

PROGRESSIVE CORRECTIVE AND DISCIPLINARY ACTION

POLICY:

Progressive Discipline – The Authority shall apply progressive discipline as a timely and effective response to employee performance deficiencies or misconduct. Depending on the nature of the infraction, one or more of the progressive discipline steps may be by-passed. Progressive discipline may include the following:

- (a) oral reprimand;
- (b) written reprimand;
- (c) suspension; or,
- (d) termination.

Discipline shall be administered on the principle of like penalty for like offense and the relationship of the penalty to the conduct/infraction. However, The Adjutant General may, at his discretion, administer discipline in a manner appropriate for circumstances surrounding the conduct/infraction and the needs of the Authority.

A record of any disciplinary action shall be kept in the employee's official personnel record which is maintained in Human Resources in Charleston.

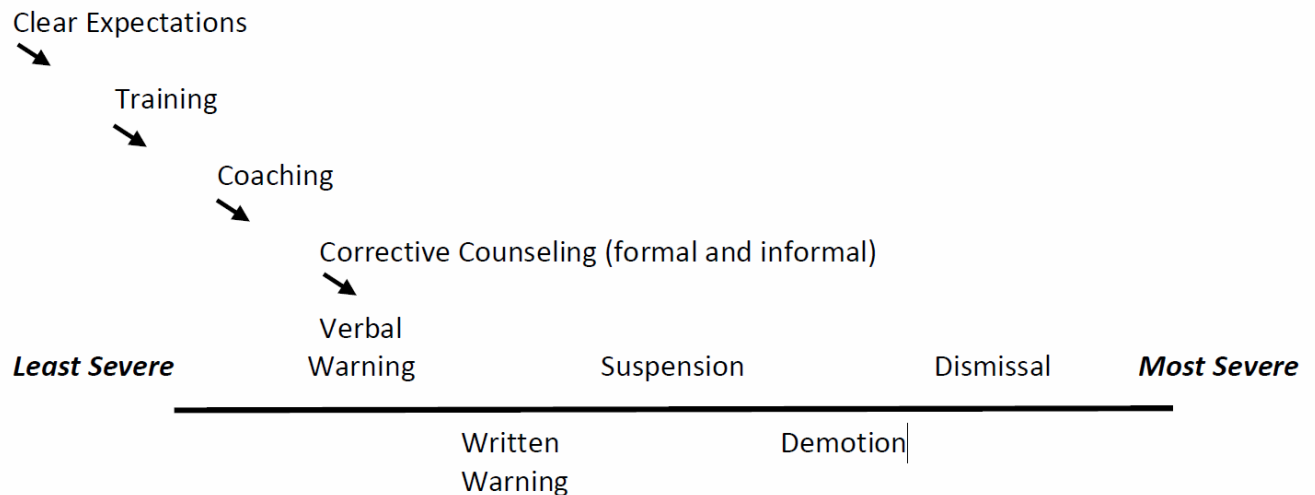
BEST PRACTICES:

Good Cause

The basic principle underlying disciplinary procedures is that management must have good cause to impose discipline. The definition of good cause may vary from situation to situation. To determine whether good cause is present, the following general principles should be considered:

- Were expectations identified and communicated to employees? (What was to be done, how it was to be done, and when it was to be done.)
- Are the agency's work rules and policies written and have they been effectively communicated to employees? (Except where conduct is self-evident.)
- Were the work rules in effect and uniformly enforced at the time of an alleged violation?
- Do the agency's work rules and expectations bear a rational relationship to the job and organizational needs?
- Were employees adequately warned of the consequences of violation of rules or failure to meet expectations?
- Did management investigate the alleged violation before issuing discipline?
- Was the investigation fair and objective and was the employee given an opportunity to respond to the charges?
- Did the investigation produce substantial evidence or proof of guilt?
- Was the employee's response during the predetermination conference given consideration?
- Was discipline imposed without discrimination?

- Was the discipline imposed reasonably related to the seriousness of the offense and did the employer take into account the employee's past disciplinary history, performance record, and perhaps the length of service with the agency?
- Was the discipline consistent with the past practices of the agency, that is, like penalties for like offenses?



Corrective Counseling

Corrective counseling should be done as soon as the supervisor or manager becomes aware of an employee's work performance or behavior problems. While it may be natural to want to allow an employee the opportunity to correct deficiencies on his or her own without interference by an autocratic or hovering supervisor, problems left to self-correct rarely do. Corrective counseling should be done informally, with the supervisor/manager meeting with the employee to be certain that the employee realizes that his or her work performance or behavior is unsatisfactory and what is expected in terms of improvement is understood. A written plan of improvement, containing specific expectations and time frames in which to accomplish them, may be simultaneously implemented as a component of the corrective counseling session. Corrective counseling can also be provided more formally by a section or department head and may be especially appropriate when alcohol, drugs, or personal problems are the source of an employee's work-related deficiencies. Ideally, corrective counseling is conducted before the misconduct or work performance deficiency reaches a serious level.

Verbal Reprimand / Warning

Again, depending on the seriousness of the infraction, if corrective counseling on at least one or two occasions fails to bring about the desired change in the employee's work behavior or performance, a supervisor or manager would generally proceed to a verbal warning/reprimand. As with a corrective counseling session, the supervisor, manager, or other appropriate agency official meets with the employee and discusses his or her failure to meet the required standards of work, and again explains what is expected. A verbal warning should include a clear explanation of the consequences of

the employee's continued failure to correct deficiencies. A written plan of improvement containing specific expectations and time frames in which to accomplish them may be simultaneously implemented as a component of the verbal warning.

The verbal warning should be documented by a brief, written summary to be placed in the employee's official agency personnel file. Do NOT have the employee sign the summary. If deficiencies continue, the verbal warning may be utilized as a foundation for subsequent corrective action measures.

Written Reprimand / Warning

If there is insufficient or no improvement in the employee's work performance/behavior within one to two months, or if new or more serious problems surface, a written reprimand/warning may be the appropriate next step. A brief history of the corrective counseling sessions and verbal warning(s) should be included in the document to the employee which may be in memorandum or letter form. As with corrective counseling and verbal warning, the employee should be advised, with specificity, of his or her failure to meet the required standards of work, and examples of deficiencies should be provided. Specific expectations and required time frames should be outlined and the consequences of continuing failure to meet the required standards of work should be clearly stated. The employee should also be given an opportunity to respond in person or in writing to the written reprimand/warning. A written plan of improvement containing specific expectations and time frames in which to accomplish them may be simultaneously implemented as a component of the written reprimand. **A copy of the reprimand/warning should be placed in the employee's official personnel file.**

Suspension

The Authority may suspend an employee without pay for cause for a period of time consistent with the severity of the infraction or misconduct. This can be accomplished in either hours or days. The employee shall be provided a written statement of the reasons for the suspension, the period of suspension and the appeal rights. When an allegation of misconduct has been made against an employee that is not yet substantiated, the Authority may place the employee on paid administrative leave pending the outcome of an investigation and/or criminal Proceeding.

Supervisor will submit a form 11 with all related documentation through the employee's chain of command. After the Adjutant General approves the form 11 the supervisor will be notified.

Demotion

The Authority may demote a regular employee for cause. The employee shall be provided a written statement of the reasons for the demotion, the effective date of the action and appeal rights.

SAMPLE – Written Warning for Misconduct and/or Performance

[Date]

[Name]

[Address]

Via **[Hand Delivery OR Certified Mail No. _____]**

Dear **[Mr./Ms. Last Name]**:

This letter shall serve as a formal written reprimand and is to confirm in writing our discussion of **[date]** concerning your unacceptable **[performance and/or conduct]** and to establish my expectations which I have outlined in a Corrective Action Plan to be commenced immediately. Further, you are hereby warned of additional disciplinary action if your **[performance and/or conduct]** does not improve. I have developed this corrective measure to assist you in bringing your work as a **[classification]** to an acceptable standard as defined in your enclosed Employee Performance Appraisal.

During the past **[time period]**, your supervisor has shared with you concern about your **[performance of the functions of your position and/or unacceptable conduct]**. While I want to emphasize that some of the deficiencies would not constitute unsatisfactory performance when viewed singularly, the cumulative effect demonstrates your inability or unwillingness to conform to expected standards of work. I believe it is necessary to initiate this Corrective Action Plan to cause you to understand that not only are your deficiencies unacceptable, but also that we are at a point where such **[substandard performance and/or unacceptable conduct]** can no longer be tolerated. **[Insert language describing the consequences of the employee's actions, or inactions.]**

You have been verbally counseled on numerous occasions concerning your work **[performance and/or conduct]** and your supervisor, **[name]**, has spent many hours explaining appropriate **[classification/job]** protocol and process. Additionally, you have attended **[insert number of training sessions employee has attended]** training

sessions; however, even with these attempts you have still not met performance expectations. Nonetheless, despite management intervention and assistance from your coworkers in actually performing your work **[if applicable]**, you have consistently failed to meet reasonable expectations. It is my sincere hope that this corrective measure will cause you to meet the full complement of performance expectations.

So you may understand why I believe your **[performance and/or conduct]** to be unsatisfactory and how this prevents or hinders this agency from meeting its objectives, I offer the following representative occurrences that demonstrate your failure to meet the agency's work expectations: **[Give SPECIFIC reasons for written warning -- employee must be informed, with reasonable certainty and precision, of the cause of the action. Be sure to give examples of deficiencies i.e., who, what, when, where and how. Provide specific details including dates of previous disciplinary actions, unacceptable performance and/or conduct, management intervention, and the consequences to the agency/public.]**

In an effort to assist you in meeting a standard of **[performance and/or conduct]** consistent with my expectations, I am establishing a thirty (30) calendar day improvement period, beginning **[date]** through **[date]** to allow you to bring your faltering **[performance and/or conduct]** to acceptable standards. Your supervisor will closely monitor all aspects of your work performance and will meet with you periodically during this time to discuss your progress and provide you with direction and feedback; however, I believe it is important for you to understand that your supervisor will not perform your work for you and will not make decisions for you. So there is no misunderstanding concerning your current responsibilities, I have reduced to writing my expectations of you in your position as a **[classification]**:

[Provide detailed expectations regarding behavior and direct employee to attend relevant training. The employee should know with certainty what he or she must do to meet expectations.]

I would like to confirm my receptiveness to any reasonable suggestion as to how I might assist you during this improvement period. I sincerely hope you will correct your **[specify issue]**. Please be advised that this letter is intended to serve as a formal warning in that regard. I assure you it is my intention to maintain the integrity of our standard of performance and conduct which provides the **[agency/department name]** and its employees with a means to ensure its efficient and effective operation. Accordingly, I must inform you that you are expected to fulfill your responsibilities as a dependable and conscientious employee. Continued **[specify issue]** will be viewed as unwillingness,

rather than inability, to comply with reasonable expectations, and could result in further disciplinary action, up to and including dismissal.

The State of West Virginia and its agencies have reason to expect their employees to observe a standard of conduct that will not reflect discredit on the abilities and integrity of their employees, or create suspicion with reference to their employees' capability in discharging their duties and responsibilities. I believe the nature of your **[unacceptable performance and/or misconduct]** is sufficient to cause me to conclude that you did not meet a reasonable standard of conduct as an employee of **[agency/department name]**, thus warranting this written reprimand.

If your **[unacceptable performance and/or misconduct]** is the result of medical and/or personal problems, I suggest you may want to contact the physician, practitioner, or counseling service of your choice. Whether or not you choose to do so is your decision. I am, however, obligated to ensure that you **[report for duty as scheduled, observe established rules, meet performance expectations, etc.]**. You may also obtain information on the State of West Virginia's Employee Referral Program by contacting the Division of Personnel at (304) 558-3950, extension 57209, or by visiting the web site at www.personnel.wv.gov/SiteCollectionDocuments/Miscellaneous%20Documents/EmpReferral.pdf.

You may respond to me, in person and/or in writing, concerning the contents of this letter, provided you do so within eight (8) calendar days **[Response period not required by DOP law, rule, or policy but is suggested as part of due process. Length of response period is determined by the agency.]** of its date.

Please sign one copy of this letter indicating your receipt of this written warning, and return to me. Your signature does not indicate agreement or disagreement with the contents; it only verifies that you received this letter. A copy will be placed in your confidential Personnel File.

I look forward to your success with the corrective action plan.

Sincerely,

[Appropriate Signature Authority]

Enclosure

c: Agency Personnel File

I have received a copy and am aware of the contents of the foregoing letter

Employee Signature

Date

[NOTE: Revised 5/2015. Ensure law, rule, and policy language is current.]