

SUBJECT: Classified Unrepresented Discipline and Dismissal **NUMBER:** 70.005.02

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

APPROVED: Signature on file with the Chief Human Resources Office

POLICY STATEMENT:

Oregon state government employees in the classified unrepresented service are subject to disciplinary action up to and including dismissal from state service for misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance or other unfitness to render effective service.

AUTHORITY:

ORS 240.086; 240.145(3); 240.316(2) and (4); 240.555; 240.560

APPLICABILITY:

Regular status classified unrepresented 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.

POLICY:

- (1) A regular status classified unrepresented employee may be disciplined for cause.
 - (a) Cause for discipline may be one or more of the following:
 - (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 ability or qualifications to perform required tasks
 - (D) insubordination: refusal to obey an order or directive
 - (E) indolence: behavior indicating unwillingness to work
 - (F) malfeasance: conduct showing moral turpitude, such as the commission of an act which is morally wrong and unlawful or
 - (b) other unfitness to render effective service: any other employee conduct, quality or condition which tends to interfere with an agency in fulfilling its mission or that justifies the agency in questioning whether it should continue to employ the employee.

- (c) In the disciplining of an employee, specific warning in any reasonable form (whether oral or written) of the agency's concerns and reasonable opportunity to correct the problem shall be given to the employee prior to the imposition of discipline unless the employee knew or should have reasonably known the conduct could lead to disciplinary action.
- (d) The agency head or designee determines the severity of the disciplinary action based upon: the seriousness of the employee's conduct, performance or behavior; the level of fault; the unsuitability of the employee; the needs of the agency; and other considerations pertinent to the facts warranting discipline, including mitigation or the lack thereof, that weigh upon the discipline imposed. The severity of the discipline must have a reasonable basis in fact.
- (2) Final disciplinary actions taken under this policy include the notice of the employee's grievance and appeal rights in (f) (D) below. The types of disciplinary action which may be taken under this policy are:
- (A) Reprimand: The reprimand shall be in writing and shall reasonably inform the employee of the conduct, performance, or behavior supporting the reprimand and the potential for further discipline if the employee's conduct, performance or behavior is not corrected. An agency may, but is not required, to provide an employee an opportunity to respond before imposing a reprimand.
- (B) Salary Reduction: The salary reduction shall be one or more steps within the employee's classification salary range for a period of time determined to be necessary for the employee to improve and the agency to monitor improvement of the conduct, performance, or behavior. Salary reductions shall not be imposed for employees who are exempt under the Fair Labor Standards Act (FLSA). The employee will be notified that if they do not correct their conduct, performance, or behavior the agency will impose further discipline.
- (C) Reprimand in lieu of salary reduction: This action is a level of discipline equal to a salary reduction but due to the employee's FLSA exempt status, does not impose an economic sanction. An appointing authority issuing this form of discipline should give the employee 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. The employee will be notified that if they do not correct their conduct, performance, or behavior the agency will impose further discipline.
- (D) Suspension without pay: The suspension shall be 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 employee will be notified that if they do not correct their conduct, performance, or behavior the agency will impose further discipline.
- (E) Demotion: This option is available when an appropriate vacancy, as determined by the agency, exists at a lower level, with a commensurate permanent reduction in salary. The employee will be notified that if they do not correct their conduct, performance, or behavior the agency will impose further discipline. Disciplinary demotions shall not be used if an employee is not qualified for employment in the lower class or if such action will cause a regular employee in the lower classification to be laid off.
- (F) Dismissal: The principles of progressive discipline will usually be followed prior to dismissal. This does not apply when the nature of the employee's conduct, performance, or behavior warrants dismissal absent prior warning or discipline including, but not limited to, conduct, performance, or behavior which the employee knew or reasonably should have known would lead to dismissal.

(2) Procedure

- (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, choose to have someone accompany the employee to 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 requested individual in attendance may not obstruct the employer's investigation nor be a witness to the event(s) prompting the 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 (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. Do not include this section in a reprimand.
 - (B) The time, date and place for the pre-disciplinary meeting;
 - (C) The consequences of not participating in the pre-disciplinary meeting; and
 - (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; and
 - (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, if in the judgment of the appointing authority or designee, the remaining facts justify discipline.
 - (C) The 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 the action or take new action.

- (e) If discipline is warranted, the appointing authority 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 in lieu of salary reduction, suspension without pay for a specific period of time, salary reduction, demotion, or dismissal)
 - (B) Effective date: The day the action takes effect. If the written notice is mailed, the effective date will be at least three calendar days after the postmark date on the written notice.
 - (C) Statutory grounds (ORS 240.555) and causes (1) (a) (A-G), either singly or in combination, for the action.
 - (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 (also refer to State HR Policy 70.005.05). 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 70.005.05). 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.
 - (E) The agency may hand-deliver the written notice of disciplinary action to the affected employee or send it by both certified or registered mail and regular mail to the employee's last known address.
- (g) 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.