

Standards of Conduct

Policy:

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Policy: 1.60

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Effective Date: April 16, 2008

Revised: 6/1/11

- Comply with the letter and spirit of all state and agency policies and procedures, the Conflict of Interest Act, and Commonwealth laws and regulations.
- Report circumstances or concerns that may affect satisfactory work performance to management, including any inappropriate (fraudulent, illegal, unethical) activities of other employees.
- Obtain approval from supervisor prior to accepting outside employment.
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Supplemental policies must be consistent with the provisions of DHRM policy and must be communicated to all agency employees.

RELATED POLICIES

1.05 Alcohol and Other Drugs

1.25

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ADMINISTRATIVE PROCEDURES

STANDARDS OF CONDUCT

Purpose

These procedures accompany the Standards of Conduct Policy 1.60 and are designed to assist agencies

A. General Principles

Corrective actions, whether informal or formal, must depend upon the nature, consequence(s), or potential consequence(s) of the offense and the surrounding circumstances and mitigating factors, if any. Management should apply corrective actions consistently, while taking into consideration the specific circumstances of each individual case. Prior to taking any corrective action it is suggested that management consider the following:

- Whether the corrective action is consistent with state and agency standards of conduct.
- The nature, severity, and consequences of the offense.
- Whether the offense constitutes a violation of a policy, procedure, rule, or law.
- Previous counseling, whether informal or formal that addresses the same or similar misconduct or performance.

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employees to the *Employee Assistance Program (EAP)* or other professional assistance

Referral to the EAP or comparable program shall not be considered a substitute for any disciplinary action imposed for the commission of an offense.

Note: Referral to the EAP or comparable program *may be required* depending upon the nature of the behavior or misconduct. Agencies are advised to consult with their Assistant Attorney General prior to mandating participation.

B. Corrective and Disciplinary Actions

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b. **Formal (Written) Counseling**

A written memorandum should be issued to emphasize the significance of relatively minor acts of misconduct or unacceptable performance when facts and discussions with the employee demonstrate that verbal counseling has not corrected the problem. It may also be issued as the initial means to address first instances of misconduct or unsatisfactory performance.

Formal counseling must be documented by a letter or memorandum, but not on the Written Notice form. A copy of the letter or memorandum must be given to the employee. Counseling documentation should be retained in the supervisors' files, not

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3. Mitigating circumstances

- a. Agencies may reduce the level of a corrective action if there are mitigating circumstances, such as conditions that compel a reduction to promote the interests of fairness and objectivity, or based on an employee's otherwise satisfactory work performance.
- b. Mitigating circumstances for a Group III offense may support, as an alternative to termination, an employee's demotion or transfer to a position with reduced responsibilities *and* a disciplinary salary action with a minimum 5% reduction in salary; transfer to an equivalent position in a different work area; and/or suspension of up to 30 workdays.
- c. An employee who is issued a Written Notice that would normally warrant termination but who is not terminated due to mitigating circumstances should be notified that any subsequent Written Notice for any level offense during the active life of the Written Notice may result in termination.

C. Pre-disciplinary Leave with Pay

Pre-disciplinary Leave is *leave with pay* to be used when disciplinary action is being
There
are two categories of Pre-Disciplinary Leave with Pay:

1. Immediate Removal from the Workplace for Disciplinary Reviews or Administrative Investigations

Management may immediately remove an employee from the workplace without providing advance notification when the employee's continued presence:

- may be harmful to the employee, other employees, clients, and/or patients;
 - makes it impossible for the agency to conduct business;
 - misconduct;
 - may hamper an investigation being conducted by law enforcement ; or
 - may constitute negligence in regard to the agency's duties to the public and/or other employees.
- a. An employee should be immediately advised of the reason for his/her removal from the workplace. As soon as possible after an employee's removal from the work area for reasons stated above, management must provide the employee with written notification of the intended corrective action and a summary or description of the evidence of the offense for which

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exceed ninety (90) calendar days. *(Agencies have the option to allow employees to charge accrued annual, overtime, compensatory, or family personal leave to this period of suspension provided that the employee has sufficient leave balances.)*

- c. If, at the

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- b. If an exempt employee is suspended for misconduct the suspension shall be not less than a full workday. Suspensions of more than one workday must be in multiples of full workdays, e.g., a three-day (24 hour) suspension for an employee assigned to 8-hour workdays, or a three-day (30 hour) suspension for an employee assigned to 10-hour workdays. If it becomes necessary to remove an exempt employee from the workplace for a partial workday due

- c. If an exempt employee is suspended for disciplinary reasons related to the unsatisfactory attendance or performance issues (non-conduct related) the suspension shall be not less than a full workweek. Suspensions of more than one workweek will be in multiples of full workweeks, e.g., a three-week (120-hour) suspension. An employee may not be permitted to serve a suspension related to attendance or performance other than in whole workweek segments. Less serious violations in these areas should be addressed by other means of discipline, reserving suspension for the most serious or repeated violations.

- d. If .

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- if a suspension extends into a second pay period, accrual of annual and sick leave shall resume in the second pay period unless the period of suspension exceeds 15 calendar days; and
 - if a suspension extends into a third pay period, accrual of annual and sick leave shall resume in the third pay period unless the period of suspension exceeds 31 calendar days, and so on.
- c. VSDP (Virginia Sickness and Disability Program) benefits
- Employees who are suspended may not access their VSDP benefits during the period of suspension.
 - Employees who are terminated for disciplinary reasons are not eligible to receive VSDP benefits.
- d. Health insurance
- A suspended employee's health insurance coverage continues until the end of the month in which the suspension began, except that there shall be no break in coverage if the employee is reinstated in time to work half of the workdays in the following month.
 - If the length of the period of suspension results in a break in health insurance coverage, the suspended employee must be notified that he/she may retain his or her group insurance coverage for up to 12 months by paying the monthly insurance premiums (both the employee's and state's contribution) in advance and in accordance with state guidelines. This 12 month extension runs concurrently with the 18 months granted under the Extended Coverage provisions of the health benefits plan.
- e. Life insurance
- Life insurance coverage may continue for up to 24 months, with the agency making the full contribution.

3. Pay and Benefits upon Reinstatement

a. Reinstatement from Suspension

- If an agency reinstates a suspended employee with back pay for any period of the suspension, unless directed otherwise in the hearing

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the date of reinstatement. The agency shall make appropriate refund(s) to the employee for the State portion of any health insurance premiums that he or she paid to continue coverage during the suspension.

- If an agency reinstates a suspended employee without back pay, there shall be no reimbursement for any portion of health insurance premiums that he or she paid to continue coverage.

b. Reinstatement from Termination

- If an agency reinstates a terminated employee with back pay, unless otherwise must be made effective retroactive to the date of termination.

Note:

Suspended and terminated employees may have purchased individual health insurance coverage or acquired coverage through a spouse's health benefits plan. Agencies should inquire about such coverage when discussing back pay and benefits with these employees. If the hearing officer does not grant back benefits because the employee was enrolled in other coverage during the period of suspension or termination, the employee must provide proof of the other coverage.

E. Due Process

Prior to the issuance of any Written Notices, demotions, transfers with disciplinary salary actions, suspensions or terminations, Agency Human Resource Directors or their designees should review the documentation for the recommended actions to determine if the action is appropriate for the offense; if a referral to the employee assistance program is advisable; and what the final recommendation for corrective action should be.

1. Advance Notice of Discipline to Employees

Prior to the issuance of Written Notices, disciplinary suspensions, demotions, transfers with disciplinary salary actions, and terminations employees must be given oral or written notification of the offense, an explanation of the agency's evidence in support of the charge, and a reasonable opportunity to respond.

2.

Employees must be given a reasonable opportunity to respond after receiving notification of pre-disciplinary or disciplinary actions. *Normally*, a 24 hour

the quantity of time provided but

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Refer to Policy 1.70, Termination/Separation from State Service for additional information on the disposition of leave and other benefits upon separation from state service.

Glossary

Corrective action

Any intervening informal or formal counseling action taken by management to address employment problems, such as unacceptable performance, behavior, or misconduct.

Counseling

Counseling may be an informal or formal intervention that consists of a discussion between an employee and his or her supervisor regarding problems with the employee's work performance, behavior, and/or conduct. Formal counseling discussions must be documented in a written memorandum. Counseling that is related to work performance may be included in an interim performance evaluation as described in Policy 1.40, Performance Planning and Evaluation.

Criminal Charge

An arrest or indictment by authorities or entities outside of the employer agency against an employee for the commission of a criminal offense.

Criminal Offense

Criminal Offenses include felonies and misdemeanors as defined in the statutes of the United States, the Commonwealth of Virginia, other sovereign states, and other city and county governments. Criminal offenses shall not include traffic or other charges that are specifically differentiated and exempted from statutory criminal offenses; however, DUI or other formal charges which impact an employee's ability to drive a vehicle or could result in incarceration if convicted shall be considered criminal charges.

Interim evaluation: A performance evaluation completed during the performance cycle to
If agencies
desire to use a form for this purpose, they may use the form provided with Policy 1.40,
Performance Planning and Evaluation, or develop their own forms. Interim Performance
confidential file for use in constructing the annual performance evaluation. Counseling,
particularly when related to work performance, may be part of an interim evaluation.

Disciplinary action

A formal action taken in response to unacceptable performance or misconduct. Disciplinary actions include the issuance of Written Notices; suspensions; demotions; transfers; disciplinary salary actions; and terminations.

Disciplinary Demotion

Management initiated assignment of an employee to the same or a different position in the same or lower Pay Band with less job responsibilities that must result in a minimum of a 5% reduction in base salary.

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a disciplinary salary action.

Disciplinary Review

A process that involves reviewing the facts and circumstances surrounding misconduct or

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An employee's absence from work, without pay, that an agency imposes as a part of a disciplinary action.

Unacceptable Conduct/Misconduct

Employee conduct or behavior that is inconsistent with state or agency standards for which specific corrective or disciplinary action is warranted.

Workday

For purposes of suspensions without pay, workday is defined as 8 hours for non-exempt employees. For exempt employees a workday is comprised of the hours scheduled to work on a normal day.

Workweek

A fixed period of seven consecutive 24-hour periods which is established by the employer for each employee. It may begin on any day of the week and at any hour of the day; it need not coincide with the calendar week. Full-time employees normally work a five-day, 40-hour schedule during a workweek.