

DISCIPLINARY ACTION AND GRIEVANCES

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Policy

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.

Provisions

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.

REASONS FOR DISCIPLINE

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

- Unsatisfactory job performance
- Unacceptable personal conduct, including grossly inefficient job performance

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.

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

Grossly Inefficient Job Performance

Grossly Inefficient Job Performance refers to the 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:

- 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.

TERMINATION OF TEMPORARY/PROBATIONARY EMPLOYEE

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. If necessary to protect the health and safety of any employee, or to protect the integrity of the agency's policies or investigation, management may consider taking preliminary action such as:

- Investigatory Placement
- Administrative Reassignment

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.

LENGTH OF DISCIPLINARY ACTION

Disciplinary actions are active for (18) months.

REMOVAL OF DISCIPLINARY ACTION FROM THE EMPLOYEE FILE

Copies of all active disciplinary action letters and documents relating to the specific action taken against an employee are filed in the employee's permanent personnel file in the Personnel Office. When a disciplinary action becomes inactive, the employee may initiate a written request for the removal of the material from his/her personnel file. The request shall be submitted to the appropriate manager in the chain-of-command. Typically, approvals proceed through the chain-of-command to the Division Director or designee for final approval. However, the request may be approved or disapproved at any point within the chain-of-command. Once the request is disapproved, the employee will receive written notification and the request will not proceed any further through the chain-of-command. If approved, the disciplinary action shall be removed from the employee's permanent personnel file in the Personnel Office in Raleigh and shall also be removed from any other employee file (i.e. field personnel file).

All materials and documents related to an approved dismissal shall remain a part of the file indefinitely. DWI's or any other action that may impact an individual's criminal justice certification and incidents relating to excessive use of force will be considered on a case-by-case basis.

FAILURE TO COOPERATE DURING OR HINDERING AN INTERNAL INVESTIGATION

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

Locations:

http://www.oshr.nc.gov/Guide/Policies/7_Discipline,%20Appeals%20and%20Grievances/Employee%20Appeals%20and%20Grievances.pdf

Forms:

https://www.ncdps.gov/emp/Forms/HR555Step1_20130731LCrights.pdf

https://www.ncdps.gov/emp/Forms/HR556Step2_20130731LCrights.pdf

Purpose

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.

Grievable Issues

Examples of issues that may be grieved are listed below:

- 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.

For a complete list of grievable issues, please use the policy link above.

Grievance Process for all Grievable Issues

A grievance or complaint must be filed within 15 calendar days of the alleged event or action that is the basis of the grievance. Unlawful discrimination, harassment or retaliation complaints must be filed under the Equal Employment Opportunity (EEO) Informal Inquiry process before proceeding to the formal internal grievance process.

All other grievable issues must first be discussed with the immediate or other appropriate supervisor in the employee's chain of command prior to filing a formal grievance with the exception of disciplinary action grievances.

Disciplinary action grievances shall proceed directly to the formal internal grievance process.

Informal Discussion with Supervisor

This informal process must be completed within the 15 calendar day timeframe, unless the employee and the agency mutually agree in writing to extend the time due to occurrences that are unavoidable or beyond the control of either party. The outcome of the informal discussion must be communicated to the employee and Human Resources by the supervisor in writing. If the informal

discussion is unsuccessful in resolving the grievable issue, the employee may choose to file a formal grievance. If no written response is provided by the supervisor within the 15 calendar day timeframe, the employee may proceed by filing a formal grievance. Time spent in the Informal Discussion with Supervisor is not a part of the formal internal grievance process.

Formal Grievance Process

The employee must begin the formal internal grievance process by filing a grievance within the agency in accordance with the Employee Grievance Policy. The employee must complete any of the required informal processes and file within 15 calendar days of the alleged event or action that is the basis of the grievance. Mediation is Step 1 in the internal grievance process.

Step 1: Mediation

Mediation is the process in which a grievant and an agency respondent use a neutral third party(s) to attempt to resolve a grievance. Mediation provides the grievant and the agency respondent an opportunity to openly discuss the grievance in a neutral environment with the goal of reaching a mutually acceptable resolution. If mediation does not result in a resolution at Step 1, the grievant is entitled to proceed to Step 2 of the internal grievance process.

Step 2: Hearing Panel Process

Human Resources will notify the grievant of the opportunity to present the grievance orally to a reviewer(s) outside of the grievant's chain of command, e.g., Hearing Officer or Hearing Panel. The hearing process shall be concluded within 35 calendar days of filing Step 2 of the grievance process unless the grievant and the agency mutually agree to extend the time due to occurrences that are unavoidable or beyond the control of either party. The agency shall issue the Final Agency Decision to the grievant within 5 calendar days of receipt of the Office of State Human Resources review of the proposed recommendation. The Final Agency Decision shall be issued in writing within 90 calendar days of the initial filing of the grievance. The FAD shall include information about applicable appeal rights. If the FAD is not issued to the grievant within the 90 calendar day timeframe, the grievant may file a Petition for a Contested Case Hearing with Office of Administrative Hearings in cases where the grievable issue may be appealed.

Appeal to Office of Administrative Hearings

If the grievant has completed the internal grievance process and is not satisfied with the Final Agency Decision, the grievant may file a Petition for Contested Case Hearing in the Office of Administrative Hearings in cases where the grievable issue may be appealed. An Administrative Law Judge will conduct a hearing and render a Final Decision. A Petition for Contested Case Hearing must be filed within 30 calendar days after the grievant receives the FAD. The grievant may file the appeal at:

Office of Administrative Hearings
1711 New Hope Church Road (Physical Address)
Raleigh, NC 27609
6714 Mail Service Center (Mailing Address)
Raleigh, NC 27699-6714
(919) 431-3000

Hearing procedure requirements and filing form (OAH Form H-06A) can be obtained from the Office of Administrative Hearings at: <http://www.ncoah.com/hearings/> or by calling (919) 431-3000.