

NORTH CAROLINA DEPARTMENT OF COMMERCE		POLICY # HR 16
Title: Disciplinary and Dismissal Policy		
Effective Date: May, 1996 Revisions: 6/07	Administering Authority: Human Resources Dir.	
Statutory Authority (if applicable): G.S. 126		

Purpose: To provide guidelines for supervisors and employees on the Disciplinary Policy

Policy:

NOTE: Managers and supervisors should contact the Human Resources Office prior to initiating any formal disciplinary action. This includes written warnings, suspensions without pay, demotions, and/or dismissals.

The Department of Commerce provides that any employee, regardless of occupation, position, or profession, may be warned, demoted, suspended, or dismissed by the appointing authority. The degree and type of action taken shall be based upon the sound and considered judgment of the appointing authority and in accordance with the guidelines included in this policy.

The provisions of this policy apply to career employees as defined by the State Personnel Act and to permanent employees who have completed their probationary period and have become permanent employees of the department. However, the appeal rights for disciplinary actions for career employees and permanent employees are different and are specifically set out in the Departmental Grievance Policy and Procedures. Career employees enjoy appeal rights both through the internal grievance process and to the State Personnel Commission. Permanent employees, who have not attained career status according to the requirements set out in the State Personnel Act, have appeal rights through the departmental grievance process, but not outside the agency unless they believe that disciplinary action is being imposed on the basis of illegal discrimination.

The policy does not apply to probationary employees who are in their first nine months of employment. However, the supervisor is responsible for working with the employee in coaching and assisting him/her to achieve a satisfactory performance level. Progress should be reviewed periodically. If it is determined that the probationary employee is not suited for the job and cannot be expected to meet acceptable standards, the employee should be separated before the end of the probationary period. A probationary employee may be dismissed without prior discipline for either job performance or conduct reasons. That employee shall receive a written letter of separation. An employee with a probationary appointment has no grievance or appeal rights under the Departmental or State Personnel Policy for disciplinary actions taken against them, except for appeals on the basis of illegal discrimination.

This policy does not apply to employees who are exempt from the State Personnel Act (G.S. 126). Employees will be informed in writing of any applicable appeal rights they might have for any disciplinary action taken against them.

It is the policy of the department that the disciplinary process be administered fairly and consistently and provide for similar treatment of persons in similar situations. Inconsistent use of discipline in similar situations may cause poor morale, grievances, or lawsuits. Records of all disciplinary actions taken within the department will be maintained in the personnel office and reviewed to insure that the disciplinary process is being administered fairly and is free of unlawful discrimination. Records and reports regarding disciplinary actions and the disciplinary process will be submitted by the Personnel Office to the Office of State Personnel and other appropriate authorities as requested.

Basis for Disciplinary Action

Disciplinary action must be taken on the basis of just cause. Just cause can fall into one of three categories:

- 1) unsatisfactory job performance
- 2) grossly inefficient job performance
- 3) unacceptable personal conduct

Unsatisfactory Job Performance

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

The determination of unsatisfactory performance is generally made by the supervisor. The supervisor's determination should be reasonable, proper, and factually supported. In determining whether an employee's performance is unsatisfactory job performance, a manager should consider any one or a combination of the factors set forth below:

- the quality of work
- the quantity of work
- work habits
- promptness
- the timely performance of work
- related analysis, decisions, or judgment
- the accuracy of work
- the performance or work plan appraisal
- absenteeism
- ability to follow instructions, directions, or procedures
- the appropriateness of work performed

Any other factors that, in the opinion of the supervisor, is appropriate in determining whether an employee's performance constitutes unsatisfactory job performance.

Grossly Inefficient Job Performance

Grossly inefficient job performance is created when unsatisfactory job performance causes death or serious injury, or when unsatisfactory job performance causes a serious loss or damage to state property or funds.

When an employee fails to obtain or maintain legally required certificates, licenses, bonds, or other

credentials this is treated as grossly inefficient job performance.

Unacceptable Personal Conduct

Unacceptable personal conduct is defined as:

- conduct in which a reasonable person should expect to receive a warning; or
- job related conduct which constitutes a violation of state or federal law; or
- an act that is a conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the state; or
- an act that is a willful violation of known or written work rules; or
- an act that is conduct unbecoming a state employee and is detrimental to state service; or
- the abuse of client(s), patient(s), student(s), or person(s) over whom the employee has charge or to whom the employee has a responsibility or of an animal owned by the state; or
- absence from work after all authorized leave credits and benefits have been exhausted; or
- falsification of a state application or other employment documentation.

Insubordination is also considered to be unacceptable personal conduct. Insubordination is defined as the willful failure or refusal to carry out a reasonable order from an authorized supervisor.

NOTE: There are some actions or behaviors which fall into a "gray area" between job performance, personal conduct, and grossly inefficient job performance and could easily be considered in either category. The Personnel Office can assist in determining the appropriate category for the disciplinary action. This is essential because the application of appropriate disciplinary action is often dependent upon a correct determination of the appropriate basis for discipline.

Types of Disciplinary Action

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

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

All disciplinary actions must be submitted in writing to the employee. A copy of the Department's Grievance Policy must be attached to the disciplinary action. All disciplinary actions must have prior approval by the Human Resources Office before being submitted to the employee.

Written Warning

All written warnings must specifically state that the document is a "written warning" so as to distinguish the document from other types of non-disciplinary action, such as counseling, guidance, or directions.

A written warning must tell the specific performance or conduct improvements that must be made.

A written warning should normally tell the time frame within which the employee must show

improved performance or conduct. (NOTE: In matters that are issues of unacceptable personal conduct, the supervisor may require that the conduct not be repeated again.)

A written warning should tell the consequences of failing to make the required improvements or corrections (i.e., further disciplinary action, dismissal, etc.)

A copy of the written warning should be given to the employee, a copy sent to the personnel office, and a copy maintained in the supervisor's files.

Written warnings are considered inactive in the following cases:

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

When a written warning becomes inactive, the warning no longer has legal significance and can no longer be counted toward the total number of prior disciplinary warnings. While some written warnings issued for unsatisfactory job performance are considered to be resolved when the underlying performance problem is addressed, written warnings issued for unacceptable personal conduct are often considered to be "permanent" in nature. A written warning for unacceptable conduct, that is considered to be permanent in nature, should indicate this in the body of the written warning.

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

* Written warnings are not grievable under the departmental grievance policy and cannot be appealed to the State Personnel Commission.

Disciplinary Suspension Without Pay

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

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

The length of the disciplinary action must be at least one work week, but no more than two work weeks. Prior to a disciplinary suspension without pay, a pre-disciplinary conference must be held between the employee and the supervisor and/or other authorized management representative. (see section below on pre-disciplinary conferences)

Demotion

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

Normally, demotion involves lowering the employee's salary while the employee retains the same salary grade. In certain instances an employee's salary grade can be lowered, with or without lowering the salary.

Prior to a demotion, the employee and the supervisor and/or other authorized management representative must have a pre-disciplinary conference. (see section below on pre-disciplinary conferences)

Dismissal

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

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

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

Prior to a dismissal, the employee and supervisor and/or other authorized management representative must have a pre-disciplinary conference. (see section below on pre-disciplinary conferences)

Pre-Disciplinary Conferences

Prior to dismissing, demoting, or suspending an employee without pay for disciplinary reasons, a supervisor and/or other authorized management representative must hold a pre-disciplinary conference with the employee. The employee must be given written notice of the pre-disciplinary conference which should include time, location, the type of disciplinary action being considered, and a brief statement of the acts or failures that led to the conference. Only the supervisor, other management representative (if needed), and the employee would normally attend the conference, although at the option of management, security personnel may attend. The employee should receive as much advance notice of the conference as is practical under the circumstances.

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

Disciplinary Actions taken after Pre-Disciplinary Conferences

After the pre-disciplinary conference is held, management shall review and consider the response of the employee and make a decision on the type of discipline, if any, that will be imposed.

If a decision is made to follow through with the discipline (dismissal, disciplinary suspension without pay, or demotion), this decision shall be communicated to the employee in writing no earlier than the start of the next business day.

If the decision is made to dismiss an employee, the employee should be given in person or may be communicated by certified mail and must include:

- the reason for the dismissal;
- the effective date of the dismissal; and
- any applicable appeal rights the employee may have.

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

Investigatory Placement

An employee may be placed in investigatory status for the following reasons:

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

An investigatory placement may last no longer than 30 calendar days without the written approval of the extension by the Commission Head or the Secretary of the Department of Commerce.