



Community Colleges of Spokane
Professional Development and Renewal

**SUPERVISOR'S GUIDELINE
TO THE
PERFORMANCE MANAGEMENT
PROCESS**

**MODULE 2: DISCIPLINARY ACTION
PROCESS**

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DISCLAIMER

This Supervisor's Guideline on performance management and disciplinary action is not a substitute for legal advice from the Attorney General's Office and/or consultation with the Human Resources Office. This guideline does not create legal rights. Furthermore, the provisions of this guideline are designed by the Community Colleges of Spokane (CCS) to serve as standards rather than absolute rules and/or policy, and exceptions may be made from time to time on the basis of particular circumstances.

There is no intent or pretense that the reader of these guidelines will become skilled in dealing with all the different aspects of performance or behavior issues. However, these guidelines provide an outline of the basics necessary to deal with and help CCS establish a culture of fairness and just cause. Hopefully, this guideline will provide the assistance needed to deal directly with performance issues and to recognize when it is appropriate to ask for help from the Human Resources Office.

The following guideline is not intended to create contractual rights. It is process instruction only and does not constitute a contract or contractual obligation, and CCS reserves the right, in its sole discretion, to amend, modify, or discontinue its use without prior notice, notwithstanding any person's acts, omissions, or statements to the contrary.

Changes in WAC, bargaining agreements or legal opinion will override this manual. When presented with a specific factual situation regarding a personnel problem where legal advice is necessary or desirable, you should contact the Human Resources Office. If necessary, the Human Resources Office will then contact the assigned assistant attorney general for advice and direction.

If in doubt, consult with the Human Resources Office.



**SUPERVISOR’S GUIDELINE
PERFORMANCE MANAGEMENT**

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**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

Subject: Cause for Disciplinary Action

MODULE 2: DISCIPLINARY ACTION

Number: SM1.1

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PURPOSE: This section identifies the types of misconduct, poor performance, or misbehavior that an employee can be disciplined for under generally accepted labor law, rules governing employment and/or causes listed in collective bargaining agreements.

CAUSE FOR DISCIPLINARY ACTION – AT A GLANCE:

Generally, in a public sector environment, an employee may be demoted, suspended, reduced in salary, or dismissed for “just cause.” The following is a commonly referenced glossary of causes used to describe specific performance or behavior issues:

- 1) Neglect of Duty
- 2) Inefficiency
- 3) Incompetence
- 4) Insubordination
- 5) Malfeasance
- 6) Gross misconduct
- 7) Willful violation of the published institution related board or higher education personnel rules or regulations
- 8) Mistreatment or abuse of fellow workers or members of the public
- 9) Omission or willful misrepresentation
- 10) Falsification of an official document or statement
- 11) Failure to meet work performance standards or requirements
- 12) Dishonesty
- 13) Improper use of drugs or alcohol
- 14) Conviction of a felony
- 15) Misuse of district property or damage to district property resulting from misuse or negligence
- 16) Inconsistent, incompatible, or conflicting employment activity or enterprise
- 17) Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the district
- 18) Sexual harassment
- 19) Conflict of interest
- 20) Excessive absenteeism
- 21) Failure to meet union shop membership or fee requirement
- 22) Presumption of resignation—unauthorized absence

Practical Tip: “Just Cause” is a **judgment**. You, as a supervisor, do not have to make the decision in a vacuum. The Human Resource Office is available to work with you every step along the way. It's easier to ask for assistance in the beginning rather than after a problem has been created.

DETAILED DEFINITIONS AND INFORMATION:

The following definitions and related questions will assist you in developing a working understanding of each common cause for disciplinary action. Each should be considered a tool the supervisor can use to help clarify whether a violation of the rule has occurred and what mitigating factors may be present and worth considering. The following does not appear in WAC or in our various master contracts and are not necessarily used by appeal bodies to determine that cause exists. It is a general guide only.

NEGLECT OF DUTY: Failure to do what must be done or lack of care in the performance of assigned duties. A careless or willful disregard for procedures, work standards or a negligent failure to perform assignments. This category includes a willful disregard for performance standards and any inattentiveness to the job, a significant oversight resulting in poor work product or damage, accidents which could have been avoided and to which the employee's neglect was a contributing factor, repeated errors which establish an employee's incompetence, or failure to follow established procedures.

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- The chance that the act(s) may reoccur.
- Whether the frequency or the nature of the employee's action reflects a job performance well below that of co-workers in similar positions.
- Length of service and whether neglect results from lack of experience or knowledge.
- The attitude of the employee – her/his desire and ability to learn from the mistake.
- Whether the employee was made aware of his responsibilities through prior warnings or other forms of notice.
- Impact of the error on the district, the department, co-workers, or the public.

INEFFICIENCY: Inefficient or unproductive utilization of time, energy, money, or other resources. An employee may be disciplined for carelessness or inability to perform certain tasks resulting in incomplete or sub-standard job performance. This would include multiple incidents of failure to maintain quality/quantity standards, misuse of time and supplies, or a consistent pattern of failure or misuse.

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- Does the frequency or nature of the employee's inefficiency reflect a job performance well below the standard set by co-workers?
- Does the performance level fall within the employee's experience, training and physical ability? Is it a realistic standard?
- Has the employee been made aware of her responsibilities through prior notification and warnings? (Note: progressive discipline does not have to be shown if the employee's error was very costly to the district or extremely hazardous to others.)
- What were the costs of the inefficiency to the district (i.e. damaged equipment, significant lost time, etc)?

INCOMPETENCE: Lack of ability, legal qualification, or fitness to carry out assigned duties. This includes an inability to perform the work with reasonable efficiency; repeated failure to meet established standards of performance; carelessness or inattention to duty. An incompetent employee usually is not "guilty" of fault or wrongdoing but rather suffers a lack of skill or ability to perform. Although the work product may be the same as that produced by an inefficient or negligent employee, incompetence is distinguishable by the inability of the employee to do the overall job regardless of effort or attention to the task.

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- Has management provided the employee with the proper supervision or training to do the job correctly?
- Has management given the employee adequate warning and the opportunity to improve his/her performance?
- Has management established and communicated reasonable performance standards?
- Is the employee a long-term employee? Has he/she performed adequately at a lower level position?
- What events can be documented to illustrate the employee's poor work?
- Was the employee provided with proper equipment to do the work?

INSUBORDINATION: Refusal to obey a lawful order by an authorized supervisor or official. There are two forms of insubordination, (a) willful refusal or failure to carry out a supervisor's lawful directive, order, or instruction; or (b) personal altercation between the employee and supervisor, possibly involving shouting matches, profane or abusive words, and actual or threatened physical violence. Insubordination can include incidents of abusive/threatening language to the supervisor, refusal to work overtime, refusal to obey order or accept assignments - or the coaxing/coaching of co-workers to do the same.

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- Did the supervisor give clear instructions to the employee?
- Were the instructions or directive given in such a manner that it is reasonable to believe the employee understood it to constitute an order from the supervisor?
- Was the employee warned of the consequences of not complying with the directive?
- Did the supervisor somehow provoke the "insubordinate" behavior?
- Was the order illegal or might the employee have reasonably believed it to endanger his or his co-workers health or safety?
- Could the employee physically do the task assigned?
- Were there any conflicting orders given from within the chain of command?

The second form of insubordination involves a personal altercation between the employee and supervisor, possibly involving shouting matches, profane or abusive words, and actual or threatened physical violence.

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- Have there been prior incidents of insubordination involving this employee?
- What is considered as "shop talk" in this particular work area (i.e. was offending language "accepted" language in that unit?)
- Was the offending behavior provoked by the conduct of the supervisor?
- Did the employee perform the task, despite his initial and/or on-going aggressive defiance?
- Was the offending behavior conducted in front of other employees or did the employee make co-workers aware of it?
- If there was a threat, what kind of threat was it?
- Did the supervisor reasonably perceive the employee's behavior as a threat or merely abusive?

MALFEASANCE: Common term used to also apply to situations of nonfeasance (to ignore and take no action – neglect), misfeasance (to take inappropriate action or give intentionally incorrect information) and malfeasance (hostile, aggressive action taken to injure another's interests).

Generally, malfeasance refers to misconduct or wrongdoing; especially, wrongdoing that is illegal or contrary to official obligations. Malfeasance may include falsifying time sheets or documents, abuse of sick leave, violations of State Ethics Law, wrong doing of a criminal or civil nature, etc.

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- Do you have sufficient knowledge that the employee has been convicted of a crime, such as a court record or conviction report, or is this knowledge a product of the "rumor mill?" The supervisor should contact the Human Resource Office regarding **all potential legal** matters.
- Does the malfeasance harm or threaten the district or district employees in some way?
- Did the act arise during the course of employment or does it have some connection to employment?
- If "yes" above, should an internal investigation be undertaken, or will the legal proceeding provide sufficient proof?
- Is the district compelled by law to take certain actions or provide procedural safeguards while court action is pending? (inquire Human Resources Office)
- Did you, as the supervisor, act expeditiously upon discovering criminal activity?

GROSS MISCONDUCT: Denotes intentional or willful acts or omissions, in flagrant or reckless disregard of the consequences to person or property; and wanton inattentiveness or indifference by employees to the foreseeable dangers or injurious results of their acts or omissions; and act or failure to act in willful disregard of the employer's interest where the effect of the employee's act or failure to act is to harm the employer's business or reputation.

The following provides examples of behavior, which is normally regarded as gross misconduct

- Does this involve violent or threatening behavior, including fighting and willful damage to property fraud or theft?
- Is the incapacity due to alcohol and/or drugs?
- Did the misconduct result in breaking statutory regulations including safety regulations?
- Did the act involve unauthorized disclosure of confidential information?
- Was there an incident of indecent behavior on district premises?

This list is provided for illustrative purposes only and is not to be considered as either complete or exhaustive.

WILLFUL VIOLATION OF THE PUBLISHED INSTITUTION OR DEPARTMENT OF PERSONNEL RULES: A willful or negligent failure to follow rules established and consistently enforced by the department. May include directives from supervisor, administrator or chancellor or in certain cases, a violation of rules set out in policy/procedure manuals, WAC/RCW, or master contracts.

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- Are the rules reasonable in both application and content?
- Are the rules lawful, are they in conflict with other written rules or expressed instructions from within the chain of command?
- Has the employee been given clear notice of the rules?
- Has management consistently enforced the rule?
- Is the penalty in keeping with past practice?
- Is there sufficient proof of the employee having violated the rule?

MISTREATMENT OR ABUSE OF FELLOW WORKERS OR MEMBERS OF THE PUBLIC: This is a form of unacceptable conduct, which results in damage to workplace morale, to the relationship with the public, students or a vendor, or creates a breach between the district and employee to such an extent that a continuing working relationship is impossible. Conduct may also violate state or federal laws. Included would be incidents of verbal or physical confrontations, acts which constitute disloyalty to the employer, or use of profane or demeaning language. May include workplace harassment based upon the victim's race, color, creed, religion, age, gender, disability or veteran status. This would not include zealous advocacy in which only the parties to the dispute are subject to the behavior, or simple disagreements that are conveyed in a respectful, collegial or civil tone.

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- Was the employee's behavior combined with other unacceptable conduct or causes of disciplinary action?
- Was the act willful or deliberate?
- What was the impact of the discourteous treatment?
- What are the established and accepted norms of conduct in the work unit or for the district as a whole?
- Did the employee react without escalating the situation? Was the reaction respectful?
- What is the likelihood of a recurrence?

OMISSION OR WILLFUL MISREPRESENTATION: Closely related to Falsification of an Official Document. If a material fact or other fraud including, but not limited to, the following:

- Falsification of application for work or other official work document (i.e. leave reports, expense reports),
- Providing false information regarding professional licenses, credentials, or certificates.
- Providing false information during the course of a workplace investigation.

A willful, deliberate attempt to defraud the district. Would include falsification of employment application, resume, transcripts, criminal information, professional licenses and other business documents. Not included would be incidents of error or acts in which there would be no gain on the part of the employee for omitting information.

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- Was the act was willful and deliberate?
- Did the employee attempt to cover up the conduct or, upon discovery; did the employee deny the act or attempt to deceive?
- Is it reasonable to believe that the employee knew when committing the offense that, if caught, he would be subject to discipline?
- If an application was falsified, would the employee's denial or omission of facts have prevented his hiring? Has the employee's work mitigated in any way the severity of the offense?
- What harm did the district suffer? Has there been an erosion of trust as a result of the act?
- Did you, as the supervisor, act expeditiously upon discovery?

FALSIFICATION OF AN OFFICIAL DOCUMENT OR STATEMENT: Incidents involving deliberate mis-statements of fact by which the employee maintains employment, gains inappropriately, or fraudulently avoids consequences for his own actions. Would include falsifying expense vouchers; false reports of medical treatment; falsifying work or time records, including those of a co-worker. Would not include incidents of error or where there would have been no gain on the part of the offender. (The latter may, however, be attributed to Negligence).

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- Was the falsification intended to deliberately cheat the district?
- Does the department/college/district have a procedure for completing such documents, or
- Does the document itself solicit the correct information?
- What harm did the district suffer?
- Did you, as the supervisor, act expeditiously upon discovery of the falsification.
- How did the employee gain from supplying false information?
- Was the employee arguably aware of the consequences of the act?

FAILURE TO MEET WORK PERFORMANCE STANDARDS AND REQUIREMENTS: May include incidents or patterns where employee's work performance is unsatisfactory due to either failure to meet standards of quality or quantity, or where employee's work product reflects an inattention to or disregard of established procedures and work methods. Would include incidents of carelessness, inefficiency, incompetence or inability.

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- What are the position's standards of production?
- Have those standards been communicated clearly to the employee?
- Are standards measurable? Reasonable?
- Have the standards been applied evenly to all similar jobs?
- Has the employee been provided with adequate training and equipment?
- Has the employee been given notice of deficiencies and provided an opportunity to improve?

DISHONESTY: A deliberate act of theft, falsification against the employer, or a crime which affects the employer. Would include falsification of a job application, falsification of other records which was deliberate and material to the employment relationship (i.e. time card), punching another employee's time card, falsifying expense accounts or health benefit statements, etc., or misuse or misappropriation of state property.

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- Is the evidence of dishonesty clear and convincing?
- Was the falsification a lapse of memory or a deliberate act with intent to defraud?
- Did the employee materially gain from the act or omission?
- Was the employee direct or evasive when answering questions concerning the alleged conduct?
- Did you, as the supervisor, act expeditiously upon learning of the conduct?

IMPROPER USE OF DRUGS OR ALCOHOL: including, but not limited to, the following:

- In possession of or under the influence of a controlled substance (i.e. alcohol, narcotics, or prescription medication that is abused) while at work or in district work areas including vehicles.
- In possession, in use, under the influence of, or trafficking in habit-forming drugs and/or narcotics while at work or on district property.
- The use and/or abuse of controlled substances, intoxicants, or drugs while on duty.

- Possession of substance or paraphernalia, or the trafficking in same.
- Would include abusive drinking at lunch or while representing the district after hours, being under the influence of alcohol or illegal substances while on official district duty, being under the influence of or in possession of illegal drug/paraphernalia, controlled substance, or alcohol while on district premises during the employee's working hours, or when rendering call-back or a positive result on a drug and alcohol screening required by the district's Abuse Policy.

An employee may be disciplined for misuse of a substance, including prescription drugs, when the misuse occurs on district property, affects the district, or impedes the employee's performance. Although a supervisor's first response to such a behavior is often to get the employee help in fighting their abuse (i.e. call to the district's EAP) these actions should never be given in lieu of discipline. The district has a zero tolerance for work place substance abuse.

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- Was the safety of other employees and/or the public severely compromised by the employee's behavior?
- Employee's length of service.
- Employee's job performance/work history.
- Whether the employee was on the job while under the influence of drugs or alcohol.
- Whether there were past incidents of such behavior.

CONVICTION OF A FELONY: (or conviction of a misdemeanor involving moral turpitude; a plea or verdict of guilty, or a conviction following a *plea of nolo contendere* (no contest) to charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this subsection). While certain felony convictions will require immediate dismissal of a public employee (i.e. embezzlement), misdemeanor convictions will often require a determination of job *nexus* or the applicability to the employee's job. Would include crimes of moral turpitude against the employer, narcotics offenses beyond a citation, a plea or verdict of guilty or no contest, or a finding of guilt by a court in trial, irrespective of a subsequent order for probation suspending the sentence. The court's record of a conviction will serve as sufficient proof of the discipline order. Obviously, certain situations may require termination of certain classes of employees (i.e. child abuse for a child service worker). Other employees may be exempt if felony is over seven (7) years old and has an insignificant relationship to the job.

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- Do you have sufficient knowledge that the employee has committed a crime, such as a court record or arrest report, or is this knowledge a product of the "rumor mill"?
- Does the crime harm or threaten the district in some way?
- Did the act arise during the course of employment or does it have a close relationship with the employee's employment with the district?
- If "yes" above, should a separate administrative proceeding be undertaken, or will the legal proceeding provide sufficient proof?
- Is the district compelled by law to take certain actions or provide procedural safeguards while court action is pending (inquire of Attorney General's Office)?
- Did you, as the supervisor, act expeditiously upon discovering criminal activity?

MISUSE OF DISTRICT PROPERTY OR DAMAGE TO DISTRICT PROPERTY RESULTING FROM MISUSE OR NEGLIGENCE: A negligent or deliberate act which harms the employer or employer's property or provides personal gain to the employee. No forewarning is required in cases of stealing district property, even if items are of relatively little value. Would include damage to or waste of district property or supplies due to negligence or willful behavior, any conversion of public property to private use - or the intent to do so, incidents of using district time/resources for personal gain, negligent or willful damage to district property, theft, falsification or purposeful omission from inventory records. See also Ethics.

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- Was the act willful and deliberate?
- Did the employee make an attempt to cover up the conduct or did he, upon discovery, deny the act?
- Did the employee know, when committing the offense that, if caught, she would be subject to discipline?
- Does this employee perform work at home, and if so, were the items stolen such that the items were needed to perform this work (i.e. office supplies for district work done on a home computer)?
- Was the damage significant and due to negligence/misuse?
- Did you, as the supervisor, act expeditiously upon discovery of the offense?
- Is your handling of this matter consistent with past practice?

INCONSISTENT, INCOMPATIBLE, OR CONFLICTING EMPLOYMENT ACTIVITY OR ENTERPRISE: Outside or self-employment which has a real or potential adverse impact upon the employee's regular duties or assignments with the district. Included would be conflicts that damage the reputation of the district.

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- Does the department have a clarifying rule?
- What is the nature of the outside employment, and how does it relate to district employment?
- What is the applicability of the outside employment upon district work?
- Has the employee reported this employment to you as the supervisor, or has the employee made known to you that they were seeking outside employment?
- What is the past practice within your department related to this matter?

OTHER FAILURE OF GOOD BEHAVIOR EITHER DURING OR OUTSIDE OF DUTY HOURS WHICH IS OF SUCH A NATURE THAT IT CAUSES DISCREDIT TO THE DISTRICT: This cause of action is a "catch all" for behavior warranting disciplinary action but which fails to clearly fall within one of the other causes. Additionally, a behavior that does fall within a category clearly, but also warrants being addressed as a behavior that brought discredit to the district (i.e. sexual harassment of a vendor).

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- Is there another cause of action which better defines this behavior?
- Was the discrediting behavior such that it harms the image or business relationship with another agency or individual?
- If the behavior occurred outside of duty hours, what was the relationship to district business?
- Do you, as the supervisor, have proof of the behavior or is it the product of the district "rumor mill"?
- Did you, as the supervisor, act expeditiously upon discovery of the offense?

SEXUAL HARASSMENT: Unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment. Would include incidents where submission to advances/requests is a "term of condition of employment", incidents of harassment by supervisors, or by co-workers/vendors, which later creates a hostile working environment. Would not include single incidents that are not offense/outrageous, situations in which the actions are mutual, or incidents of harassment with is not sexual in nature. Any incident of sexual harassment must be reported to the HR Office for an official investigation.

CONFLICT OF INTEREST: (RCW 42.52 – Ethics in Public Service) Conflict of Interest is describe as: 1) A state officer or state employee may not have a financial interest or engage in any activity that is in conflict with the proper discharge of the officer's or employee's official duties; 2) A state officer or state employee may not use his official position to secure special privileges for himself or herself or any other person; and 3) A state officer or state employee may not receive compensation from any person, except the State of Washington, for performing his or her official duties.

The following are some examples of a conflict of interest:

- Self-dealing. For example, you use your position with the district to secure a contract for a private consulting company you own.
- Accepting benefits. Bribery is one example; substantial [non token] gifts are another. For example, you are the purchasing agent for your department and you accept a case of liquor from a major supplier.
- Influence peddling. Here, the professional solicits benefits in exchange for using her influence to unfairly advance the interests of a particular party.
- Using your employer's property for private advantage. This could be as blatant as stealing office supplies for home use. Or it might be a bit more subtle, say, using software, which is licensed to your employer for private consulting work of your own.
- Using confidential information. While working, you learn that the district is planning to buy land. You quickly rush out and buy the land in your wife's name.
- Outside employment or moonlighting which would be setting up a business on the side that is in direct competition with the district's operations.

EXCESSIVE ABSENTEEISM: Misuse of sick or other leave, including excessive or patterned absenteeism or tardiness. Misuse of sick leave, including tardiness or leaving shift early, would include failure to call in or otherwise give notice to management, invalid reasons or documentation to support illness, etc., patterned absences (i.e. every Monday or Friday), attendance which has fallen below an acceptable range for an unreasonable period of time, or leaving the work station early.

Prior to determining the severity of proposed disciplinary action you should first consider the following:

- Have prior absences or previous periods of poor attendance occurred during specific months or periods of time (i.e. summers when children are out of school)?
- What were the given reasons for the absences and are those reasons believable?
- What is the nature of the employee's job (is there periodic high stress or heavy repetitive work)?
- What are the attendance patterns of co-workers?
- Does the department have a clear policy relating to absenteeism and has that policy been clearly communicated to the employee?
- Was the employee warned of the consequences of continued absenteeism?
- How has the absence impacted the operations of the department?

FAILURE TO MEET UNION SHOP MEMBERSHIP OR FEE REQUIREMENT: (Summary of Article 39 of the Classified Master Contract and Article 8(14) of the Faculty Master Contract). All employees covered by this Agreement will, as a condition of employment, either become members of the Union and pay membership dues or, as nonmembers, pay a fee no later than the 30th day following the effective date of the Agreement or the beginning of their employment. If an employee fails to meet the conditions outlined below, the Union will notify the Employer and inform the employee that his or her employment may be terminated. If an employee fails to meet the agency shop provision outlined above, the Union will notify the Employer and inform the employee that his or her employment may be terminated.

PRESUMPTION OF RESIGNATION (JOB ABANDONMENT OR UNAUTHORIZED ABSENCE): An employee may be presumed to have resigned his/her position when there has been an absence without authorized leave from the job for a period of three working days. Contact the HR Office if this has occurred.



**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

Subject: Establishing "Just Cause"

MODULE 2: DISCIPLINARY ACTION

Number: SM1.2

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PURPOSE: District rules, bargaining agreements, WAC and RCW establish that permanent employees may be disciplined "for cause." Other terms commonly used include "reasonable cause," "fair cause," "proper cause," "good cause," or "just cause." This section addresses the question ***"What is "for cause," and how do I establish it?"***

JUST CAUSE:

"Just Cause" is a judgmental decision made by the supervisor after considering all relevant factors and past disciplinary actions. Simply put, it means that the employer has established a reason ("cause") for imposing discipline and that reason is fair ("just"). There is, unfortunately, no hard and fast rule about what behavior warrants a specific disciplinary action. The decision whether you have established "just cause," and what level of discipline is appropriate requires careful analysis and consistency in application - on a case-by-case basis. There are, fortunately, generally accepted guidelines established through published arbitration findings.

Establishing "Cause" to Discipline

The questions that follow will help you determine whether or not you have "cause" for disciplining an employee. A "no" answer to any one of the following questions may raise doubt whether just cause exists.

- **Employee Adequately Warned:** Did the employee have advance notice of the rule and the possible or probable disciplinary consequences of breaking the rule (i.e., "continued violation of this rule could lead to further disciplinary action up to and including termination")?
- **Reasonable Rule or Order:** Does the rule require conduct that might reasonably be expected of an employee?
- **Informal Discipline Utilized:** Did you use a progressive discipline approach (i.e. coaching, Oral Reprimand-Written Reprimand-etc.) appropriate to the offense?
- **Reasonably Related:** Is the rule reasonably related to the orderly, efficient and safe operation of the district?
- **Investigate Fairly and Objectively:** Have you, before proposing discipline, investigated, in a fair and objective manner, whether the employee did in fact violate or disobey district's rule, standard, or order?
- **Established Proof:** as a result of the investigation, did the supervisor obtain substantial evidence or proof that the employer's was guilty as charged?
- **Equal Application:** Have you applied your rule, order and penalty fairly and consistently to all employees having committed similar infractions/offenses before?

If you can answer, "Yes" to all of these questions, your action will have an excellent chance of being upheld throughout the appeal process - should the employee decide to appeal the action. A solid justification, reasonable to believe because it is based on facts and documentation is the ideal position from which to take action.



**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

Subject: Communicating Standards of Performance

MODULE 2: DISCIPLINARY ACTION

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PURPOSE: Having policies, rules and standards is meaningless if employees are not aware or have reasonably forgotten the policies/standards exist. Further, it is critical that employees also understand the policies/standards clearly, have opportunity to ask clarifying questions, and are reminded periodically. The following suggests ways to make sure your employees are notified understand and follow standards of conduct, rules and policies of the institution.

Communicating Policy: Communicating policies, rules and/or standards is important not only because it helps employees become aware of those standards but also because it starts the process of understanding what is expected. Documentation of your communication efforts makes it easier to prove notice was given to enforce the standards.

When to Communicate Work Expectations: It is critical that rules/standards are communicated in advance of enforcement. This may sound obvious, but it is often overlooked. As new employees transfer into the work unit, you must orient them to the rules/standards. This is an ideal time to also recommunicate those rules to existing staff. Even better is a periodic reminder sent throughout the course of a work year. It is also advisable to offer opportunity – perhaps during a department meeting – to ask and answer questions regarding the rules/standards.

Oral Communication of Work Expectations: Communicating verbally has the advantage of “give and take” between you and employees. It expands understanding and decreases miscommunication. However, it’s hard to prove a conversation occurred. We advise, therefore, that you keep a journal or log that documents the “what, when, where, how and who” of your work expectation conversations.

Oral communication is usually best for fundamental job knowledge (i.e., start time, lunch time, break time, etc.). It’s always helpful to reference the source of the policy/standard when providing oral communication. This way the employee will have a source document to refer to in the future.

Written Communication of Work Expectations: The district provides written communication of district-wide rules/standards/policies on a regular basis. You can do the same as a supervisor. Draft your expectations/standards and route them to your supervisor or to HR for review. If the rules are verified as reasonable and enforceable, provide them to your staff and give opportunity to discuss. This allows you to document the employee was informed, forewarned and understood expectations. Another important written communication of work expectations occurs during the course of employee performance evaluation. Use this opportunity to clearly state, evaluate and discuss the work standards and performance expectations of the employee.

Practical Tip: When you hire a new employee, orient the employee by providing a clear picture of what kind of behavior is acceptable and expected. This allows the employee to “start off on the right foot.” Many times, employees are too scared or overwhelmed the first few days to ask questions about work rules, so the information can be helpful and studies indicate it greatly enhances job survival during the first critical year.



**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

Subject: Constructive Feedback

MODULE 2: DISCIPLINARY PROCEDURES

Number: SM1.4

Revision Date: 1/13

Page 1 of 2

PURPOSE: A challenging aspect of supervision is providing criticism in a way that is effective but not demeaning. An effective technique is called “constructive feedback.” The ability to give and receive feedback is an essential skill of the effective supervisor. Failure to provide effective feedback is both costly to the individual, supervisor and the district. The following provides some hands-on advice regarding the constructive technique.

What is Constructive Feedback? Constructive feedback is communication which alerts the individual receiving it of performance/behavior that must improve. Constructive feedback is not criticism; rather it is supportive, descriptive and always focused to the issue (the “what”) and not the person (the “who”). The following provides a step-by-step plan for providing constructive feedback.

Step 1: Do Your Homework

- Gather personal knowledge of what occurred. Allegations and rumor or not sufficient cause for conversation. Get the facts.
- Be able to clearly communicate your expectations – i.e. what is the expected performance or behavioral standard. Be able to explain why there must be a change (i.e. rule, standard, expectation).
- Consider some steps that would resolve or improve the situation. What training, information, experience, etc. would help the employee?
- Draft an outline of your pending conversation. During the course of a difficult conversation your natural human instinct will be to shorten the conversation or redirect the conversation to more pleasant subject matter. An outline ensures you get all the information discussed that is critical to discuss. Caution: it’s an outline and not a script. It should guide your conversation, so be careful not to simply read it.
- Have a plan for how you will monitor job performance to ensure that the behavior change occurs and discuss a follow-up schedule for future discussions/evaluations.

...and Remember: Constructive feedback is focused on the issue and not the person.

Step 2: Have a Plan for the Conversation

- Have your outline in front of you. Refer to it, but do not read it to the employee. Make it a conversation and not a speech.
- Consider how the employee might respond to the information. Is he/she likely to redirect the conversation to less stressful subjects – to get you off track? Is he/she someone who tends to blame others? Will there be tears?
- Practice what you are going to say and in what sequence.
- Know your own communication style, how you are perceived, and how you will react in the event of a challenge or emotional outburst.
- Pick a location that ensures privacy and arrange it so you will not be interrupted.
- It's okay to stop the process and ask for a "time out."

Step 3: Establish a Positive Environment for Conversation

- Create a Supportive Environment: Don't put yourself between the employee and the door. Limit the possibility of interruptions (phone on hold, direct no visitors, etc.). Ask the employee to turn off his/her cell and you do the same.
- Show Trust: Start by telling the employee the purpose for the conversation. Get it out there and then let the employee ask any clarifying questions. Trust that the employee is an adult and can handle the conversation. Focus on the "what."
- Show Mutual Respect: Explain that you both have a mutual interest in the employee being successful. If the employee isn't successful you, as a supervisor, cannot be successful. You are mutually dependent.
- Have No Hidden Agendas: Honest and open dialogue does not allow for either party to play games or use the situation to further another purpose. Get right into it, and stick to your outline.
- Listening Attentively: The ability to listen and understand the other person's perspective is essential and demonstrates that it is a conversation and not a speech. Allow the employee to interrupt and ask clarifying questions – but don't let him/her redirect the conversation to other matters.
- End the Conversation on a Positive Note: Point out things that the employee is doing well or succeeding at. Provide some balance between what is working and what must be fixed. Put it into perspective. Express your mutual dependency again and offer your support. Set up a schedule for follow-up conversations and how the employee can ask clarifying questions.



**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

**Subject: Factors to be Considered in Determining
Cause**

MODULE 2: DISCIPLINARY PROCEDURES

Number: SM1.5

Revision Date: 1/13

Page 1 of 2

PURPOSE: This section develops a framework for analyzing and establishing cause for action. It considers the complexity of the work environment and the mitigating circumstances to be considered. The ability to examine and give proper weight to a variety of factors is critical to ensuring fair and equal treatment.

Determine the Rule, Policy and/or Procedure Violated: Decide which specific rule, policy or procedure the employee violated and if that violation requires corrective action. If several incidents or issues are involved, proof of each violation must be established.

Degree of Offense: Is the current problem part of an emerging or continuing pattern of infraction or poor performance? Poor performance often occurs in degrees. Minor individual infractions seldom require more than simple informal corrective action. A continuing series of incidents may call for more severe corrective action, up to and including dismissal.

Circumstances: Obtain all the facts regarding the environment in which the infraction occurred. Know what happened and the impact it had on the work environment. Were there contributing factors that were not within the employee's control? If so, you'll want to take that into consideration.

A Matter of Training: Has the employee received adequate training/direction and information about the job? Ignorance resulting from inadequate, contradictory or lack of training makes subsequent poor performance a shared responsibility – in other words, you have some culpability.

Employee Awareness: Make sure the employee is aware of the expectations and understands the standards of the job. Does the employee have a written copy of the rules and/or job expectations? Have the job expectations been discussed with the employee in a manner that allowed him/her to ask clarifying questions? Does the employee understand the seriousness of the problem? Has the supervisor previously explained the possible consequences if the problem is not corrected?

Length and Quality of Service: Review past records of performance and the length of service the employee has with the institution. Is this an isolated incident in an otherwise stellar career? Is this another occurrence of similar infractions that have happened repeatedly in this employee's career?

Seriousness: Evaluate the seriousness of the unacceptable conduct/performance. Consider the impact on co-workers, the department, and/or the institution in terms of resources, costs, service, work unit performance, reputation, etc.

Time between Infractions: Have there been other disciplinary problems in the past? Over how long a time span? Are those problems similar to the current issue? Review periods of improvement. Identify offenses similar in nature and unrelated offenses and how often they have occurred. Previous poor performance or unacceptable behavior resulting in corrective action may be considered in determining the degree and form of corrective action for subsequent behavior.

Extenuating Factors: Are there extenuating circumstances? Consider how mitigating or aggravating circumstances may have directly caused or contributed to poor job performance.

Time to Improve: Has the employee been given adequate time to learn the job? Has the supervisor given the employee adequate time to correct a previously noted problems? Have you provided the support, coaching, and resources necessary for the employee to be successful?

Past Practice: What disciplinary action has been taken involving other employees for similar offenses? Be sure you are consistent in your actions and that you require the same level of compliance across all employees. Can you be criticized for having different standards for different employees? If yes, can you adequately explain why? Review your past decisions for consistency in application.

Appropriate Corrective Action: Determine what corrective action will eliminate the problem. Contact your supervisor or the Human Resources Office when in doubt.

Consider Referral: Most supervisors are not trained to discuss an employee's personal problems or act as a life counselor. If the probable cause of poor performance is a personal problem, refer the employee to the Human Resources Office or the Employee Assistance Program. This information should be given to the employee as a recommendation, not a mandate. The supervisor focuses on the job performance and not the excuses for that poor performance.

Other Employees: The corrective action should not violate or otherwise negatively impact other members of the work group.

"Just Cause" Established: The questions that follow will help you determine whether or not you have "cause" for disciplining an employee. A "no" answer to any one of the following questions may raise doubt whether just cause exists.

- Did the employee have advance notice of the rule and the possible or probable disciplinary consequences of breaking the rule (i.e., "continued violation of this rule could lead to further disciplinary action up to and including termination")?
- Does the rule require conduct that might reasonably be expected of an employee?
- Did you use a progressive discipline approach (i.e. coaching, Oral Reprimand-Corrective Interview, etc.) appropriate to the offense?
- Is the rule reasonably related to the orderly, efficient and safe operation of the district?
- Have you, before proposing discipline, investigated, in a fair and objective manner, whether the employee did in fact violate or disobey the district's rule, standard, or order?
- Have you applied your rule, order and penalty fairly and consistently to all employees having committed similar infractions/offenses before?



**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

Subject: Documentation

MODULE 2: DISCIPLINARY PROCEDURES

Number: SM1.6

Revision Date: 1/13

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PURPOSE: Whenever you are documenting work performance – either positive or negative – you must document in a manner that is specific, factual and descriptive enough that others can understand. In disciplinary situations, lack of documentation will become cause for **not** upholding your decision. Other reasons for good documentation include:

- Documentation is critical when you need to justify your actions to others. In the event that a disciplinary action is questioned; documentation will be the key to supporting that action. An appeal officer will listen to your description but will trust supporting documentation.
- Documentation of progressive actions is necessary in most disciplinary cases. The exception is where the cause for discipline is based upon a substantial, single, isolated incident.
- Memory alone will not substantiate a decision. Memory can also be extremely faulty, incomplete or inaccurate. You will need to present specifics and details – and evidence that support those specific details. That can best be done through timely and thorough documentation.
- Sometimes, what you remember as a formal warning may be viewed by the employee as a friendly reminder. Documentation can show with reasonable certainty what was communicated and what should have been understood.



Don't get caught trying to reconstruct documentation after the fact. Also, the documentation process should not be used to "build a case" against one employee when other employees in similar situations did not have their actions documented. Selective documentation may be proof that a person was the victim of unfair treatment.

DOCUMENTATION:

The writing of a disciplinary document requires a specialized approach. There are, fortunately, a number of principles that will help ensure your documentation will stand up to close scrutiny. Remember that your records will be most useful if you promptly document, whether it is a conversation or a formal written notice, and don't rely on your long-term memory.

There are a number of mistakes commonly made in writing disciplinary materials:

- Lack of clear, direct, relevant communication from the supervisor to the employee;
- Reliance on general statements instead of specific factual detail;
- Reliance on conclusions without a supporting factual foundation;
- Documentation based on assumptions, interpretations, and generalizations.

Open, direct and frank communication between a supervisor and subordinate is critical in every disciplinary document. In simple terms, the employee must know specifically the problem, the solution, and the consequences. There can be no room for the employee to apply his/her own interpretation. Too often, instead of expressing the facts and dealing with the problem head-on, supervisors "sugarcoat" the conversation. This is easily rationalized as an attempt to be tactful, but instead results in miscommunication.

This is not to say that tact and empathy don't have a place in discipline. It is possible to be factual and direct in communicating with workers without engaging in a personal attack. Focus on the specific facts rather than on the person. Offer sincere help to the employee. This approach will enhance chances of a positive outcome.

General vs. Specific

The "golden rule" of documentation is:

"ALWAYS BE SPECIFIC AND FACTUAL."

Record specific detail such as times, dates, etc. Use names, places, and events. Describe what others saw and heard. Use the code of journalism: describe the what, why, when, where, and how. Be specific and be factual.

If, for example, your employee is habitually tardy - do not write, "John is frequently late for work." Specifically and factually, you would instead write something like this:

<i>During the months of January and February 1996, John Doe was late to work five times, as follows:</i>	
<i><u>Date</u></i>	<i><u>Minutes Late</u></i>
<i>January 03</i>	<i>11</i>
<i>January 06</i>	<i>17</i>
<i>January 22</i>	<i>22</i>
<i>February 04</i>	<i>10</i>
<i>February 09</i>	<i>19</i>

A good document will tell the reader how many times John Doe was late, which days, and how late he was on each of those days. The general statement of "John is frequently late for work" will be somewhere between difficult and impossible to substantiate. And, when your disciplinary action is questioned, you will lose.

Judgmental vs. Factual

The "golden rule" of documentation, again, is:

"ALWAYS BE SPECIFIC AND FACTUAL."

Documentation, which describes observed or verifiable behavior, is different than documentation which evaluates the person based on assumptions, interpretations and generalizations about what the facts mean. Compare the following statements:

- *"That was a very poor report. I wish you were more committed to doing a good job."*
- *"Your report was not formatted according to district standard and the content was based on data which is a year out of date."*

The latter statement tells the employee exactly what needs to be improved without judging his or her character or motives. Employee performance is more likely to improve when you ask the employee to do something different rather than asking him to be different. People become defensive when they feel judged and are less likely to make changes. The less defensive the employee is the more likely he will accept direction and supervision.

Conclusion vs. Fact

The "golden rule" of documentation, again, is:

"ALWAYS BE SPECIFIC AND FACTUAL."

You should try to avoid making conclusion statements. If a conclusion is used it should be supported by specific facts.

For example, to say, "John was found sleeping on duty," is a conclusion statement. A factual foundation in support of that conclusion might be:

"Upon entering the office, John Doe was observed sitting at the desk, his head was lowered and eyes closed, he did not acknowledge my presence for a full five minutes, he responded after his name was repeated a third time in normal conversation tone."

It is essential that the writer be able to distinguish specific from general statements and fact from conclusion. Once these concepts are understood, the supervisor is on the way to becoming a competent "documentator."

The following examples will help illustrate how to develop a specific and factual document:

Bad Documentation
"The General Conclusion"

Good Documentation
"The Specific Facts"

Numerous, frequently, often

Several times within past two months

Violates provision of Classified Employee's Handbook

Took a morning break in excess of ten minutes allowed in the Classified Employee's Handbook on June 6, 7, and 9th

Inaccurate mathematical calculation

Jane incorrectly calculated the daily cash drawer on June 3rd by \$1.36 (see attached receipts)

John Doe was intoxicated

After he returned from lunch at 1:15 p.m. on August 26, 1996, John Doe's speech was slurred, he staggered when he walked, and there was alcohol smell.

Workstation is dirty

John's work station on June 3 & June 14, 1996, was found to have oil standing on the floor, used rags on the floor, (see attached photographs)

Bad Documentation
"The General Conclusion"

Jane Doe lied on her time card

Jane Doe used dirty language toward a client

John Doe is abusing his sick leave

John Doe harassed a co-worker

Good Documentation
"The Specific Facts"

On June 17, 1996, Jane Doe claimed eight (8) hours for the workday. Her supervisor noted that on June 17th, Jane actually arrived at 8:30a.m., took a 1 ½ hour lunch break visiting with a friend named Stacy Smith and left her work station at 3:35p.m., not to return for the remainder of that work day.

On April 27, 1996, Jane Doe was overheard by two of her co-workers and her supervisor telling a member of the public to "stick your application up your rear end" "(see attached witness statements and public complaint)"

John Doe used eight (8) hours of sick leave on June 24, 1996 (see attached timecard). A co-worker reported seeing John at an auction, held at 307 Oak Street in Spokane, that same morning from 9:45 a.m. to 11:30 a.m. "(see attached witness statement and purchase receipt)."

On May 17, 1996, John Doe referred to a co-worker as "that damned Nazi Kraut" while on break with two other co-workers. The employee referenced is of German ancestry "(see attached statements)."



**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

Subject: Determining the Appropriate Action

MODULE 2: DISCIPLINARY PROCEDURES

Number: SM1.7

Revision Date: 1/13

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As discussed, discipline must be progressive in all but the most egregious violations. Said another way, with few exceptions, you cannot "fire" an employee for a first offense. The action will simply not hold up in the appeal process, for the reasons we've already covered. Disciplinary action may range from informal counseling to termination. The actions in-between form a progressive system founded on the premise that actions are to be both corrective as well as punitive, progressively more severe, appropriate given the offense, and consistently applied. The primary goal is modification of the employee's behavior. A common question, then, is how to establish the appropriate disciplinary action for a certain behavior or offense.

Arbitration and legal findings are often published. These publications help to establish a pattern of penalties generally considered appropriate for common problems. A summary list developed by and obtained from an arbitrator who used it as his guide, is included below. It should be used as a guide only. There is no guarantee that every arbitrator or hearing official will use the same list and the unique circumstances of each situation – including mitigating circumstances – must always be considered. In general, however, the following serve as an informed guideline

Key

- W = informal action: conference, oral or written reprimand
- S = suspension without pay, reduction in salary, or demotion
- T = termination

<i>Appropriate Action List by Offense</i>	Number of offenses			
	1 st	2 nd	3 rd	4 th
Type of offense or misconduct				
Attendance Problems *				
• Unexcused Absence	W/S	W/S	S	T
• Pattern/Chronic Absenteeism	W	W/S	S	T
• Unexcused/excessive lateness	W	W	S	T
• Leaving without Permission	W/S	W/S	S	T
• Absence without Leave	W/S	W/S	S	T
On-the-Job Behavior Problems				
• Intoxication on Duty	W/S	S/T	T	*
• Insubordination	S/T	T	*	*
• Horseplay	W/S	S	T	*
• Smoking in Unauthorized Places	W	W/S	S	S/T
• Fighting	S/D	T	*	*
• Gambling	W/S	S	T	*
• Failure to Use Safety Devices	W/S	S/T	T	*
• Failure to Report Injuries	S/T	T	*	*
• Carelessness	W	W	S	T
• Sleeping on the Job	W	S	T	*

• Abusive or Threatening Language	W/S	S/T	T	*
• Possession of Narcotics/Paraphernalia	S/T	T	*	*
• Unauthorized Possession Firearms/Weapon	S/T	T	*	*
• Away From Work Station	W	W	S	T
• Refusal to Take Drug Test	S/T	T	*	*
• Under Influence of Controlled Substance	S	T	*	*
• Violation of Work Rule	W	W	S	T
• Selling a Controlled Substance on Premises	S/T	T	*	*
Dishonesty and Related Problems				
• Theft	S/T	T	*	*
• Falsifying Employment Application	S/T	T	*	*
• Willful Damage to employer property	T	*	*	*
• Falsifying Work Records/Time Cards	S/T	T	*	*
Other Problems/Outside Activities				
• Unauthorized Soliciting	W	W	S	T
• Intentional Slowdown of Production	S	T	*	*
• Unauthorized Strike Activity	S/T	T	*	*
• Disruptive Personal Problems	W	W	S	T
• Outside Criminal Activities/Moral Turpitude	W/T	Depends	on	Specifics
Performance Problems				
• Failure to Meet Performance Standards	W	W	S	T
• Excessive Errors/Mistakes	W/S	S/T	T	*
• Repeatedly Missing Deadlines	W	W/S	S	T
• Decline or Ongoing Poor Performance	W	W	S	T

* **Note:** use of leave is a conditional benefit subject to supervisory approval. In addition to administering discipline the supervisor may deny payment of leave if any of the following are present:

- Inadequate leave balances to cover absences.
- Failing to properly notify the department, as outlined in applicable MOU or department policies.
- Invalid reason for use.
- Unable to substantiate leave by medical or other verification.
- Information/evidence of fraudulent use (information requires investigation to substantiate).



**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

Subject: Informal Discipline

MODULE 2: DISCIPLINARY PROCEDURES

Number: SM1.8

Revision Date: 1/13

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PURPOSE: Disciplinary actions fall into two broad categories – formal and informal. A system of progressively more severe actions is taken with an increasingly frequent or severe offense. In other words, the action taken is considerate of the severity/frequency of behavior. Only for the most serious violations will an employee be dismissed after a first offense (i.e. embezzlement). In most cases, there is a progression of action. The typical progressive is as follows:

- Coaching
- Oral Reprimand/Corrective Interview,
- Letter of Reprimand
- Formal Discipline

Formal discipline is legally defined as action that impacts an employee's "property interest" in his/her job – or those actions which take something tangible away from the employee. Formal actions generally involve pay and include demotion, suspension, reduction in salary or dismissal. At CCS formal discipline is taken only by the "Appointing Authority" of the institution (generally the president of the college, or for district office employees the chancellor).

Informal discipline represents those actions that a supervisor employs prior to initiating formal disciplinary action. Corrective in nature, informal disciplinary actions are those actions which do not impact the employee's property interest and are used to both improve performance and communicate that poor performance is unacceptable. Inherent to informal discipline is a supervisor's belief that the deficiency can be corrected. If that is not true, then formal disciplinary action is appropriate.

Informal Discipline – At a Glance

Informal discipline is best utilized where problems are progressively worsening and the concern is not so severe or otherwise unacceptable as to warrant formal action. The number of corrective steps taken will depend upon the severity of the concern and the degree of improvement needed.

The basic goals of Informal Discipline are:

- Bringing the employee's job performance to a satisfactory level;
- Heightening the employee's awareness that continued violation/poor performance is unacceptable and could lead to formal discipline if not corrected.
- Provide the supervisor with a process to document and build a file that support formal discipline;

The progression is not a chain of separate, discrete steps. There will almost always be some overlap and variations in progression.

The “Coaching” Session

These on-going sessions between supervisor and employee are private discussions centering on the employee’s work performance. The goal is to assist the employee in recognizing his strengths and weaknesses, to communicate expectations and standards, and when there is a performance problem to clarify and remedy it quickly. It is a purposeful discussion about "how things are going."

Ideally, these sessions will resolve any problem early. While the first discussion with an employee about a job-related problem does not become a document, it is recommended that a log or journal entry be maintained for documentation and later reference.

Rule of Thumb: The rule of thumb is “if in doubt - document.” Since management has the burden of proof in the disciplinary process, it is management that must produce documentation. Documentation will help support your position

Oral Reprimand

The Oral Reprimand verbally notifies the employee that his/her performance or behavior is unacceptable and must improve. Supervisors give Oral Reprimands when coaching has failed to produce the desired change or when the intolerable performance warrants immediate attention.

Your Oral Reprimand should follow this outline:

- Define what improvement is required;
- Set goals for improvement; and
- Warn the employee that failure to improve will result in more serious action, which may include demotion, suspension, reduction in salary or dismissal.

Begin with the assumption that the employee did not fully understand the performance expectation. Explain the rule, standard or performance expectation clearly. Explain how the employee fell short and make it clear that performance must improve. You should immediately document the date, time and content of the reprimand into your working file.

Later, a confirming memo should be issued to the employee. Document the discussion (date, time, place, circumstances, nature of reprimand, and that the employee is officially advised in writing of the consequences of failing to improve his/her performance). A recommended format for this memo is included as Attachment #4. This confirming memo should be placed in your working file. It does not go into the employee’s official personnel file at the Human Resources Office.

Fairness Issue: It’s important to remember that employees are more likely to perceive disciplinary action as “fair” if plenty of notice about conduct and performance standards are given.

Corrective Interview/Improvement Plan

If there has been no improvement, the Oral Reprimand should be followed by a more formal Corrective Interview and an Improvement Plan.

There are four objectives of the Corrective Interview:

- Identify the unacceptable behavior or performance.
- Produce a plan for improvement
- Identify areas where the supervisor can assist or provide necessary training.
- Set dates for checking on progress and a deadline for the employee to demonstrate the required improvement.

Related documentation and reference to prior discipline should be referenced in the Corrective Interview but not documented in the Improvement Plan. A sample format for Corrective Interview documentation is included in attachment #5.

Letter of Reprimand

The last step in the informal disciplinary process is the letter of reprimand. If the improvement plan developed during the Corrective Interview has been unsuccessful or if the infraction is more serious, a letter of reprimand is issued.

A copy of the letter of reprimand is given to the employee. The original letter of reprimand is sent to HRO, becoming the first official action to appear in the employee's official personnel file. HRO staff notifies the employee the letter of reprimand is being placed in the personnel file and the employee is given an opportunity to submit a rebuttal.

Heads Up: *Inconsistency between disciplinary action proposed and annual performance evaluations is one of the main reasons disciplinary actions are not upheld. There must be consistency in the message that you provide the employee regarding his or her job performance.*

Supervisor's Log

- Attachment #1.....Supervisor's Log
- Attachment #2.....Critical Incident Report
- Attachment #3.....Job Performance/Attendance Record

Oral Warning

- Attachment #4.....Oral Warning

Corrective Interview

- Attachment #5.....Corrective Interview

Letter of Reprimand

- Attachment #6.....Letter of Reprimand

Attachment #1: SAMPLE - SUPERVISOR'S LOG

SUPERVISOR'S LOG:

Staff Name: _____

DATE	DESCRIPTION	ACTION TAKEN	FOLLOW-UP/TIMELINES	COMMENTS
3/9/00	Completed -New Staff Orientation			
4/19/00	Late for work today – arrived at 8:10	None	None	
4/21/00	Late for work – arrived at 8:14	None	None	Called to say he would be late -said he had car problems
5/01/00	Late – arrived at 8:15	Set up meeting		
5/02/00	Supervision Session	Spoke with him about needing to be on time	Will monitor for compliance	He was very upset over being late – worried about my reaction
5/5/00	Late – arrived 8:10			Called to say he had over slept – Spoke briefly with him about the importance of being on time.
5/18/00	Late – arrived 8:20	Set up meeting		
5/18/00	Supervision -Meeting with him regarding his pattern of late arrival	Oral Reprimand	Will monitor for compliance	Said that he had purchased a new alarm clock and that this should not be a problem anymore.



**COMMUNITY COLLEGES OF SPOKANE
Critical Incident Report**

Employee:

Classification:

Department:

+	Incidents of Good Performance	(-)	Incidents of Poor Performance
Date	Description	Date	Description

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Attachment #4: Sample – CONFIRMING MEMO (ORAL WARNING)

Memorandum

Date:

To: (Employee' Name)

From: (Supervisor's Name)

Subject: Meeting on May 18, 2000

This memorandum will confirm our conversation of May 18, 2000 during which you were cautioned against arriving late to work. Your specific hours of work are from 8:00 am to 4:30 p.m., Monday through Friday throughout the calendar year. During the past two weeks you have been late to work on two occasions (May 5 - arrival time 8:10; and May 18 - arrival time 8:20).

Additionally, on two previous days (April 19 and April 21) you had arrived late by 10 and 14 minutes respectively. We spoke briefly on two occasions (5/02/00 and 5/5/00) about your late arrival to work being unacceptable and you needing to make changes so that this would stop occurring.

During this last meeting we both agreed that the goal is for you to get to work by 8:00. You indicated that you had purchase a new alarm clock and this should not be a problem anymore.

Please be aware that additional incidents of this nature may be cause for formal discipline, which may include demotion, suspension, and reduction in salary or dismissal.

This is to certify that you have read this memorandum and you understand this to be an informal disciplinary warning.

Employee Signature

Attachment #5: Sample – CORECTIVE INTERVIEW MEMO

Date:

To: Employee's Name

From: Supervisor's Name

Subject: Corrective Interview

This memo serves as a written confirmation concerning the performance deficiencies, which have been the subject of our ongoing review. On June 12, 2000 we met to discuss your continued problem of getting to work on time. Your specific hours of work are from 8:00 a.m. to 4:30 p.m., Monday through Friday throughout the calendar year.

The following documents your failure to arrive on time:

Date	Arrival Time
Tuesday, April 19, 2000	8:10 AM
Tuesday, April 21, 2000	8:14 AM
Tuesday, May 5, 2000	8:10 AM.
Wednesday, May 18, 2000	8:20 AM

Yesterday morning (June 12, 2000) you arrived at work at 8:20 a.m., which is 20 minutes late. As I mentioned in our meeting yesterday, your failure to arrive to work on time is not acceptable. Moreover, it may take further formal disciplinary action, unless this problem is corrected. Formal disciplinary, which may include demotion, suspension, reduction in salary or dismissal.

I would like to set up an appointment to develop an Improvement Plan for you on June 14, 2000 at 3:00p.m. in my office. It is my sincere hope that we will be able to work constructively towards a solution to this problem.

This is to certify that you have read this memorandum and understand this to be a disciplinary warning.

Employee Signature

Date:_____

Attachment #6: Sample - LETTER OF REPRIMAND

Memorandum

Date:

TO: Employee's Name

FROM: Supervisor's Name

SUBJECT: Letter of Reprimand

This is an official Letter of Reprimand that is being submitted to the Human Resources Office to be placed in your personnel file. This letter is the result of your pattern of arriving at work late.

This morning (July 7, 2000) you arrived at work at 8:50 am, which is fifty (50) minutes late. Your scheduled shift begins at 8:00 am. You have previously received an Oral Reprimand on June 18, 2000 (see attached confirmation memo), a Corrective Interview on June 12, 2000 (see attached confirmation memo) and developed an Improvement Plan on June 13, 2000(see attached plan) related to your late arrivals to work. Specific dates of your late arrival are:

<u>DATE</u>	<u>ARRIVAL TIME</u>
Tuesday, April 19, 2000	8:10 AM
Thursday, April 21, 2000	8:14 AM
Monday, May 1, 2000	8:15 AM
Tuesday, May 5, 2000	8:10 AM
Wednesday May 18, 2000	8:20 AM

You have been directed both orally and in writing to arrive at work no later than 8:00 AM. Your specific hours of work are from 8:00 am to 4:30 p.m., Monday through Friday throughout the calendar year.

You understand that our rules require that you be at your workstation at the beginning of your work shift, which has been and continues to be 8:00 am. Be further advised that failure to meet the above standards is causes for formal disciplinary action. If you do not correct the deficiencies set forth in this memo, formal disciplinary action will be recommended to the Chancellor/Chief Executive Officer. Formal discipline, which may include demotion, suspension, reduction in salary or dismissal

You have the right to respond in writing to this "Letter of Reprimand" and have such response, if any, placed in your HRO personnel file.

This is to certify that you have read this memorandum and you understand this to be a disciplinary warning.

Employee Signature



**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

Subject: Corrective Interview

MODULE 2: DISCIPLINARY PROCEDURES

Number: SM1.9

Revision Date: 1/13

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PURPOSE: The Corrective Interview is a critical step in the progressive discipline process. It provides not only an opportunity to inform the employee his/her performance/behavior is unacceptable, but also engages the supervisor and employee in a process to improve the situation. If unsuccessful, it becomes documentation of management's effort to help the employee improve. This section outlines the important elements of the corrective interview and provides helpful hints to conducting it successfully.

The following items should be discussed during the Corrective Interview:

- What specific expectation(s) or standard(s) are not being met?
- What caused the problem(s)?
- What is the solution? How can the supervisor assist? What will the employee do to correct the problem?
- What are the possible consequences for the employee if improvement does not occur?
- What follow-up will be done? When?

Conducting the Corrective Interview: Arrange for privacy and allow ample time. Do not discipline an employee in front of others. Gather sufficient information to discuss the situation competently. Prepare by reviewing your notes and files, as well as any past actions taken. Plan in advance the items to be covered. Make an outline for reference during the interview.

State the Problem: The employee should clearly understand this disciplinary process. Don't start with an accusation – describe the problem as one you both need to solve. State the problem as clearly as possible. Be specific. Don't exaggerate. Avoid generalized conclusions. Be firm. Be fair. Be friendly. Don't require submission or agreement. Focus on the behavior that must change. The objective is to change the employee's performance, not his/her personality. Use examples that demonstrate acceptable performance and behavior.

Listen: Listen to the employee's explanation of the situation. Don't jump to conclusions. Ask "what" and "how" questions rather than "yes/no" questions – you'll learn more. Respect the employee's dignity and right to a different point of view. Don't engage in a lengthy discussion and don't wander or get side-tracked. Stay calm. Don't threaten. Don't argue. Share the blame gracefully if that's appropriate.

Solution Stage: Express confidence in the employee's ability to improve. Make it clear this is why the interview was schedule. Engage the employee in developing the Improvement Plan. Reassure the employee that you value his or her work and that you want to help the employee make the necessary improvements. Develop an action plan to correct performance. Be specific as to what the employee must do and what resources you are willing to commit. Maintain a helpful attitude. Set a deadline for specific measurable change. Take adequate notes.

Summarize then Develop Plan: Summarize the discussion. Identify the consequences for failure to improve. The employee should clearly understand the consequences of not meeting the expectations. Set the time for a progress review. Prepare a written summary of the interview and give a copy to the employee.

Follow-up: Monitor - check the employee's progress against the expected improvement plan. Provide feedback on what you're observing. Reinforce good efforts. Complete the record when the employee has made the desired change or add to the record if the improvement plan has not been successful.

...and Remember: Personal problems often interfere with work, but it is not the supervisor's responsibility to become involved in an employees' personal problem. A good rule is to refer personal problems to the Human Resources Office or the Employee Assistance Program. Supervisors can be empathetic and supportive but they should remain focused on job performance- not the causes of those problems.



**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

Subject: Improvement Plan

MODULE 2: DISCIPLINARY PROCEDURES

Number: SM1.10

Revision Date: 1/13

Page 1 of 2

PURPOSE: Management has an obligation to orient, train, and support an employee. An Improvement Plan is one way management can document that an employee has been given the support, resources and training necessary to perform, particularly when it has become apparent that he/she is not performing satisfactorily.

An Improvement Plan document is used whenever any employee's job performance, excluding cases of isolated misconduct, is either unsatisfactory or has deteriorated from a previous level. An Improvement Plan **is always** the by-product of the Corrective Interview.

The following must be addressed in an Improvement Plan:

WHY? You should have already thoroughly and completely documented/discussed the specific performance concerns. The improvement document should start with a general summary of these concerns. A general statement is sufficient - something like the following:

Your performance has steadily deteriorated over the last six (6) months in the areas of ... This program for improvement is established as a corrective attempt to turn around this decline in your performance.

WHAT MUST BE DONE? Establish specific, measurable objectives. Specifically tell the employee what must be done in order to meet performance standards. Be specific. Think of it as a list of answers to the question, "What can the employee do in order to meet the job standards?"

WHAT ASSISTANCE IS AVAILABLE? Identify for the employee the forms of assistance available. This may include resource material, assistance from you, help from a fellow employee, or training from a specialist who has detailed knowledge of the area of improvement. The notice must identify what management is willing to do to assist the employee meet expectations. Some common forms of the assistance:

- Training publications and books;
- Opportunities to visit other locations to observe the work of others;
- Counseling with a trained counselor;
- Opportunities to attend relevant training programs;
- Trained personnel work with and assist the employee
- A mentor to help the employee.

HOW LONG? You should include the time frame for improvement. This should be reasonable. Consider using a specific date as a deadline. The goal is for the employee to clearly understand when improvement must occur.

WHAT ARE THE CONSEQUENCES? The employee must know in advance the consequences of failing to improve. Where the employee has violated a rule, regulation, or directive the employee must be directed to comply in the future. A phrase that will eliminate the defense of, "Nobody told me that I would be fired!" follows. Use it in the Improvement Plan document.

“Please be aware that additional incidents of this nature may be cause for formal discipline, which may include demotion, suspension, reduction in salary or dismissal.”

The goal is to clearly notify the employee of the ultimate consequences if he fails to improve performance. The Improvement Plan is used to clearly document that the employee knew why there was a concern, what had to be done, and was given a fair opportunity to correct the problem over a reasonable period of time. Attachment #7 provides a sample document for your assistance.

Formalize the document by having the employee sign it and then provide a copy.

Helpful Hint: The employee's attitude and participation in the Plan should also be documented.

TO: Employee's Name
FROM: Supervisor's Name
SUBJECT: Improvement Plan

This Improvement Plan documents a Corrective Interview held on June 12, 2012, regarding your pattern of arriving late for work over the past three (3) months. This plan was developed from that interview. It specifies the objective, timeframe and assistance I committed to provide to help you meet performance expectations, as follows:

Objective: To arrive at your work station not later than 8:00 am on no less than 95% of your scheduled workdays between July 11 and December 10, 2012.

Actions Required:

- a. (Employee's Name) purchases a new alarm clock that is dependable to keep correct time and wake him up. This will be done by no later than June 16, 2012.
- b. (Employee's Name) will set his alarm for 6:30 am instead of the current 7:00 am to allow for additional ready time in the morning.
- c. (Employee's Name) will participate in the office coffee fund instead of stopping at a local convenience store prior to work each day. (Supervisor's Name) will arrange for (Employee's Name) inclusion in the fund and will bill (Employee's name) every other Friday for required contributions.
- d. (Employee's name) will arrive at his workstation (desk) by no later than 8:00 am instead of in the parking lot by that same time. (Supervisor's Name) will monitor arrival times to determine if objective is met.
- e. (Supervisor's Name) agrees to be as flexible as is possible in allowing (Employee's Name) approved time off to attend to any personal business.

Feedback:

(Supervisor's Name) and (Employee's Name) will met every other Friday, beginning June 19, 2012, to review progress toward objective and make alterations or modifications as warranted. (Supervisor's Name) will formally evaluate (Employee's name) at three months into this plan for compliance.

If you do not correct the deficiencies set forth in this notice, the district will take further disciplinary action, which may include demotion, suspension, reduction in salary, or dismissal.

I acknowledge receipt of this Improvement Plan and I agree to abide by its terms.

Date

Employee



**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

Subject: Final Review Checklist

MODULE 2: DISCIPLINARY PROCEDURES

Number: SM1.11

Revision Date: 1/13

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PURPOSE: If informal steps have not been successful the supervisor must next decide if formal discipline is appropriate. Before moving to formal action, however, it is first advisable to conduct a final review of informal action. The purpose of the final review is to analyze the documentation to ensure it is complete, accurate and supportive of formal action.

Before recommending that an employee be suspended, demoted or terminated, the supervisor will need to critically review the working file as a whole and ask these questions:

- Has all critical information been reduced to writing and placed into the working file?
- Is the nature of the employee's misconduct or poor performance clearly described in a specific, factual manner?
- Is there consistency between the documentation and the employee's performance evaluations?
- Was the employee clearly informed of the required standards of behavior and performance?
- Does the record progress from early warnings to more serious, comprehensive documents?
- Was the employee given adequate assistance to improve?
- Has the employee had reasonable period of time and a fair opportunity to improve?
- Is the poor performance or misconduct sufficiently persistent and/or serious to warrant formal disciplinary action?
- Has the employee been given fair warning of the consequences of his continued poor performance or misbehavior?
- Is formal disciplinary action consistent with my approach in similar circumstances?

When these questions can be answered in the affirmative, supported by specific and factual documentation, you are ready to proceed.



**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

Subject: Formal Discipline

MODULE 2: DISCIPLINARY PROCEDURES

Number: SM1.12

Revision Date: 1/13

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PURPOSE: Formal discipline is appropriate where informal discipline has failed to change the employee's conduct/job performance or when the offense is so serious in nature that formal action is appropriate. This section provides an outline of the steps in the formal discipline process.

ACTION STEPS:

- ❑ **Consultation Required:** Recommending formal disciplinary action to the appointing authority requires contractual compliance. It is required, therefore, that you work with the Human Resources Office to implement formal disciplinary action. Call on them early.
- ❑ **Need for Documentation:** We must be able to adequately reconstruct the process and explain exactly what happened to a neutral third party. The burden is upon management to show cause. An investigation, conducted in a fair, compliant and thorough manner, is often required at this level. Again, contact the HR Office for help.
- ❑ **Formalizing the Charges:** We will draft a notice listing the charges and offering supporting documentation. This notice will take the form of a recommendation by you to your supervisor, proposing that formal disciplinary action be taken. It should contain the facts supporting the charge, the effect the behavior or performance has had on the staff and/or institution, a list of informal corrective actions taken, improvement plans implemented, investigation results/documentation and a recommended disciplinary action. The memo should be forwarded to your supervisor, courtesy copied to the Human Resources Office. Do not send a copy to the employee or union at this time.
- ❑ **Pre-Disciplinary Meeting:** Upon receipt of the written notice of proposed action the Human Resources Office will schedule a pre-disciplinary meeting with the employee, employee representative, and the appropriate management. The Human Resources Office will send the employee a letter outlining the charges, information regarding the incident(s), and recommended action. The letter will state the date, time, and place scheduled for the pre-disciplinary meeting.

Formal action is only recommended at this point. Action cannot be taken without giving the employee an opportunity to provide information and explanation. The pre-disciplinary hearing allows the employee the opportunity to explain why formal disciplinary action should not be taken.

- ❑ **Initiating Formal Action:** The appointing authority or designee makes the decision whether or not to take formal action, or what the most appropriate specific formal action should be taken. A letter is sent to all parties involved in the process listing the charges, giving supporting information, the employee's perspective as shared during the pre-disciplinary meeting (if appropriate), and the decision regarding the formal action taken.



**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

Subject: Types of Formal Discipline

MODULE 2: DISCIPLINARY PROCEDURES

Number: SM1.13

Revision Date: 1/13

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PURPOSE: At this point, informal effort to correct the employee's job performance has failed. Some form of formal disciplinary action is required. Board policy provides that the **appointing authority** of the institution in question may utilize the following types of disciplinary action:

Suspension Without Pay: This may be the first formal disciplinary action taken after informal actions have failed. Suspension is not appropriate where there are concerns of attendance, or when performance observation is required to determine if the concern has been corrected. Suspension is most appropriate:

- To immediately remove the employee from the work environment due to safety or security concerns; or
- Where the conduct is so egregious that it is negatively impacting service to students or otherwise impacting the operation of the district
- Where there is severe misconduct or chronic behavior problems for which there is no other appropriate response.

Reduction in Salary/Demotion to a Lower Class: The appointing authority may reduce the salary of a permanent employee, or may demote an employee to a position at a lesser pay range. Reduction in step is normally used in lieu of a suspension and is applied for only a specific period of time.

Normally, demotions are appropriate if an employee cannot perform the duties of his/her present position but may still function effectively at a lower level. The employee must meet the minimum qualifications for the class to which he/she is demoted.

Dismissal: A permanent employee can be dismissed for just cause during the term of his/her employment contract. Dismissal should only be taken when management is thoroughly satisfied, after a thorough investigation, that the employee has been given every opportunity to meet performance or behavior standards and has clearly failed to do so. Dismissal is seldom given for a first offense.

Generally the employee is given at least 14 calendar days' notice of dismissal. The appointing authority, however, can place the employee on "home assignment or "work location at home" during these two weeks. The details of this type of assignment are worked out with the Human Resources Office.

Immediate Dismissal: If, after notifying the employee of the charges and giving the employee an opportunity to respond, the appointing authority determines the circumstances are such that retention of the employee in an active duty status may result in damage to state property or may be injurious to the employee, co-workers, or the public, the employee may be dismissed immediately (i.e., without 14 calendar days' notice).

REMEMBER . . . the employee must be given an opportunity to have a pre-disciplinary hearing

All correspondence regarding the appointing authority's decision and action will be prepared by the Human Resources Office, signed by the appointing authority, and sent certified mail or hand delivered to the employee. Copies of the correspondence will be sent to all parties involved.

Most employees have appeal rights to all formal disciplinary actions. In such appeals, the employer has the burden of proving (1) that the misconduct or lack of performance cited in the disciplinary letter did, in fact, take place, just cause exists and (2) that the nature of discipline was appropriate for the offense committed.



**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

Subject: Appeal Hearing

MODULE 2: DISCIPLINARY PROCEDURES

Number: SM1.14

Revision Date: 1/13

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PURPOSE: One possible outcome of formal disciplinary action is an appeal hearing. This section will prepare you to be successful in that situation.

An Appeal Hearing

Most employees have appeal rights to formal disciplinary actions. The appeal hearing may be heard by an appeals board, arbitrator or another third party. In such appeals, the employer has the burden of proving that it had just cause to take the action.

When an appeal officer/board is deciding whether or not to uphold a disciplinary action, there are seven critical questions considered:

- **Notice:** Did the employer give the employee forewarning of the possible consequences of his conduct (i.e. "Continued violation of this rule could lead to further disciplinary action, which may include demotion, suspension, reduction in salary or dismissal.")?
- **Reasonable Rule or Order:** Was the employer's rule or order reasonably related to: 1) the orderly, efficient, and safe operation of the work unit; and 2) the performance that the employer might expect of the employee?
- **Investigation:** Did the employer, before administering the discipline, make an effort to discover whether the employee did in fact violate or disobey a rule or order?
- **Fair Investigation:** Was the employer's investigation conducted fairly and objectively?
- **Proof:** As a result of the investigation, did the reviewing authority obtain substantial evidence or proof that the employee was guilty as charged?
- **Equal Treatment:** Has the employer applied its rules, order and penalties even-handedly and without discrimination to all employees in similar circumstances?
- **Penalty:** Was the degree of discipline administered by the employer reasonably related to a) the seriousness of the employee's proven offense, and b) the record of the employee in his service with the employer?

If the answer is "yes" to all of the above, the officer can be expected to render a favorable decision for the district. If the answer to any of the above is "no", you often will get the employee back, and will pay for back wages and lost benefits. The cost of error in this regard is very high.

Additionally, it is a requirement under the district's disciplinary process that all proposed formal disciplinary actions are pre-approved by the Human Resources Office (who checks for procedural adherence and fairness). The reason is that disciplinary actions, especially dismissal, have the potential to turn into costly decisions and therefore should be considered carefully. If there is a problem, then it is better to correct it before hearing than as a result of a hearing.



**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

**Subject: Standard Employee Defenses
(and how to overcome them)**

MODULE 2: DISCIPLINARY PROCEDURES

Number: SM1.15

Revision Date: 1/06

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PURPOSE: Prior to the Formal Disciplinary Hearing, the employee's representative - usually a union representative or attorney - will spend considerable hours in preparation and will have carefully and painstakingly scrutinized the information you've produced during the disciplinary process. Knowing in advance what a representative looks for should give the supervisor an advantage – the opportunity in advance to avoid errors that can be used to overturn your decision.

Standard Employee Defense

Lack of "Cause": This defense is based upon the theory that the proposed punishment is too severe in relation to the alleged misconduct. The employee's rep will argue that, even if everything management says is true, there is insufficient cause to impose such harsh discipline. This defense does not necessarily indicate a poor job of building a case on your part; it is the district's judgment about what form of discipline to impose that is being attacked.

WHAT TO DO... SEE SM 1.2 ESTABLISHING "CAUSE" - FOR HELP IN ESTABLISHING "CAUSE" AND SETTING APPROPRIATE DISCIPLINE GIVEN A SPECIFIC OFFENSE. ALSO, REVIEW SM 1.13 TYPES OF FORMAL DISCIPLINE AND SM 1.5 FACTORS TO BE CONSIDERED REGARDING DISCIPLINARY ACTION FOR ADDITIONAL INFORMATION.

Procedural Defenses: You are required to observe procedural rules when managing your staff. These include personnel rules, labor agreements, evaluation notices, and related labor laws. Failure to comply with procedural requirements may cause you to lose a disciplinary appeal on technical grounds, even though the case is solid on the merits.

WHAT TO DO... SEE SM 1.6 INFORMAL DISCIPLINE AND SM 1.10 DOCUMENTATION DEALING WITH "DISCIPLINARY ACTION" FOR THESE PROCEDURES. ALSO, ALWAYS CONSULT WITH THE HUMAN RESOURCES OFFICE DURING THE DISCIPLINARY INVESTIGATION AND DOCUMENT CONSTRUCTION PROCESS. THE RULE OF THUMB IS "IF IN DOUBT-CONTACT THE HUMAN RESOURCES OFFICE."

Lack of Notice Defense: The most common defense in disciplinary matters today is the lack-of-notice defense. The common charge is, *"its all management's fault, the employee wasn't told."* The experienced representation knows that the employer's burden of proof is twofold. First, management must show that the employee broke a rule. Second, it must be proved that the employee knew of the rule before it was broken. The employee representative can persuasively argue that it is unreasonable and unfair to punish anyone for failure to comply with rules of performance, which were unknown to him/her. This defense is frequently used to get a reduction in the severity of the discipline imposed.

WHAT TO DO... IT IS THE EMPLOYER'S OBLIGATION TO GIVE ALL EMPLOYEES NOTICES OF APPLICABLE WORK RULES AND REQUIRED STANDARDS OF PERFORMANCE (SEE SM 1.3 COMMUNICATION POLICY SM 1.6 INFORMAL DISCIPLINE AND SM 1.10 DOCUMENTATION FOR ASSISTANCE IN AVOIDING THIS DEFENSE). THE RULE OF THUMB IS TO INCLUDE ON INFORMAL DISCIPLINE CORRESPONDENCE THE STATEMENT, "PLEASE BE AWARE THAT ADDITIONAL INCIDENTS OF THIS NATURE MAY BE CAUSE FOR FORMAL DISCIPLINE, WHICH MAY INCLUDE DEMOTION, SUSPENSION, REDUCTION IN SALARY OR DISMISSAL."

Lack of Help Defense: It is the supervisor's duty to give the floundering employee direction and assistance. Remember, discipline must be corrective as well as punitive. Where the personnel file fails to reflect any effort on the supervisor's part to offer help; the disciplinary action is vulnerable to assertions that the employee could have done the job with proper guidance. The employee representative will attempt to shift fault from the employee to the supervisor in such a case.

WHAT TO DO...THE EFFECTIVENESS OF THIS DEFENSE VARIES DEPENDING UPON THE NATURE OF THE EMPLOYEE'S MISCONDUCT. SOME PROBLEMS ARE MORE CORRECTABLE THAN OTHERS. IF THE FLAW IN WORK WAS CORRECTABLE, HOWEVER, EVIDENCE OF MANAGEMENT'S TRYING TO HELP THE EMPLOYEE MUST BE PRESENT IN ORDER TO PREVAIL (SEE SM 1.9 IMPROVEMENT PLAN AND SM 1.10 DOCUMENTATION).

Personality Conflict Defense: The employee representative will pay special attention to prior evaluations. Experience has taught him/her that the evaluative documents are often contradictory. While records relating to recent performance are usually negative (if not, you will definitely lose) often previous evaluations will range somewhere between satisfactory and outstanding. This inconsistency is usually due to poor documentation and "less than honest" evaluations. In such a case the employee representative will be able to raise the "personality conflict" defense – successfully in most cases.

THE DEFENSE, SIMPLY PUT, IS AN ATTEMPT TO DISCREDIT THE DISCIPLINARY CHARGES AS NOTHING MORE THAN THE ON-GOING PERSONAL ATTACK OF A SUPERVISOR WHO DISLIKES THE EMPLOYEE. THE SUPERVISOR'S BIAS, THE EMPLOYEE REPRESENTATIVE WILL ARGUE, IS "ESTABLISHED" BY THE FACT THAT ALL PREVIOUS EVALUATIONS HAVE BEEN GOOD.

"Nit Pick" Defense: A lack of care in recording dates, times and other simple details can come back to haunt the documenting supervisor. During cross-examination the errors will be brought to the attention of the embarrassed supervisor. After you admit the mistake, the employee representative will ask the devastating question, "*are you always that careless in performing your supervisory duties?*" The employee representative realizes that typographical errors and other "nitpick" mistakes are of little significance in themselves. However, such errors do tend to discredit the reliability of management's paperwork.

EVEN MORE IMPORTANT IS THE IMPACT UPON THE EMPLOYER'S WITNESSES. SURPRISED AND STARTLED, EMBARRASSED, RATTLED AND CONFUSED THE WITNESS GENERALLY LOSES HIS SELF-CONFIDENCE AND BECOMES DISTRACTED WITH THE MINOR ERRORS. HE/SHE BEGINS TO LOSE SIGHT OF THE REAL THRUST OF THE EMPLOYER'S CASE. AS A RESULT, THE OVERALL VALUE OF HIS/HER TESTIMONY IS REDUCED (SEE SM 1.6 INFORMAL DISCIPLINE AND SM 1.10 DOCUMENTATION FOR HELP IN PROPERLY PREPARING DOCUMENTS).

Supervisor Error: The standard employee defenses are characterized by one common theme. They all depend upon supervisor errors. None of these defenses are an affirmative effort to show that the employee has done a good job or that the disciplinary charges are actually untrue. Rather than build up the employee, the central theme is to tear management down. The objective, then, is to transfer attention from the employee's faults to the employer's mistakes. Because the employee's case relies so heavily on management blunders, the manager or supervisor is in an excellent position to minimize the effectiveness of the employee's case. This can be done by carefully avoiding mistakes in the first place. Adhering to the advice contained in this and other supervisory manuals - and utilizing the expertise of the Human Resources Office can best do this.

Eight-Step Performance Management Flowchart

1. Does the employee have a performance problem, has he/she violated a department, college or district rule/policy, or is the employee displaying an unacceptable work behavior?

Yes: continue
No: there is no need for action.
2. Have you, as the supervisor, clearly communicated to the employee the standard or work rule he/she is violating; should he/she now be reasonably aware he/she is violating the standard or rule?

Yes: continue
No: take the time to clearly inform all staff of the standard or work rule. Hold an informal coaching session with the employee, explaining the importance of the standard or rule and your observation that he/she is failing to meet the standard. Note the session onto a Critical Incident Report Form (CIRF).
3. Does the performance problem or work behavior fit within one or more of the generally accepted causes of discipline?

Yes: continue
No: consider adding a department rule that will eliminate future occurrences of this performance problem or work rule.
4. Have you determined the appropriate disciplinary action given the severity of the problem/behavior, the number of previous warnings/incidents and considering all possible mitigating circumstances?

Yes: continue
No: review your notes, past CIRF entries, documentation, and the employee's personnel file. Determine the following:
 - how many times has this problem occurred in the past,
 - how many times did you bring it to the employee's attention,
 - how often was the problem documented.
 - continue.
5. Is the appropriate action informal (i.e. coaching, oral or written reprimand)?

Yes: Document appropriately.
No: continue

6. Is the appropriate action formal (either a suspension, demotion, reduction in salary, or termination)?

Yes: begin an investigation into the problem or behavior to verify its occurrence and determine cause. Continue.
No: stop, there is apparently no appropriate action for the problem/behavior. Contact the HR Office for help.

7. Does your investigation verify the problem, behavior, or incident of misconduct?

Yes: prepare a draft Notice of Proposed Disciplinary Action and bring it along with the investigative documents and notes to the HR Office for review/consultation. Continue.
No: end your investigation; the problem, behavior, or misconduct cannot be proven and/or supported. Continue to monitor the situation. Document.

8. Have you received approval from the HR Office to continue?

Yes: arrange a disciplinary meeting with the employee to provide opportunity to tell you why proposed action is not appropriate. Notify employee of right to representation. Perform any follow-up investigation necessitated by what you hear. Amend your proposal accordingly. Present it to HR Office for final review. Serve the approved notice to the employee. Continue.
No: amend proposal or proceed as directed. Back to #7.



**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

Subject: Legal Precedents

MODULE 2: DISCIPLINARY PROCEDURES

Number: SM1.16

Revision Date: 1/06

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PURPOSE: The following section provides information on three legal cases that will affect the supervisor in the performance of his/her duties. The supervisor should be aware of these legal cases, in order to avoid potential problems when dealing with employees. The cases listed below are not inclusive but more representative of the complexity of personnel law. They speak to, not assuming but to asking for clarification from the Human Resources Offices prior to taking action. The rule of thumb is **"if in doubt – consult with HRO."**

LEGAL PRECEDENTS – AT A GLANCE:

Weingarten Rights - The court ruled that an employee is entitled to have representation present when they are about to attend a meeting, which they reasonably believe may result in disciplinary action against them.



If during a disciplinary action, a supervisor refuses to honor the employees request for representation and insists on a meeting, he or she commits an unfair labor practice and the results of the meeting may be set aside. Don't make the same mistake that Weingarten did, over twenty-five years ago- honor these's request.

Loudermill Requirements -The court held that an employee is entitled to a predisciplinary hearing prior to termination. The hearing does not necessarily have to be formal or elaborate; the hearing does need to provide the employee with: (1) proper notice of the charges; and (2) an opportunity to respond. The predisciplinary hearing is designed as an initial check against mistaken decisions and a method to determine whether there are reasonable grounds to support the employer's action.

Department of Personnel rules require that prior to any formal disciplinary action, a predisciplinary meeting.

Liberty Interest- All individuals possess a right to their good name - or, constitutionally speaking, a "liberty interest." In employment that "good name" can be tarnished by accusations of gross misconduct - such as theft or deception. When an employer seeks to terminate the employment of an individual on such grounds it first must afford the employee an opportunity to "clear his/her good name," otherwise known as a "liberty interest" hearing. This hearing is simply an opportunity for the employee to provide his/her side of the story prior to having action taken.

For full-time staff, this right is afforded during the "Loudermill" hearing. **Be aware**; however, that other employees such as **hourly staff or student workers**, who otherwise do not have a right to a Loudermill hearing, are also entitled to a liberty interest hearing in cases of alleged misconduct.

Cross Reference Information:

WAC 357-40, SM 1.12 Formal Disciplinary Action

DETAILED INFORMATION

N.L.R.B v. Weingarten 420 U.S. 251, 95 S.Ct.959, 43 L.Ed.2d 171 (1975), established the right of representation during investigatory interviews. An investigatory interview has been defined as an interview the employee could reasonably believe may lead to disciplinary action. The employee may request representation.

In 1972 a counter clerk working at a store in Houston, Texas, was called into her manager's office and questioned about allegations that she had been stealing money from the cash register. The clerk repeatedly requested to have a union representative called into the meeting, but management refused her requests. Her union, the Retail Clerks, filed an Unfair Labor Practice (ULP) charge against the employer, J. Weingarten, Inc. The case was heard by the National Labor Relations Board and then made its way through the Federal courts. Finally, in February of 1975, the U.S. Supreme Court issued a decision upholding the ULP, and establishing in law what is now known as the "Weingarten Rights."

An employee **has** *Weingarten Rights* whenever a meeting is conducted for any of the following purposes:

- To investigate facts that may lead to formal discipline of that employee;
- Review performance evaluations prepared during the time period in which a disciplinary action is under appeal;
- To adjust any employee complaint or grievance;
- Any disciplinary meeting that goes beyond merely informing the employee of the discipline to be imposed;
- Investigation of an employee's union related activities.

An employee **does not** have *Weingarten Rights* in the following situations:

- Being given work instructions;
- Training;
- A supervisor correcting work practices or techniques;
- Evaluation meetings or discussions except as outlined above;
- The purpose of a meeting is simply to inform an employee of the discipline to be imposed.

When the employee requests union representation, the supervisor must: 1) Either grant the request and delay questioning until a union representative arrives; or 2) Deny the request and end the interview immediately; or 3) Give the employee a choice of having the interview without union representation or end the interview.

Cleveland Board of Education v Loudermill, 470 U.S. 532, 85 L. Ed. 2d 494, 105 S. Ct. 2487 (1985) the United States Supreme Court held that, prior to dismissing an employee with permanent status who can be dismissed only "for cause", employers must advise the employee that dismissal is being contemplated and give the employee an opportunity to review the charges, examine the employer's evidence, and indicate why the employee believes a dismissal is inappropriate. This right is based upon the court's opinion that the constitution's bill of rights precludes the government from taking "property" without due process. By extension, the court reasoned, a governmental employer cannot take an employee's "property" - in this case, the pay and benefits that he enjoys from working in a position he reasonably believes can only be taken from him through due process. The reason for such a due process procedure, then, is to provide both an initial check against erroneous decisions and to protect the employee's constitutionally provided "property interest" in his job.

The Cleveland Board of Education hired respondent Loudermill as a security guard. On his job application Loudermill stated that he had never been convicted of a felony. Subsequently, upon discovering that he had in fact been convicted of grand larceny, the Board dismissed him for dishonesty in filling out the job application. He was not afforded an opportunity to respond to the dishonesty charge or to challenge the dismissal. The U.S. Supreme Court over-ruled the firing consequently the Loudermill Requirement was established.

UNIVERSITY OF CALIFORNIA BOARD OF REGENTS V. ROTH (1972) SUPREME COURT RECOGNIZED THAT A LIBERTY TO PURSUE THE "COMMON OCCUPATIONS OF LIFE" MAY BE IMPLICATED WHERE A GOVERNMENT TERMINATES AN EMPLOYEE IN SUCH A WAY THAT IT IMPOSES A STIGMA OR OTHER DISABILITY ON THE EMPLOYEE WHICH EFFECTIVELY FORECLOSES THE OPPORTUNITY TO SEEK OTHER EMPLOYMENT. A PUBLIC SECTOR EMPLOYER, THEN, CANNOT DEPRIVE AN EMPLOYEE'S "LIBERTY INTEREST" WITH DUE PROCESS AS PROTECTED BY THE 14TH AMENDMENT, WHICH ALLOWS EVERY CITIZEN THE RIGHT TO FOLLOW A CHOSEN PROFESSION OR TO ENGAGE IN THE "COMMON OCCUPATIONS OF LIFE." SPECIFICALLY, "LIBERTY" ENTAILS THE RIGHT OF ALL INDIVIDUAL'S TO THEIR GOOD NAME. WHERE AN EMPLOYER ACCUSES AN EMPLOYEE OF CONDUCT THAT WOULD TARNISH HIS GOOD NAME, THAT EMPLOYEE HAS A RIGHT TO DEFEND HIMSELF AGAINST THOSE CHARGES. THIS HAS CREATED THE NEED TO PROVIDE A "LIBERTY INTEREST" HEARING TO ANY EMPLOYEE CHARGED WITH GROSS MISCONDUCT OR ILLEGAL CONDUCT.

Fortunately, the "liberty interest" hearing can be accomplished at the same time as the Loudermill hearing. All that is required is that the employee be granted the opportunity to defend his good name. If the employee does not take that opportunity, there is no violation of the right.

Where this right has implications for a supervisor is in dealing with "at will" employees - or those employees who do not have a "property interest" in their jobs (**part-time or student, for example**). Where an allegation of misconduct is made against these employees, they would not have a right to a Loudermill Hearing (they do not have an expectation that their employment can only be taken from them for due cause) but would have a right to a **liberty interest hearing**.

Practical Tips: Given the complexity of these rights and issues it is always a good idea to consult with the Human Resources Office, early and often. The Human Resource Office will guide you through this process and increase the likelihood that you will successfully implement corrective actions.



**SUPERVISOR'S GUIDELINE
PERFORMANCE MANAGEMENT**

Subject: WAC

MODULE 2: DISCIPLINARY PROCEDURES

Number: SM1.17

Revision Date: 1/06

Page 1 of 2

PURPOSE: The Washington Administrative Code (WAC) is the backbone by which all personnel procedure is directed from in the performance of a supervisor's duty. Being aware, understanding and following these codes will help keep the supervisor and the institution out of harm way.

WASHINGTON ADMINISTRATIVE CODE:

(a) 357-40-010

CAN AN APPOINTING AUTHORITY TAKE DISCIPLINARY ACTION?

An appointing authority may dismiss, suspend without pay, demote, or reduce the base salary of a permanent employee under his/her jurisdiction for just cause.

[Statutory Authority: Chapter 41.06 RCW. 04-18-113, § 357-40-010, filed 9/1/04, effective 7/1/05.]

(b) 357-40-015

**CAN AN APPOINTING AUTHORITY TAKE ACTION OTHER THAN DISMISSAL, SUSPENSION,
DEMOTION OR REDUCTION IN BASE SALARY TO ADDRESS UNSATISFACTORY PERFORMANCE?**

Employers may develop a corrective discipline policy that identifies actions that an appointing authority may take other than dismissal, suspension, demotion, or reduction in base salary, that represent alternative formal measures that do not deprive an employee of pay, yet still help an employee address unsatisfactory performance. Actions taken by an appointing authority in accordance with the employer's corrective discipline policy carry the same weight as disciplinary actions which impact pay.

[Statutory Authority: Chapter 41.06 RCW. 04-18-113, § 357-40-015, filed 9/1/04, effective 7/1/05.]

(c) 357-40-020

WHEN MUST AN EMPLOYEE BE NOTIFIED OF A DEMOTION OR REDUCTION IN BASE SALARY?

The appointing authority must notify an employee in writing at least fifteen (15) calendar days before the effective date of the demotion or reduction in base salary.

[Statutory Authority: Chapter 41.06 RCW. 04-18-113, § 357-40-020, filed 9/1/04, effective 7/1/05.]

(d) 357-40-025

**WHAT MUST BE IN THE WRITTEN NOTICE OF DISMISSAL, DEMOTION, OR REDUCTION IN BASE
SALARY?**

The notice must include the specific charge(s) and the employee's right to appeal to the board as provided in chapter 357-52 WAC.

[Statutory Authority: Chapter 41.06 RCW. 04-18-113, § 357-40-025, filed 9/1/04, effective 7/1/05.]

(e) 357-40-030

WHAT NOTICE IS REQUIRED TO DISMISS AN EMPLOYEE?

An appointing authority may dismiss an employee with fifteen (15) calendar days' written notice or without fifteen (15) calendar days' notice as follows:

(1) An appointing authority may dismiss an employee effective immediately with pay in lieu of the fifteen (15) calendar days' notice period. As required by WAC [357-40-025](#) the appointing authority must still provide written notice of the specific charge(s) and the employee's rights to appeal to the board as provided in chapter 357-52 WAC.

(2) An appointing authority may dismiss an employee effective immediately without pay in lieu of the fifteen (15) calendar days' notice period if the appointing authority determines that continued employment of the employee jeopardizes the good of the service. The appointing authority must provide written notice of the immediate dismissal stating the reason(s) for dismissal, the reasons immediate action is necessary, and the employee's right to appeal to the board as provided in chapter 357-52 WAC.

[Statutory Authority: Chapter 41.06 RCW. 04-18-113, § 357-40-030, filed 9/1/04, effective 7/1/05.]

(f) 357-40-035

WHEN MUST AN EMPLOYEE BE NOTIFIED OF A SUSPENSION?

An employee being suspended must be notified in writing no later than one day after the suspension takes effect.

[Statutory Authority: Chapter 41.06 RCW. 04-18-113, § 357-40-035, filed 9/1/04, effective 7/1/05.]

(g) 357-40-040

WHAT MUST BE IN THE WRITTEN NOTICE OF SUSPENSION?

The suspension notice must include the specific charge(s) and the duration of the suspension. It must also include the employee's right to appeal to the board as provided in chapter 357-52 WAC.

[Statutory Authority: Chapter 41.06 RCW. 04-18-113, § 357-40-040, filed 9/1/04, effective 7/1/05.]

(h) 357-40-045

IS THERE A LIMITATION TO HOW LONG AN EMPLOYEE CAN BE SUSPENDED?

An appointing authority may not suspend without pay a permanent employee for more than fifteen calendar days as a single penalty or more than thirty calendar days in any one calendar year as an accumulation of several penalties.

[Statutory Authority: Chapter 41.06 RCW. 04-18-113, § 357-40-045, filed 9/1/04, effective 7/1/05.]

(i) 357-40-050

HOW MUST NOTICE OF DISCIPLINARY ACTION BE PROVIDED TO AN EMPLOYEE?

Notice of dismissal, suspension, demotion, or reduction in base salary must be provided by personal service or certified letter through the United States mail. Service of notice will be regarded as completed when personal delivery has been accomplished; or upon deposit of a certified letter in the United States mail properly stamped and addressed to the employee's last known home address.

[Statutory Authority: Chapter 41.06 RCW. 05-12-079, § 357-40-050, filed 5/27/05, effective 7/1/05.]