

LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

SECRETARY'S POLICY AND PROCEDURES MEMORANDUM (PPM) NO. 26

SUBJECT: Disciplinary Process, Documentation, and Investigation Procedures

EFFECTIVE DATE: July 24, 1989

INSTRUCTIONS: This memorandum supersedes all other memoranda and manuals.

1. POLICY STATEMENT

- A. For the Department of Transportation and Development (DOTD) to operate in an orderly and efficient manner, employees must follow the rules governing the work place. The vast majority of employees are dedicated, hard-working men and women who contribute significantly to the Department's success. However, failure to follow work rules or to meet standards is against the best interest of all employees and the Department. Supervisors must therefore accept responsibility to take corrective action when any employee's work performance, conduct, or productivity falls below established standards. Disciplinary action is an attempt to change an employee's behavior or performance from unacceptable to acceptable. The progressive disciplinary system explained below enables supervisors to do so in a fair and consistent manner. In every case where disciplinary action is being considered, however, employees will be given every opportunity to provide a response to the actions proposed.
- B. This policy applies to all offices of the Department and its permanent, classified (full or part-time) employees. (Students, temporary, and probationary employees are governed by the intent of the policy in terms of performance and rules, but are not entitled to the due-process procedures.)

2. DEFINITIONS

- A. Supervisory File - A confidential file maintained by a supervisor to record information on their subordinate employee's job performance and work conduct.
- B. Appointing Authority - An employee legally authorized to make appointments to positions and take disciplinary action.
- C. Cause - Conduct which impairs the efficient or orderly operation of the public service.
- D. Disciplinary Action - Adverse action taken to correct, improve, prevent, or stop unacceptable job performance or behavior. It includes suspension without pay, reduction in pay, involuntary demotion and dismissal.

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3. RESPONSIBILITIES

A. Appointing Authorities are responsible for the following:

- (1) Complying with all investigation and discipline procedures outlined in this policy and Civil Service Rules.
- (2) Ensuring that supervisors are well-trained and held accountable for maintaining an efficient and productive workforce.
- (3) Applying fair and consistent treatment to all employees in similar situations.
- (4) Taking disciplinary action after careful consideration of factual evidence. The disciplinary action process should begin immediately after the conclusion of the investigation that determines any violation of the Department policy.

B. Supervisors are responsible for the following:

- (1) Establishing and monitoring employees' performance and conduct, including maintaining supervisory files on each employee to reflect documentation of feedback on employees' job performance and conduct.
- (2) Recognizing deficient employee performance and conduct problems early and taking prompt, corrective action..
- (3) Notifying Appointing Authority immediately of policy violations that may warrant an investigation and/or disciplinary actions.

C. Human Resources/Employment Attorney and the HR Employee Relations Manager are responsible for the following:

- (1) Reviewing and discussing performance and/or conduct problems and providing assistance to management at any stage in an investigation or during the progressive discipline process.
- (2) Carefully evaluating proposed disciplinary actions and written notices to ensure that all policy and procedural requirements are met.

D. Employees are responsible for complying with Civil Service Rules, Department policies, and supervisors' instructions insofar as employee conduct, behavior, and job performance are concerned.

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4. INVESTIGATION PROCEDURES

- A. Upon notification of employee misconduct, the Appointing Authority shall immediately begin a documented inquiry to establish the facts of the events that occurred. However, if the allegations are serious in nature (i.e., workplace violence, sexual harassment, payroll fraud, or conduct likely to result in the employee's termination), prior to starting an investigation, the Appointing Authority must consult with the HR Employee Relations Manager and/or Employment Attorney and their respective Office Head.
- B. An Appointing Authority, after consulting with the HR Employee Relations Manager and/or Employment Attorney, may place an employee on suspension with pay pending investigation. Suspension with pay should be used when there is reason to believe the employee has engaged in conduct, which if substantiated, would warrant disciplinary action and the employee's continued presence at work during an investigation of the suspected conduct would be contrary to the best interests of the Department. The employee must be notified in writing that he/she is being suspended with pay pending investigation and the reasons for suspension.
 - (1) Suspension with pay cannot exceed 260 hours.
 - (2) While on suspension with pay the employee remains "on the clock" during business hours and is not on leave. The employee is therefore subject to supervisory directives such as reporting requirements, coming in for investigation interviews, etc.
- C. If, at any point during an investigation, it is determined that the misconduct will likely warrant the employee's termination, the Appointing Authority shall notify the employee of such. The Appointing Authority MUST document when the notification occurred and indicate what was stated. If an employee resigns after this notification occurs, the separation shall be coded as "resignation to avoid dismissal". Consequences for employees who resign to avoid dismissal include the following:
 - (1) Lose eligibility for non-competitive reemployment.
 - (2) Lose eligibility to be rehired at former pay rate.
 - (3) Lose right to have annual and sick leave restored if reemployed by the State.
 - (4) Removal from the department preferred reemployment list.

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- (5) Allows the Appointing Authority or Department of State Civil Service to reject the employee's application and the Department of State Civil Service may cancel the employee's eligibility for employment. [Rule 6.5(c); Rule 22.4(d); Rule 23.16(a)4; Rule 23.13(b); Rule 11.18(b); Rule 17.23(e)4]
 - (6) Disclosure of the reasons for separation to external prospective employers.
- D. The investigation shall include documented interviews and written statements from the complainant, accused, witnesses, and anyone else determined to have knowledge pertaining to the allegations being investigated.
 - (1) Written statements must be signed, dated, and provide a complete account of what occurred with as much detail as possible ("who, what, when, and where").
 - (2) Statements may include questions from the Appointing Authority to ensure pertinent facts are obtained from each of the witnesses. The Appointing Authority should be careful not to guide or recommend specific responses from involved parties or witnesses.
- E. Interviews and fact-finding shall be completed as soon as possible upon the initial notification of misconduct. If additional time is needed beyond ten business days, Appointing Authorities must notify their Office Head. This notification must include the status of the investigation and how much additional time may be needed to complete the investigation.
- F. Requests for third party investigations for serious misconduct (for example payroll fraud, workplace violence, sexual harassment), including tasking the DOTD Investigator, shall be made through the respective Office Head. Third party investigations, including ones conducted by the DOTD Investigator, must include signed interview notes, statements, and all other relevant documentation along with the Investigator's final report.
- G. Upon completion of the investigation and once all relevant documents, notes, and statements have been obtained, the Appointing Authority shall consult with HR Employee Relations Manager and/or Employment Attorney to determine what action, if any, shall be taken. Corrective actions available to Appointing Authorities are set forth below in Section 5 - Progressive Disciplinary System.

If discipline is warranted, the Appointing Authority is responsible for preparing the Pre-deprivation and Disciplinary Action Notice per the "Formal Disciplinary Process" outlined below in Section 6. These notices and all supporting

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documentation must be reviewed by the HR Employee Relations Manager and Employment Attorney before being issued.

5. PROGRESSIVE DISCIPLINARY PROCESS

A. For any system of discipline to work, there must first be established performance standards and rules which are clearly explained to employees and consistently enforced. These are supervisors' responsibilities. The Department uses disciplinary action to correct unacceptable behavior and/or job performance. The following steps define the progressive disciplinary system that will normally be used by the Department supervisors. *Based on the seriousness of the offense, however, the Department reserves the right to take any level of disciplinary action, up to and including termination of employment.*

- (1) **Verbal Counseling.** This is normally the first step to call an employee's attention to unacceptable behavior or job performance. It is an informal discussion or coaching session between an employee and supervisor to discuss the misconduct, discuss what is expected moving forward, and discuss what will happen if the behavior continues. Documentation of the meeting should be placed in the employee's supervisory file.
- (2) **Improvement Letters.** Improvement letters include letters of counseling, coaching, warning, or reprimand and improvement plans (supervisory plan and performance improvement plan). Improvement letters can be used to address continued misconduct that has been previously addressed with a verbal counseling or can be used when something stronger than a verbal counseling is needed. Appointing Authorities are required to utilize the Improvement Letter template, available by request to the HQ/HR Employee Relations Manager. All improvement letters must be signed by the Appointing Authority. These letters should be kept in the supervisory file only and cannot be placed in an employee's official personnel file or any other file that is accessible to the public. These letters should reference any prior counseling sessions, expected behavior or standards, and state consequences if the misbehavior or misconduct continues. Employees must also be told that the letter is not a disciplinary action, that the employee has the right to respond in writing and that the response will be filed with each copy of the letter.
- (3) **Disciplinary Actions.** These are formal actions taken by an employee's Appointing Authority for the employee's unacceptable job performance or behavior, taking into account the severity of impairment, previous discipline (related or not), past related counseling/reprimands/warnings (Improvement Letters), employee's length of service, and penalty imposed

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on other employees for the same conduct.

- (a) Reduction in Pay. This action can be temporary or permanent. In either case, an employee's pay can never be reduced below the pay range minimum or below minimum wage.
 - (i) A temporary reduction in pay reduces an employee's pay for a specified period of time similar to that of a suspension without pay but unlike a suspension, the employee continues to report to work, which avoids having to reassign work to other co-workers in order to prevent delays.
 - (ii) A permanent reduction in pay reduces an employee's pay by a specific percentage or dollar amount permanently without changing the employee's classification.
- (b) Suspension without Pay. This action temporarily removes an employee from work without pay, and is best used when it is necessary to impress upon the employee (and his/her co-workers) that poor performance and/or misconduct will not be tolerated.
- (c) Involuntary Demotion. This action moves an employee into a different position, for which the employee qualifies, that has a classification with a lower maximum and reduces the employee's pay by a minimum of 7%. Involuntary demotion is typically used when an employee cannot satisfactorily perform the duties of the job but could perform the duties of a lower level job. This is an alternative to dismissal, a bonafide vacancy must exist, and the employee must qualify for the lower level job.
- (d) Dismissal. This action separates the employee from employment for cause, such as, but not limited to, repeated misconduct for which the employee has previously been disciplined/counseled or a single, particularly aggravated incident or egregious violation has occurred. In addition to termination of employment, the consequences for a dismissal include the following:
 - (1) Lose eligibility for non-competitive reemployment.
 - (2) Lose eligibility to be rehired at former pay rate.
 - (3) Lose right to have annual and sick leave restored if

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reemployed by the State.

- (4) Removal from the department preferred reemployment list.
- (5) Allows the Appointing Authority or Department of State Civil Service to reject the employee's application and the Department of State Civil Service may cancel the employee's eligibility for employment. [Rule 6.5(c); Rule 22.4(d); Rule 23.16(a)4; Rule 23.13(b); Rule 11.18(b); Rule 17.23(e)4]
- (6) Disclosure of the reasons for separation to external prospective employers.

6. FORMAL DISCIPLINARY ACTION

A. In order to take any formal disciplinary action (reduction in pay, suspension without pay, involuntary demotion, or dismissal) against a permanent, classified employee, an Appointing Authority must adhere to the following process:

- (1) Pre-deprivation Notice. Employees must be provided with a written pre-deprivation notice which sets forth the facts and evidence in support of a proposed disciplinary action. This notice must be reviewed by the Employment Attorney and HR Employee Relations Manager before it is issued, and must include:
 - (a) A proposed disciplinary action.
 - (b) The facts (including pertinent dates, times, places, and names) that support the proposed action. In effect, it should be a who, what, when, and where statement of facts.
 - (c) An explanation of the evidence on which the Appointing Authority relies in support of the proposed disciplinary action.
 - (d) A statement regarding the employee's right to respond in writing and deadline (minimum of three working days) for the response.
- (2) Opportunity to Respond. Employees shall be granted a reasonable amount of time to provide a written response to allegations stated in a pre-deprivation notice.
- (3) Disciplinary Action Notice. After the opportunity to respond has lapsed,

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the Appointing Authority will issue the employee a formal disciplinary action notice. The Appointing Authority can impose the proposed action stated in the pre-deprivation notice or impose a lesser action (but cannot impose an increased action).. The action notice must be reviewed by the Employment Attorney and the HR Employee Relations Manager before being issued, and must include:

- (a) The specific action to be taken with an effective date and time (The employee must receive the action notice before any formal disciplinary action is taken.);
- (b) All facts and evidence considered;
- (c) The details of the employee's response (or lack of response); and
- (d) A statement regarding the employee's right to appeal the action in accordance with Civil Service Rule 13.

B. Receipt of Notice Guidelines. Civil Service Rule 12.8.1 states an employee is deemed in receipt of a written notice when:

- (1) It is hand-delivered to the employee; OR
- (2) It is hand-delivered to a person of suitable age and discretion who resides with the employee; OR
- (3) On the 7th calendar day after it was mailed with correct postage to the employee's most recent address furnished in writing or electronically to the agency's Human Resource office. (This is only applicable if notice is mailed regular USPS mail with Certificate of Mailing, not when sent Certified Mail. A Certificate of Mailing serves as proof that a notice was mailed, while Certified Mail will show proof of receipt, which could extend the 7-day receipt period.)

C. In an effort to maintain consistency throughout the Department, any disciplinary action proposed by the Appointing Authority must be carefully evaluated by the Employment Attorney and the HR Employee Relations Manager to determine the following:

- (1) The proposed penalty is in line with similar cases.
- (2) All procedural requirements have been met.

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(3) There is sufficient evidence to support the charge.

- D. Assessing the Severity of a Disciplinary Action. Civil Service referees have ruled that prior instances of discipline/counseling must be specifically noted in the letter of discipline, if relied on by the Appointing Authority to enhance the penalty imposed for the current offense. For instance, if an Appointing Authority decides that a 5-day suspension is warranted for misconduct, based on the fact that the employee has a prior disciplinary record or was previously guilty of the identical misconduct for which he/she was counseled, reference to that disciplinary action/counseling must be set forth with specificity in the current disciplinary action. Otherwise, evidence concerning the prior disciplinary action/counseling may not be admitted into evidence. In the absence of such evidence, the referee may find that the disciplinary action imposed for the current offense is too severe and reduce it to a lesser penalty. If this occurs, the referee will find the Department liable and may award the employee back wages and attorney's fees.
- E. Employee Appeals. An employee may appeal any official disciplinary action (reduction in pay, suspension without pay, involuntary demotion and dismissal) to the Civil Service Commission within 30 days from receipt of notice. An appeal may result in a hearing, which is conducted by the Civil Service Commission or 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 supervisory files on employees to document reprimands, both verbal counseling and written letters of counseling, warning, and caution. Without the ability to refer to records to identify the instances of these prior efforts to correct the employee's behavior, the disciplinary action may not be sustainable. Legal advice and representation is available to supervisors and Appointing Authorities by DOTD's Legal Section.

7. REFERENCES

- A. For more detailed policies and rules, please refer to the following:
- (1) Civil Service Rules, Chapter 12 - Discipline; Corrective Actions; Separations. This information includes mandatory procedures for taking disciplinary action against permanent employees for cause. It further explains non-disciplinary removals, suspensions with pay pending investigation, letters of counseling, warning and/or reprimand, and resignations. Pre-removal/pre-disciplinary procedures and written notice requirements are also covered.
 - (2) Civil Service Rules, Chapter 13 – Civil Service Appeals. This information includes specific procedures for appealing to the Civil Service

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Commission. It tells who can appeal, how an appeal is requested, and how appeals are heard. Employees who are disciplined for cause must be notified in writing of their appeal rights and the location of Chapter 13 of the Civil Service Rules.

- (3) PPM No. 3 - Appointing Authority – Personnel Action Certifications. This Department policy further designates, delegates, and grants Appointing Authority status to a number of top-level agency officials for their respective office, authority, section, or district. Disciplinary actions can only be taken by a statutory or lawfully delegated Appointing Authority.
- (4) PPM No. 29 - Employee Conduct. This Department policy identifies nonexclusive examples of misconduct and/or offenses for which appropriate disciplinary action may be taken.

8. FURTHER INFORMATION

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



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