

SUBJECT: Management Service Discipline and Dismissal **NUMBER: 70.000.02**

DIVISION: Human Resource Services Division **EFFECTIVE DATE: D R A F T 7/9/08**

APPROVED: D R A F T

POLICY STATEMENT:

An employee in the management service of the state is subject to disciplinary action if the employee is unwilling or unable to fully and faithfully perform the duties of the position satisfactorily and is subject to dismissal from state service for misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance or other unfitness to render effective service.

AUTHORITY:

ORS 240.145(3); 240.212; 240.555; 240.570(3); 243.650(6)(16)(23)

APPLICABILITY:

Management service employees

ATTACHMENTS:

None

DEFINITIONS:

Constitutionally Protected Right: any right provided for by the constitution of the state of Oregon or the United States of America such as but not limited to an individual's rights to property, liberty and privacy.

Management service employee with immediate prior former regular status in the classified service: A management service employee who was a classified employee and held regular status immediately before (or within one work day) entering management service.

Management service employee without immediate prior former regular status in the classified service: A management service employee who was never in the classified service, or whose former classified service ended more than one work day before entering management service.

See also HRSD State Policy 10.000.01, Definitions; and OAR 105-010-0000

POLICY

(1) **Management Service Discipline [ORS 240.570 (3)]:** A management service employee, as specified below in (1)(a-f), may be reprimanded, reduced in pay, suspended, demoted or removed from management service if the employee is unable or unwilling to fully and faithfully perform the duties of the position satisfactorily. The reasons for such discipline may be deficient performance or conduct (including acts or omissions on or off the job) which affect the employee's suitability for the management service position. Final disciplinary actions taken under this policy include the notice of the employee's appeal rights in (3) (f) (D) below.

(a) **Reprimand:** A supervisor of a management service employee, whether or not the supervisor is also an appointing authority, may issue a reprimand when appropriate. The reprimand is in writing and informs the

employee of the misconduct or performance supporting the reprimand and the potential for further discipline if the employee does not correct the conduct or performance.

- (b) Salary reduction: The salary reduction is one or more steps for a period of time necessary to improve and monitor improvement of the conduct or performance. The appointing authority notifies the employee of the potential for further discipline if the employee does not correct the misconduct or performance. Salary reductions are not imposed for employees who are exempt under the Fair Labor Standards Act (FLSA).
 - (c) Reprimand in Lieu of Salary Reduction: This action represents a level of discipline equal to a salary reduction but does not, due to the employee's FLSA exempt status, impose an economic sanction. Employee's receiving this form of discipline should be given notice within the written disciplinary action that were it not for the employee's FLSA exempt status, the action would have resulted in a reduction in pay.
 - (d) Suspension: The suspension is without pay for a specified period of time. For employees exempt under the FLSA, the suspension must be in increments of 40-hour work weeks. The appointing authority notifies the employee of the potential for further discipline if the employee does not correct the conduct or performance.
 - (e) Demotion: Demotion with a commensurate, permanent reduction in salary is available when an appropriate vacancy, as determined by the agency, exists at a lower level. The appointing authority notifies the employee of the potential for further discipline if the employee does not correct the conduct or performance while performing the new job duties. The appointing authority does not use disciplinary demotion if the employee is not qualified for a vacancy in the lower classification or if such action would cause a regular employee in the lower classification to be laid off.
 - (f) Removal: A management service employee with immediate prior former regular status in the classified service who is removed from the management service for the reasons listed in ORS 240.570 (inability or unwillingness) is restored to the classified service under State HR Policy 50.030.01 Restoration of Terminated Employees. A management service employee without immediate prior former regular status in the classified service who is removed from the management service for the reasons listed in ORS 240.570 (inability or unwillingness) is terminated from employment with the state.
- (2) Management Service Dismissal (ORS 240.555): An appointing authority may dismiss a management service employee with immediate prior former regular status in the classified service for the following disciplinary reasons as specified in ORS 240.555:
- (a) misconduct: conduct an employee knows, or should know, is not proper behavior
 - (b) inefficiency: failure to produce required results even though the employee is competent to do so
 - (c) incompetence: absence of the ability or qualifications to perform required tasks
 - (d) insubordination: refusal to obey an order or directive
 - (e) indolence: behavior indicating an unwillingness to work
 - (f) malfeasance: conduct showing moral turpitude, such as the commission of an act which is morally wrong and unlawful or
 - (g) other unfitness to render effective service: any other employee conduct, quality or condition which tends to interfere with an agency in fulfillment of its mission or that justifies the agency questioning whether it should continue to employ the employee.

(3) Procedures:

- (a) Investigation: The appointing authority or designee investigates the alleged misconduct or deficient performance or other circumstances indicating that grounds may exist for disciplinary action or dismissal. The appointing authority or designee meets with the employee to hear the employee's response to potential charges, deficient performance or other circumstances indicating that grounds may exist for disciplinary action or dismissal. An employee who is the subject of an investigation may, upon the employee's request, have a management service coworker or an attorney present with them at an investigatory meeting or interview. An employee's request for an individual to attend a meeting or interview may not unreasonably delay the meeting or interview. The actual attendance of a management service coworker or an attorney may not obstruct the employer's investigation.
- (b) Pre-Disciplinary Notice: Prior to imposing a disciplinary action, other than reprimand, under this policy, an agency issues a pre-disciplinary notice giving an employee an opportunity to attend a pre-disciplinary meeting with the appointing authority or designee. The notice will include:
 - (A) the statutory grounds (either ORS 240.570(3) or ORS 240.555), the background and supporting facts to the charges against the employee, including such facts necessary to apprise the employee of the nature of the charges
 - (B) the time, date and place for the pre-disciplinary meeting
 - (C) the consequences of not participating in the pre-disciplinary meeting
 - (D) notice that the employee may be represented during the pre-disciplinary meeting.
- (c) Pre-Disciplinary Meeting: The pre-disciplinary meeting is the employee's opportunity to refute charges or present mitigating circumstances to the appointing authority or designee. The appointing authority or designee considers the appropriateness of discipline based on the following factors:
 - (A) The seriousness of the employee's conduct or deficient performance
 - (B) The facts obtained at the pre-disciplinary meeting
 - (C) The level of fault
 - (D) The unsuitability of the employee
 - (E) The needs of the agency
 - (F) Other pertinent information.
- (d) If new facts are discovered during the pre-disciplinary process:
 - (A) The appointing authority or designee may send a supplemental notice to the employee incorporating the new facts as an additional basis for discipline and give the employee an opportunity to refute the new charges within a reasonable timeframe, if the new facts are unfavorable to the employee.
 - (B) The appointing authority or designee may disregard the new facts and proceed with the original action based on the original charges if the new facts are unfavorable to the employee, or the appointing authority or designee determines that the remaining facts justify dismissal.
 - (C) A portion of the charges may be withdrawn; however, no withdrawal by the agency of any portion of the charges supporting a dismissal or other disciplinary action requires the agency to rescind the action or take new action.
- (e) If discipline is warranted, the appointing authority or designee determines and imposes the appropriate level of discipline, if any, within 21 calendar days of the date of the pre-disciplinary meeting. If the agency is unable to take disciplinary action within 21 calendar days, the agency will notify the employee of the status of the investigation and set a deadline for its decision.

- (f) Notice of Discipline: The written notice of disciplinary action will contain:
- (A) Action being taken (reprimand, reprimand in lieu of salary reduction, suspension without pay for a specific period of time, salary reduction, demotion, removal from management service or dismissal)
 - (B) Effective date: The day the action takes effect. If the letter is mailed, the effective date will be at least three calendar days after the postmark date on the letter
 - (C) Statutory grounds and causes for the action:
 - (i) For all disciplinary actions listed in section (1) (a) (A-E) the statutory grounds are ORS 240.570(3). The cause for the disciplinary action is "Inability or unwillingness to fully and faithfully perform the duties of the position satisfactorily."
 - (ii) For dismissal action listed in section (2) the statutory grounds are ORS 240.555. The cause for the disciplinary action is one or more of the reasons listed in (2) (a-g) for example, "incompetence, indolence or other unfitness to render effective service."
 - (D) This notice of grievance and appeal rights: "If you choose to contest this disciplinary action, you have the right to file:
 - (i) A grievance with the agency head or designee. Your grievance must REACH the agency head or designee within 30 calendar days from the effective date of the disciplinary action.
 - (ii) An appeal with the Employment Relations Board (ERB). Your appeal must REACH the ERB no later than 30 calendar days from the effective date of the disciplinary action. Filing a grievance with the agency head or designee DOES NOT extend the 30-day deadline for filing an appeal with the ERB."
 - (E) The agency may hand-deliver the written notice of disciplinary action to the affected employee or mail it by both certified or registered mail and regular mail to the employee's last known address.
- (4) Failure of the agency to comply with provisions of this policy in taking any action against an employee does not invalidate the action unless the employee is deprived of a constitutionally protected right and there is not possibility of correcting or reversing the deprivation of the employee's constitutionally protected right. If a potential deprivation of the employee's rights is brought to the attention of the agency, the agency head or designee may rescind the action, may take new action of the same or different nature or may let the action stand.