



MARYLAND STATE POLICE PERSONNEL DIRECTIVE



Civilian Disciplinary Procedures

Distribution: Civilian Employees / Supervisors	Index: PER 19.12
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.01 Purpose

To provide an overview of the disciplinary procedures that are applicable to civilian employees.

.02 Policy

The MSP will maintain a disciplinary process that complies with statute and applicable collective bargaining agreements and will be applied consistently to all employees.

.03 Definitions

APPOINTING AUTHORITY: an individual or a unit of government that has the power to make appointments and terminate employment; in the MSP, the appointing authority is the Superintendent and his authority may be delegated to others in the agency.

EMPLOYEE: a permanent, non-contractual civilian employee.

EXECUTIVE SERVICE: positions such as the chief administrator of a principal unit or a comparable position that is not excluded from the State Personnel Management System.

MANAGEMENT SERVICE: civilian positions that primarily involve direct responsibility for the oversight and management of personnel and financial resources, require the exercise of discretion and independent judgment and are not in the executive service.

PROFESSIONAL SERVICE: civilian positions that require advanced knowledge in a field of science or learning customarily acquired by a course of specialized instruction and study and that normally require a professional license, advanced degree or both.

SKILLED SERVICE: civilian positions that are not in the executive, management or professional services.

SPECIAL APPOINTEE: civilian positions described in MD. CODE ANN., STATE PERS. & PENS. §6–405.

.04 References

[MD. CODE ANN., STATE PERS. & PENS. §6–405.](#)

[MD. CODE ANN., STATE PERS. & PENS. §11–110.](#)

[MD. CODE ANN., STATE PERS. & PENS. §11–113.](#)

[MD. CODE ANN., STATE PERS. & PENS. §11–303.](#)

[COMAR 17.04.03.17.](#)

[COMAR 17.04.05.01 - .05.](#)

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.05 CALEA Standards

LE:	26.1.4	26.1.6	26.1.7	TA:	2.3.1	2.3.3	2.3.4	CM:	1.4.2	1.4.3	1.4.4
	26.1.8	52.1.2	52.1.5		2.3.5	2.3.6	4.6.3		1.4.6	1.4.8	1.4.10
	52.2.2	52.2.3	52.2.5		4.6.5	4.6.6	4.6.7		1.4.11	3.6.5	3.6.7
	52.2.7								3.6.8	3.6.9	

.06 Procedures

A. Overview

1. All disciplinary actions against civilian employees must be imposed by an Appointing Authority.
2. In the MSP, the appointing authorities registered with the Department of Budget and Management (DBM) are the:
 - a. Chief, Support Services Bureau (SSB);
 - b. Assistant Chief, SSB;
 - c. Director, Human Resources Division (HRD);
 - d. Assistant Commander, HRD;
 - e. Department Prosecutor and members of the Department Prosecutor Section; and
 - f. Commander, Administrative Hearing Office.
3. Civilian employees may be disciplined for:
 - a. unsatisfactory performance of duties and responsibilities; and
 - b. misconduct.
4. Disciplinary actions that may be taken include:¹
 - a. a written reprimand;
 - b. forfeiture of up to 15 work days of accrued annual leave;
 - c. suspension without pay;
 - d. denial of an annual pay increase;
 - e. demotion to a lower pay grade; and
 - f. termination of employment.
5. Automatic Termination²

The following actions by an employee are causes for automatic termination of his employment:

 - a. intentional conduct, without justification, that:
 - (1) seriously injures another person;
 - (2) causes substantial damage to property; or

¹ LE: 26.1.4(c) TA: 4.6.3(c) CM: 3.6.5(c)

² LE: 52.2.7 TA: 2.3.4 CM: 1.4.8

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- (3) seriously threatens the safety of the workplace;
- b. theft of State property of a value greater than \$300;
- c. illegal sale, use or possession of drugs on the job;
- d. conviction of a controlled dangerous substance offense by an employee in a designated sensitive classification;
- e. conviction of a felony;
- f. accepting for personal use any fee, gift, or other valuable thing in connection with or during the course of State employment if given to the employee by any person with the hope or expectation of receiving a favor or better treatment than accorded to other persons;
- g. violation of the Fair Election Practices Act;
- h. using, threatening, or attempting to use political influence or the influence of any State employee or officer in securing promotion, transfer, leave of absence or increased pay; and
- i. wantonly careless conduct or unwarrantable excessive force in the treatment or care of an individual who is a client, patient, prisoner, or any other individual who is in the care or custody of this State.

B. Preliminary Procedures

1. Upon learning of an incident that could lead to disciplinary action, the employee's commander or director will:
 - a. Contact the Department Prosecutor Section to:
 - (a) review the case;
 - (b) obtain delegation of authority to investigate the matter; and
 - (c) obtain the employees disciplinary record which should be reviewed in its entirety.
 - b. Review the employee's personnel record to identify prior counseling or issues of poor performance documented within the last 12 months.
2. If a member of the Department Prosecutor Section is notified of a case that has the potential to expose the MSP to substantial liability, or a case that is grounds for immediate termination in subsection (A)(3), above, he will:
 - a. notify the Chief of Staff who will notify the Superintendent;³ or
 - b. if he is unable to notify the Chief of Staff, may notify the Superintendent.⁴

C. Miscellaneous Disciplinary Provisions

1. Limits on Additional Disciplinary Action

After taking a disciplinary action against an employee, the MSP may not impose an additional disciplinary action against that employee for the same conduct, unless additional information is made known to the MSP after the disciplinary action was taken.

³ LE: 52.2.2 TA: N/A CM: 1.4.3

⁴ LE: 52.1.3 TA: 2.3.1 CM: 1.4.2

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2. Burden of Proof

When imposing a disciplinary action against a member of the skilled or professional service, the MSP has the burden of proof, by a preponderance of evidence.

3. Suspension of FLSA Exempt Employees

The suspension of an employee who is exempt from the overtime pay requirements of the Fair Labor Standards Act will be done so that the employee's overtime exemption is not lost.

4. Representation

An employee may choose any person to assist or represent him during an appeal of a disciplinary action and will notify the MSP of that choice.

D. Non-Disciplinary Procedures**1. Formal Counseling ⁵**

- a. Issuing a counseling memorandum is an instructional communication, not a disciplinary action.
- b. Counseling sessions will be documented on a Form 165, Personnel Counseling Record, which lists the actions:
 - (1) of the employee; and
 - (2) taken by the supervisor to modify the behavior or performance.
- c. A counseling session should occur as soon as possible following the incident, so the employee's behavior or performance can be discussed and corrected while the incident is fresh in the minds of the employee and supervisor.
- d. The supervisor may also refer to any job observation material (Form 164) that has been previously presented to and signed by the employee.
- e. The supervisor and the employee will discuss the incident, so that the reasons that the behavior or performance are considered inappropriate are clear to both.
- f. The employee will be given the opportunity to state his views and suggest corrective action.
- g. At the conclusion of the counseling session, the supervisor will recommend a course of action designed to help the employee improve his behavior or performance.
- h. The Form 165 will be prepared in triplicate.
 - (1) If the employee refuses to sign the form, "refused to sign" will be recorded in the appropriate space.
 - (2) Copies will be distributed as follows:
 - (a) the original will be sent to HRD and placed in the employee's master personnel file;
 - (b) a copy is placed in the employee's auxiliary file; and
 - (c) a copy is given to an employee.
- i. An employee may submit a written response to a counseling memorandum within five days of receiving it.

⁵ LE: 26.1.4(b) TA: 4.6.3(b) CM: 3.6.5(b)

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- (1) The response will be placed in the employee's file and attached to any record of the memorandum.
- (2) The employee may not take any other action in response to a counseling memorandum.

2. Leave Without Pay

- a. Placing an employee on leave without pay, when the employee is absent without approval, is not a disciplinary action.
- b. An employee who is placed on leave without pay when the employee is absent without approval may also be subject to disciplinary action for the unapproved absence.

3. Restitution

- a. Requiring an employee to make restitution to the State for loss or damage to State property due to the employee's negligence is not a disciplinary action.
- b. An employee is not required to pay restitution exceeding 3% of the employee's annual base salary.
- c. An employee who is ordered to make restitution may also be subject to civil or criminal prosecution for wanton destruction of property under State law.

4. Training ⁶

- a. An employee may be required by his commander or director to attend training to improve his performance.
- b. Requiring an employee to attend training to improve performance is not a disciplinary action.

E. Discipline Related to Employee Misconduct

In addition to the actions that are causes for automatic termination of employment, an employee in the skilled or professional service may be disciplined for any violation of MSP policy, rule or regulation or:

1. negligence in the performance of duties;
2. intentional misconduct, without justification, that:
 - a. injures another person;
 - b. causes damage to property; or
 - c. threatens the safety of the workplace;
3. conduct that has brought or, could bring the State into disrepute;
4. being unjustifiably offensive toward fellow employees, wards of the State or the public;
5. violating a provision of State Personnel and Pensions Article, Title 2, Subtitle 3; Title 15; or § 9-607, Annotated Code of Maryland.
6. stealing State property with a value of \$300 or less;
7. after notification, continuing to engage in another business, trade or occupation which conflicts with the employee's position or prevents the employee from satisfactorily performing the duties of the employee's position;

⁶ LE: 26.1.4(a) TA: 4.6.3(a) CM: 3.6.5(a)

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8. conduct involving dishonesty, fraud, deceit, misrepresentation or illegality;
9. causing damage to public property or wasting public supplies through negligence, recklessness or willful conduct;
10. willfully making a false official statement or report;
11. knowingly assisting another in conduct that is a violation of State Personnel and Pensions Article, COMAR 17.04.05;
12. violating a lawful order or failing to obey a lawful order given by a superior, or engaging in conduct, violating a lawful order; or failing to obey a lawful order which amounts to insubordination;
13. engaging in discrimination prohibited by law;
14. using leave contrary to law or policy; and
15. committing another act, not previously specified, when there is a connection between the employee's activities and an identifiable detriment to the State.

F. Disciplinary Procedures Related to Employee Misconduct

1. All procedures found in [PER 19.02](#) will be followed.
2. Before taking any disciplinary action related to employee misconduct, the Appointing Authority will:
 - a. investigate the alleged misconduct;
 - b. meet with the employee;
 - c. provide the employee with a written notice of the allegations prior to the initial interview of the employee;⁷
 - d. consider any mitigating circumstances; and
 - e. determine the appropriate disciplinary action, if any, to be imposed.
2. The Appointing Authority will then give the employee a written notice of the:
 - a. disciplinary action to be taken;
 - b. employee's appeal rights;⁸ and
 - c. effective date of the disciplinary action.
3. The written notice will be provided using an MS-4A, Notice of Disciplinary Action, or MS-507, Notice of Termination, as appropriate.

G. Time Limits on Disciplinary Actions Related to Employee Misconduct ⁹

1. Suspension without Pay
 - a. The Appointing Authority may suspend an employee without pay no later than five workdays following the close of the employee's next shift after the Appointing Authority acquires knowledge of the misconduct for which the suspension is imposed.
 - b. Weekends, legal holidays and employee leave days are excluded in calculating the five workday period.

⁷ LE: 52.2.5 TA: 2.3.3 CM: 1.4.6

⁸ LE: 52.2.5 TA: 2.3.3 CM: 1.4.6

⁹ LE: 52.2.3 TA: 2.3.1 CM: 1.4.4

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2. The Appointing Authority may impose any other disciplinary action no later than 30 calendar days after acquiring knowledge of the misconduct for which the disciplinary action is imposed.

H. Disciplinary Actions Related to Employee Performance

1. The Appointing Authority may impose performance-related discipline on an employee in the skilled or professional services.
2. Examples of performance-related disciplinary issues include:
 - a. employee incompetence or inefficiency in the performance of the employee's duty;
 - b. an employee who has a disability who, with a reasonable accommodation, cannot perform the essential functions of the position; and
 - c. an employee who is currently not qualified for the position.

I. Disciplinary Procedures Related to Employee Performance

Prior to taking any disciplinary action related to employee performance:

1. the employee's commander must contact the Director of HRD; and
2. the Appointing Authority will:
 - a. investigate the employee's performance, including the employee's most recent performance appraisals;
 - b. notify the employee of the deficiency and provide an explanation of the Appointing Authority's position;
 - c. meet with the employee to hear the employee's explanation, unless the employee is unavailable or unwilling to meet; and
 - d. after determining the appropriate discipline, give the employee written notice of the:
 - (1) disciplinary action to be taken;
 - (2) employee's appeal rights; and
 - (3) effective date of the disciplinary action.

J. Time Limits on Disciplinary Actions Related to Employee Performance ¹⁰

1. The Appointing Authority will take each of the actions required in subsection H, above, within 30 calendar days after acquiring knowledge of performance-related reasons for which disciplinary action may be imposed.
2. The time period may be extended for any time that the employee is unavailable.
3. In the case of annual performance appraisal, the Appointing Authority will impose discipline within 30 calendar days after the time period specified in subsection J, below.

K. Procedures Related to Employee Performance Appraisals

1. Overall Rating of Unsatisfactory
 - a. The supervisor of an employee who receives an overall rating of "unsatisfactory" on an annual performance rating will inform the employee that the employee has 180 calendar days from issuance of the rating to improve to the level of "satisfactory."

¹⁰ LE: 52.2.3

TA: 2.3.1

CM: 1.4.4

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- b. Midway through the 180 day period, the employee and the supervisor will meet to evaluate the employee's progress towards a rating of "satisfactory."
 - c. Failure to achieve a rating of satisfactory at the end of the 180 day period will result in the employee's termination.
- 2. An employee may not be denied a pay increase unless substantial reasons of performance were cited on the employee's mid-year or final performance appraisal forms.

L. Negotiation and Bargaining

The MSP and an employee may agree to:

- 1. delay the implementation of a disciplinary action for a period not to exceed 18 months in order to permit the employee to improve conduct or performance;
- 2. impose a lesser disciplinary action as a final and binding action, not subject to any further appeal; and
- 3. waive or extend any time limits stated in this chapter.

M. Appeals by Employees in Skilled or Professional Service ¹¹

1. Appeal to the Superintendent

- a. An employee or an employee's representative may file a written appeal of a disciplinary action with the Superintendent that states, to the extent possible, the issues of fact and law that the employee believes would warrant rescinding the disciplinary action.
- b. An appeal must be filed within 15 calendar days after the employee receives notice of the disciplinary action.

2. Conference with Superintendent

The Superintendent or his designee may confer with the employee before making a decision.

3. Disposition

- a. The Superintendent may:
 - (1) uphold the disciplinary action; or
 - (2) rescind or modify the disciplinary action and restore to the employee any lost time, compensation, status or benefits.
- b. The Superintendent will issue a written decision to the employee that addresses each point raised in the appeal, within 15 calendar days of receiving an appeal.

N. Appeal to the Secretary, DBM ¹²

An employee in the skilled or professional service may appeal a decision of the Superintendent to the Secretary, DBM, in accordance with MD. CODE ANN., STATE PERS. & PENS. § 11-110 and COMAR 17.04.05.01.

¹¹ LE: 26.1.6 TA: 4.6.5 CM: 3.6.7

¹² LE: 26.1.6 TA: 4.6.5 CM: 3.6.7

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O. Failure to Appeal

If an employee fails to appeal a decision within the time limits specified in this directive, the employee is considered to have accepted the decision.

P. Failure to Decide an Appeal

Failure of the MSP to decide an appeal within the time limits specified in this directive is considered a denial, from which the employee may appeal.

Q. Resolution of Appeal

The employee and the MSP will make every effort to resolve an appeal at the lowest level possible

R. Termination of Initial Probationary Employees¹³

1. Employees serving an initial probationary period may be terminated in accordance with MD. CODE ANN., STATE PERS. & PENS. § 11-303 and COMAR 17.04.03.17(F)(1).
2. An appointing authority will provide notice at least 10 days before the effective date of the termination that states the reasons for the termination,¹⁴ the effective date ¹⁵ and the appropriate appeal route.

S. Appeals by Initial Probationary Employees ¹⁶

1. An employee in the skilled or professional service, serving an initial probationary period, may appeal a disciplinary action only on the grounds that the action was illegal or unconstitutional.
2. The employee has the burden of proof in an appeal under this section.

T. Demotion or Removal of Probationary Employees

If, in the Appointing Authority's judgment, an employee in the skilled or professional service on probation following a promotion or reinstatement is unable or unwilling to satisfactorily perform the duties or responsibilities of the position, the Appointing Authority will:

1. return the employee to his former position, if it is vacant; or
2. demote the employee to a position comparable to his position within the Appointing Authority's jurisdiction; a probationary employee may appeal such a demotion.

U. Employees in the Management or Executive Service and Special Appointments

An employee in the management service, the executive service or under special appointment:

1. serves at the pleasure of the Appointing Authority;
2. is subject to the disciplinary actions specified in this directive;
3. may be terminated or disciplined for any reason that is not illegal or unconstitutional;
4. may appeal a disciplinary action only to the Superintendent, whose decision is final;¹⁷
5. has the burden of proof in an appeal; and

¹³ LE: 52.2.7 TA: 2.3.4 CM: 1.4.8

¹⁴ LE: 26.1.7(a) TA: 4.6.6(a) CM: 3.6.8(a)

¹⁵ LE: 26.1.7(b) TA: 4.6.6(a) CM: 3.6.8(b)

¹⁶ LE: 26.1.6 TA: 4.6.5 CM: 3.6.7

¹⁷ LE: 26.1.6 TA: 4.6.5 CM: 3.6.7

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6. may only appeal on the grounds that the disciplinary action is illegal or unconstitutional.

V. Forfeited Annual Leave

1. For disciplinary actions in which an employee forfeits annual leave, the forfeited annual leave will be transferred to the State Employees' Leave Bank.
2. The employee whose annual leave is forfeited and transferred to the State Employees' Leave Bank as a disciplinary action does not become a member of the State Employees' Leave Bank.

W. Records and Files

All records and files related to civilian disciplinary action for which a tracking number was issued by the Department Prosecutor will be securely and confidentially maintained by the Department Prosecutor.^{18,19}

X. Annual Analysis of Complaints Against Personnel²⁰

1. Annually, the Department Prosecutor will prepare a summary report of all complaints against civilian personnel that were investigated during the previous calendar year that includes the data elements required by CALEA.
2. This report will only include complaints related to employee misconduct and will not include discipline related to employee performance.
3. The report will be forwarded annually to the Superintendent by March 1.
4. A summary of the prior year's cases will be included in the MSP Annual Report.

Approved:

Colonel Marcus L. Brown
Superintendent 01/01/2014

¹⁸ LE: 52.1.2 TA: 2.3.5 CM: 1.4.10

¹⁹ LE: 26.1.8 TA: 4.6.7 CM: 3.6.9

²⁰ LE: 52.1.5 TA: 2.3.6 CM: 1.4.11