unwilling or unable to effectively perform assigned duties; or when previous counseling efforts and disciplinary actions taken to correct his/her improper conduct, behavior, or poor performance have proven ineffective. Dismissals are also justified for a single, particularly serious incident or gross misconduct.

VII. PROCEDURES

A. Pre-Deprivation Procedures. (Civil Services Rule 12.7)

Prior to taking any of the above listed disciplinary actions and prior to effecting a non-disciplinary removal of a permanent employee, the appointing authority must provide the employee with a written pre-deprivation notice which sets forth the facts and evidence in support of the proposed action. The employee must be given a meaningful opportunity to respond in writing, but a personal meeting may be granted at the discretion of the appointing authority. (If a personal meeting is granted, the appointing authority must ensure that witnesses are present and that an electronic or written record of the meeting is made.) The appointing authority's decision as to whether an employee will be non-disciplinarily removed or whether an employee will be disciplined, as well as the appropriate penalty for the misconduct, should only be decided after learning the employee's response.

1. The pre-deprivation letter should:

- a) contain sufficient detail to fully apprise the employee of the conduct with which he/she is charged. In effect, it should be a “Who, What, When, Where, Why, and How” statement of facts;
- b) provide an explanation of the evidence on which the appointing authority bases the proposed disciplinary action;
- c) advise the employee of his/her right to respond in writing; and
- d) provide the time and date by which the employee's written response must be submitted. (If letter is mailed, no fewer than 12 calendar days; if hand delivered, no fewer than 5 calendar days.) Note: If final day to respond falls on a holiday or during the weekend, the response should be accepted if received at the beginning of the next work day.)

2. In an effort to maintain consistency throughout the department, all pre-deprivation letters must be submitted to and carefully evaluated by Human Resources to determine whether:

- a) the proposed penalty is in line with similar cases;
- b) all procedural requirements have been met; and
- c) there is sufficient evidence to support the charge.

B. Written Notice to Employees (Civil Service Rule 12.8)

The appointing authority must consider the employee's response prior to making a final decision. Where questions or defenses were raised by the employee's response, the appointing authority will perform additional investigation to ensure a well-informed decision. After all evidence has been considered, and discipline is deemed appropriate, the appointing authority will prepare a written notice to inform the employee of the action to be taken. The notice must first be submitted to the HR office for review. The written notice must include:

- the specific action to be taken;
- the effective date of the action (must be after receipt by employee);
- the conduct for which the action is being taken including, where pertinent, dates, times, places, and names of persons directly involved in or affected by such conduct (unless their identities are protected by law, in which case, identification may be made as permitted by law);
- all facts and evidence considered, including prior discipline or counseling used to support severity of offense;
- the pre-deprivation process followed;
- the employee's appeal rights and where a copy of Chapter 13 of the Civil Service Rules may be found. The following language represents full compliance with Civil Service Rules: "You have the right to appeal this action to the Civil Service Commission within 30 calendar days following the date you receive this notice."

The appeal procedure is contained in Chapter 13 of the Civil Service Rules, which is available from the Department of State Civil Service or your Human Resources office.”

- notice to the employee that more severe disciplinary action may result if satisfactory performance is not demonstrated.

C. Delivery of Pre-deprivation Letters and Disciplinary Notices (Civil Service Rule 12.8.1)

Pre-deprivation letters and written notices may either be hand-delivered to the employee, hand-delivered to someone of suitable age and discretion who resides with the employee, or mailed with correct postage to the most recent address furnished in writing (or electronically) by the employee to his personnel office or entered electronically by the employee into the LaGov HR system via LEO. If mailed, notice is considered given on the seventh day after it was mailed. No disciplinary action may be effected until official notice has been given to an employee. Therefore, if a disciplinary notice is mailed, the effective date can be no sooner than eight days from date of mailing. At time of mailing, purchase a “Certificate of Mailing”, which is a receipt (proof) from the post office showing a stamp of the date mailed. Keep the original stamped Certificate of Mailing attached to the Appointing Authority’s copy of the letter and a copy of the Certificate of Mailing should be sent to the Agency HR Office and kept attached to their copy of letter. If hand-delivered, either a memo documenting delivery with witness signature(s) must be completed (subsequently attach copy to each copy of the letter) or delivery/witness information may be typed on the original letter, after which copies are made.

VIII. OTHER NON-DISCIPLINARY ACTIONS/SEPARATIONS

A. Removal (Civil Service Rule 12.6)

An employee may be non-disciplinarily removed under the following circumstances:

1. When, on the date the written notice is mailed or hand-delivered, the employee is unable to perform the essential functions of his job due to illness or medical disability and has fewer than eight hours of sick leave. An employee removed under this provision shall be paid for all remaining sick leave.
2. An employee has seven or more unscheduled absences during any consecutive twenty-six week period. After the employee has been given written notice that his attendance requires improvement a copy of (OLG/DCRT Policy PPM#20, Unscheduled Absences) is provided to the employee.
3. As a result of conduct that was not work related, the employee fails to obtain or loses a license, commission, certificate or other accreditation that is legally required for the job.

4. The employee holds more than one position in the state service and the multiple employment causes an employing agency to be liable for overtime payments under the Fair Labor Standards Act and, after having been provided the opportunity to do so, the employee has refused to resign from one of the positions.
5. There is cause for dismissal, but the cause is not the employee's fault.

NOTE: The pre-deprivation and written notice procedures explained in Section VII must also be followed for non-disciplinary removals of permanent employees.

B. Suspension Pending Investigation (Civil Service Rule 12.10)

An appointing authority may orally suspend a permanent employee who is suspected of conduct that, if confirmed, would warrant discipline or removal and the employee's continued presence at work during the investigation and subsequent administrative proceedings would be contrary to the best interests of state service. The employee must be told that he/she is being suspended with pay and the general nature of the conduct being investigated. A suspension pending investigation with pay cannot exceed 260 work hours. Enforced compensatory or enforced annual leave cannot be used for this 260-hour period. A suspension pending investigation is not discipline and is only appealable on the basis of discrimination due to political or religious beliefs, sex or race or a violation of Civil Service rules.

Because a suspension pending investigation is with pay, the employee can be required to comply with directives and required to cooperate and participate in the investigation. Upon completion of the investigation, the employee shall be advised of the outcome, and if it is determined that discipline is warranted, the appointing authority must comply with the procedures described in Section VII. If discipline is not warranted, the employee should accordingly be advised and instructed to return to work.

C. Employee Resignations (Civil Service Rule 12.11)

An employee's oral or written resignation becomes effective on the date and time specified by the employee. An oral resignation must be documented by the person receiving it. An employee may not withdraw or modify the resignation after the appointing authority accepts it, unless the appointing authority agrees. When an employee resigns, after receiving notice that dismissal has been proposed, the resignation must be reported as a resignation to avoid dismissal.

D. Termination of Probationary Appointment (Civil Service Rule 9.1 (e))

A probationary period is an essential part of the examination process and shall be used for the most effective adjustment of a new employee and for the elimination of any probationary employee whose performance does not meet the required standard of work.

Probationary periods cannot exceed 24 months, during which time the supervisor provides training and feedback and closely monitors documents and evaluates performance. Permanent status shall not be granted if there are any performance concerns or issues. Should the supervisor determine (at any point during the probationary period) that the employee's conduct or performance is unacceptable, he/she should recommend that the appointing authority terminate the probationary appointment. Since termination of a probationary appointment is not a disciplinary action, the pre-deprivation and written notice procedures are not required. A letter, however, should be issued to the employee advising that the probationary appointment is being terminated since the employee failed to meet the standards of the department.

IX. EMPLOYEE APPEALS

A permanent employee may appeal his/her removal or disciplinary action to the Civil Service Commission. An appeal may result in a hearing, which is conducted by the Civil Service Commission or a Referee, and is similar to a court proceeding. It is imperative to follow this policy and all referenced rules and procedures so that the Department can successfully defend its actions. In particular, supervisors must maintain timely, accurate and complete supervisory files on employees to document employee conduct, verbal counseling sessions and improvement letters. Chapter 13 of the Civil Service Rules explains the appeals process in detail.

X. QUESTIONS

For any questions regarding this policy, please contact the appropriate agency Human Resources Section.