

## DISCIPLINARY ACTION

- ▣ Any employee, regardless of occupation, position, or profession may be warned, demoted, or dismissed.
- ▣ All employees with permanent full-time, permanent part-time, or trainee appointments are subject to the Disciplinary Policy.
- ▣ Disciplinary Actions are valid for 18 months.
- ▣ 2 Reasons for Disciplinary Action:
  - Unsatisfactory Job Performance
  - Unacceptable Personal Conduct

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The discipline and dismissal policy provides employees and management a fair, clear, and useful tool for correcting and improving performance problems and unacceptable personal conduct. Any employee, regardless of occupation, position, or profession may be warned, demoted, or dismissed by the appointing authority based on the policies and procedures within the Disciplinary Policy. All employees with permanent full-time, permanent part-time, or trainee appointments are subject to the Disciplinary Policy.

**NOTE:** While employees with a probationary appointment or new hire trainee appointment who have not attained career status(i.e. been employed with the state for 24 consecutive months) are not entitled to appeal rights and are not subject to the successive disciplinary process for unacceptable work performance, the procedures governing the issuance of a disciplinary action as delineated in this policy shall be followed.

Disciplinary Actions are valid for 18 months.

The two reasons for the discipline or dismissal of employees are:

- Unsatisfactory job performance
- Unacceptable personal conduct, which includes grossly inefficient job performance

We will discuss each of these next.

## **UNSATISFACTORY JOB PERFORMANCE**

Work-related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work standard, or as directed by the supervisor(s) or manager(s) of the work unit.

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The two reasons for the discipline or dismissal of employees are:

- Unsatisfactory job performance,
- Unacceptable personal conduct which also includes including grossly inefficient job performance

First we will talk about unsatisfactory job performance.

Unsatisfactory Job Performance refers to work-related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work standard, or as directed by the supervisor(s) or manager(s) of the work unit.

What are some examples that you can think of that would be considered Unsatisfactory Job Performance?

### **SOLICIT EXAMPLES AND BRIEFLY DISCUSS**

## UNACCEPTABLE PERSONAL CONDUCT

- ❑ Conduct for which no reasonable person should expect to receive prior warning;
- ❑ Conduct unbecoming of a State Employee
- ❑ Conduct that constitutes a violation of state or federal laws;
- ❑ Conviction of a felony or an offense involving moral turpitude that is determined to or impacts the employee's service to the State;
- ❑ The willful violation of known or written work rules;
- ❑ The abuse of client(s), patient(s), student(s), or a person(s) over whom the employee has charge or to whom the employee has a responsibility or an animal owned by the State;
- ❑ Falsification of a state application or employment document.
- ❑ A sub-category of Personal Conduct is Grossly Inefficient Job Performance.

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The 2<sup>nd</sup> reason for discipline or dismissal is Unacceptable Personal Conduct.

Unacceptable Personal Conduct- includes:

- Conduct for which no reasonable person should expect to receive prior warning; OR
- Conduct unbecoming of a State Employee
- Job-related conduct that constitutes a violation of state or federal laws; OR
- Conviction of a felony or an offense involving moral turpitude that is determined to or impacts the employee's service to the State; OR
- The willful violation of known or written work rules; OR
- The abuse of client(s), patient(s), student(s), or a person(s) over whom the employee has charge or to whom the employee has a responsibility or an animal owned by the State; OR
- Falsification of a state application or any other employment document.

No prior warnings are needed to dismiss an employee for grossly inefficient job performance or unacceptable personal conduct.

What are some examples that you think might be considered Unacceptable Personal Conduct?

**SOLICIT EXAMPLES AND BRIEFLY DISCUSS**

## **GROSSLY INEFFICIENT JOB PERFORMANCE**

- ▣ A sub-category of Unacceptable Personal Conduct
  
- ▣ Failure to satisfactorily perform job requirements and, the act or failure to act causes or results in:
  - death or serious bodily injury or creates conditions that increase the chance for 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,
  
  - the loss of or damage to state property or funds that results in a serious adverse impact on the State and/or work unit.

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A sub-category of Personal Conduct is Grossly Inefficient Job Performance.

Grossly Inefficient Job Performance- refers to unsatisfactory job performance that occurs in instances in which the employee fails to satisfactorily perform job requirements as specified in the relevant job description, work standard, or as directed by the supervisor(s) or manager(s) of the work unit AND that failure results in:

- The creation of the potential for death or serious bodily injury to an employee(s) or to members of the public or to a person(s) over whom the employee has responsibility; OR
- The loss of or damage to state property or funds that result in a serious impact on the State and/or work unit.

No prior warnings are needed to dismiss an employee for grossly inefficient job performance or unacceptable personal conduct.

What are some examples that you think might be considered Grossly inefficient job performance?  
**SOLICIT EXAMPLES AND BRIEFLY DISCUSS**

## **TERMINATION OF TEMPORARY, PROBATIONARY EMPLOYEE**

An employee may be terminated from probationary appointment or trainee status (if not attained career status) at any time prior to being granted a permanent appointment for:

- ▣ Unsatisfactory Job Performance; OR
- ▣ Grossly Inefficient Job Performance; OR
- ▣ Unacceptable Personal Conduct
- ▣ Employees terminated from probationary/ trainee appointment have NO appeal rights unless the employee feels the actions are discriminatory.

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Newly hired employees must serve a probationary period or may be hired in a trainee progression. The probationary or trainee period is viewed as an extension of the selection process. An employee may be terminated from probationary/trainee status at any time prior to being granted a permanent appointment for:

- Unsatisfactory Job Performance,
- Grossly Inefficient Job Performance, OR
- Unacceptable Personal Conduct

An employee terminated from probationary appointment or trainee appointment (i.e. trainees without 24 consecutive months of state service) has NO appeal rights unless the employee feels the actions are discriminatory.

## INTERIM MEASURES

- ▣ Once the basic allegations and issues have been identified, management will determine whether there is a need for preliminary action pending completion of the investigation.
  - Investigatory Placement
  - Administrative Reassignment

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#### Investigatory Placement

The Department may place an employee on Investigatory Placement with Pay to allow sufficient time for investigating allegations that could lead to disciplinary action. This process is intended to prevent disruption to the workplace and to allow time to schedule a pre-disciplinary conference. Investigatory placement is not a disciplinary action. It is a management tool that allows a thorough investigation of allegations that may result in disciplinary action without prejudging the employee or penalizing an employee with loss of pay.

#### Administrative Reassignment

The Department may place an employee on Administrative Reassignment with Pay to allow sufficient time for investigating allegations that could lead to disciplinary action. An employee may be temporarily assigned to a different job function, different location, or alternative work duties. This process is intended to prevent disruption to the workplace and to allow time to schedule a pre-disciplinary conference. Reassignment is not disciplinary action. It is a management tool that allows a thorough investigation of allegations that may result in disciplinary action without prejudging the employee or penalizing an employee with loss of pay.

## **FAILURE TO COOPERATE DURING OR HINDERING AN INVESTIGATION**

- ▣ Employees are required to cooperate fully and honestly.
  
- ▣ If you are uncooperative, provide false or purposely misleading information OR you discuss any aspect of the investigation with anyone other than the investigators, it is considered Unacceptable Personal Conduct and may result in disciplinary action up to and including dismissal.

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As an employee of the Department of Public Safety, you may become involved in and/or asked to assist in an investigation.

**QUESTION:** Ask participants if they think they are required to cooperate and provide information during an investigation or do they think they can plead the 5<sup>th</sup>?

**ANSWER:** Explain that they are required to cooperate and provide truthful information or they will face discipline and/or dismissal.

Department managers (or designees) routinely conduct investigations into a variety of work related matters for which an employee may be required to respond to questions, provide information/data, etc. In such investigations, employees may be questioned by a manager (or designee) individually on more than one occasion in an effort to gather information surrounding an incident and to differentiate between facts and hearsay. Investigations may include, but are not limited to:

- Employee Grievance and/or Disciplinary Investigation
- Inmate Grievance Investigation
- Investigation of stolen property
- Investigation into misuse of State owned equipment
- Investigation into safety violations.

Employees are required to cooperate during such investigations by displaying truthfulness and honesty. An

employee's failure to cooperate with Department officials or hindering an internal investigation constitutes unacceptable personal conduct and is representative of those causes considered for disciplinary action up to and including dismissal. Additionally, the following also constitute unacceptable personal conduct and may result in disciplinary action up to and including dismissal:

- Providing false or purposefully misleading information during the course of an internal investigation;
- Discussing any aspect of the investigation with anyone other than the investigative personnel;
- Failure to submit to a polygraph examination when directed to do so by a Department Official

## GRIEVANCES

It is the policy of North Carolina State government that a grievance process exist to allow for prompt, fair and orderly resolution of grievances arising out of employment.

Employees have the right to present a grievance free from interference, restraint, coercion, or reprisal.

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Since disciplinary actions can sometimes result in employee grievances/appeals, the Office of State Human Resources (OSHR) sets forth a process for dealing with those grievances and appeals. It is the policy of North Carolina State government that a grievance process exist to allow for prompt, fair and orderly resolution of grievances arising out of employment.

## EXAMPLES OF GRIEVABLE ISSUES\*

- ▣ Dismissal, demotion or suspension without pay for lack of just cause
- ▣ Denial of promotion due to failure to post
- ▣ Failure to give priority reemployment rights after a reduction in force
- ▣ Denial of request to remove inaccurate/misleading info from personnel file
- ▣ Denial of veteran's preference
- ▣ Any retaliatory personnel action for reporting improper gov't activities
- ▣ Violation of the Fair Labor Standards Act (FLSA), Age Discrimination in Employment Act (ADEA), Family and Medical Leave Act (FMLA), or Americans with Disabilities Act (ADA)
- ▣ Unlawful workplace harassment

\*This is not an all inclusive list. Refer to the policy for a complete list of grievable issues

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This is a list of SOME grievable issues. A complete list of grievable issues can be found in the policy that is noted in your manual.

- Dismissal, demotion or suspension without pay for lack of just cause
- Denial of promotion due to failure to post
- Failure to give priority reemployment rights after a reduction in force
- Failure to give employees in exempt policy-making or exempt managerial status priority reemployment consideration or reassignment after removal from an exempt position
- Denial of request to remove inaccurate or misleading information from personnel file
- Denial of veteran's preference regarding reduction in force, and other employment events including subsequent hirings, promotions, reassignments, and horizontal transfers
- Any retaliatory personnel action for reporting improper government activities
- Violation of the Fair Labor Standards Act (FLSA), Age Discrimination in Employment Act (ADEA), Family and Medical Leave Act (FMLA), or Americans with Disabilities Act (ADA)
- Unlawful workplace harassment based upon age, sex, race, color, national origin, religion, creed, or disabling condition, including both quid pro quo and hostile work environment.

## GRIEVANCE PROCESS

- ▣ Informal discussion with Supervisor.
  
- ▣ If not successful, initiate Step 1 Grievance form within 15 days of the alleged occurrence.
  
- ▣ 2 Step Resolution Process
  - Step 1: Mediation
  
  - Step 2: Hearing before Hearing Panel

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If an employee has a problem or issue, it should be discussed first with the employee's immediate supervisor or the appropriate supervisor within the employee's chain of command. This should occur within 15 days of the alleged grievable issue.

If communication with the supervisor does not resolve the issue, the employee may file a written grievance. The grievance must be submitted by using the Step 1 Grievance Filing Form HR 555. The employee must submit the grievance within fifteen calendar days of the alleged occurrence of the event or action that is the basis of the grievance.

There is a two-step process for resolution of employee grievances internal to DPS. Each step is designed to maximize communication and resolution of workplace issues.

Step 1: Mediation: a structured process using a neutral third party to attempt to help parties resolve their conflict. When mediation does not produce an agreement at Step 1, the grievance may be appealed in Step 2. This step will include a hearing with a Hearing Panel. The request to appeal shall be made in writing by completing the Step 2 Grievance Filing Form HR 556. Once the Panel hears the case, a Final Agency Decision is issued. If the employee is not in agreement with the Final Agency Decision, some grievable issues may be appealed to the Office of Administrative Hearings. Please refer to the policy for a complete list.