

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

DIVISION: Chief Human Resources Office **EFFECTIVE DATE:** 2/01/2019

APPROVED: Signature on file with the Chief Human Resources Office

POLICY STATEMENT: An Oregon state government employee in management service is subject to disciplinary action up to and including dismissal from state service if the employee is unwilling or unable to fully and faithfully perform the duties of the position. An eligible employee may be restored to the classified service at the agency's(ies') sole discretion, as provided in State HR Policy 50.030.01.

AUTHORITY: ORS 240.145(3); 240.212; 240.250; 240.555;240.570(1)(3)(4)(5); 243.650(16)(23)

APPLICABILITY: Management service employees, excluding limited duration appointments

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 classified service, or whose former classified service ended more than one work day before entering management service.

Also refer to State HR Policy 10.000.01, Definitions

"Reasons listed in ORS 240.555" include the following: "misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance, or other unfitness to render effective service."

POLICY:

- (1) **Management Service Discipline and Removal (ORS 240.570 (3)):** A management service employee, as specified below in (1)(a) through (f), may receive a reprimand, salary reduction, suspension, demotion, removal or dismissal 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 (2)(f)(E) 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: A salary reduction of 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 in writing and states 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. An appointing authority issues this form of discipline in writing and informs the employee that were it not for the employee's FLSA exempt status, the action would have resulted in a reduction in pay.
- (d) Suspension without pay: Suspension without pay occurs 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 in writing and states 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 in writing and informs the employee 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/Dismissal: When a management service employee has immediate prior former regular status in classified service and is removed from management service for the reasons listed in ORS 240.570 (inability or unwillingness), the agency(ies) have sole discretion to restore the employee to the classified service.
A management service employee with prior classified service may not be restored to the classified service if the discipline is for any of the reasons stated in ORS 240.555.

If an agency chooses not to restore the employee to classified service, the employee is removed from management service and dismissed from employment with the state. NOTE: Language **must** indicate in the "Action" section (as noted in (2)(f)(A) of this policy) if the employee is being dismissed from state employment.

A management service employee without immediate prior former regular status in classified service who is removed from management service for reasons listed in ORS 240.570 (inability or unwillingness) is removed from the management service and dismissed from employment with the state. NOTE: Language **must** indicate in the "Action" section (as noted in (2)(f)(A) of this policy) if the employee is being dismissed from state employment.

(2) Procedures applying to Discipline, Removal and Dismissal actions:

- (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 listen to 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 employee (from the employing agency or another state agency) 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 nor may the person be a witness to the allegations.

- (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 (ORS 240.570(3) or ORS 240.570(1) AND ORS 240.570(3)), 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. The "Action" portion of the pre-disciplinary notice, where removal is under consideration, shall state the following:

ACTION: Commencement of process for consideration of removal from management service with effective end of state service.
 - (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 accompanied by a management service co-worker or attorney during the pre-disciplinary meeting.
 - (E) Based on the charges, if an agency is not considering or the employee is not eligible for restoration to a prior classified position, and removal from management service under ORS 240.570(3) terminates the employee's state service, the "Summary" portion of the pre-disciplinary notice shall include one of the following:
 - (i) If the above charges are true and you are removed from management service, you are not eligible for consideration of restoration to the classified service because you do not have immediate prior classified service. Thus, your removal will terminate your state service.
 - OR**
 - (ii) If the above charges are true and you are removed from management service, you are not eligible for consideration of restoration to the classified service because the conduct constitutes one or more of the grounds listed in ORS 240.555. Thus, your removal will terminate your state service.
 - OR**
 - (iii) If the above charges are true and you are removed from the management service, this action will terminate your state service because the agency is exercising its discretion not to restore you to classified service.
- (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 proposed 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) An appointing authority or designee may withdraw a portion of the charges; however, no withdrawal by the agency of any portion of the charges supporting a dismissal or other disciplinary action requires the agency to rescind or modify the proposed action or take new action.
 - (D) The appointing authority determines if disciplinary action is not appropriate.
- (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). If the discipline is a removal and dismissal, the "Action" portion of the disciplinary notice shall state the following:
ACTION: Removal from management service with effective end of state service.
 - (B) Effective date: The day the action takes effect. If the notice is mailed, the effective date will be at least three calendar days after the postmark date on the notice.
 - (C) Statutory grounds and causes for the action:
 - (i) For all disciplinary actions listed in section (1)(a) through (f) 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) At the agency's sole discretion, for management service removal and restoration to prior classified service, the statutory grounds are ORS 240.570(3) and 240.570(1).
 - (D) When an agency(ies) do not restore an employee to a prior classified position and removal from management service under ORS 240.570(3) terminates the employee's state service, the "Summary" portion of the disciplinary notice shall include the following:

Your removal from management service terminates your state employment.

- (E) 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 (Also refer to State HR Policy 70.000.10). The agency head or designee **MUST RECEIVE** the grievance within 30 calendar days from the effective date of the disciplinary action.
 - (ii) An appeal with the Employment Relations Board (ERB) (also refer to State HR Policy 70.000.10). ERB **MUST RECEIVE** the appeal 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.
 - (F) 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.