

## **Rule XXIV. Discipline**

### **A. Purposes**

The purposes of this Rule are (1) to provide direction on how to deal with deficiencies in performance and misconduct by classified service employees and (2) to establish standard ranges of penalties for various types of misconduct in order to promote reasonable consistency in the disciplining of classified service employees involved in similar situations.

### **B. Discipline Policy**

County employment policy is designed to give each employee a full opportunity for work success. This objective is dependent upon good employee selection procedures, meaningful employee orientation, appropriate on-the-job training, periodic performance evaluations and a positive approach toward employee discipline by County supervisors.

Disciplinary action is considered a dimension of performance evaluation and employee development. It is a corrective process to help employees overcome work-related shortcomings, strengthen work performance and achieve success. When problems occur, they should be handled in reasonable ways that jointly support the concept of positive discipline and minimize the interruption of County services. Employee discipline may be needed and, as a corrective procedure, is an integral part of County employment policy. Underlying discipline, however, is an expectation that supervisors will direct their efforts toward employee development and success.

To insure maximum effectiveness of its operations, the County must strive to have a consistent, progressive, and fair system of employee discipline. A progressive disciplinary system will help insure that each employee is given an opportunity for his/her work performance to conform to expected standards and will clearly state what types of behavior are unacceptable. Discipline should be corrective and is not used to "get even" for something that has occurred. Because discipline is to be corrective, the disciplinary action taken must be applied consistently, must be appropriate for the offense and must be timely.

Key aspects of good supervisory methods include recognizing and encouraging good performance, correcting performance problems through coaching and counseling, and building commitment to high standards and safe work practices. Supervisors should focus on communicating an expectation of change and improvement in a personal, adult, non-threatening way while, at the same time, maintaining the seriousness of the situation. When this approach is followed, most employees will recognize and correct their own performance deficiencies.

Coaching and counseling are the expected methods for the supervisor to confront an employee about a problem in the areas of work performance, conduct/safety or attendance. The objective of performance counseling is to help the employee recognize that a problem exists and to develop effective solutions to it. Since it is the supervisor's approach to a performance problem that often brings about the employee's decision to change behavior, it is critical that the supervisor be prepared. Normally, performance problems can be resolved through this approach.

When an employee fails to respond to counseling or a single incident occurs which is serious enough to warrant a formal step of discipline, the supervisor will have several options, depending on the seriousness of the performance problem. These options or steps of the Progressive Discipline system are:

- (1) Oral Reminder
- (2) Written Reminder
- (3) Suspension
- (4) Reduction in Pay
- (5) Demotion
- (6) Dismissal

### **C. Retention of Disciplinary Action Information**

In keeping with the policy of corrective rather than punitive discipline, references to disciplinary actions involving oral reminders, written reminders and suspensions may be removed from an employee's personnel file both in the employee's department and in the Personnel Department as applicable when the problem performance has been corrected as determined by the Appointing Authority and another performance issue of the same or a different type has not occurred. If the Appointing Authority elects to remove the items connected with the discipline, they will be placed in a file separate from the regular personnel file used to retain employment information on the employee and maintained confidentially but in accordance with the requirements of Chapter 119, Florida Statutes. Such inactivated disciplinary actions shall not be considered when reviewing an employee's qualifications for promotion or transfer; however, they may be reactivated in the event future performance problems indicate that a more serious disciplinary action is required. The Appointing Authority will review these items for placement in this separate file minimally as follows: Oral Reminder - Six Months; Written Reminder - Nine Months; Suspension- Twelve Months. The determination of the Appointing Authority regarding placement of these items in this separate file shall be final and shall not be grievable.

### **D. Authority to Effect Discipline**

- (1) Subject to appeal procedures referenced below the Appointing Authority shall have sole authority to dismiss, suspend, demote or reduce the pay of an employee, except that in the absence of the Appointing Authority this authority shall be delegated to a person designated by the Appointing Authority. Other disciplinary actions may be taken by supervisory personnel as authorized by the Appointing Authority.
- (2) Any supervisor is authorized to immediately suspend an employee who is deemed to pose a danger to the supervisor, the employer, or others. In such cases the supervisor shall notify the department Director of the action as soon as possible. The suspended employee shall remain on suspension for the remainder of the work day. At the beginning of the next scheduled work day the employee shall meet with the Department Director and the supervisor in order to determine the next course of action.

### **E. Appealable Actions**

Any Classified Service employee may be suspended without pay, demoted or discharged by an Appointing Authority for any cause listed in the attached chart listing offenses and deficiencies.

However, it should be noted that this chart is not exclusive and the Appointing Authorities retain the right to impose disciplinary action for other causes which impact upon the efficiency, morale or good order and discipline of the Classified Service. A written statement of the reasons for the action shall be submitted to the Director of Personnel and to each employee suspended, demoted, or discharged. Any affected permanent status employee may grieve the disciplinary action within ten (10) working days from the effective date of such action, in accordance with the grievance procedure specified in Rule XX; except that a permanent status employee shall have the right to appeal directly to the Personnel Board a discharge

within ten (10) working days from the effective date of the discharge. For purposes of this Rule as it relates to discharges and suspensions, a promoted employee serving the probationary period following a promotion who has, in the promotional position and in any other lesser classification, continuously served a total of one (1) year or more immediately preceding the disciplinary action shall be considered an employee with permanent status.

A member of the Personnel Department staff may assist an aggrieved employee by advising the affected employee of all rights and responsibilities in the appeal procedure. The staff member shall not act as a representative or advocate for the aggrieved employee. The employee may, if desired, be represented by counsel or layman during a hearing conducted under the provisions of this rule. The Personnel Department maintains a list of employees who have volunteered and have been trained to provide assistance and support to an employee at all stages of the appeal process.

## **F. Hearings**

- (1) The Personnel Board shall be the final authority in all matters relating to the personnel policy and personnel actions, and the findings of the Board shall be binding on all affected parties.
- (2) Any affected permanent status employee entitled to an appeal pursuant to paragraph E. of this rule shall have the right to a fact-finding hearing. Investigations and hearings authorized by the Pinellas County Unified Personnel System Act and conducted by the Personnel Board, or at its direction, shall provide for the opportunity to be heard, in person, by layman or by counsel, and the right to introduce testimony and other evidence to each party to the proceeding.
- (3) The Personnel Board, when conducting any investigations or hearing pursuant to the provisions of the Pinellas County Unified Personnel System Act, in accordance with its appeal procedure, shall have the power to appoint hearing examiners, administer oaths, take depositions, issue subpoenas to compel the attendance of witnesses and/or the production of records, books, papers, or other documents, and apply to the Circuit Court to compel obedience to such subpoenas in case of disobedience or refusal to comply with same.

Witnesses subpoenaed by the Personnel Board shall be entitled to receive, for attendance, fees and mileage as provided by law for witnesses in civil cases. Service of subpoenas shall be made in the manner provided by the Florida Rules of Civil Procedure.

- (4) Within ten (10) calendar days from the conclusion of an appeal hearing by the Personnel Board, the Board shall render its findings and decision which may sustain, reverse, or alter the decision of the Appointing Authority in the following manner:
  - a. Upon a finding that just cause existed for the suspension, demotion, or discharge, the Board shall affirm the disciplinary action taken;
  - b. Upon a finding that just cause did not exist for the suspension, demotion, or discharge, the Board may order the reinstatement of the employee, with or without pay;
  - c. Upon a finding that just cause for disciplinary action existed but the disciplinary action taken was inappropriate, the Board may in its discretion change the disciplinary action. In that event, the Board will remand the matter to the Appointing Authority for its recommended alternative disciplinary action which shall be considered by the Board before making a final decision.
- (5) Upon motion of a proper party, or by its own motion, the Personnel Board may reconsider, modify, or amend its finding and/or decision when said motion is made within ten (10) calendar days of receipt of the Board's decision and:
  - a. The motion for reconsideration, modification or amendment is based upon testimony taken at the previous hearing; or

- b. The motion for reconsideration, modification or amendment claims that the Board's decision was made through, or based upon fraud, collusion, deceit, or mistake of law or fact.

## **G. Suspensions Pending Judicial Review**

When any employee has been indicted or has had an information filed against him or her for a felony, a misdemeanor involving moral turpitude, or any offense in which a conviction would adversely affect the efficiency or morale of the Classified Service, the employee may, at the discretion of the Appointing Authority, be suspended with or without pay and such suspension may, in the discretion of the Appointing Authority, continue until any such charge has been prosecuted to its conclusion. In the event the suspension is without pay, the employee will be given an opportunity, either orally, in writing, or both, to present to the Appointing Authority reasons why the suspension without pay would be inappropriate.

Written notice of suspension shall be provided to the employee. In case any such employee has been tried and found guilty, and the conviction is not reversed, the Appointing Authority may terminate or reinstate the employee in the Classified Service. In the event adjudication is withheld, or the employee is placed in a Pre-Trial Intervention or similar program, the employee may be reinstated in the Classified Service at the discretion of the Appointing Authority, or the Appointing Authority may terminate the employee from the Classified Service. In the event such employee has been tried and acquitted, or the information or indictment is quashed or dismissed, the employee may present appropriate documentation to the Director of Personnel and request reinstatement.

Upon verification that such documentation is genuine and accurate, the employee may be reinstated in the Classified Service by the Appointing Authority or on affirmative action by the Personnel Board, and the employee may appeal to the Personnel Board for payment of wages and benefits lost during the suspension period less sums from all sources, including wages or salary earned from any and all public assistance and unemployment compensation received during the period of suspension. The Personnel Board may grant such payment only with the concurrence of the Appointing Authority.

## **H. Leave During Investigations**

An employee who is under formal investigation by the Department for violation of a rule or statute for which dismissal is a penalty, may be placed on administrative leave with pay not to exceed 10 work days. This leave may be extended for an additional period of time if deemed necessary by the Appointing Authority. Such administrative leave is not an appealable action.

## **I. Types of Disciplinary Action**

- (1) **Oral Reminders.** An oral reminder ordinarily, but not necessarily, will be given by the immediate supervisor. When a supervisor determines that an oral reminder will be given to an employee, the supervisor shall discuss orally with the employee the nature of the improper behavior or the offense involved and explain the necessary corrective action. The supervisor will inform the employee that future deficiencies or misconduct, whether similar or not, could result in more severe disciplinary action in accordance with Rule XXIV, Standard

Ranges of Disciplinary Actions. The employee shall be allowed to make comments regarding the incident.

A memorandum titled "Documentation of Oral Reminder" shall be given to the employee following the oral discussion. The memorandum shall include each of the items in the above paragraph. The memorandum should also inform the employee that promotional opportunities may be withheld during the active period of the Oral Reminder and that the employee's performance review may be adversely affected possibly resulting in a reduced or denied merit increase. The employee should not be required to sign an acknowledgment of having received a copy of this document .

- (2) **Written Reminders.** A written reminder ordinarily, but not necessarily, will be given by the immediate supervisor. When a supervisor determines that a written reminder will be given to an employee, a memorandum to the employee shall be prepared and will be given to the employee at the time the problem is discussed. The content of the memorandum shall indicate that the employee is receiving an official written reminder and contain the same information as is outlined above for an oral reminder.

### **Required Pre-Disciplinary Hearings**

Under established law, the following actions require a pre-disciplinary hearing before becoming effective. Such hearings are not conducted under the auspices of the Unified Personnel System Board, therefore, they may be conducted in the manner determined appropriate by the respective Appointing Authority in conjunction with guidance from the County Attorney.

- (3) **Suspension.** Suspension is appropriate when a supervisor observes continued occurrence of minor violations or commission of a major offense. A suspension is a period of time without pay. A notice of suspension shall state the specific reason or reasons for the action, the length of the suspension, corrective behavior that will be needed in the future and the consequences of failure to correct the behavior.
- (4) **Reduction in Pay.** A reduction in pay action is appropriate when counseling, oral reminders and written reminders have not been successful in correcting poor performance or behavior. This type action should be used in lieu of suspension, particularly when suspension would be incongruous with the offense, e.g. excessive tardiness or excessive absence. The reduction in pay shall be limited to a maximum of five percent and should remain in effect until the problem is corrected, with a review of the employee's performance not less frequently than six months.
- (5) **Demotion.** Demotion for disciplinary reasons is appropriate when an employee has committed a serious offense and management has lost confidence in the employee's ability to function effectively in the current position, but believes the employee can contribute positively in a less responsible position.
- (6) **Dismissal.** This is the final step in the progressive discipline process. A dismissal may be the result of a single severe rule violation. More often it occurs as a result of an accumulation of minor offenses and the failure of the employee to react positively to the corrective efforts of the supervisor.

## **J. Standard Ranges of Disciplinary Actions**

The following standard ranges of disciplinary actions are guidelines only and have been established to help ensure that all employees receive similar treatment in like circumstances. The recommended disciplinary action is normally the penalty which should be imposed; however, a violation of any offense is subject to discipline ranging from oral reminder to discharge depending on the circumstances which make a greater or lesser action more appropriate than the one suggested. The impact of the offense will be an important factor in determining the severity of the disciplinary action. Realizing that some of the offenses and deficiencies listed will be more serious and more frequent in certain cases, the person taking the disciplinary action must utilize good judgment in light of all available facts in each case. Second and subsequent offenses have a cumulative effect and justify greater penalties. An offense need not be similar in nature to an earlier offense in order to have such cumulative effect. An overall evaluation of satisfactory or better for a period of time between offenses does not diminish the cumulative effect. The length of the period of time between offenses is a factor that may be considered in determining the severity of the penalty.

When a disciplinary proceeding is based on an overall evaluation of needs attention or unsatisfactory, the action should be as consistent with the standard ranges as circumstances suggest. Likewise when disciplinary action is taken, the employee's performance review rating for that period will in all likelihood be adversely affected. As such, depending upon the severity of the circumstances and the level of discipline administered, any merit increase may be reduced or denied depending upon how severely the performance review is affected by the event(s) leading to the disciplinary action. Regarding promotional opportunities, these may be withheld as well during the period the disciplinary action is active depending upon the circumstances. Normally any disciplinary action requiring a pre-disciplinary hearing will result in a denial of a merit increase and promotional opportunities for one year.

In addition to or in lieu of the penalty imposed pursuant to the following standards, personnel action may include a reduction in pay.

The totality of the employee's work record and any mitigating circumstances should always be considered when making decisions regarding disciplinary action.

This list of offenses is not meant to be all-inclusive but rather a listing of the most common offenses.

Offenses and Deficiencies	First Offense	Second Offense	Third Offense	Fourth Offense
(1) Substandard quality or quantity of work.	Oral reminder to written reminder	Written reminder to 3 day suspension	3 day suspension to dismissal	Dismissal
(2) Sleeping on the job.	Written reminder to 3 day suspension	3 day suspension to dismissal	Dismissal	
(3) Failure to perform assigned duties.	Oral reminder to 3 day suspension	Written reminder to 5 day suspension	Dismissal	
(4) That the employee refused to answer questions from a superior or investigative agency relating specifically and directly and narrowly to the employee's official duties, after the employee had been warned that refusal to answer such questions could lead to disciplinary action and that statements made by employees under such circumstances were inadmissible as evidence in a criminal prosecution.	3 day suspension to dismissal	Dismissal		
(5) Insubordination.	Oral reminder to 3 day suspension	Written reminder to 5 day suspension	Dismissal	
(6) Excessive tardiness.	Oral reminder to written reminder	Written reminder to reduction in pay	Reduction in pay to dismissal	Dismissal
(7) Excessive absenteeism.	Oral reminder to written reminder	Written reminder to reduction in pay	Reduction in pay to dismissal	Dismissal
(8) Leaving work station without authorization.	Oral reminder to 3 day suspension	3 day suspension to dismissal	Dismissal	
(9) Absence without authorized leave.	Written reminder	3 day suspension	Dismissal	
(10) Intentional falsification of records.	3 day suspension to dismissal	Dismissal		

Offenses and Deficiencies	First Offense	Second Offense	Third Offense	Fourth Offense
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(11) Unintentional destruction or misuse of property or equipment.	Oral reminder to 3 day suspension	Written reminder to 5 day suspension	Greater than 5 day suspension to dismissal	Dismissal
(12) Intentional destruction or misuse of property or equipment.	3 day suspension to dismissal	Dismissal		
(13) Unauthorized use of bulletin boards.	Oral reminder to 3 day suspension	Written reminder to 3 day suspension	5 day suspension to dismissal	Dismissal
(14) Unauthorized use of County equipment or property.	Oral reminder to 3 day suspension	Written reminder to dismissal	Dismissal	
(15) Violation of Safety Rules.	Oral reminder to 3 day suspension	3 day suspension to dismissal	Dismissal	
(16) Willful violation of written rules, regulation policies or statutes.	Written reminder to dismissal	3 day suspension to dismissal	Dismissal	
(17) Negligence resulting in minor consequences.	Oral or written reminder	Written reminder to 3 day suspension	Dismissal	
(18) Negligence resulting in serious consequences.	3 day suspension to dismissal	Dismissal		
(19) Unauthorized distribution, solicitation, or sales.	Oral to written reminder	Written reminder to 3 day suspension	Dismissal	
(20) That the employee has engaged in a physical fight at the work site.	3 day suspension to dismissal	Dismissal		

Offenses and Deficiencies	First Offense	Second Offense	Third Offense	Fourth Offense
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(21) That the employee has engaged in a verbally abusive and/or intimidating confrontation with a supervisor, peer, employee or citizen.	Written reminder to dismissal	3 day suspension to dismissal	Dismissal	
(22) Horseplay.	Oral reminder to written reminder	Written reminder to 3 day suspension	3 day suspension to dismissal	Dismissal
(23) Unlawful gambling during working hours or on County property.	Oral reminder to 3 day suspension	3 day suspension to dismissal	Dismissal	
(24) That the employee possesses a deadly weapon, while on County owned or leased property, or in a County owned vehicle or in a personal vehicle while being used for County business except as specifically provided in Florida Statute §790.251. Prohibited possession under this Rule shall also apply to a deadly weapon located in an employee's privately-owned vehicle if such vehicle is parked on County owned or leased property. For the purposes of this Rule, a "deadly weapon" shall be defined as any instrument which will cause death or great bodily injury when used in the ordinary and usual manner contemplated by its design and construction and includes, but is not limited to, the following: Firearms; clubs; knives, other than a common pocket knife with a folding blade or an eating utensil; stun guns; brass knuckles; and numchucks, throwing stars, and other martial arts weapons. Exceptions to the above prohibitions may be granted by Appointing Authorities to employees whose duties require them to carry such an item or who have a need to carry a firearm or deadly weapon for their own personal protection.	3 day suspension to dismissal	Dismissal		
(25) Use of profane, obscene or abusive language.	Oral reminder to written reminder	Written reminder to 3 day suspension	3 day suspension to dismissal	Dismissal
(26) Violating decency or morality.	3 day suspension to dismissal	Dismissal		

Offenses and Deficiencies	First Offense	Second Offense	Third Offense	Fourth Offense
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(27) That the employee has misappropriated County funds, appropriated County property for personal use, or illegally disposed of County property.	Written reminder to dismissal	Dismissal		
(28) Violation of County Substance Abuse Policy or CDL Testing Policy.	Dismissal			
(29) That the employee has been guilty of conduct unbecoming an employee of the County whether on or off duty.	Written reminder to dismissal	Dismissal		
(30) Finding of guilty or plea of guilty or nolo contendere to an employment-related first degree misdemeanor, or felony whether adjudication of guilt is withheld or not.	3 day suspension to dismissal	Dismissal		
(31) Finding of guilty or plea of guilty or nolo contendere to a misdemeanor or felony involving moral turpitude*, whether adjudication of guilt is withheld or not and whether related to employment or not.	Written reminder to dismissal	Dismissal		
(32) Unlawful harassment and/or discrimination	Written reminder to dismissal	Dismissal		
(33) That the employee is incapable of performing the essential functions of the job classification because of a mental or physical disability, even with a reasonable accommodation.	Demotion or dismissal			
(34) That the employee has violated the Personnel Act with regard to political activity.	Written reminder to dismissal	Dismissal		
(35) That the employee has been guilty of attempting to use political influence in attaining a position or in securing promotional positions or attempting to influence officers or supervisory employees in personnel matters.	Written reminder to dismissal	Dismissal		
(36) That the employee has intentionally falsified a time record or made a false claim for leave, or failed to report absence from duty to supervisors.	3 days suspension to dismissal	Dismissal		
(37) That the employee, after employment, is found to have made a false statement in his application for employment.	Written reminder to dismissal			

Offenses and Deficiencies	First Offense	Second Offense	Third Offense	Fourth Offense
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(38) That the employee is offensive in his conduct; antagonistic toward superiors, fellow employees, or the public; or whose conduct interferes with the proper cooperation of employees or impairs the efficiency of the County service.	Oral reminder to 3 day suspension	Written reminder to dismissal	Dismissal	
(39) That the employee has been refused a surety bond when applied for as a qualification for employment.	Dismissal			
(40) That the employee refuses to have fingerprints or photograph taken when directed to do so.	Dismissal			
(41) That the employee, whose position requires the operation of a motor vehicle in the performance of assigned duties, has a suspended driver's license or fails to advise the supervisor that the driver's license has been suspended or revoked.	Demotion or dismissal	Dismissal		
(42) That the employee whose position requires the operation of a motor vehicle in the performance of his duties, fails to immediately advise of a conviction for violation of any motor vehicle law or ordinance for which more than three (3) points are assessed pursuant to Section 322.27, Florida Statutes, or any conviction under Sections 316.193 or 316.1931, Florida Statutes (driving under the influence).	Oral to written reminder	Written reminder to 3 day suspension	3 day suspension to dismissal	Dismissal
(43) That the employee has failed to qualify on the examination required for the held required job classification.	Demotion or dismissal			
(44) That the employee, during working hours or non-duty hours, has engaged in an employment, activity, or enterprise that is inconsistent, incompatible, in moral or in legal or technical conflict with assigned duties, functions, and responsibilities as a County employee.	3 day suspension to dismissal	Dismissal		
(45) That the employee has violated Section 447.505, Florida Statutes, or any subsequent amendments thereto or any other related, applicable Florida Statute, or has induced or attempted to induce, or aided or abetted any employee of Pinellas County to engage in any strike or walk-out against Pinellas County or any organizational department or unit thereof.	Dismissal			

Offenses and Deficiencies	First Offense	Second Offense	Third Offense	Fourth Offense
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(46) Violation of County Ethics Policy. That the employee has solicited or taken for personal use a fee, gift, or other valuable thing in the course of assigned work or in connection with it, when such fee, gift, or other valuable thing so solicited or given might be construed to be a means of receiving a favor or obtaining better treatment than that accorded other persons either on a present or future basis.	Oral reminder to dismissal	Dismissal		
(47) Failure to perform a reasonable amount of emergency work outside normal working hours when directed to so do by proper authority.	3 day suspension to dismissal	Dismissal		
(48) That the employee has failed to report any arrest during employment with the County (The employer may or may not elect to exercise a suspension pending judicial review (Section G))	Oral reminder to dismissal	Written reminder to dismissal	Dismissal	
(49) Violation of County or Departmental building, grounds or other security regulations.	Oral reminder to dismissal	Written reminder to dismissal	Dismissal	

### Conferences for Probationary Employees.

When incidental to the dismissal of a probationary employee, the Department places in the employee's personnel file any information concerning the employee which might be considered stigmatizing to future employers, i.e., termination for misconduct; and if the employee contends that the information is false, the employee may, in writing, demand a name clearing conference. If such demand is made, the Department shall provide the employee an opportunity to demonstrate the falsity of the information, and the burden of proof shall be on the employee. The sole issue to be determined shall be the truth or falsity of the information alleged by the employee to be false, and the decision shall not necessarily affect the dismissal.