

**EMPLOYEE DISCIPLINARY PROCEDURES**

**I. POLICY OBJECTIVE**

Discipline includes both informal and formal actions and, in general, is applied progressively. The goal of progressive discipline is to redirect state employees toward improved job performance and conduct which complies with all applicable statutes, rules, policies, procedures, and practices. Progressive discipline is a system designed to ensure not only the consistent, impartiality and predictability of discipline, but also the flexibility to vary penalties if justified by aggravating or mitigating conditions. Each employee has a duty to comply with the Department of Agriculture, Food, and Forestry's (ODAFF) progressive discipline policy. [260:130-27-3]

**II. POLICY**

The following procedures have been established for ODAFF to ensure a safe and productive work environment through the prompt application of appropriate discipline that is equitable and suitable for the offense considering the circumstances and which provides a limited due process. [260:130-27-1] For just cause shown, disciplinary action against an employee may be entered at any progressive step of the disciplinary process; and individual steps in the disciplinary process may be omitted.

**EMPLOYEE DISCIPLINARY PROCEDURES**

**A. Causes for Disciplinary Action**

Any employee may be disciplined for violations of:

- Oklahoma State Statutes/Acts/Rules
- Violations of the Civil Service and Human Capital Modernization Act or Civil Service and Human Capital Modernization Rules
- ODAFF Policies and Procedures, as well as individual practices established by the operating units within ODAFF

and/or for:

- Misconduct
- Insubordination
- Inefficiency
- Inability or Failure to Perform the Duties of the Position in Which Employed
- Conduct Unbecoming a State Employee
- Any other just cause.

B. Prior Discipline

Supervisors are prohibited from considering incidents that occurred longer than five (5) years prior to an offense in order to move to a higher level of discipline, absent aggravating circumstances; however, this prohibition does not apply to incidents involving the following types of conduct:

- a. Criminal activity
- b. Sexual misconduct and/or harassment
- c. Racial/ethnic discriminatory behavior and/or harassment
- d. Threats or acts of violence against employees in the workplace
- e. Drug and/or alcohol use or abuse on the job.

C. Employee Evaluations

Prolonged, serious, or repetitive job performance deficiencies should be documented in the performance evaluation and during periodic reviews in accordance with the Employee Service Rating System. [74 O.S. § 840-4.17] Such evaluations will be used for current or former state employees in decisions regarding promotions, appointments, demotions, performance pay increases and discharges. [260:130-21-31] **With or without the performance evaluations, ODAFF can make decisions regarding discipline and discharges on current state employees, as deemed necessary.**

D. Employee Assistance Program

Referrals to the Employee Assistance Program (EAP) for recommendation to treatment or counseling programs, in addition to a disciplinary response, may be appropriate under certain conditions and employee participation in treatment or counseling may serve to mitigate discipline.

### III. **DISCIPLINARY PROCESS**

Communication between the supervisor and employee, an opportunity for the employee to respond to the proposed disciplinary action and documentation of the disciplinary process are integral parts of the disciplinary system within ODAFF.

The following process should be applied regarding disciplinary matters to ODAFF employees:

A. Employee Engagement

The first phase in the disciplinary process is employee engagement (informal discipline). The goal of employee engagement is to bring potential problems to an employee's attention before such issues escalate. Employee engagement may be administered verbally (as in informal discussion, warnings, corrective interview, coaching, counseling, or verbal reprimand) or in writing through an *Employee engagement Summary*.

## **Steps for Employee Engagement**

1. Both verbal and written employee engagement must notify employees of:
  - The nature of the problem which is cause for the discipline
  - The steps which must be taken to resolve the problem, and
  - The consequences of repeated infractions or continuing deficient performance or conduct.
2. Documentation regarding informal disciplinary actions taken will not be placed in the employee's permanent personnel file; however, any documentation regarding employee engagement shall be included in the disciplinary file of record for consideration, as appropriate, in any subsequent decision to administer formal discipline.
3. A copy of any written employee engagement action will be provided to the employee.

## **B. Formal Discipline**

Formal discipline is normally administered after employee engagement has failed to produce acceptable results. Although formal discipline should normally be applied progressively (from least severe to most severe), based on relevant circumstances, a single incident may justify a higher step of discipline without proceeding through less severe steps of discipline. Formal disciplinary actions include:

- a. Written Reprimands
- b. Punitive Transfers
- c. Suspensions Without Pay
- d. Involuntary Demotions
- e. Termination.

## **Steps for Formal Disciplinary Action**

1. Following an incident whereby disciplinary action is being considered, the supervisor considering discipline will review the relevant circumstances and discuss proposed discipline within their supervisory chain of command.
2. The supervisor will contact the Office of General Counsel Human Resources Attorney for review and consideration of the incident warranting proposed disciplinary action. The Human Resources Attorney will collaborate with the supervisor, employee, Human Resources Manager, and any other relevant persons to determine the appropriate disciplinary action.
3. In determining the appropriate disciplinary action, the Office of General Counsel Human Resources Attorney and Human Resources Manager (or designee) may investigate all relevant facts and circumstances, which may be done by interviews,

written statements, document review, etc. The employee and supervisor(s) shall cooperate with the Human resources Attorney and Human Resources Manager (or designee) in this investigatory phase. Any relevant supporting documents considered in the determination of the disciplinary action may be included in the disciplinary file.

4. The supervisor will then prepare the *Notice of Disciplinary Action*, with the assistance of the Human Resources Attorney and Office of Human Resources Division.
5. Before final notice of termination of any employee the disciplinary file will be reviewed by the Office of General Counsel Human Resources Attorney for legal sufficiency.
6. *The Notice of Disciplinary Action will include:*
  - The date of issuance of the *Notice of Final Disciplinary Action*
  - The statute, rule, policy, practice, or procedure regarding work performance or conduct which was violated
  - The specific disciplinary action that is proposed (the effective date of suspension without pay, the total number of days/dates suspended, in cases of demotion - the new position, date of termination, etc.)
  - Steps which can be taken to resolve the problem, if any
  - A citation of any prior discipline ((employee engagement or formal discipline) that was used in the decision to propose a disciplinary action
  - The consequences of repeated infractions or continuing deficient performance or conduct
  - The signature of the supervisor preparing the proposed disciplinary documents and the date of delivery to the employee
  - Documentation of the date of receipt by the employee by personal service or documentation of the reasonable effort made to provide such service
  - A statement of the employee's right to file a complaint with the Civil Service Division, and
  - A copy of the Civil Service Division Complaint Petition form.

#### **IV. STATUS OF EMPLOYEES PENDING DISCIPLINARY ACTION**

In conjunction with the approval of the Human Resources Manager, an employee may be placed on suspension with pay when it is in the best interest of the agency.

- A. Suspension with pay  
State employees may be suspended with pay for the following:
  - (1) internal investigatory purposes

(2) for the employee to undergo a fit-for-duty examination.

B. Notice

The employee will be informed in writing of the beginning and ending dates and times of the suspension with pay, advised of what working hours the employee is to be available, and any additional reporting requirements. The supervisor will take possession of the employee's badge and any assigned state property during the period of suspension. [260:130-19-8(a)]

C. Investigatory Purposes

If the employee was suspended with pay for investigatory purposes and is cleared, the employee's personnel records will be fully cleared, and every reasonable effort made to fully clear any related external records. If the charges against the employee are confirmed, in whole or in part, a suspension with pay in accordance with this provision shall not preclude the Appointing Authority from taking disciplinary action in accordance with Oklahoma law and all relevant Rules. [260:130-19-8(b)]

**V. RETENTION AND CONFIDENTIALITY OF DISCIPLINARY DOCUMENTS**

The employee will be provided a copy of any formal disciplinary document issued. A copy of all signed (issued) documents pertaining to formal discipline, will be forwarded to the Human Resources Manager.

All formal disciplinary documents will be retained in the employee's personnel file and treated as confidential except that any final disciplinary action which results in the loss of pay will be treated as an open record in accordance with *51 O.S. § 24A.7*.

The Civil Service Division, because of statutory responsibility, shall have a right of access to disciplinary documents. [260:130-27-4]

**VI. OTHER PERSONNEL ACTIONS**

The following personnel actions are not subject to the requirements outlined for discipline within these procedures:

A. Termination During the Trial Period

Individuals who have been initially hired as a state employee and are serving a trial period may be terminated at any time during the trial period without the right of appeal. [260:130-19-31]

B. Executive Management

Individuals designated as "executive management" may be disciplined or terminated at any time without the right of complaint. [Title 62 O.S. §34-301(H)(6)]

C. Termination upon Conviction or Plea of Guilty or Plea of Nolo Contendere to a Felony Offense

Any state employee who is found guilty, pleads guilty or nolo contendere to a felony will forfeit employment immediately upon entering such plea and will vacate the employment held. [51 O.S. § 24.1.F] Employees of ODAFF must report any felony conviction, plea of guilty, or plea of nolo contendere to a felony offense to their immediate supervisor by the next working day of said conviction or plea.

D. Termination upon Absence from Work

A state employee who is absent from work without prior approval and who has not contacted his/her supervisor or agency representative within five working days is deemed to have resigned from state service. [260:130-19-6]

E. Annual Leave

An employee may be involuntarily placed on annual leave whenever the Appointing Authority (or designee) determines that such action is in the best interest of the agency, so long as the employee has at least forty hours of accrued annual leave.

F. Modification of Work Assignment

Employees may be provided temporary work assignments pending the completion of any final disciplinary action.

## VII. DISTRIBUTION

A. Civil Service Division

A copy of these procedures and any revisions will be provided to the Civil Service Division as the progressive discipline plan to be implemented by ODAFF. [260:130-27-5]

B. Division Directors

All Division Directors will receive a copy of this policy when implemented and any time revisions are made.

C. Employees

All employees will receive a copy of this policy at initial appointment and any time revisions are made.

## VIII. REFERENCES

260:130:19, et al

260:130-21-31

260:130-27, et al

51 O.S. §24.1: Suspension from Office or Employment Upon Conviction of Felony

51 O.S. §42A.7: Confidential Personnel Records of Public Body

62 O.S. §34-301: Civil Service and Human Capital Modernization Act

**IX. FORMS**

A: *Employee engagement Summary*

B: *Written Reprimand*

C: *Notice of Disciplinary Action*

D: *Statement of Employee Rights*

E: *Civil Service Complaint Petition*

**X. ACTION**

All supervisors are responsible for compliance with this procedure.

The Office of General Counsel Human Resources Attorney is responsible for the annual review and revisions of this policy.

Any exception to this procedure will require prior written approval from the Commissioner of Agriculture.

**XI. REPLACED**

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- ODAFF – 10.a

**AUTHORIZED AND APPROVED BY:**

  
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Blayne Arthur  
Commissioner of Agriculture