

### 40-11 Employee Disciplinary Action and Termination

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1. **Purpose.** The purpose of these policies and procedures is to recognize the need of the University to manage its work force in accordance with applicable federal and state laws and University policies and to determine the methods, means and personnel required to maintain efficient operations.
2. **Policy.** Employee management and disciplinary action practices at the University are subject to the following policies:
  - A. The University recognizes that misconduct and continued performance problems may require disciplinary action.
  - B. The University normally uses the progressive discipline process described below to address misconduct and continued performance problems. Progressive discipline is intended to be corrective, *not* punitive in nature. It is designed to provide employees with notice of deficiencies and an opportunity to improve. However, some violations of policies and procedures or continued negative behavior or performance may be of such a serious nature that immediate suspension or discharge may be appropriate.
  - C. The University retains the right, in accordance with applicable federal and state laws and University policies, to maintain efficient operations. This includes the right to hire, promote, transfer, assign and retain staff employees in positions within the University.
  - D. The University recognizes several categories of termination or separation from University employment: resignation, release, relieved, layoff, discharge, retirement, or death.
  - E. For purposes of this policy "employees" include regular staff, at-will, temporary and term employees.

#### Procedures

3. **Administration.** These policies and procedures shall be administered and enforced by the Office of Human Resources, with oversight from the vice president for Business Affairs or his or her designee.
4. **Required Approval by the Office of Human Resources.** Supervisors contemplating the suspension, demotion or discharge of any employee, including probationary and temporary employees, must consult with the director of Human Resources before taking such action. Whenever prior consultation is not practical because of reasons perceived to be of an urgent or serious nature, the employee must be placed on administrative leave with pay until the case can be discussed with the director of Human Resources.
5. **Responsibilities and Rights.** Employees are responsible for following established University policies, procedures, regulations, and practices. They shall work in an efficient, competent and cooperative manner and fulfill their job requirements.
6. **Investigation.** The University recognizes that misconduct and continued performance problems may require disciplinary action. Once the University becomes aware that a possible infraction of the rules

or policies has occurred, appropriate management personnel shall immediately conduct a preliminary, confidential investigation.

## 7. Suspension or Release from Employment

- A. Temporary and on-call employees may be released from employment with or without cause.
- B. Probationary employees are those employees who have *not* completed the appropriate probationary period defined in their employee contract and may be suspended or released from employment with or without cause. However, supervisors should make reasonable efforts to train and work with probationary employees to achieve satisfactory performance.
- C. Post-probationary employees may be suspended or discharged only for proper cause (discussed in section 10, below). Supervisors should normally use progressive discipline when resolving disciplinary problems involving post-probationary employees.
- D. Post-probationary employees hired under a term appointment agreement may be suspended or discharged only for proper cause (discussed in section 5, below) during the term appointment. However, the individual's employment will end as of the specified date, unless the supervisor notifies the employee that the appointment will be extended.
- E. At-will employees are employees designated by the president who are hired on periodic employment contracts. At-will employees may be suspended or discharged only for proper cause (discussed below). Conditions of employment for at-will employees are identified in their employment contracts. The University has the right *not* to renew these contracts when they expire.

## 8. Types of Termination. The University recognizes seven categories of termination or separation from University employment: resignation, retirement, release, relieved, layoff, discharge, or death.

- A. Resignation
  - a. In the event an employee decides to resign, a written resignation must be submitted to the employer as soon as possible and no less than two (2) weeks prior to the effective date of proposed separation.
  - b. An employee who has walked off the job or who is absent for two (2) consecutive work days without permission except when an emergency situation precludes giving notice is considered to have resigned.
  - c. An employee who fails to return to work within the prescribed time limit following a leave for extended illness, injury or personal reasons is considered to have resigned.
- B. Retirement. Employees may elect to retire after meeting eligibility requirements for retirement and should give two (2) weeks' notice.
- C. Release. Employees are terminated at the end of temporary employment.
- D. Relieved. Employees may be terminated during their probationary period (six [6] months for support employees, twelve [12] months for professional employees) without cause or recourse.
- E. Layoff. Employees may be terminated because of reduction in force due to lack of funds, work or other compelling reasons.
  - a. For an employee in good standing, every effort is made to place that employee in another position within the University prior to layoff.

- b. The order of layoff shall be based on performance, ability, training, seniority and other qualification as determined by the University. When performance, ability, etc., are equal, seniority shall be the determining factor.
  - c. Probationary, temporary and occasional employees are normally laid off before regular employees in the same classification and department.
- F. Discharge. An employee may be terminated after corrective discipline has failed or the seriousness of the misconduct or situation so warrants.
- G. Death. Upon the death of an employee, the supervisor shall notify Human Resources. That office will assist the next of kin in completing termination forms, filing insurance claims, etc.

## 9. Supervisor Responsibilities

Supervisors should seek to achieve a productive, effective work environment by ensuring that each employee's job performance meets expectations. Supervisors should make appropriate efforts to ensure that employees understand job requirements and expectations, and supervisors should address problems that may impact performance in a timely, constructive and corrective manner.

When an employee is not suited to a specific position, a supervisor may wish to consider a lateral transfer to a different position, which may be better suited to the employee. A lateral transfer may be appropriate when there is a comparable position open within the department and such a transfer is reasonably predicted to result in improved performance. In cases of poor performance where an employee performed satisfactorily in a lower level position, a demotion may be appropriate if there is a lower level position open in the department. Since a demotion results in a salary reduction, this can only be done with the employee's agreement. All demotions and transfers must be approved, in advance, by the director of Human Resources.

When performance problems continue or employee misconduct is of a serious nature requiring discipline, the actions described in section 4, below, herein may be appropriate. The objective of the following corrective actions is to help the employee to positive productive performance.

## 10. Progressive Discipline

The University uses progressive discipline for regular, temporary, term or at-will employees. Progressive discipline is designed to allow an employee a reasonable opportunity to meet the requirements of the job, comply with University policies, procedures, practices and regulations, and allow the employee an opportunity to improve performance.

Progressive discipline may not be appropriate in all instances, such as when health or safety is at risk or a crime has been committed, and does not prevent a supervisor from imposing stronger discipline with the approval of the director of Human Resources, depending on the individual circumstances. Some violations could be of such a serious nature that disciplinary action could lead directly to suspension or discharge with the approval of the director of Human Resources.

Progressive discipline actions include the use of oral warnings, written warnings, suspensions and/or discharge. Discipline should be administered equitably, consistently and progressively. Depending on the nature of the performance problem or misconduct, a supervisor, in consultation with the Office of Human Resources, may start progressive discipline at any appropriate point in the process. The following sections describe in detail the actions used in progressive discipline.

### A. Oral Warning

The primary objective of oral warning(s) should be to advise the employee that there is a performance problem and to tell the employee what he or she can do to restore satisfactory performance. It is expected that most such discussions will result in improved performance. The supervisor should advise the employee about:

- (1) the nature of the problem and allow the employee to explain any reason for the problem and suggest ways to correct the situation; this should include an explanation of the policies or rules violated (if any);
- (2) the specific performance expectations the supervisor has for the employee;
- (3) the specific actions to be taken by the employee *and/or* supervisor to correct the problem, including specific time frames, if appropriate;
- (4) that further disciplinary action will occur should the problem persist; and
- (5) that disciplinary action may be disputed according to the provisions of the Grievance and Dispute Resolution Policy (AGP&P 40-12).

The supervisor must make it clear to the employee that this is an "oral warning." An oral warning is not documented in the employee's official personnel file, maintained by the Office of Human Resources. However, the supervisor shall maintain a record of any oral warnings given which should be referred to in any further disciplinary action taken.

#### **B. Written Warning**

A written warning provides the employee with a written explanation of the events leading to the warning, an explanation of any applicable rules, and any subsequent information that can help the employee improve the identified performance problem. The supervisor must make it clear to the employee that this is a "written warning" and that if the employee does not improve performance to a satisfactory level within the time frames listed more serious disciplinary action will take place. A written warning is documented in the employee's official personnel file maintained by the Office of Human Resources. The written warning should include:

- (1) the nature of the problem and allow the employee to explain any reason for the problem and suggest ways to correct the situation; this should include an explanation of the policies or rules violated (if any);
- (2) the specific performance expectations the supervisor has for the employee;
- (3) the specific actions to be taken by the employee *and/or* supervisor to correct the problem, including specific time frames, if appropriate;
- (4) that further disciplinary action will occur should the problem persist; and
- (5) that disciplinary action may be disputed according to the provisions of the Grievance and Dispute Resolution Policy (AGP&P 40-12).

Since the purpose of discipline is to help employees correct problems, when an employee has corrected a problem and the supervisor is satisfied that it will not reoccur, subsequent performance evaluations should reflect the improved performance. After an employee has received at least three (3) positive evaluations, an employee may petition his or her dean or director to have the written warning removed from the employee's official personnel file.

#### **C. Suspension**

A suspension is a temporary involuntary leave *without pay* for performance problems that have not been satisfactorily corrected through the use of oral and written warnings or for misconduct or serious violation of policy. Suspensions range from one (1) work day up to thirty (30) work days, depending on the seriousness of the problem. The supervisor must comply with the notice requirements listed below, and should inform the employee in writing that the suspension is a disciplinary action and that discharge could occur should the problem persist. A suspension requires approval, in advance, of the supervising dean or director and the director of Human Resources.

#### **D. Discharge**

A discharge is a permanent, involuntary separation of employment from the University for disciplinary reasons. Discharges must be approved, in advance, by the supervising dean or director and the Director of Human Resources. The supervisor must comply with the notice requirements listed below.

## 11. Proper Cause

Proper cause is any behavior significant or substantial in nature relating to the employee's work that is inconsistent with the employee's obligation to the University. A list of behaviors that, when significant or substantial in nature, may constitute proper cause is shown below. This list is for guidance only, and is not considered an all-inclusive list.

- Assault or battery on another person.
- Conviction of a felony or misdemeanor where the provisions of the Criminal Offender Employment Act apply, depending on the nature of the offense and the type of position.
- Conduct which causes damage to the University, its reputation, programs, property, employees or students.
- Creating a hostile working environment.
- Excessive absenteeism or tardiness without reasonable cause.
- Falsification (deliberate) or omission of information on employment applications or resumes, time cards/records, or other University records.
- Illegal drugs and alcohol - violation of the University's Drug-Free Work Place policy (AGP&P 40-13).
- Incompetence.
- Inefficiency.
- Insubordination.
- Intoxication on the job.
- Misappropriation or personal use of University funds, property, possessions, or resources.
- Misconduct.
- Negligence.
- Performance which continues to be inadequate after reasonable time has been allowed to correct it.
- Sexual harassment.
- Theft or fraud.
- Uncooperative behavior.
- Violation of confidentiality or the release of confidential information.
- Violation of University policies.

## 12. Notice Requirements

### A. Notice of Contemplated Action

To initiate a suspension or discharge of a post-probationary regular, term, or contract employee, the supervisor must serve the employee with written notice of the contemplated action. Suspensions and discharges require approval of the supervising dean or director and the director of Human Resources prior to issuing a Notice of Contemplated Action. This notice must include *all* the following points:

- (1) Cite the acts which the supervisor believes may constitute proper cause.
- (2) Give a summary of the evidence against the employee.

- (3) Specify the contemplated action.
- (4) Give instructions on how and when the employee should respond to the notice
- (5) The notice may include subsequent steps that will be taken in the discipline process.

A copy of the notice will be sent to the Office of Human Resources for placement in the employee's official personnel file.

**B. Notice of Final Action**

After considering the employee's response, a decision on the final action will be determined and the employee shall be provided a written notice of the final action. The notice of final action shall be within thirty (30) calendar days after receipt of the employee's response and include *all* the following points:

- (1) The final action to be taken.
- (2) The acts constituting just cause, which shall only include allegations specified in the Notice of Contemplated Action.
- (3) A summary of the evidence.
- (4) The effective date of any disciplinary action.
- (5) A statement that the employee may appeal to the area executive administrator directly or through a grievance filed through the dispute resolution coordinator within five (5) days of receiving the notice of final action.

A copy of the notice will be sent to the Office of Human Resources for placement in the employee's official personnel file.

**C. Pay Status**

An employee may be placed on administrative leave *with pay* pending completion of the investigative or disciplinary process (for more information, refer to "Leave without Pay" (AGP&P 40-7-8)).

**13. Adequate Notice of Termination for Professional Employees**

Professional employees with a at least one (1) and not more than three (3) years of completed service may be removed from University employment by a written notice of termination delivered two (2) weeks prior to the effective date of termination. Professional employees with more than three (3) years of service may be removed from University employment by a written notice of termination delivered to the employee four (4) weeks prior to the effective date of termination. Employees that have completed the probationary period must be given written reason(s) for their termination.

**14. Pay in Lieu of Notice for Professional Employees**

When giving notice is not practical, pay in lieu of notice may be given at straight time rate. Pay in lieu of notice will not be granted if in the judgment of the University it is determined that immediate dismissal for serious misconduct is warranted.

**15. Notice of Termination for Support, Temporary, and Probationary Employees**

Support, temporary and probationary employees should be given notice, where practical, but no minimum notice is required.

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