



UNIFORM CONDUCT STANDARDS AND DISCIPLINARY POLICY

OVERVIEW

It is the policy of the Arkansas Department of Energy and Environment to establish a work climate that promotes productivity. Supervisors shall communicate job expectations and behavioral expectations to all employees, and supervisors are expected to initiate corrective measures when an employee deviates from acceptable behaviors that impact the work environment or job functions. These corrective measures typically will be progressive in nature and supervisory actions shall be fair and consistent and shall be administered in an objective manner.

Progressive discipline shall be utilized for deviations from these conduct standards, unless documented circumstances clearly warrant other actions. These variances from the progressive discipline philosophy may be due to mitigating, extenuating, or aggravating circumstances, which may indicate a lesser or greater level of discipline.

Utilization of this procedure does not create any expectation of continued employment, but it provides supervisors and employees with guidelines on behavioral expectations. Employees are not entitled to have a witness or representative during the disciplinary process.

1. DEFINITIONS

- 1.1. ACTIVE NOTICE The active life of a formal disciplinary action. See explanations under Section 4.3 Timeliness Factors.
- 1.2. CORRECTIVE ACTION Any action taken by a supervisor to correct or improve an employee's behavior or non-compliance with the conduct standards or job performance standards.
- 1.3. COUNSELING STATEMENT Written documentation to memorialize an informal discussion between the supervisor and employee regarding a work-related behavior or code of ethics violation. This document is not a formal disciplinary action. A counseling statement may serve as the foundation for future disciplinary actions if unacceptable work-related behaviors or code of ethics violations are not corrected or recur.
- 1.4. DEMOTION/TRANSFER This level of progressive disciplinary action should be preceded by other formal disciplinary action unless the employee's behavior is of such a serious nature that the elimination of progressive disciplinary steps is warranted. If the supervisor makes a recommendation for a demotion or transfer for disciplinary reasons, the Department Secretary must review and approve.

- 1.5. DISCIPLINARY ACTION Any formal disciplinary action taken by a supervisor in response to an employee's behavior. Actions range from written notice to discharge. A disciplinary action is supported with documentation using the Disciplinary Action Form. Disciplinary actions may be combined with other disciplinary actions, i.e., a Written Notice combined with Suspension/Disciplinary Leave without Pay.
- 1.6. DISCIPLINARY PROBATIONARY STATUS This level of progressive disciplinary action should be preceded by other formal disciplinary action unless the employee's behavior is of such a serious nature that the elimination of progressive disciplinary steps is warranted. The Probationary Policy, Section 5, applies to the administration of disciplinary probationary status.
- 1.7. INFRACTION Violation of a specific work rule, policy, or procedure.
- 1.8. MAJOR INFRACTION Incident of inappropriate behavior that may be characterized as jeopardizing the order of the work environment, which are more severe in nature than minor infractions. Certain types of major infractions are of such a serious nature as to warrant immediate discharge. Group 2 and Group 3 offenses are major infractions.
- 1.9. MINOR INFRACTION Incident of inappropriate behavior that indicates corrective action is necessary. Although behavior is inappropriate, it has not escalated to a more severe level. Employee must have multiple occurrences of the same or similar inappropriate behavior to warrant escalation of disciplinary levels. Group 1 offenses are minor infractions.
- 1.10. MITIGATING, EXTENUATING, OR AGGRAVATING CIRCUMSTANCES Factors collateral to the actual unacceptable work-related behavior or code of ethics violation that also may be outside the control of the employee. Supervisors must determine, based on the sum total of circumstances, the impact or effect of any mitigating, extenuating, or aggravating factors. Such variances should be documented to justify deviation from the standards of conduct.
- 1.11. PROGRESSIVE DISCIPLINE A system of discipline that links certain types of offenses to specific levels of discipline and allows for variations due to mitigating, extenuating, or aggravating circumstances. Progressive discipline may range from informal discussions to discharge. Absent special circumstances, repetition of an offense is accompanied by an automatic progression to the next higher or more severe level of discipline. Progressive discipline emphasizes problem solving and increasing communication of expected behaviors before disciplinary action is taken.
- 1.12. SUSPENSION/DISCIPLINARY LEAVE WITHOUT PAY This level of progressive disciplinary action should always be preceded by other formal disciplinary action or be of such a serious nature that the elimination of other written progressive disciplinary steps is warranted. An employee may be suspended for a minimum of two workdays and a maximum of thirty workdays for Group 1, Group 2, and Group 3 infractions or any combination of the same. Suspensions may be invoked pending the outcome of an investigation being conducted by the Arkansas State Police or other federal, state, or local law enforcement agency.

- 1.13. WRITTEN NOTICE Written documentation to memorialize a formal disciplinary discussion between the supervisor and employee regarding unacceptable work-related behavior or code of ethics violation, which may have been previously addressed in a counseling statement. To advance from a non-disciplinary status (counseling statement), the infraction must be serious enough to warrant progression to a more severe level of discipline.

2. GENERAL CONDUCT STANDARDS

- 2.1. The following standards are not all-inclusive, but are intended to be illustrative of the minimum expectations for acceptable work-related behavior. They also are intended to provide for some flexibility in administration, based upon necessity. Examples are provided for illustrative purposes and should not be considered all-inclusive.
- 2.2. Attendance Employees should report to work as scheduled. If an employee cannot report as scheduled, then the employee should arrange planned absences, including reporting to work late or leaving work early, in advance with his or her supervisor. An employee must report unexpected absences of any nature to his or her supervisor as promptly as possible.
- 2.3. Overtime Employees should work overtime hours **only** as directed by their supervisor or management, as specified in the Fair Labor Standards Act (FLSA) policy or compensatory time policy. Non-exempt employees (as defined by FLSA) shall not work overtime without advance authorization from their supervisor.
- 2.4. Compliance with Policies Employees are expected to abide by all policies promulgated by the Department or applicable entity, the Office of Personnel Management, and Governor's Policy Directives. Advance notice of disciplinary action is required, except in instances when the employee's continued presence may be harmful to the employee, other employees, clients, or public; it is impossible to continue business with the employee present; or the employee's presence may constitute negligence in regard to the employer's duties.
- 2.5. Circumstances Affecting Work-Related Behavior Employees must report to their supervisor any condition or circumstance that prevents satisfactory compliance with conduct standards or that prevents the employee from meeting the minimum qualifications for the position that the employee occupies. These circumstances may result in demotion/transfer or discharge.
- 2.6. Employee Responsibilities The employee shall:
- Become familiar with and understand the conduct standards;
 - Avoid deviation from the conduct standards;
 - Participate in good faith in any administrative investigation;
 - Comply with any corrective action plans or instructions following a deviation from these standards.

The following are specific circumstances that **must** be reported to the supervisor; however, this list is not intended to be all inclusive:

- Loss or suspension of driver's license required for performance of job duties;
- Incarceration for an extended period of time; and
- Loss or suspension of a required professional license or certification to perform job duties.

The supervisor must immediately report this information through the appropriate chain of command to the Department Secretary for review and possible demotion/transfer or discharge of the employee.

- 2.7. Unacceptable Behaviors The offenses set forth below are not all-inclusive, but are intended as examples of unacceptable behaviors for which specific disciplinary actions may be warranted. Any offense that undermines the effectiveness of the Department's activities may be considered unacceptable and treated in a manner consistent with the provisions of this section.

3. OFFENSES

3.1. *GROUP 1 OFFENSES*

A supervisor may, in his or her discretion, address a first-time Group 1 offense with a Counseling Statement, which **is not a disciplinary action**. However, a first-time violation of a Group 1 offense will usually be addressed by a Written Notice. Generally, upon accumulation of three active Written Notices for Group 1 offenses, the employee will be suspended without pay for three to five workdays. Alternatively, in the event of mitigating, extenuating, or aggravating circumstances, demotion/transfer, suspension/disciplinary leave without pay, or discharge may be justified. Generally, an employee who accumulates a fourth active Written Notice for a Group 1 offense will be discharged. Alternatively, in the event of mitigating or extenuating circumstances, transfer, suspension, or demotion may be justified. Suspension/disciplinary leave without pay for Group 1 offenses shall not exceed thirty working days.

Examples of Group 1 Offenses:

- Unsatisfactory attendance or excessive tardiness;
 - Unauthorized absences are those occurring when an employee has not obtained required advance approval for leave or has exhausted pertinent leave balances and leave has not been approved for other available types of authorized leave. Employees who are absent from work due to a work-related injury or illness and who are receiving Workers' Compensation benefits are exempt from this policy.
- Abuse of sick leave;

- Abuse – Inappropriate use or misuse of any type of leave; also includes unauthorized use of leave. Example: using sick leave for a purpose other than intended by law or policy.
- Excessive – Taking leave in appropriate amounts or chronic absenteeism (may be indicated by patterns of attendance or lack of attendance.) Example: Use of leave soon after accrual that could result in a zero balance or an unauthorized leave without pay situation.
- Abuse of State time, including for example, unauthorized time away from the work area or use of State time for personal business;
- Use of obscene or abusive language;
- Inadequate or unsatisfactory work performance;
- Disruptive behavior(s); and
- Conviction of a moving traffic violation while using a State vehicle.

3.2. ***GROUP 2 OFFENSES***

This category of offenses includes acts and behaviors that are considered more severe in nature than Group 1 offenses. Generally, an accumulation of two Group 2 offenses warrants discharge.

The disciplinary action for a Group 2 offense is a formal disciplinary action, which may include up to ten workdays of suspension without pay. The supervisor may initially address the infraction with a counseling statement. If the employee commits the same infraction that resulted in the counseling statement, the supervisor may advance to a formal disciplinary action to address the behavior. In this instance, the counseling statement may serve as the foundation for disciplinary action.

Group 2 Written Notices are cumulative. Generally, a second active Group 2 Written Notice will result in discharge. Generally, a Group 2 Written Notice following three active Group 1 Written Notices will result in discharge. Alternatively, in the event of mitigating or extenuating circumstances, demotion/transfer or suspension/disciplinary leave without pay may be justified. If mitigation does not result in discharge, the Department must notify the employee by Disciplinary Action Form that a subsequent formal disciplinary action for ANY level of offense while the Group 2 Written Notice is active may result in discharge.

Examples of Group 2 Offenses:

- Failure to follow a supervisor's instructions, perform assigned work, or otherwise comply with established written policy;
- Violating a safety rule when there is not a threat of bodily harm;
- Leaving the work site during work hours without permission;

- Failure to report to work as scheduled without proper notice to the supervisor;
- Unauthorized use or misuse of State property or records;
- Violation of the Employee Handbook, Uniform Conduct Standards, Code of Ethics, Drug Free Workplace; and any policy of federal or state government;
- Violation of anti-discrimination, Equal Employment Opportunity policies, depending upon the nature of the violation;
- Violation of Sexual Harassment prevention policies, depending upon the nature of the violation.

3.3. **GROUP 3 OFFENSES**

This category of offenses includes acts and behaviors of such a serious nature that a first-time occurrence will likely result in discharge. In this instance, the supervisor prepares a written recommendation for approval by his or her chain of command and submission to the Department Secretary for disposition. If a counseling statement has been issued for a previous offense, the supervisor may use the statement as the foundation for the official Written Notice and discharge.

Alternatively, in the event of mitigating or extenuating circumstances, demotion/transfer or suspension/disciplinary leave without pay for a period up to thirty workdays may be justified. If an employee is not discharged due to mitigation, the Department shall notify him or her by Written Notice that any subsequent Written Notice received by the employee for ANY level of offense during the active life of the Written Notice may result in discharge.

Examples of Group 3 Offenses:

- Absence in excess of three consecutive workdays without authorization or a satisfactory reason;
- Falsification of any agency records, including, but not limited to, vouchers, reports, insurance claims, time records, leave records, client records, or other official State documents;
- Willfully or negligently damaging or defacing State records, State property, or property of other persons (including, but not limited to employees, clients, supervisors, visitors, or students);
- Theft or unauthorized removal of State records, State property, or the property of other persons (including, but not limited to employees, clients, supervisors, visitors, or students);
- Gambling on State property or gambling during working hours;
- Fighting or other acts of physical violence;

- Violating safety rules when there is a threat of physical harm;
- Sleeping during work hours;
- Participating in any type of concerted interference with State operations;
- Unauthorized possession or use of firearms, dangerous weapons, or explosives;
- Threatening or coercing persons associated with any State agency (including, but not limited to employees, supervisors, clients, visitors, or students);
- Criminal conviction for illegal conduct occurring on or off the job that clearly is of such a nature that to continue the employee in their position could constitute negligence;
- Violation of the Employee Handbook, Uniform Conduct Standards, Code of Ethics, Drug Free Workplace, and any policy of federal or state government;
- Violation of the Sexual Harassment prevention policies, depending upon the nature of the violation; and
- Violation of the anti-discrimination, Equal Employment Opportunity policies, depending upon the nature of the violation.

4. DISCIPLINARY PROCEDURES

- 4.1. The Disciplinary Action Form should be used to document formal disciplinary action and provided to an employee. (Counseling statements are non-disciplinary actions and will use a separate form.) All Disciplinary Action Forms will be placed in the employee's personnel file. The supervisor will provide the employee with a copy of the signed form after review.
- 4.2. Corrective Action Corrective Action should be implemented as soon as a supervisor becomes aware of an employee's unsatisfactory behavior or commission of an offense. The supervisor may utilize a combination of corrective actions if warranted. Examples of corrective actions include issuance of a counseling statement or formal disciplinary action. Mitigating, extenuating, or aggravating circumstances may be a consideration.
- 4.3. Timeliness Factors Supervisors should initiate use of progressive discipline as soon as possible after becoming aware of an offense.

The active life of any formal disciplinary action is dependent upon the type of offense for which it is issued and is measured by the period for which it is "active" as set forth below:

Group 1 Offense – Formal disciplinary action is active for **one year** from the date of issuance to the employee.

Group 2 Offense – Formal disciplinary action is active for **two years** from the date of issuance to the employee.

Group 3 Offense – Formal disciplinary action is active for **three years** from the date of issuance to the employee.

The active periods stated above **may not** be extended due to an employee's absence. Written Notices that are no longer active shall not be considered in an employee's accumulation of formal disciplinary action or in determining the appropriate disciplinary action for a new offense.

4.4. Retention of Formal Disciplinary Action Any formal disciplinary action shall be kept in the employee's personnel files, except as follows:

- Removal of a formal disciplinary action may occur if the Department Uniform Conduct Standards and Disciplinary Policy is modified or vacated concerning that particular offense; or
- If the Department modifies or vacates the disciplinary action.

4.5. Pay and Benefits During Suspension All suspensions are without pay. If an employee is suspended without pay pending the outcome of an investigation being conducted by the Arkansas State Police or other federal, state, or local law enforcement agency, and the findings are in favor of the employee, pay and benefits shall be restored by the Department.

A suspended or discharged employee shall be responsible for full payment of any health insurance premiums due during the period of suspension or following the discharge. If the employee's suspension is rescinded or the employee is reinstated following discharge by the Department, through an Alternative Dispute Resolution agreement or by an order of the State Employee Grievance Appeal Panel, the Department shall make an appropriate refund to the employee, including back pay and benefits. However, if any type of reinstatement is made without back pay, the Department shall not be required to reimburse the employee for any lost benefits, including insurance.

If the suspended or discharged employee is reinstated to full employment and benefits, meaning reinstatement with back pay and benefits, the award of back pay shall automatically be offset by any interim earnings that the employee received during the period of separation, including unemployment compensation received by the employee.

5. PROBATION POLICY

An employee may be placed on probation for a performance-based situation. Probationary employees may be dismissed at any time. Violations of the conduct standards or failure to perform required job duties in a satisfactory manner are types of behavior, among others, that can result in dismissal.