

***NORTH CAROLINA
DEPARTMENT OF ADMINISTRATION***

Disciplinary Action and Dismissal Policy

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Disciplinary Action and Dismissal Policy

Purpose

The purpose of this policy is to provide departmental employees and managers a fair, clear and useful tool for correcting performance problems, as well as to provide a process to assist management in handling cases of unacceptable personal conduct.

All provisions of the Performance Management System, equal employment opportunity and other related policies shall be complied with in implementing and evaluating the fair and just delivery of appropriate disciplinary actions.

Consistent with sound employee relations practices, it is most important that all disciplinary actions, including dismissal, be administered in as near a uniform manner as possible throughout the department where similar circumstances exist. The following policy is established to assist all levels of supervisors in promoting efficient and equitable treatment for all employees.

Policy

The Department of Administration provides that any disciplinary action taken in accordance with this policy must be for **just cause** under one of the two following categories:

- Unsatisfactory job performance, including gross inefficiency
- Unacceptable personal conduct

When just cause exists, any career State employee, regardless of occupation, position, profession or work performed, may be warned, suspended, demoted or dismissed by the appointing authority. The degree and kinds of action to be taken will be based upon the sound and considered judgment of the appointing authority in accordance with the provisions of this policy to assure that the intent of the policy is followed.

Covered Employees

The provisions of this policy apply to career employees as defined by the State Personnel Act and to employees who have completed their probationary period and have permanent position appointments with the agency. However, the appeal rights for disciplinary actions for career employees and permanent employees are different and are specifically set out in the agency Grievance and Appeal Policy and Procedure.

Career employees are eligible for appeal rights through both the internal grievance process and the State Personnel Commission. Employees with permanent position appointments who have not attained career status according to the requirements set out in the State Personnel Act have appeal rights through the agency grievance process, but not outside the department unless they believe the disciplinary action is being imposed on the basis of illegal discrimination.

Employees Not Covered

Probationary Employees - This policy does *not* apply to probationary employees in their first nine months of employment. However, the supervisor is responsible for working with the employee in coaching and assisting him/her to achieve a satisfactory performance level. Progress should be reviewed periodically. However, if it is determined that the probationary employee is not suited for the job and cannot be expected to meet acceptable standards, the employee should be separated before the end of the probationary period. A probationary employee may be dismissed without prior discipline for either job performance or conduct reasons. However, that employee shall receive a written letter of separation indicating the specific behavior(s) or deficiencies, which led to his/her separation.

An employee with a probationary appointment has no grievance or appeal rights under the Department of Administration or State Personnel Commission policy for disciplinary action taken against him/her, except for appeals on the basis of alleged illegal discrimination.

Employees Exempt from the State Personnel Act - This policy does not apply to employees who are exempt from the State Personnel Act.

NOTE: Managers and supervisors should contact the Human Resources Management Office prior to initiating any formal disciplinary action

Establishing Just Cause

For Grossly Inefficient Job Performance - The supervisor shall determine Just cause for grossly inefficient job performance when:

- The employee causes death or serious injury of employee(s), member(s) of the public or person(s) for whom the employee is responsible
- The employee causes serious loss or damage to State property or funds
- The employee fails to obtain or maintain legally required certificates, licenses, bonds or other credentials.

For Unacceptable Personal Conduct - The supervisor shall determine just cause for unacceptable personal conduct when the conduct of the employee is:

- An intentional or unintentional act committed while on duty
- An intentional or unintentional act committed while off duty that is connected significantly to the employee's job

For Unsatisfactory Job Performance - Any work-related performance problem may establish **just cause** for disciplinary actions. The supervisor shall be reasonable in determining unsatisfactory job performance, and shall assure the decision is proper and factually supported.

The following factors, individually or combined, shall be considered in determining **unsatisfactory job performance**:

- Quality, quantity, timely completion, accuracy and appropriateness of work performed
- Work habits and performance behaviors
- Promptness and absenteeism
- Related analysis, decisions or judgment
- Failure to follow instructions, directions or procedures
- Other factors used by supervisor to determine unsatisfactory job performance

Types of Disciplinary Action

When **just cause** exists, any employee may be given appropriate disciplinary action by the supervisor or other authorized management representative. Types of disciplinary action include:

- Written Warning
- Disciplinary Suspension Without Pay
- Demotion
- Dismissal

In compliance with the provisions of the Performance Management System, the supervisor shall provide appropriate support to review and encourage satisfactory job performance by employees within the work unit. The supervisor shall intervene fairly and timely to address incidents and cases of **grossly inefficient job performance/unacceptable personal conduct and unsatisfactory job performance**.

Written Warnings

A written warning shall be the first type of disciplinary action for unsatisfactory job performance.

A written warning:

- Must specifically state that the document is a “written warning” to distinguish it from some other types of non-disciplinary action such as counseling, guidance or directions.
- Must tell the specific performance or conduct deficiencies, omissions or issues that are the basis for the warning (supporting just cause).
- Must tell the specific performance or conduct improvements that must be made.

- Must tell the time frame within which the employee has to show improved performance or conduct. (In matters, which are issues of unacceptable personal conduct, the supervisor may require that the conduct not be repeated. A maximum of 60 days is considered a reasonable timeframe for performance improvement).
- Must state the consequences of failing to make the required improvements or correction (i.e., further disciplinary action, dismissal, etc.).
- Must advise the employee that written warnings are not grievable under the agency grievance policy and are not appealable to the State Personnel Commission.

A copy of the final warning should be provided to the employee, a copy sent to the Human Resources Management Office, and a copy maintained in the supervisor's files.

Should an employee wish to contest the written warning, they may write a letter "To The File" stating his/her point of view in the matter. This document shall be forwarded to the Human Resources Management Office to be placed in the employee's permanent file along with the warning.

Inactive Written Warnings - Written warnings are considered to be inactive in the following instances:

- After 18 months, unless there has been additional written disciplinary action since the date the written warning was issued;
- After 18 months, unless the employee is notified in writing that the timetable for the written warning is extended;
- At any time if the supervisor or other authorized management representative concludes that the problem that gave rise to the warning has been resolved, is unlikely to re-occur. The employee is then notified in writing that the written warning is being removed from their personnel file.

When a written warning becomes inactive, it no longer has legal significance and cannot be counted toward the total number of prior disciplinary warnings. While some written warnings issued for unsatisfactory job performance are considered to be resolved when the underlying performance problem is addressed, written warnings issued for unacceptable personal conduct are often considered to be "permanent" in nature. **A written warning for unacceptable conduct that is considered to be permanent in nature should indicate this in the body of the written warning.**

When an employee transfers to another department or unit, any active written warnings or disciplinary action will transfer with the personnel file and will remain in effect at the new work unit in accordance with the time frames of this policy.

Disciplinary Suspension Without Pay

An employee may be ***suspended without pay*** for disciplinary reasons for a current incident of ***unsatisfactory job performance*** after the receipt of at least one prior disciplinary action.

An employee may be **suspended without pay** for disciplinary reasons for a current incident of **unacceptable personal conduct or grossly inefficient job performance** without prior disciplinary action for that employee.

The length of the disciplinary action must be at least one work week, but no more than two work weeks for employees who are exempt from the Fair Labor Standards Act. The length of the disciplinary action must be at least one full day, but no more than two work weeks for employees who are subject to the Fair Labor Standards Act.

Prior to a disciplinary suspension without pay, the supervisor **must**:

- Schedule and conduct a pre-disciplinary conference
- Provide advance written notice of the conference to the employee to include:
 - type of disciplinary action (proposed disciplinary suspension)
 - acts or failure to act (reasons) justifying the proposed disciplinary action
 - conference time and location
- Give a written statement of the basis for disciplinary action and his/her appeal rights

Demotion

An employee may be demoted for either unsatisfactory job performance, grossly inefficient job performance, or unacceptable personal conduct. An employee can be demoted for a current incident of unsatisfactory job performance after the employee has received at least one prior warning or disciplinary action. An employee can be demoted for grossly inefficient job performance or unacceptable personal conduct without any prior warning or disciplinary action.

Demotion may be implemented using either **grade change** or **pay change**.

Prior to a demotion the supervisor and/or other authorized management representative **must**:

- Schedule and conduct a pre-disciplinary conference
- Provide advance written notice of the conference to the employee to include:
 - type of proposed disciplinary action (demotion)
 - acts or failure to act (reasons) justifying the proposed demotion
 - conference time and location
- Inform employee of impact of demotion on grade and pay
- Give a written statement of the basis of the disciplinary action and his/her appeal rights

Dismissal

An employee may be dismissed for unsatisfactory job performance, or a current incident of grossly inefficient job performance, or unacceptable personal conduct.

In order to dismiss an employee for unsatisfactory job performance, an employee must have at least two prior, active warnings or other disciplinary actions (or one warning and one other disciplinary action) in addition to the current incident.

An employee may be dismissed for a current incident of grossly inefficient job performance or unacceptable personal conduct without any prior disciplinary actions.

Prior to a dismissal, the employee and supervisor and/or other authorized management representative must have a pre-disciplinary conference. A pre-disciplinary conference shall be held with the employee after the supervisor has discussed the recommended dismissal with appropriate agency management and received approval.

Prior to dismissal the supervisor **must**:

- Schedule and conduct a pre-dismissal conference
- Provide advance written notice of the conference to the employee to include:
 - type of proposed disciplinary action
 - acts or failure to act (reasons) justifying the proposed dismissal
 - conference time and location
- Give a written statement informing the employee of the basis of the dismissal and his/her appeal rights

Pre-Disciplinary Conferences

Prior to dismissing, demoting or suspending an employee without pay for disciplinary reasons, a supervisor and/or other management representative must hold a pre-disciplinary conference, preceded by an advance written notice of the conference directed to the employee to include time, location, type of disciplinary action to be considered, and a brief statement of the act(s) or failure(s) that led to the conference. The pre-disciplinary conference must be conducted by the person having the authority to recommend or decide what, if any, disciplinary action should be imposed on the employee. Only the supervisor, other management representative (if needed), and the employee should attend the conference, though at the option of management, security personnel may attend. The employee should receive as much advance notice of the conference as is practical under the circumstances. No attorney shall represent either side at the conference.

During the conference, the employee will be given verbal or written notice of the reasons for the recommended disciplinary action. The employee will be given an opportunity to respond with information on the proposed disciplinary action and an opportunity to offer facts that are different from those offered by management. The employee does not have the right to have witnesses present.

Disciplinary Actions After Pre-Disciplinary Conferences

After the pre-disciplinary conference is held, management shall:

- Render a decision on the proposed dismissal based on review and consideration of responses of the employee made during the conference
- Communicate the decision no earlier than the start of the next business day after the conference
- Prepare a written letter of dismissal to be handed to the employee or to be sent via certified (receipt requested) mail, **if the decision is to dismiss**. The letter must include the following information:
 - the reason for the dismissal
 - the effective date of the dismissal
 - any applicable appeal rights the employee may have

When dismissal is for unsatisfactory job performance, the effective date of the dismissal shall be no sooner than the date of the written notice and no later than 14 calendar days after the written notice. Management may give an employee pay in lieu of the 14-day notice or any part of that notice only for dismissals for unsatisfactory job performance.

Investigatory Placement

Placement on investigation with pay does not constitute disciplinary action. An employee may be placed in investigatory status for the following reasons:

- To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action; or
- To provide time within which to schedule and conduct a pre-disciplinary conference, or
- To avoid disruption of the workplace and/or to protect the safety of persons or property

An investigatory placement may not last longer than 30 calendar days without the written approval of the extension by the Secretary of the Department of Administration and the State Personnel Director.

Procedural Violation Consequences

Failure to include written reasons for a dismissal, written notice of appeal rights or to conduct a pre-dismissal conference is a procedural violation. In the event of such, the department will be subject to the rules of the Commission dealing with procedural violations.

Right of Appeal

Time for filing a grievance as a result of suspension, demotion or dismissal does not start until the employee receives a written notice of any applicable appeal rights.

Every disciplinary action shall include notification to the employee, in writing, of any applicable appeal rights.

Warnings, extensions of disciplinary action and placement on investigation are not grievable under Department of Administration policy.

The employee shall be furnished, as an attachment to the written documentation of any grievable disciplinary action, a copy of the Department of Administration grievance procedure.

Waiver of Appeal Rights

If an action is grievable within the Department of Administration or to the State Personnel Commission and the employee fails to timely grieve the action, the employee is deemed to have waived the right to contest the validity of a disciplinary action.

Transfer of Disciplinary Action

When an employee transfers to another department or unit, any active written warnings or disciplinary action will transfer with the personnel file of the employee and will remain in full force at the new work unit until removed by the new employer or made inactive by operation of this policy.

Notification of Changes

When changes are made in internal and State Personnel Commission policies, employees are notified of the changes in the following ways:

- All employees shall attend an orientation program at the time of initial hiring.
- All current employees shall be scheduled for and receive training on the new policy.
- Other internal communication approaches shall be used to assure the timely dissemination of information to employees including but not limited to
 - The department's newsletter
 - Monthly personnel contact meetings
 - Director's meetings (full staff meeting)
 - Home page for Human Resources Management in DOA

Definitions

For purposes of the policy, the following terms shall apply:

Career State Employee – A State employee who is in a permanent position appointment, and has been continuously employed by the State of North Carolina in a position subject to the State Personnel Act for the immediate 24 preceding months.

Current Unresolved Incident – An act of unacceptable personal conduct, unsatisfactory job performance or grossly inefficient job performance for which no disciplinary action has previously been taken by the agency.

Disciplinary Demotion – A personnel action that (a) lowers the salary of an employee within his/her current pay grade, or (b) places the employee in a position at a lower pay grade with or without lowering the employee's salary, and (c) the action was involuntary, and the action was taken to discipline the employee.

Disciplinary Suspension Without Pay – The removal of an employee from work for disciplinary reasons or for failure to obtain or maintain necessary job-related credentials.

Gross Inefficiency (Grossly Inefficient Job Performance) – Failure to satisfactorily perform job requirements as set out in the job description, work plan, or as directed by the management of the work unit or agency; and the act or failure to act causes or results in: (a) death or serious bodily injury to an employee(s), or to members of the public, or to a person(s) for whom the employee has responsibility; or (b) the loss or damage to State property or funds that results in a serious adverse impact on the State and/or work unit.

Inactive Disciplinary Action – A disciplinary action becomes inactive when: (a) the manager or supervisor notes in the employee's personnel file that the reasons for the disciplinary action have been resolved or corrected; (b) the performance evaluation process documents a summary rating that reflects an acceptable level of performance overall and satisfactory performance in the area cited in the warning or other disciplinary action, or (c) 18 months have passed since issuance of the warning or disciplinary action, the employee does not have another active warning or disciplinary action which occurred within the last 18 months, and the agency has not, prior to the expiration of the 18-month period, issued to the employee notice of the extension of the period.

Unacceptable Personal Conduct – An act that is:

- (a) conduct for which no reasonable person should expect to receive prior warning; or
- (b) job-related conduct which constitutes a violation of State or Federal law; or
- (c) conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the State; or
- (d) the willful violation of known or written work rules; or
- (e) conduct unbecoming a State employee that is detrimental to State service; or
- (f) the abuse of client(s), patients(s), student(s) or person(s) over whom the employee has charge or to whom the employee has a responsibility of an animal owned by the State; or

- (g) absence from work after all authorized leave credits and benefits have been exhausted; or
- (h) falsification of a State application or in other employment documentation;
- (i) willful failure or refusal to carry out a reasonable order from an authorized supervisor is insubordination for which any level of discipline, including dismissal, may be imposed without prior warning.

Unsatisfactory Job Performance – Work-related performance that fails to satisfactorily meet job requirements as set out in the relevant job description, work plan, or as directed by the management of the work unit or agency.