

# DISCIPLINARY ACTION AND GRIEVANCES

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## DISCIPLINARY ACTION AND GRIEVANCES

### LOCATION

[https://www.ncdps.gov/emp/HR/AdministrativeMemos/DPS\\_Disciplinary\\_Policy\\_010115.pdf](https://www.ncdps.gov/emp/HR/AdministrativeMemos/DPS_Disciplinary_Policy_010115.pdf)

### POLICY

Any employee, regardless of occupation, position, or profession may be disciplined in accordance with this policy by the Commissioner or designee. The Department of Public Safety (DPS) Disciplinary Process ensures all employees receive fair and consistent treatment relative to addressing job performance and personal conduct issues in the workplace. Adherence to this policy and the procedures will assure compliance with current State Human Resources Commission (SHRC) rules, Office of State Human Resource (OSHR) policies and further ensure that disciplinary actions are administered in a fair and equitable manner.

### COVERED EMPLOYEES

This policy applies to State employees who have career status as defined by N.C.G.S. § 126-1.1.

- Is employed in a permanent position; and
- Has been continuously employed by the State of North Carolina or a local entity as provided in N.C.G.S. §126-5(a)(2) in a position subject to the State Human Resources Act for the immediate 12 preceding months.

This policy does not apply to the following employees:

- Non-career state employees.
- Employees occupying positions that have been designated as exempt policymaking, exempt managerial, confidential assistant/secretary or as a chief deputy.
- Employees who are subject to N.C. General Statute 115C-325, System of employment for public school teachers.

### Reasons for Discipline

Just cause for disciplinary action falls into two categories:

- Discipline issued based on unsatisfactory or grossly inefficient job performance, and
- Discipline issued based on unacceptable personal conduct.

### Unsatisfactory Job Performance

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 DPS.

### Grossly Inefficient Job Performance

Failure to satisfactorily perform job requirements as defined in the job description, work plan, or as directed by the management of the work unit or DPS; and, the act or failure to act causes or results in:

- Death or serious bodily injury or creates conditions that increase the chance for death or serious bodily injury to an employee(s) or to members of the public or to a person(s) for whom the employee has responsibility; or,
- The loss of or damage to State property or funds that results in a serious adverse impact on the State and/or work unit.

**Unacceptable Personal Conduct**

All employees of the DPS shall maintain personal conduct of an acceptable standard as an employee and member of the community. Unacceptable personal conduct includes, but is not limited to:

- Conduct for which no reasonable person should expect to receive prior warning; or
- Job-related conduct which constitutes a violation of State or federal law; or
- Conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee’s service to the State; or
- The willful violation of known or written work rules; or
- Conduct unbecoming a State employee that 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 in other employment documentation.

The categories are not mutually exclusive. Some actions by employees may fall into both categories depending upon the facts of each case. No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.

**TYPES OF DISCIPLINARY ACTION**

When just cause exists, the disciplinary actions that can be issued are:

- Written Warning
- Disciplinary Suspension without Pay
- Demotion or
- Dismissal

**REQUIREMENTS FOR DISCIPLINARY ACTION FOR UNSATISFACTORY JOB PERFORMANCE**

Before disciplinary action for unsatisfactory job performance may be issued, the following must occur for each respective type of disciplinary action. The employee must have:

**Written Warning:**

- a current unresolved incident of unsatisfactory job performance.

**Disciplinary Suspension without Pay:**

- a current unresolved incident of unsatisfactory job performance, and
- at least one (1) active disciplinary action, and
- a Pre-Disciplinary Conference.

**Demotion:**

- a current unresolved incident of unsatisfactory job performance, and
- at least one (1) active disciplinary action, and
- a Pre-Disciplinary Conference.

**Dismissal:**

- a current unresolved incident of unsatisfactory job performance and
- at least two (2) active disciplinary actions, and
- a Pre-Disciplinary Conference.

**REQUIREMENTS FOR DISCIPLINARY ACTION FOR GROSSLY INEFFICIENT JOB PERFORMANCE**

No prior discipline is required to suspend, demote or dismiss an employee for grossly inefficient job performance. Before an employee may be suspended, demoted or dismissed for grossly inefficient job performance, the following must occur:

- a current unresolved incident of grossly inefficient job performance and
- a Pre-Disciplinary Conference.

**REQUIREMENTS FOR DISCIPLINARY ACTION FOR UNACCEPTABLE PERSONAL CONDUCT**

Before disciplinary action for unacceptable personal conduct may be issued, the following must occur for each respective type of disciplinary action:

**Written Warning:**

- Current unresolved incident of unacceptable personal conduct.

**Disciplinary Suspension without Pay:**

- Current unresolved incident of unacceptable personal conduct, and
- Pre-Disciplinary Conference.

**Demotion:**

- Current unresolved incident of unacceptable personal conduct and
- Pre-Disciplinary Conference.

**Dismissal:**

- Current unresolved incident of unacceptable personal conduct, and
- Pre-Disciplinary Conference.

**INVESTIGATORY LEAVE WITH PAY**

An employee may be placed on Investigatory Leave with Pay (ILWP) per approval from the Human Resources Director or designee(s), or in appropriate circumstances, without prior approval, but with notification to the OSHR Director or designee the following business day. Investigatory leave shall be with pay (i.e. no charge to the employee's accrued leave) and may be used to temporarily remove an employee from work status. Investigatory leave does not constitute a disciplinary action, and therefore, may not be appealed.

An employee may be placed on ILWP only:

- To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
- 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.

**TEMPORARY PLACEMENT**

In lieu of ILWP, a manager may consider temporarily placing an employee within the work unit or to another work unit if applicable and based on business need. Employees temporarily placed shall be given written notification of the temporary placement when the placement results in a change of

work locations or if there are any specific instructions. Such actions are for the benefit of the employee(s) and DPS to ensure a fair and objective investigation. For that reason, temporary placements are not grievable and do not carry appeal rights.

### **INACTIVE DISCIPLINARY ACTION**

A disciplinary action becomes inactive, i.e., cannot be counted towards the number of prior disciplinary actions that must be issued before further disciplinary action can be issued for unsatisfactory job performance when:

- The manager or supervisor notes in the employee's personnel file that the reason(s) for the disciplinary action has/have been resolved or corrected; or
- For performance-related disciplinary actions, the performance evaluation process documents a summary rating that reflects an acceptable level of performance overall and satisfactory performance in the area cited in the warning or other disciplinary action, or
- Eighteen (18) months have passed since issuance of the warning or disciplinary action and the employee does not have another active warning or disciplinary action occurring within the last eighteen (18) months. If a warning, demotion or disciplinary suspension occurs within the eighteen (18) months of prior disciplinary warnings, demotions or suspensions, the disciplinary action will remain active until the end date of the most recent disciplinary action

### **RIGHT TO APPEAL**

All employees who have attained career status as that term is defined in law may have appeal rights as allowed by the State of North Carolina Employee Grievance Policy. An employee as identified above may appeal the following disciplinary actions:

- Demotion;
- Disciplinary Suspension without Pay;
- Dismissal.

The time for filing an appeal does not start until the employee receives a written notice of any applicable appeal rights. If the employee fails to timely appeal the disciplinary action, the employee is deemed to have waived the right to appeal the disciplinary action.

Refer to the State of North Carolina Employee Grievance Policy for further information.

[http://www.oshr.nc.gov/Guide/Policies/7\\_Discipline,%20Appeals%20and%20Grievances/Employee%20Grievance%20Policy.pdf](http://www.oshr.nc.gov/Guide/Policies/7_Discipline,%20Appeals%20and%20Grievances/Employee%20Grievance%20Policy.pdf)

### **TRANSFER OF DISCIPLINARY ACTION**

When an employee transfers to or from another department or unit, any active disciplinary actions will transfer with the personnel file of the employee and will remain in full force at the new work unit until removed by the new employer or made inactive by operation of this policy.

## GRIEVANCES

### Locations:

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

### Forms:

[https://www.ncdps.gov/emp/Forms/HR555Step120140123LC\(2\)Rights.pdf](https://www.ncdps.gov/emp/Forms/HR555Step120140123LC(2)Rights.pdf)

[https://www.ncdps.gov/emp/Forms/HR556Step220140123LC\(2\)Rights.pdf](https://www.ncdps.gov/emp/Forms/HR556Step220140123LC(2)Rights.pdf)

<https://www.ncdps.gov/emp/Forms/HR556aWitness20140117LCRights.pdf>

### Purpose

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

### Grievable Issues

Examples of issues that may be grieved are listed below:

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

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

### Grievance Process for all Grievable Issues

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

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

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

### Informal Discussion with Supervisor

This informal process must be completed within the 15 calendar day timeframe, unless the employee and the agency mutually agree in writing to extend the time due to occurrences that are unavoidable or beyond the control of either party. The employee must clearly declare to the

supervisor or other appropriate personnel that the Informal Discussion request is regarding an alleged event or action that is the basis of a potential grievance. The supervisor or other appropriate personnel shall confirm the intention of the requested Informal Discussion with the employee before beginning discussions. The outcome of the informal discussion must be communicated to the employee and Human Resources by the supervisor in writing. If the informal discussion is unsuccessful in resolving the grievable issue, the employee may choose to file a formal grievance. If no written response is provided by the supervisor within the 15 calendar day timeframe, the employee may proceed by filing a formal grievance. Time spent in the Informal Discussion with Supervisor is not a part of the formal internal grievance process.

### **Formal Grievance Process**

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

#### **Step 1: Mediation**

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

#### **Step 2: Employee Advisory Committee**

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

#### **Appeal to Office of Administrative Hearings**

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

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

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