

SUPERVISOR'S GUIDE TO DISCIPLINARY PROCEDURES

PURPOSE: To describe procedures, consistent with established policy under the county code, that will assist supervisors and managers administering disciplinary action. This EPP is intended to serve as a guideline. It is not intended to be a contract nor is it intended to supersede any of the negotiated collective bargaining agreements that are in force in the County.

SCOPE: This EPP applies to all classified regular-status and classified probationary employees in County employment, unless there is a conflict with applicable provisions of a collective bargaining agreement. "Classified" and "unclassified" employees are as defined in the County Code.

SUPERVISOR'S RESPONSIBILITY

The role of the first-line supervisor is key to maintaining an effective disciplinary system. The responsibilities of the supervisor are as follows:

1. Know the disciplinary policy, rules of conduct, and disciplinary procedures of the County.
2. Inform employees of expected standards of conduct and performance.
3. Counsel and coach employees as problems occur.
4. Recognize the need for initiating disciplinary action and intervene in a timely manner.
5. Make specific entries in the employee's file or other formal disciplinary records maintained by the County.

DISCIPLINE POLICY

It is the policy of the County that disciplinary measures for classified regular-status employees shall be corrective, progressive, lawful and proportionate to the nature of the offense, and that disciplinary action for such employees shall be for cause as it relates to job performance. These policies are established and further explained in the County Code, section 2.05.190.2. Collective bargaining agreements also establish a "just cause" or similar standard for disciplinary action regarding regular-status employees in a bargaining unit.

KINDS OF DISCIPLINARY ACTION

The possible kinds of disciplinary action include, in increasing order of severity:

- Oral reprimand;
- Written reprimand;
- Suspension without pay;
- Demotion; and
- Dismissal

These types of disciplinary action are described in the County Code, section 2.05.190.4.

GENERAL PROCEDURES FOR ADMINISTERING DISCIPLINE

1. Investigate the facts thoroughly before giving any discipline. If there is a need to remove an employee from the workplace during an investigation, administrative leave with pay is available as described in the County Code. Items to investigate include:
 - A. Who was involved?
 - B. What happened?
 - C. When did the violation or deficiency occur?
 - D. Where did it occur?
 - E. Who were the witnesses, if any?
 - F. What rule, policy, or practice was violated?
 - G. What is the past record of the employee? (Length of service as well as number and severity of previous problem areas should be considered.)
2. Many investigations include an interview of the employee for whom disciplinary action is being considered. In an investigatory interview of a union-represented employee, where the employee reasonably believes that the interview may lead to discipline for him or her, the employee (at his or her request) has the right to have a union representative present.
3. When the facts have been investigated and considered, determine a proposed course of action. A checklist that may be helpful in reviewing the situation is attached to this EPP as "Appendix A."
4. Notify the employee of the reasons for proposed discipline, the level of proposed discipline, and give the employee a chance to respond, before making a final decision.
5. After the employee has responded, complete any additional investigation that is needed.
6. If the decision is to proceed with disciplinary action, prepare a written letter to the employee (except in cases or oral reprimand) outlining the reason for the discipline and the particular action to be taken. Also prepare the appropriate Personnel Action form. The letter and Personnel Action form should be reviewed by the Personnel Division. Sample letters are attached to this EPP as "Appendix C."
7. Investigate the facts and administer the discipline as soon after misconduct is identified as possible.
8. For union-represented employees, review the bargaining agreement and follow all of its provisions relating to discipline and discharge.
9. Contact DES with any questions or for assistance as needed.
10. Make an effort to administer discipline in a manner that will not unduly embarrass the employee--typically in a location away from other employees.

PROCEDURES FOR ADMINISTERING DISCIPLINE WITHOUT ECONOMIC LOSS

Oral reprimand and written reprimand are types of discipline that do not involve economic loss. When a supervisor believes there is cause for discipline without economic loss, the supervisor should follow the general procedures for administering discipline. The County Code requires that notice be given to the employee, prior to a final decision being made, of:

- the cause for discipline,

- the investigation made or to be made, and
- the disciplinary action considered.

The County Code does not require that such notice be in writing; however it is often a good idea to put such notice in writing, particularly if written reprimand is being considered.

The County Code requires that the employee be given a reasonable opportunity to offer facts in explanation or mitigation.

PROCEDURES FOR ADMINISTERING DISCIPLINE WITH ECONOMIC LOSS

Suspension without pay, demotion and dismissal are types of discipline that involve economic loss. When a supervisor believes there is cause for discipline with economic loss, the procedures are the same as above, however in such cases the County Code requires that written notice be given to the employee, prior to a final decision being made, of:

- the cause for discipline,
- the investigation made or to be made, and
- the disciplinary action considered.

As above, the County Code requires that the employee be given a reasonable opportunity to offer facts in explanation or mitigation.

A summary of the “three-step process” is attached to this EPP as Appendix B. It describes the steps of the disciplinary process in more detail: (1) investigation, (2) written notice of proposed discipline, and (3) written notice of disciplinary action.

Sample written notices are attached to this EPP as “Appendix C.”

In instances of proposed dismissal, the employee should be given ten (10) days advance notice of the dismissal date as required by County Code. Payroll should be notified of a dismissal in advance so that a payroll check may be given to the employee by the next business day after the dismissal, as required by law. If the appointing authority believes that circumstances require the separation of an employee from his/her work assignment following a decision for dismissal but preceding the effective date of dismissal, the employee may be suspended with or without pay during the remainder of the 10-day notice period.

The appointing authority should notify the employee of a dismissal by certified mail or, if possible, by hand delivering the letter and Personnel Action form. A copy of those materials should be provided to the Personnel Division within 24 hours.

INTERNET LINKS

County Ordinance (<http://www.clackamas.us/code/documents/title2.pdf>)

Attachments:

- Appendix A: Checklist Review
- Appendix B: Summary of Three-Step Process
- Appendix C: Sample Letters

APPENDIX A

CHECKLIST REVIEW BEFORE ADMINISTERING CORRECTIVE ACTION

Prior to finalizing any disciplinary actions, the supervisor should consider the questions below.

1. Did management give the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?
 - A. Forewarning or foreknowledge may properly have been given by management, orally or in writing, or via policy or rules publications.
 - B. Another method to communicate employee shortcomings and consequences is via a performance appraisal showing a poor rating in the problem behavior category; however, the performance appraisal should not be used as a vehicle for actually administering discipline.
 - C. Some offenses, such as insubordination, coming to work intoxicated, or theft of public property or a co-worker's property are so serious that any employee is properly expected to know that such conduct is offensive and punishable.

2. Was management's rule or managerial order reasonably related to the orderly efficient and safe operation of the agency?
 - A. Absent any contractual prohibition or restriction, management has the right unilaterally to design reasonable rules and give reasonable orders.
 - B. If an employee believes that the rule or order is unreasonable, or in violation of the union contract, he/she must nevertheless obey it, unless he/she has reasonable grounds to believe that to obey the rule or order would jeopardize his/her personal safety or that of other workers or the public (the "work and grieve" rule).

3. Prior to administering discipline, did management make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
 - A. An employee has the right to know the offense with which he/she is being charged and the right to defend the behavior.
 - B. Management's investigation must be completed before the final disciplinary decision is made.
 - C. There may be circumstances under which management must react immediately to the employee's behavior. In such cases, take those actions necessary to resolve the immediate problem, with the understanding that final disciplinary action will be determined after the investigation. In such a situation administrative leave pending the investigation may be appropriate.

4. Was management's investigation conducted fairly and objectively?
 - A. Was the investigation conducted before decisions were made?

- B. Was the person conducting the examination able to do so in a fair and impartial manner?
5. During the investigation did the investigator obtain substantial evidence or proof that the employee behaved as reported?
6. Has management applied its rules and orders evenhandedly to all employees and without discrimination?
- A. If management has been lax in enforcing its rules and orders and decides henceforth to apply them rigorously, management may avoid a finding of discrimination by telling all employees at the time of the decision of the intent to enforce all rules hereafter as written.
7. Was the degree of discipline administered by management reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee?
- A. A minor proven offense does not merit severe discipline unless the employee has previously been found guilty of the same or other offenses in the past.
- B. The proper use of an employee's record is to help determine the severity of discipline to impose once he/she has properly been found guilty of the immediate offense.
- C. Given the same proven offense for two or more employees in the same circumstances, their respective records provide the only proper basis for "discriminating" between them in the administration of discipline.
8. Were the following due process steps followed?
- A. Notice of proposed disciplinary action.
- B. Notice of reasons for the proposed action - what the employee did wrong, where and when the offense occurred.
- C. Employee was notified of rules or standards violated, and materials upon which the proposed action is based.
- D. Employee was given an opportunity to respond before disciplinary action finally determined.
9. Was employee's performance regularly evaluated, and are the evaluations taken into consideration in determining the proposed action?
10. Is every incident, warning, reprimand, meeting, etc. well-documented?

Note: Oftentimes employees claim they were never told of the consequences of an offense or that certain things were not discussed. A memo confirming discussions receipted by the employee is the best documentation.

USE THREE-STEP PROCESS
(Two Notices Are the Minimum Required)

STEP 1 PRELIMINARY INVESTIGATION OF ALLEGED MISCONDUCT (OR OTHER REASON FOR DISCIPLINARY ACTION)

TM GATHER THE FACTS.

- ☞ A thorough investigation is part of “just cause” for discipline.
- ☞ Fact-Gathering may include an “investigatory interview” with the employee.
- ☞ Anytime that discipline is a reasonable possibility, the employee has a right to union representation at the investigatory interview.

STEP 2 NOTIFICATION of PROPOSED DISCIPLINE OR DISCHARGE (DUE PROCESS NOTICE AND MITIGATION MEETING)

TM NOTIFY EMPLOYEE IN WRITING OF PROPOSED DISCIPLINE. (1ST WRITTEN NOTICE)

- 🕒 **INCLUDE IN THE NOTICE THE FOLLOWING:**
 - ☞ Your intention or proposal to take corrective action and possible levels considered (including dismissal if being considered).
 - ☞ Reasons for discipline or “cause” and statement of the policy or rule violated.
 - ☞ State that the employee has the opportunity to meet with employer (Department Director if dismissal): employee may present any information employee wishes to have considered before a final decision on disciplinary action is made.
 - ☞ Identify the timeframe of the notice (County Code and union contracts identify minimum notice). Within the timeframe identify the time and place when employer will be available to meet with the employee.
 - ☞ Inform employee of right to union representation.
 - ☞ Copy to DES and union representative.

TM CONDUCT A “DUE PROCESS” MITIGATION MEETING. (PRE-DISMISSAL HEARING IF APPLICABLE)

- ☞ Allow employee to present their side.
- ☞ Document the contents of the meeting.
- ☞ Union representative present if requested.
- 🕒 **FOLLOW-UP.**
 - ☞ Complete any additional investigation.
- 🕒 **MAKE DECISION ABOUT ACTION TO BE TAKEN.**

STEP 3 NOTIFICATION OF DISCIPLINE OR DISCHARGE DECISION

TM NOTIFY EMPLOYEE IN WRITING OF DECISION. (2ND WRITTEN NOTICE)

- ☞ Description of the violation or performance issue.
- ☞ Reference to the policy/rules violated.
- ☞ Identify the level of corrective action taken.
- ☞ Include notice of additional progressive discipline for continued violations.
 - Copy DES and union representative.
 - Grievable under union contracts.

APPENDIX C SAMPLE LETTERS

SAMPLE WRITTEN REPRIMAND LETTER

Date

Employee's Name

Address

City, State, Zip

SUBJECT: Written Reprimand

Dear:

Part of the responsibilities of your position include [Examples: arriving to work on time, limiting the use of the phone for personal calls, etc]. Recently you have failed to fulfill these responsibilities of your position.

You have previously been given oral reprimands for similar conduct on [specify dates of previous oral reprimands].

I notified you on [date] that your conduct on [dates] appeared to be in violation of [County/department] [work rules/policy]. I notified you that I was considering issuing a written reprimand to you. I gave you an opportunity to present any information which you wanted me to consider before making a final decision regarding disciplinary action. We met on [date] for that purpose, along with your union representative. I have considered the information you presented.

I have decided to impose disciplinary action against you in the form of this written reprimand. Disciplinary action is appropriate based on the following:

County Code, section 2.05.190.1 Employee Conduct;

County Code, section 2.05.190.3 Cause for Disciplinary Action [specify specific cause];

County Code, section 2.05.180.2 Work Rules[specify work rules].

You assured me that these problems would be corrected. Please be advised that improvement must be immediate and continue from now on in order to avoid further and increased application of progressive discipline up to and including termination.

I have confidence that you have the ability and skills to successfully fulfill the responsibilities of your position. If you have any questions now or in the future regarding performance expectations or proper procedures, you are encouraged to discuss them with me.

Sincerely,

Supervisor or Manager

My signature acknowledges receipt of this written reprimand but does not necessarily indicate that I agree with the content.

Employee's Signature

Date

C Union President
DES Director
County Counsel

SAMPLE LETTER OF PROPOSED DISCHARGE OF PROBATIONARY EMPLOYEE

Date

Employee Name
Address,
City, State, Zip

SUBJECT: Notification of Proposed Dismissal as a Probationary Employee

Dear:

The County Code provides a 12 month probationary period which is an integral part of the selection process. It provides the department with the opportunity to observe the employee's work, to train, and to aid the employee in adjustment to the position, and to reject any employee whose work performance fails to meet required work standards.

Please accept this letter as notice of proposed dismissal as a probationary employee, effective [day, date and time]. During the past months there have been performance issues that have been addressed with you. Several areas fail to meet performance expectations including [insert examples of problem behaviors here].

Authority to dismiss as a probationary employee is governed by the County Code section 2.05.110, Probationary Period, which states: "If the work or conduct of a probationary employee is found to be unacceptable to the appointing authority, the appointing authority may dismiss, demote or suspend the probationary employee. Every such action shall be accompanied by written documentation stating the reasons for such action.

A meeting will be held with the Department Director on [date, time, and place]. You will have the opportunity to present information that you think should be considered before a final decision is made regarding this matter. As a represented employee, you may have a union representative present with you at the meeting. If you do not wish to attend this meeting, please let me know by [day, date, and time].

Under the County Code 2.05.110.3, a probationary employee may request a review of a dismissal by the Director of Employee Services. If you have any questions, please contact me [or other contact person at phone #].

Sincerely,
Department Director

My signature acknowledges receipt of this written reprimand but does not necessarily indicate that I agree with the content.

Employee's Signature

Date

C DES Director
 Union President
 County Counsel

SAMPLE LETTER OF NOTIFICATION OF PROPOSED DISCHARGE

Date

Name

Address

City, State, Zip

SUBJECT: Notification of Proposed Dismissal from Employment

Dear:

It appears that between February 7th and 14th, 2007 you have spent an excessive amount of county time on the internet including visiting sites that are prohibited by county policy. Attached you will find the report of your Internet usage for this time period. The inappropriate sites are marked.

These actions appear to be in violation of the county policy regarding Employees Network and Internet Standards, and County Code sections 2.05.190.3 (B), (H), (K), and (O), and section 2.05.180.2 (D).

You previously were disciplined on November 3, 2006 for violations of the same policy and code provisions.

A copy of the Internet Standards policy is attached. The County Code sections are set forth below:

2.05.190.3 Cause for Disciplinary Action

Cause for disciplinary action includes but is not limited to the following:

- B. Violation of any of the established work rules set forth in chapter 2.05;
- H. Improper or unauthorized use of County property or services;
- K. Misconduct in the performance of duties as an employee.
- O. Violation of any provisions of this chapter or rules adopted by the Board or any provisions of departmental rules.

2.05.180 Employee Responsibilities 2.05.180.2 Work Rules

D. Employees shall be responsible for, and not misuse County property, records or other materials in their care, custody and control;

This letter is sent to notify you that I am proposing to take disciplinary action with economic loss against you, up to and including your dismissal from employment. The proposed dismissal from employment would be effective on [date no less than 10 days in the future]. A meeting has been scheduled at [place and time] on [day, date before the proposed dismissal date] where you will have the opportunity to present information which you wish to have considered before I make a final decision regarding the proposed disciplinary action. If you do not wish to attend the meeting, please notify me by [day, date, and time]. Under the terms of the collective bargaining agreement, you have the right to have a union representative with you at the meeting.

Sincerely,

Department Director

My signature acknowledges receipt of this written reprimand but does not necessarily indicate that I agree with the content.

Employee's Signature

Date

C Union President
DES Director
County Counsel

SAMPLE LETTER OF DISCHARGE

Date

Name

Address

City, State, Zip

SUBJECT: Dismissal from employment

Dear:

You were previously informed, in a letter dated [date], of your proposed dismissal from County employment. Dismissal was proposed because it appeared that you have you have spent an excessive amount of county time on the internet including visiting sites that are prohibited by county policy.

On [day, date] you met with me with your union representative at a pre-dismissal meeting to offer information you wished me to consider before a final decision was made on the proposed disciplinary action. I have considered the information that you provided and have decided to dismiss you from County employment [or: decided to impose a disciplinary action consisting of a one-week suspension without pay]. This action will take effect on [day, date, and time]. I have determined that you have violated the following policies.

Employees Network and Internet Standards policy

2.05.190.3 Cause for Disciplinary Action

Cause for disciplinary action includes but is not limited to the following:

- H. Improper or unauthorized use of County property or services;
- K. Misconduct in the performance of duties as an employee.
- O. Violation of any provisions of this chapter or rules adopted by the Board, or any provisions of departmental rules.

2.05.180 Employee Responsibilities 2.05.180.2 Work Rules

D. Employees shall be responsible for, and not misuse County property, records or other materials in their care, custody and control;

This letter is official notification that your employment will be terminated effective (day, date, time). You may wish to contact your union representative to determine your rights under the bargaining agreement.

Sincerely,

Department Director

My signature acknowledges receipt of this written reprimand but does not necessarily indicate that I agree with the content.

Employee's Signature

Date

C Union President
 DES Director
 County Counsel