

# Chapter 10

## Taking Disciplinary Action

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For DSS to operate in an orderly and efficient manner, employees must follow the rules governing our work place. The vast majority of our employees do, and are dedicated, hard-working men and women who contribute significantly to our agency's success. Those who fail to follow work rules or to meet standards, however, are acting against the best interest of our agency. It is therefore our agency's policy to take disciplinary action when an employee's work performance, conduct, or productivity is deemed unacceptable.

An employee may appeal any official disciplinary action to the Civil Service Commission. 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 therefore imperative to follow established procedures so that our agency can successfully defend its actions. In particular, supervisors must maintain administrative files on employees to document both verbal counseling and written letters of counseling, warning, and reprimand. Without the ability to produce records that prove prior efforts to correct the employee's behavior, the disciplinary action may not be sustainable.

In determining appropriate disciplinary action, each situation is reviewed on a case-by-case basis by both the Headquarters' Human Resources and Legal staffs. This chapter provides a general overview of the disciplinary process with sample letters provided in the Appendix. For additional guidance, supervisors should carefully review [DSS Policy 4-7](#) and Civil Service Chapters 12 and 13 and also take the "Documenting for Performance and Discipline" course offered through CPTP.

### Points to remember:

- Disciplinary action is primarily an attempt to change an employee's behavior or performance from unacceptable to acceptable.
- Disciplinary actions only include: suspensions without pay; reductions in pay; involuntary demotions and dismissals.
- Disciplinary action can only be invoked by a statutory **appointing authority** (Secretary, Undersecretary, and Assistant Secretary for his/her respective Office) or an individual delegated appointing authority status via an Authentic Act prepared in conjunction with the Bureau of General Counsel.
- Classified employees with permanent status possess "property rights" to their jobs and pay, which can only be taken away for *cause*. Legal cause exists when the conduct or job performance impairs the efficiency of the public service and bears a real and substantial relationship to the efficient and orderly operation of a public agency. Due process must be afforded all classified, permanent employees; the burden is upon the agency to prove that cause exists.
- These disciplinary procedures apply to all offices of the Department and all permanent, classified (full or part-time) employees. Unclassified employees, students, temporary and probational employees are governed by the intent of the policy in terms of performance and rules, but are not entitled to due process procedures.
- In general, before disciplinary action is taken, there must be documented evidence that counseling and supervisory instruction have failed to guide an employee to satisfactory

performance. (Based on the seriousness of the offense, however, management may take any level of disciplinary action, up to and including termination, without prior counseling.)

## **ELEMENTS OF EFFECTIVE DISCIPLINE**

### **1. Communication**

Establish and clearly explain to employees the levels of expected performance and conduct; speak to the employee, in private, as soon as evidence indicates that the employee's performance (includes job duties, conduct and attendance) may be unsatisfactory or unacceptable; encourage the employee to relate any problems he/she may be having and to think through means of resolution; advise employee of consequences of continued failure to demonstrate acceptable performance. Remember: If a supervisor is aware of misconduct or unacceptable job performance and fails to take action, the conduct or performance is considered condoned and may not be used as the basis for future disciplinary actions.

### **2. Consistency**

Apply fair and consistent treatment to all employees in similar situations; use the “Hot Stove” approach:

- A hot stove burns whoever touches it; it doesn't skip anyone.
- A hot stove acts immediately following each touch.
- A hot stove burns all who touch at the same temperature; and
- A hot stove doesn't change its burn on the basis of the toucher's personality, friendship, race, color, religion, age, national origin or disability.

### **3. Documentation**

Documentation should begin at the first sign of trouble. Maintaining proper documentation is time-consuming, and it is often tempting to put off beginning the documentation for a disciplinary problem. However, putting off the documentation process frequently results in a more difficult and even more time-consuming case to handle.

Every discussion with an employee concerning a problem with performance or behavior should be documented and maintained in a file. It is therefore critical for supervisors to: maintain a supervisory or administrative file on each employee to reflect documentation of "good news and bad news" on employees' job performance/conduct; regularly observe performance, behaviors and actions and document observations; collect and file work samples in supervisory file; implement a regular procedure to consistently document each employee's performance; and, maintain accurate records of performance and counseling history to substantiate disciplinary action taken or recommended.

Every memo written to an employee concerning a performance or behavior problem should be signed by the appointing authority and kept in this file. If an employee's performance or behavior improves after the first discussion or memo, and the inappropriate performance or behavior does not recur, the documentation on that incident can be discarded after a reasonable period of time – usually one year. If, however, the employee's performance or behavior continues, disciplinary action must be supported by proper documentation that has been maintained from the beginning. For typical job performance problems, the supervisor should initiate a supervisory work plan (approved by the appointing authority) prior to taking disciplinary action, with performance documented in the follow-up PPR rating. (Refer to Chapter 5 on Managing Performance.)

A worksheet to assist with documentation appears in the appendix to this chapter, but any format can be used, provided sufficient information is maintained. Regardless of the format, use the “FOSA” method to document:

- **Facts:** Be specific and focus on actions and behavior; avoid discussing the reasons you think the employee might have done what he did and instead provide answers to what was observed, i.e., Who? What? When? Where? How? Depending on what you’re documenting, this may include day, date, time and place of the incident; day, date, time and place of the counseling session or copy of written memo; names of any witnesses, and written statements if possible.
- **Objectives:** What are the expectations? (Is it a policy, PPR expectation, job description expectation?) When were expectations communicated? Was the employee told of the proper way to handle the situation being discussed? When was he told? What actions were taken to help the employee achieve goals? Is the performance problem related to improper training/lack of knowledge, or did the employee simply ignore procedures he should have known? How was the employee trained and how should the employee have known of the proper way to handle the situation? What is the employee’s statement about the incident?
- **Solutions:** How can the issue or problem be resolved? Who will do what to resolve?
- **Actions:** Specify timeline, next meeting date, and what actions might be taken if the employee does not meet the expectations.

Remember that a satisfactory performance rating or approval of a merit increase indicates satisfactory performance as of that date. It is virtually impossible to take formal disciplinary action against an employee who has a continuing and ongoing problem when he/she has just recently received a merit increase or satisfactory performance rating, and there is no documentation of the problem.

#### **4. Progression**

The typical steps in a progressive disciplinary system are described in the next section. While gross misconduct may result in dismissal for a first offense, most incidents should follow the progressive disciplinary steps, by which consequences become greater with each repeated offense. While coaching and counseling involves constructive criticism and tools/resources to help employees improve their job performance or behavior, discipline refers to the negative, adverse actions taken after the positive approaches have not worked.

### **TYPICAL STEPS IN A PROGRESSIVE DISCIPLINARY SYSTEM**

**1. Conduct Verbal Counseling.** This action is normally the first step taken to help an employee change unacceptable behavior 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 and why, and to explain what will happen if the behavior continues. Supervisors must recognize that unless an employee is counseled, he/she will consider any misconduct acceptable. When conducting the session, supervisors should maintain a calm demeanor, apply a direct approach to problem, use specifics to support observations and concerns, and stay on target. When feasible, emphasis should be placed on counseling, cooperative efforts to be made by employee and supervisor, and assistance/instruction the supervisor will give to assist the employee in meeting performance objectives or behavior expectations. When performance of job duties is the issue, supervisors should plan to review, coach, retrain as necessary, schedule follow-up, etc. Documentation of the meeting should be placed in the employee’s supervisory file.

## **2. Issue Letter of Improvement (Coaching, Counseling, Warning, or Reprimand) or**

**Supervisory Plan.** The purpose of these letters is not to punish the employee, but rather to get the employee to change his/her performance to meet expectations. The letter tells the employee that his/her performance or behavior is not acceptable, explains what performance or behavior is expected, refers to prior verbal counseling sessions, directs the employee to discontinue the unacceptable behavior and states consequences if misbehavior or misconduct continues. This action is appropriate when verbal counseling fails, and the same unacceptable job performance or misconduct continues. It may also be the supervisor's initial response when something stronger than verbal counseling is needed to get the employee's attention. These types of written letters are not disciplinary actions, but appointing authorities must either approve all such letters/supervisory plans or delegate in writing to appropriate personnel the authority to issue these by Authentic Act. What the letter is called (counseling, coaching warning or reprimand) is usually based on the seriousness of the employee's action or inaction. These letters are not placed in an employee's official personnel file or any other file that is accessible to the public. They are instead maintained in the file the supervisor maintains on the employee and referenced in the next PPR rating. Depending on the point in the rating cycle when the letter is issued, supervisors should may also develop a supervisory work plan, as discussed in Chapter 5. Employees must be told that the letter is not a disciplinary action and that he/she has the right to respond in writing by a certain date and that the response will be filed with each copy of the letter. 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 subsequently 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.

**3. Determine Appropriate Disciplinary Action.** Should counseling and written letters of improvement or supervisory plans be unsuccessful in changing the employee's performance or behavior, discipline is the next step in the progressive disciplinary system. Disciplinary actions are official, adverse actions taken against employees to correct, improve, prevent, or stop unacceptable job performance or behavior. Only appointing authorities can take these actions, which should be taken within a reasonable time after the appointing authority becomes aware of the conduct. Otherwise, the charges become "stale" and cannot be used as the basis for disciplinary action. Disciplinary actions include:

- (a) **Reduction in Pay.** This action is usually 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. An appointing authority should first assess the penalty in terms of a suspension, temporarily reducing the employee's pay by an amount equivalent to the amount that would have been suffered for a disciplinary suspension. This action is recommended when manpower shortages or further disruption of work must be avoided. Reductions in pay are usually temporary, but may be permanent depending upon the severity of the circumstances. In no

case, however, may an employee's pay, however, be reduced below the minimum of his/her pay range or below the minimum wage.

(b) 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. Suspension is normally applied when counseling, warnings and/or reprimand(s) have failed to guide an employee to satisfactory job performance. No suspension without pay shall exceed 176 hours, except in very limited circumstances. [(Civil Service Rule 12.3(b)]

(c) Involuntary Demotion. This action permanently moves an employee out of his/her position into a different position/job that has a lower maximum rate of pay. This is an alternative to dismissal, and the employee must qualify for the lower level job. The employee's pay must be reduced by a minimum of 7%. While uncommonly used, this is appropriate when, try as he/she may, an employee cannot satisfactorily perform the duties of the job but may be able to perform a lower level job. Demotion is also appropriate when diligent efforts to guide an employee to satisfactory performance have been unsuccessful, other disciplinary action has proven ineffective, and/or the employee has grossly mismanaged and/or has been derelict in carrying out responsibility of his/her position. Demotion should only be used when the supervisor believes the employee would serve satisfactorily in a lower classification of position. If used for performance reasons, the action should be supported by the employee's most recent performance evaluation(s). Demotion may also be appropriate when evidence shows that an employee appears to have been promoted past his capability and performance was fully satisfactory in his former position. In these instances, and if the employee is unwilling to voluntarily demote, supervisors should make every effort to tactfully handle the disciplinary, involuntary demotion.

(d) Dismissal. This action is the ultimate disciplinary action and 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; an employee's conduct has been such that his/her contribution to the Department and the fulfillment of its mission does not meet standards of the Department; the employee is unwilling or unable to effectively perform assigned duties; or previous efforts to correct his/her improper conduct, behavior, or poor performance have proven ineffective. Dismissals are justified when either repeated disciplinary actions have been taken for unacceptable behavior or conduct, or when a single, particularly aggravated incident or gross misconduct has occurred, such as client abuse, financial fraud, program sabotage, etc.

## ASSESSING THE SEVERITY OF A DISCIPLINARY ACTION

Discipline is the force that prompts people to observe policies, rules, regulations and procedures necessary for the smooth functioning of a work unit and for attainment of agency objectives.

Supervisors should consider the following when recommending an appropriate disciplinary action:

- Does the behavior or conduct affect job performance? Affect others? How?
- Have I given the employee feedback about the behavior or conduct?

- How serious is the offense? How does it impact public service?
- How frequent is the offense?
- Are there any extenuating circumstances?
- What is DSS's history of discipline regarding similar offenses?

Once a decision is made to recommend disciplinary action, many factors should be considered in determining which disciplinary action to take. Each situation must be looked at individually; there is no set action to take for a specific misconduct or performance issue. In general, the severity of the action is determined by the seriousness of the misconduct with consideration given to aggravating and mitigating circumstances. Specific factors to consider include:

- Previous misconduct, to include the severity of the misconduct, number of prior offenses, and the timeframe over which the violations have occurred
- Degree of harm/potential harm to individuals (public, coworkers, clients)
- Disruption of agency or office operations
- Willfulness of the misconduct
- Employee's length of service
- Employee's quality of service (merit increases, PPR ratings, etc.)
- Difficulty in correcting the problem
- Whether the employee was adequately trained to successfully perform
- Whether the employee has resources needed to successfully perform
- Evidence that the policy or expectation was clearly communicated to employee
- How similarly situated employees have been disciplined
- Whether employee was placed on supervisory plan, and if so, what were the results?

### General Disciplinary Guidelines

Mild Offense	3 documented actions before termination	<u>Examples of Actions:</u> 1. Verbal Counseling 2. Performance Letter 3. Suspension or Reduction in Pay 4. Termination
Moderate Offense	2 documented actions before termination	<u>Examples of Actions:</u> 1. Performance Letter 2. Suspension or Reduction in Pay 3. Termination -- or -- 1. Suspension or Reduction in Pay 2. Significant Suspension or Reduction in pay 3. Termination



Serious Offense	1 documented action before termination	<u>Examples of Actions:</u> 1. Significant Suspension or Reduction in Pay 2. Termination
Severe Offense	Zero Tolerance	<u>Action:</u> 1. Termination

Remember: Progressive discipline is not always required. A particularly egregious act may warrant immediate disciplinary action, including termination, when it is clearly indicated that the employee's action/non-action:

- Did or may result in severe impairment of the efficiency of agency operations or services,
- Was a severe rule violation, and/or
- Did or may jeopardize the welfare of another/other individuals(s).

Examples of such gross misconduct include, but are not limited to:

- Client abuse
- Bizarre and/or threatening behavior
- Theft
- Program sabotage
- Violation of federal or state law
- Extreme negligence of duties which leaves children at risk
- Negligence of duties which causes significant financial impact on the agency
- Financial fraud (including payroll fraud)
- Blatant insubordination which causes serious impact on state service
- Gross misconduct

Be advised that 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 similar misconduct for which he/she was counseled, reference to the previous disciplinary actions/counselings must be set forth with specificity in the pre-deprivation and written notice of the 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 this Department liable for back wages and attorney's fees.

## **PROPOSING THE DISCIPLINARY ACTION (PRE-DEPRIVATION PROCESS)**

All permanent, classified employees must be provided with a pre-deprivation notice, which sets forth the facts and evidence in support of a proposed disciplinary action. In an effort to maintain consistency throughout the Department, any disciplinary action proposed must be carefully evaluated by Legal and the appropriate Headquarters' Human Resources Office to determine whether:

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

- There is sufficient evidence to support the charge.

Supervisors should therefore first submit to Legal/HR the proposed pre-deprivation notice along with any source documents/evidence that supports the proposed action. Approved letters/source documents are then submitted to the appointing authority for signature and issuance. In preparing the pre-deprivation notice, remember that it must:

- 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;
- provide an explanation of the evidence on which the appointing authority bases the proposed disciplinary action;
- advise the employee of his/her right to respond in writing; and
- 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. Reasonable judgment however should be used in deciding if the situation warrants a longer response time.)

If no disciplinary action is taken, the pre-deprivation letter, along with the employee’s response, shall not be maintained in the employee’s public personnel file but will be retained in the supervisory file and in the employee’s confidential personnel file. If disciplinary action is taken, the disciplinary letter, along with all attachments including the employee’s response, shall be maintained in the employee’s official personnel file.

### **EFFECTING THE DISCIPLINARY ACTION (WRITTEN NOTICE TO EMPLOYEE)**

The appointing authority should thoughtfully 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 should 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 appropriate HR office and Legal Section 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 signee’s opinion that the employee did not disprove the reasons for the action or provide evidence or satisfactory justification to withdraw the action;



- the signee's opinion that the reasons for the action are true and support the severity of the action;
- 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.

## EXCEPTIONS TO DISCIPLINARY PROCEDURES

[Civil Service Rule 12.10](#) allows an employee to be **verbally suspended, with pay, pending investigation**, for up to 260 work hours. It is not a disciplinary action and is used when the appointing authority has reason to believe the employee has engaged in conduct which, if confirmed, would warrant discipline or removal, 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 told that he/she is being suspended pending investigation and general nature of the conduct being investigated. The appointing authority should subsequently notify the employee of such in writing. (See sample letter in Appendix.)

Since the suspension is with pay, the employee may and should be directed to cooperate with the investigation and remain accessible should the agency call him/her for interview or back to work. The suspension is with pay, but is not charged against the employee's accrued annual or compensatory leave balances; it is instead charged to payroll code LI. In the rare event that an investigation extends beyond 260 work hours, enforced annual or compensatory leave may then be utilized. Upon completion of an investigation which revealed the employee's guilt of misconduct which warrants disciplinary action, the appointing authority proceeds with preparation of the pre-deprivation letter. Additionally, such conduct will be recorded in the appropriate areas of the employee's next PPR rating. If no action is deemed necessary, the employee should be accordingly advised of such, instructed to report to work, and any documentation regarding the investigation will be maintained in the employee's supervisory file. A **suspension pending investigation is not a disciplinary action** and is only appealable if the basis for the appeal is discrimination or a violation of Civil Service Rules. ([Civil Service 13.10\(b\) or \(c\)](#)).

A third type of suspension, **suspension pending criminal charges**, may be allowed by the **Civil Service Commission** when an indictment or bill of information has been filed against the employee for conduct that, if proved, would be cause for dismissal and the appointing authority cannot obtain sufficient information to initiate dismissal proceedings. An appointing authority's request for approval of a suspension under this rule must explain why the conduct would be cause for dismissal, why the employee cannot be allowed to work in any capacity, and why sufficient information to initiate dismissal proceedings cannot be obtained. The request must also include documentation that an indictment or bill of information has been filed. Prior to the approval of a suspension pending criminal charges, the Commission will provide the employee with a copy of the appointing authority's written statement and a reasonable opportunity to respond. A permanent employee suspended under the rule must be given written notice (compliant, to the extent possible, with Civil Service Rule 12.8) before the suspension begins.

## **DELIVERY OF PRE-DEPRIVATION LETTERS AND WRITTEN NOTICES**

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 ISIS 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 Bureau of General Counsel and 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. ( Samples are provided in the appendix to this chapter.)

## **EMPLOYEE APPEALS**

Permanent employees may appeal disciplinary actions and non-disciplinary removals to the Civil Service Commission. In appeal proceedings, the employee is referred to as the appellant; the agency is the appellee. A hearing is conducted in a fashion similar to a court proceeding and is conducted by an appeals referee or the full Commission. The employee may hire an attorney and may call witnesses to support his/her claims. The appointing authority is generally represented by a DSS or DSS-contracted attorney. In all cases, the appointing authority must prove that the disciplinary action taken was appropriate. The appointing authority is limited to introducing facts and information that relate to incidents cited in the pre-deprivation and disciplinary letters. If the appointing authority does not follow Civil Service rules in effecting a disciplinary action or if someone other than an appointing authority issues the disciplinary letter, the employee will generally win his/her appeal. Following the hearing, the referee or Commission will issue its decision, which will usually either uphold, rescind or lessen the disciplinary action. Generally, when actions are rescinded, suspended employees are compensated for days suspended and terminated employees are reinstated with back pay/benefits. Attorney fees are often also awarded and all records of the action are expunged from the employee’s record.

### **Issues Relating to a Challenge of a Disciplinary Action**

- Level of proof: You need a preponderance of evidence; whose story makes more sense?
- Staleness: Act within a reasonable time after learning of the offense or misconduct.
- Condonement: Have you allowed the misconduct to continue over the years?
- Severity: Does the punishment fit the infraction?
- Double Jeopardy: You can’t punish employee twice for the same act.
- Cause: The conduct (behavior, performance or action) must harm or interfere with the efficient or orderly operation of the public service, i.e., impairment to the public service.
- Due Process: You must provide the employee with the right to respond, prior written notice, etc.
- Cumulative Disciplinary Action: In determining severity, consider whether employee has been previously counseled/disciplined.

## **USE OF LEAVE FOR CIVIL SERVICE APPEAL HEARINGS**

In cases where formal disciplinary action is taken against an employee who then files an appeal with Civil Service, the employee should be placed on ANNUAL LEAVE when attending preliminary hearings, meetings with his/her attorney, or when attending the actual appeal hearing. If the employee wins the appeal, and the appeal decision totally rescinds all disciplinary action and/or states that the disciplinary action was unwarranted, the employee's annual leave may be restored if specified in the Civil Service decision.

Departmental employees subpoenaed as witnesses in the case should be placed on CIVIL LEAVE. Employees attending the hearing as representatives of the Department (i.e., appointing authorities, managers, supervisors, and others involved in the decision to take the disciplinary action) are considered ON DUTY when attending these hearings.

## Chapter 10 Appendix A

### Sample Disciplinary Forms/Letters

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#### APPENDIX A - SAMPLE DISCIPLINARY FORMS/LETTERS

##### SAMPLE DOCUMENTATION FORM

Date: \_\_\_\_\_

Employee: \_\_\_\_\_

##### **INFORMATION ABOUT THE INCIDENT**

Date incident occurred \_\_\_\_\_ Time \_\_\_\_\_

Place \_\_\_\_\_

Witnesses: \_\_\_\_\_

\_\_\_\_\_ Use reverse if additional space is needed

##### **DETAILED DESCRIPTION OF THE INCIDENT** (Use additional pages if needed.)

**Facts:** Be specific and focus on actions and behavior; avoid discussing the reasons you think the employee might have done what he did and instead provide answers to what was observed, i.e., Who? What? When? Where? How? Attach any written statements from witnesses.

**Objectives:** What are the expectations? (Is it a policy, PPR expectation, job description expectation?) When were expectations communicated? Was the employee told of the proper way to handle the situation being discussed? When was he told? Is the performance problem related to improper training/lack of knowledge, or did the employee simply ignore procedures he should have known? How was the employee trained and how should the employee have known of the proper way to handle the situation? What is the employee's statement about the incident?

**Solutions:** How can the issue or problem be resolved? Who will do what to resolve?

**Actions:** What was the employee told about this incident, and what was the employee instructed to do in the future? What was the employee's response? (Attach if written.) Specify timeline, next meeting date, and what actions might be taken if the employee does not meet the expectations.

**ACTIONS TAKEN OR RECOMMENDED** (Emergency suspension, placed on LWOP, verbal or written counseling, formal discipline, etc.)

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If verbal counseling, complete the following:

Day \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

Place \_\_\_\_\_

Conducted by: \_\_\_\_\_ (name/job title)

Others present at counseling session \_\_\_\_\_

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Topics discussed:

Supervisor's Signature: \_\_\_\_\_

## SAMPLE PRE-DEPRIVATION NOTICE (Suspension)

(Date of Letter)

Employee's Name

Employee's Address (line 1)

Employee's Address (line 2)

Re: Pre-deprivation Notice

Dear Mr. /Ms. (Employee's Name):

You have been employed by the Department of Social Services (DSS) since \_\_\_\_\_ (date of hire). You currently serve with permanent status in the classified state service as a(n) \_\_\_\_\_ (Job Title) in the \_\_\_\_\_ (name of Office/Division). In accordance with Civil Service Rule 12.7 and DSS Policy 4-7, this is to advise you that I am considering suspending you for forty (40) work hours without pay. The reasons for this action being considered are set forth below.

On July 9, 2008, at approximately 10:00 a.m., John Supervisor assigned you to the xxx case or case #xxx. You refused to obey his directive and responded unprofessionally by using profane language. You said "I'm not working on that case. You can go to hell and back." You have since refused to work on the case. Mr. Supervisor regarded your language and refusal inappropriate and disturbing to your co-workers: Mr. Coworker A, job title, Ms. Coworker B, job title, and Mr. Coworker C, job title, all of whom were present and witness to your statements. Additionally, your actions constituted insubordination and your language was disrespectful and unwarranted. As you should be aware, supervisors are responsible for making work assignments to ensure that work is accomplished. Without employee cooperation, the agency would not be able to reach its objectives or serve the public in the manner expected. Your response to your supervisor's directives was therefore unacceptable and cannot be tolerated.

You have the right to respond to this recommended disciplinary action. In this regard, you may respond in writing. Any written response must be received by xxx (date, at least five calendar days from date of hand-delivery shown below.) If you fail to provide a written response, I will use the information at hand to make a decision regarding this recommended disciplinary action. Any response made by you will be carefully considered before action is taken on the recommended disciplinary action.

Signed by Appointing Authority; copies to HQ Human Resources and Legal: for hand delivery:

Received By: \_\_\_\_\_

Delivery Witnessed By: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_



## **SAMPLE PRE-DEPRIVATION NOTICE (Reduction in Pay)**

(Date of Letter)

Employee's Name

Employee's Address (line 1)

Employee's Address (line 2)

Re: Pre-deprivation Notice

Dear Mr. /Ms. (Employee's Name):

You have been employed by the Department of Social Services (DSS) since \_\_\_\_\_ (date of hire). You currently serve with permanent status in the classified state service as a Social Services Counselor 1 with a biweekly salary of \$1260.40. In accordance with Civil Service Rule 12.7 and DSS Policy 4-7, this is to advise you that I am considering reducing your salary to \$1008.24 for two future pay periods, which is the equivalent of a four-day suspension. The reasons for this proposal are set forth below.

On December 13, 2007, you were rated as "Needs Improvement" for the rating period ending on December 17, 2007. Prior to this rating, you were under the direction of a supervisory plan dated July 15, 2007, which was continued by a plan dated December 28, 2007. Item 2 of the December 13, 2007, Supervisory Plan (copy attached as Exhibit "A") directed you to turn in a weekly schedule to your supervisor on Fridays for the following work week. It further specified that it was your responsibility to provide your supervisor with all information necessary to determine if a change is needed in that schedule and that assignments can only be changed by your supervisor. Item 3 required that all requests for annual leave must be submitted and approved in advance.

As directed, you submitted a schedule on Friday, January 25, 2008 (Exhibit "B attached) for the week of January 28-February 1, 2008. Per written directive from your supervisor dated December 21, 2007, and hand-delivered to you on that same date (Exhibit "C" attached), you were to complete a home study as requested for client #053319800 by January 31, 2008. According to your weekly schedule for the week of January 21-February 1, 2008, you scheduled this home visit appointment for January 29 at 11:30 a.m.

On January 29, you left the office at approximately 10:45 a.m. At approximately 12:30 p.m., this client called the office because you had not yet shown up for your 10:30 a.m. appointment. When advised that your appointment schedule indicated an 11:30 a.m. appointment, the client advised that it had been initially scheduled for 11:30 a.m., but that you had called her on January 28 to move the appointment up by one hour. In an attempt to find out where you were, your supervisor called you on your cell phone several times (12:40 p.m., 1:15 p.m. and 3:00 p.m.) and left several messages, but you did not answer your phone. The client called again on January 30 to report that you never showed up for the home visit even though she had taken the day off from work to meet you. You called your supervisor on January 30 to advise her you had a personal emergency and could not report to work that day. When asked about the appointment in question, you advised your supervisor that you didn't have time to discuss it. Your supervisor advised you that you

had been placed on unauthorized leave without pay for your absence the previous day and that you would remain on such until you returned to work. You returned to work that afternoon at 1:00 p.m. and again stated that you had had a personal emergency the previous day (January 29) as well as the morning of the 30<sup>th</sup>.

You therefore did not complete the home study with this client by January 31, 2008, as you were directed; you did not notify your supervisor that you had changed your weekly schedule as you were directed in the Supervisory Plan; you did not advise your supervisor that you would be unable to comply with her directives and you caused this client to unnecessarily miss work to meet with you. You failed to keep the appointment at her home and failed to contact her to advise her that you would be unable to keep that appointment. You further failed to contact your supervisor after leaving the office on January 29 to explain your whereabouts or request annual leave. These actions on your part constitute insubordination and failure to follow specific directives. Additionally, as a result of your actions, you caused damage to a client's opinion of this agency and the services it provides.

You have the right to respond to this recommended disciplinary action. In this regard, you may respond in writing. Any written response must be received by xxx (date, at least twelve calendar days from date of mailing of letter.) If you fail to provide a written response, I will use the information at hand to make a decision regarding this recommended disciplinary action. Any response made by you will be carefully considered before action is taken on the recommended disciplinary action.

Signed by Appointing Authority; copies to HQ Human Resources and Legal.

## SAMPLE PRE-DEPRIVATION NOTICE (Involuntary Demotion)

(Date of Letter)

Employee's Name

Employee's Address (line 1)

Employee's Address (line 2)

Re: Pre-deprivation Notice

Dear Mr. /Ms. (Employee's Name):

You have been employed by the Department of Social Services (DSS) since \_\_\_\_\_ (date of hire). You currently serve with permanent status in the classified state service as an Accountant 3 with a biweekly salary of \$1555. In accordance with Civil Service Rule 12.7 and DSS Policy 4-7, this is to advise you that I am considering demoting you to an Accountant Technician with a 7% reduction in your salary. The reasons for this proposal are set forth below.

The following chart indicates the status of projects that were assigned to you by your supervisor through four separate memoranda, copies of which are attached.

Project	Assigned	Due Date	Status
The 123 task	8/06/07	09/6/07	Completed 11/6/07
ABC file	9/06/07	10/06/07	Completed 12/28/07
DEF case	10/06/07	11/06/07	Remains incomplete
Wiffle project	11/06/07	12/06/07	Remains incomplete

Following the assignment of each of these projects by memoranda, your supervisor, Ms. Xxx, scheduled meetings with you to review the tasks at hand and discuss the importance of completing the work on time. The documentation of Ms. Xxx's meetings with you are shown on the attached employee performance logs. At no time in any of the meetings did you request help or indicate that you would have a problem with completion in a timely manner. Ms. Xxx further issued four separate memoranda to you, copies of which are attached, after each due date had passed, reminding you of the past due date and offering assistance. You did not respond. On December 14, 2007, Ms. Xxx conducted a counseling session with you regarding your failure to meet these deadlines. A memorandum to you dated December 17 (copy attached) documented that meeting, during which you indicated that the work was too difficult for you to complete on time. Ms. Xxx advised you that these were not difficult projects and that they were the types of projects typically assigned to Accountant 3's in this agency. You indicated that you needed at least three months to complete each of the assigned projects. As you are aware, your PPR expectation for these types of projects indicates that you are expected to complete assigned projects in one month.

Because you did not complete your projects in a timely manner, this agency had to pay a late fee of \$400 concerning the 123 task; ABC had to pay interest of \$234.27; DEF has been delayed in beginning improvement son his property and we are having to pay overtime to get the Wiffle project finished.

You have the right to respond to this recommended disciplinary action. In this regard, you may respond in writing. Any written response must be received by xxx (date, at least five calendar days from receipt of hand-delivered letter.) If you fail to provide a written response, I will use the information at hand to make a decision regarding this recommended disciplinary action. Any response made by you will be carefully considered before action is taken on the recommended disciplinary action.

Signed by Appointing Authority; copies to HQ Human Resources and Legal: for hand delivery:

Received By: _____	
Delivery Witnessed By: _____	
Date: _____	Time: _____

## **SAMPLE PRE-DEPRIVATION NOTICE (Dismissal)**

(Date of Letter)

Employee's Name

Employee's Address (line 1)

Employee's Address (line 2)

Re: Pre-deprivation Notice

Dear Mr. /Ms. (Employee's Name):

You have been employed by the Department of Social Services (DSS) since \_\_\_\_\_ (date of hire). You currently serve with permanent status in the classified state service as a/an \_\_\_\_\_ (Job Title) in \_\_\_\_\_ (Office/Division). In accordance with Civil Service Rule 12.7 and DSS Policy 4-7, this is to advise you that you are being considered for termination. The reasons for this proposal are set forth below.

On July 9, 2007, when your supervisor, Mr. John Supervisor, assigned you to the xxx case, you responded unprofessionally using profane language. You said "I'm not working on that project. You can go to hell and back" and you refused to work on the project. Your actions were witnessed by your co-workers, (list coworker names and job titles). As a result of your insubordination and use of profanity, you received a forty work-hour suspension, effective July 30, 2007, for insubordination and use of profane language. The written notice dated July 27, 2007, is attached as Exhibit "A."

On November 7, 2007, at approximately 10:00 a.m., your supervisor, Mr. John Supervisor, assigned you to xxx case. You refused to do so and responded unprofessionally, using profane language. "I don't like that (expletive not shown here, but use exact language in actual letter) case and I'm not working on it. Suspend me again if you want." You then walked out of the office and went to the kitchen, where you loudly told coworkers (names, job titles) that you were not working on any cases that you didn't want to and that Mr. John Supervisor could "go (expletive deleted but include in actual letter) himself". Your use of profane language to co-workers, your insubordination and failure to promptly and cooperatively follow direct orders given by a supervisor disrupted office operations and hindered public service. Insubordination and malicious use of profane language is prohibited behavior, as stated on page 29 of the Employee Handbook, a copy of which was issued to you upon your employment. Such behavior is unacceptable. For these reasons, I am considering terminating your employment.

You have the right to respond to this recommended disciplinary action. In this regard, you may respond in writing. Any written response must be received by me by date (at least twelve calendar days from date of mailing.) If you fail to provide a written response, I will use the information at hand to make a decision regarding this recommended disciplinary action. Any response made by you will be carefully considered before action is taken on the recommended disciplinary action.

Signed by Appointing Authority, with copies to HQ HR and Legal

## **SAMPLE DISCIPLINARY LETTER (Suspension)**

(Date of Letter)

Employee's Name

Employee's Address (line 1)

Employee's Address (line 2)

Re: Suspension Notice

Dear Mr. /Ms. (Employee's Name):

You have been employed by the Department of Social Services (DSS) since October 16, 2002, and currently serve with permanent status in the classified state service as a Secretary 2 in the Office of Management and Finance. In accordance with Civil Service Rule 12.8 and DSS Policy 4-7, this is to advise you that you will be suspended without pay for 24 hours (three, 8-hour workdays) beginning at 7:00 a.m. on Monday, June 13, 2007 and ending at 3:30 p.m. on Wednesday, June 15, 2007. The reasons for this action are set forth below. On May 11, 2007, you were scheduled to work from 7:00 a.m. until 3:30 p.m., but you failed to report to work or notify your supervisor, (name/job title), regarding the fact that you would not be reporting to work. When you reported to work on May 12, you advised Mr. Supervisor that you had a personal emergency and forgot to call. You were accordingly placed on unauthorized leave without pay for that day, verbally counseled by Mr. Supervisor on proper call-in procedures (i.e., call Mr. Supervisor no later than 7:30 a.m. to request leave/report absence/tardiness) when you have a personal emergency, and provided with a copy of DSS Policy 4-4 (Accrual and use of Leave for Classified Employees), a copy of which is attached as Exhibit "A." On May 24, 2007, you were scheduled to work from 7:00 a.m. until 3:30 p.m.; however, you were two hours late in reporting to work and failed to notify your supervisor. You were again placed on unauthorized leave without pay for those hours and issued a letter of warning on May 25<sup>th</sup>, a copy of which is attached as Exhibit "B." On May 31, 2007, you were scheduled to work from 7:00 a.m. until 3:30 p.m.; you were four hours late in reporting to work and again failed to telephone Mr. Supervisor in accordance with his instructions. The pre-deprivation notice dated June 3, 2007, and hand-delivered to you that same date offered you the right to respond to the recommended suspension without pay, copy attached. Having failed to receive a response, I have based my decision on the facts stated above. In determining the severity of this disciplinary action, I also took into consideration the prior verbal counseling sessions (March 6, 2007; March 28, 2007; April 28, 2007) that Mr. Supervisor conducted with you on this same topic and documented. After carefully considering the facts, I am of the opinion that you did not disprove the reasons for the action or provide evidence or satisfactory justification to withdraw the action. I am also of the opinion that the reasons for the action are true and support the severity of the action.

You have the right to appeal this action to the State 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. Please be further advised that your continued failure to comply with agency policy will result in more severe disciplinary action, up to and including termination.

Signed by Appointing Authority, Exhibits listed, copies to HQ HR and Legal



## **SAMPLE DISCIPLINARY LETTER (Dismissal)**

(Date of Letter)

Employee's Name

Employee's Address (line 1)

Employee's Address (line 2)

### **Re: Termination Notice**

Dear Mr. /Ms. (Employee's Name):

You have been employed by the Department of Social Services (DSS) since October 16, 2004, and currently serve with permanent status in the classified state service as a Social Services Specialist 2 with the Office of Community Services. In accordance with Civil Service Rule 12.8 and DSS Policy 4-7, this letter is to advise you that you will be terminated from your position with this department effective the close of business on Monday, July 25, 2008. The reasons for the action are set forth below.

In a letter dated June 24, 2008 (Exhibit "A" attached), the writer alleged that you provided confidential information from agency files to her estranged husband. She indicated in the letter that the information that you provided was her current address, and in doing so, you placed her life in jeopardy because her estranged husband had been physically abusive to her when they lived together and has subsequently threatened to harm her physically.

On June 25, 2008, you met with xxx, Social Services Supervisor, and xxx, Social Services District Manager, to discuss the allegations in the letter. In this meeting, you stated that as an employee of the Office of Community Services, you had no way to access the writer's address from the Battered Women's Program and that you could not have provided such information since it is not on file with our agency. Further, you denied that you had given this woman's estranged husband any type of computer print out or document.

During a meeting with the above-named supervisory staff on June 26, 2008, and in your written statement dated that same date (Exhibit "B" attached), however, you admitted to using the agency computer at work to learn that the writer of the letter was receiving AFDC and you did provide that information to her estranged husband. You stated that you realized that what you had done was wrong, but that you were angry about the situation because you and other family members had a personal relationship with the writer's estranged husband and believed that he was being treated unfairly.

As an employee of DSS, you have received a copy of the Employee Handbook, which clearly states on page 29 that "revealing confidential information to unauthorized persons" is a rule infraction, for which disciplinary action may be taken. You have also attended numerous agency workshops, the most recent of which was July 8, 2007, at which the importance of client confidentiality was emphasized. (Attendance roster indicating your participation attached as Exhibit "C".) In assessing the appropriate

Employee Name

Page 2

Date

penalty, I also considered the three-day suspension issued to you on June 8, 2007, and the letters of counseling issued to you on February 7, 2007, and May 18, 2007 (copies attached as Exhibit "D"). These previous documents pertain to matters similar to the unacceptable behavior which is presently at issue.

You have failed to respond to the pre-deprivation notice hand-delivered to you dated June 30, 2008, copy attached as Exhibit "E". As stated in this notice, you were advised that you could submit a written response by July 11, 2008. You did not provide a written response, so I have based my decision on the facts stated above. After carefully considering the facts, I am of the opinion that you did not disprove the reasons for the action or provide evidence or satisfactory justification to withdraw the action. I am also of the opinion that the reasons for the action are true and support the severity of the action.

You have the right to appeal this action to the State 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.

Sincerely,

Appointing Authority

Title

Attachments:

Exhibits "A"-"E"

Attendance Roster

Civil Service Chapter 13

c: HQ Human Resources Division

Legal

Administrative File

Received By: \_\_\_\_\_

Delivery Witnessed By: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

## SAMPLE SUSPENSION WITH PAY PENDING INVESTIGATION

(Date of Letter)

Employee's Name

Employee's Address (line 1)

Employee's Address (line 2)

**Personal & Confidential**

Re: Suspension Pending Investigation

Dear Mr. /Ms. (Employee's Name):

This letter will confirm that on April 28, 2008, you were verbally suspended from work by Ms. Xxx, Regional Manager, in the presence of Ms. Xxx, Human Resources Liaison. In accordance with Civil Service Rule 12.10, you are being suspended with pay for a period not to exceed 260 work hours. This suspension is premised upon a pending investigation involving alleged violations that could eventually warrant disciplinary action. As you were advised, this action has been taken because our office received an allegation of xxx, and because of the nature of your work, it is in the best interest of state service to remove you from your duties until we can determine if the allegation is valid. Your suspension from the workplace is also necessary to ensure separation of the employees involved, which will facilitate the investigation.

As Ms. Regional Manager advised you, you are prohibited from returning to the office or visiting any facility associated with the Office of Community Services (OCS) unless your supervisor contacts you. You were further directed not to make contacts on any OCS cases and/or with any OCS clients and not to discuss this matter with anyone other than your legal counsel or duly authorized OCS officials investigating this matter. Unless required by these investigating officials or your supervisor, you are not to visit any DSS property or contact any DSS employee during the term of your suspension. You have provided your home and cell phone numbers and have been advised to remain available for contact between the hours of 8 a.m. and 4:30 p.m., Monday-Friday. You have also been advised to remain work ready in the event your supervisor calls you to return to work or report for an investigative interview. Finally, you are directed to cooperate with this investigation, answering all questions completely and truthfully and not withholding any pertinent information. Should you fail to follow these directives, severe disciplinary action, up to and including termination, will result.

This action is not a disciplinary action and there will be no record of it placed in your official personnel file. Your continuing cooperation in this matter will be expected and is appreciated.

Sincerely,

Appointing Authority

Title

c: HQ Human Resources Division  
Legal

## Sample Documentations for Hand-Delivery

*When delivering to employee, have employee sign and deliverer should keep original. Attach copies to all copies of letter:*

Letter dated \_\_\_\_\_ was hand-delivered to employee on \_\_\_\_\_.

\_\_\_\_\_  
Deliverer's signature/date

\_\_\_\_\_  
Employee's signature/date

---

*When delivering to employee's home, in case employee is not at home, have this form also prepared.*

Employee was not at home, so I left the letter dated \_\_\_\_\_ with \_\_\_\_\_ (name of adult), who said he/she lives with Employee.

Date/Time of Delivery: \_\_\_\_\_

Deliverer's Signature \_\_\_\_\_

I, \_\_\_\_\_, reside with Employee and agree to deliver to him/her the letter I received from Deliverer on \_\_\_\_\_ at \_\_\_\_\_ am/pm.

Recipient signature: \_\_\_\_\_