Performance Improvement & Progressive Discipline

A Human Resources Guide

Department of Human Resources

Learn... Grow... Lead... Excel

The Manager's Toolbox

Committed to Excellence

TABLE OF CONTENTS

SECTION ONE: Guide to Progressive Discipline

How to Use This Guide 4

Introduction 6

Performance Management vs. Progressive Discipline 7

Using Performance Improvement Plans (PIPs) 9

Developing and Implementing a Performance Improvement Plan (PIP) 10

The Progressive Discipline Process 11

Rights and Standards in Applying Progressive Discipline 11

Conducting Investigative Meetings 12

Just Cause Standards 13

Weingarten Rights 14

Verbal Reprimand 15

Written Reprimand 15

Suspension 15

Demotion 16

Termination 16

Procedure for Suspension and Demotion 16

Procedure for Termination (Discharge) 16

Common Disciplinary Offenses 18

Attendance 18

Chronic Poor Performance 19

Discourtesy to the Public and Co-Workers 20

Insubordination 20

Off-Duty Conduct 21

Theft 21

TABLE OF CONTENTS

SECTION TWO: Tools for Progressive Discipline

Discipline Checklist 23

Washoe County Performance Improvement Plan (PIP) 24

Sample Letters:

Verbal Reprimand 26

Written Reprimand 27

Notice of Investigative Meeting 29

Notice of Investigative Meeting 30

Notice of Investigative Meeting 31

Refusal to Answer Questions 32

Notice of Second Investigative Meeting 33

Notice of Discipline 34

Notice of Disciplinary Action-Suspension 35

Notice of Proposed Action-Discharge of Employment 36

List of Appendices

Appendix A: Glossary of Terms 37

How To Use This Guide

The processes detailed within are based on all applicable laws and are used and supported by the Washoe County Board of County Commissioners, the County Manager's Office, the Department of Human Resources, County departments, and collective bargaining units.

Section One of this Guide will walk you through the Progressive Discipline Process and provide detailed information on the steps and requirements necessary to successfully implement discipline.

Section Two is a tool kit containing sample documents to help you apply discipline. When you see the "tool" icon, you will know a useful reference is available to help you with the topic being discussed.

As always, your Department of Human Resources is here to help you with performance management and progressive discipline and to support you in all of your talent management initiatives.

SECTION ONE:
Guide to Progressive Discipline

Progressive Discipline

Introduction

This guide is intended to provide direction to Washoe County managers and supervisors regarding when and how to implement the progressive discipline process.

In general, the progressive discipline process is used to address:

- chronic employee behavior that fails to comply with standards of conduct (i.e., often late, unexplained absences, or otherwise fails to take care of business)
- obvious unacceptable behavior (i.e., insubordination, rude, or antagonistic)
- violation of county policy

OBJECTIVES

The progressive discipline process is in place to:

- help managers and supervisors identify employee performance and behavior problems and know when and how and when to address them
- provide managers and supervisors with a method for taking action to help employees improve/change performance/behavior
- give managers and supervisors a clear understanding of roles and responsibilities in handling progressive discipline matters
- provide information on the steps and requirements necessary to effectively apply discipline
- provide a consistent methodology for handling more serious and/or chronic employee issues
- provide managers and supervisors with an understanding of their responsibility for knowing the contractual agreements

Did you know?

Any disciplinary action must be noticed to the employee and to the appropriate labor association. It is important to respond immediately to an offense, to be consistent in enforcing all such occurrences with all employees, and to document all actions.

Performance Management vs. Progressive Discipline

Employee issues that require corrective action on the part of the manager can be generally categorized as either performance or behavior problems. Progressive Discipline is a series of increasingly serious corrective actions taken in compliance with collective bargaining agreements to address repeated, unacceptable behavior or more serious performance problems. In general, supervisors do not start with progressive discipline for poor work performance or less serious/non-chronic behavioral problems. These kinds of issues are more typically handled by supervisors as a part of their day-to-day performance management responsibilities.

Behavior Problems

Unacceptable behavior may include, but not be limited to, misconduct, negligence, actions or behaviors that violate rules, regulations, County/Departmental policies, insubordination and attendance issues. Such behavior may result in discharge from employment.

Problem behaviors are usually within the control of the employee. For example, employees make a conscious decision every day to either leave home in sufficient time to arrive at work on time or not, to be truthful or not, to follow the direction of their supervisors or not.

Performance Problems

Examples of performance problems include poor productivity, inability to perform tasks/ responsibilities, lack of knowledge/skills/abilities in area of responsibility, and inability to meet performance standards/expectations. Problems such as these are not always completely within the employee's control. It is incumbent upon the supervisor to play an active role in assisting the employee to meet the minimum requirements of the position through performance management.

Application of Progressive Discipline is not a substitute for effective performance management. In fact, as a supervisor, your goal is to achieve the desired results or behavior change without having to apply the more punitive measures of the Progressive Discipline process.

Did you know?

Probationary employees serve at the pleasure of the appointing authority and may be rejected at any time during the probationary period; however, their performance must be monitored and managed with formal performance evaluations being completed at the end of the 3rd and 5th month for those serving a 6-month probationary period and at the end of the 3rd, 8th and 11th month for those serving a 12-month period. Probationary employees must be provided the training, assistance and resources to meet the standards of performance for the position and be given the opportunity to address performance concerns as well as an opportunity to improve.

Progressive Discipline

Unfortunately, there may be many instances where the employee issues you need to address do not seem so clear cut and you will need to make a distinction between willful misconduct, incompetence, and poor judgment when considering implementing performance improvement measures and/or formal discipline. You need to apply the appropriate measures based on a determination of whether the behavior or performance shortcomings arise from incompetence or are due to negligence and/or overt, willful disregard for reasonable rules, procedures and policies. It would not be appropriate to treat an employee's inadequacies as willful so long as he or she endeavors to improve but is simply unable to meet the requirements of the job. However, you are not obligated to carry indefinitely an incompetent employee. If rehabilitative measures do not succeed, the you may have no alternative but to demote or terminate the employee.

Typically, there is a sequence of events in the performance management process that should occur and that may lead up to Progressive Discipline if performance does not improve:

1. Define behavior and performance standards and expectations and communicate them to employees.
2. Provide employees with the training, resources, coaching and opportunity to achieve the expected level of performance.
3. Be sure that the standards of behavior and performance have been applied equitably.
4. Monitor the employee's performance and behavior.
5. Provide on-going coaching and feedback.
6. Deliver a Notice of Expectations to employee if appropriate.
7. Implement a Performance Improvement Plan (PIP) as appropriate.

When these measures have not resulted in the expected level of performance and/or behavior in accordance with the established expectations or when adherence to established expectations is chronically unacceptable and expected performance and behavior is not sustained, Progressive Discipline should be applied. And of course, if the gravity of the infraction or deficiency is such that these steps are not appropriate, progressive discipline could be applied immediately.

The Progressive Discipline Process is designed to ensure the supervisor establishes clear, timely and documented communication with an employee regarding:

- the expectations of the job
- what he has done wrong
- How she can correct it
- a timeframe for correcting the behavior and/or improving performance

- the consequences if they fail to change/correct their behavior

Once the threshold for applying progressive discipline has been crossed, specific measures must be taken in accordance with applicable laws, policies, and labor agreements.

Using Performance Improvement Plans (PIPs)

A Performance Improvement Plan (PIP) is used to develop desired performance and/or behavioral change. In addition to the assignments, functional tasks, knowledge and skills usually associated with performance, desired performance can include:

- adherence to the County Code of Conduct and County Policies
- proficiency in the application of Washoe County Core Competencies (e.g. Customer Service, Personal Relationships)
- adherence to standards or requirements of the job and/or department (e.g. attendance, call-in-sick procedures)

Did you know?

The *Washoe County Guide to Managing Employee Performance* outlines the process for ongoing performance management and can be found on the HR website in the Managers' Toolbox.

Performance Improvement Plans are intended to deliver a stronger message to the employee than might be given in day-to-day coaching. PIP's clearly indicate that change is needed, communicate the performance expectations, and set a timeframe for improvement.

Think of a PIP is as an interim performance evaluation that focuses on specific performance issues rather than overall performance. As such, it should be signed by you and the employee and placed in both their departmental and HR files. If the employee improves as needed and no further action is necessary, the employee can request that the PIP be removed from his or her files at the time of the next scheduled performance evaluation. This evaluation must indicate an overall "Meets" or "Exceeds" Expectations rating and the employee should make the request through the supervisor who will notify HR. However**, f**ailure on the part of an employee to adhere to a Performance Improvement Plan and affect and sustain the desired results or change may result in the next Performance Evaluation with an overall rating of "Below Expectations" and denial of a merit increase and/or the application of Progressive Discipline as the behavior may be deemed chronic.

A sample PIP can be found in Section Two and a blank form can be found in the Managers' Toolbox.

Developing and Implementing a Performance Improvement Plan (PIP)

A PIP is used when training and coaching efforts have not resulted in the desired change in performance and/or employee behavior is unacceptable. This document includes:

- Specific job requirements and expectations
- Specific improvement needed
- Consequences if performance improves, does not improve, or is not sustained
- Action plan for improvement including assistance and support that will be provided
- Timeframe for improvement, typically 60 to 90 days

Remember that the purpose of a PIP is to help the employee understand what needs to be done, by when it needs to be done, what consequences may result if no change occurs or if the change is not sustained, and what assistance and support is available to help achieve the desired result.

Once you have drafted a PIP, use these steps to help ensure successful communication and implementation.

1. Meet with the employee to discuss and get agreement on the improvement needed and the action plan for improvement.
    - Review the draft improvement plan with the employee.
    - Agree on specific actions, monitoring methods, needed resources and support such as training, supervisory assistance and guidance.
    - Reiterate performance expectations including maintenance of expected performance levels, steps to improve performance, state expected outcomes.
2. Revise Plan to incorporate employee input as needed and appropriate.
3. Hold a final discussion and obtain employee signature.
4. Monitor and follow-up
    - Schedule weekly or bi-weekly meetings to review progress.
    - Evaluate the outcome of the improvement plan.
5. Determine what, if any, additional action may be required.

Hopefully the PIP will achieve the desired result and no further action will be required beyond regular, on-going performance management. However, if the performance is not improved and sustained or if the behavior or performance deficiency reoccurs, the supervisor will have developed sound documentation to support whatever personnel action must be taken.

Progressive Discipline

The Progressive Discipline Process

As the name implies, there are a series of increasingly serious steps in the Progressive Discipline process; however, it is not necessary to proceed through each step in every case. There may be situations of such a grievous nature that to progress through the steps would not be appropriate. In those cases you may begin the Progressive Discipline process with a more serious response such as suspension or even termination. Be sure to utilize the expertise of Human Resources, as well as your own department management to help you through the process of addressing serious and/or chronic performance and behavioral issues.

Remember that formal discipline is a serious action taken by an employer. It is typically not to be used for addressing non-chronic performance issues or minor behavioral issues. Because of the gravity of applying the disciplinary process, it is important to understand the steps involved and the rights accorded to all involved parties.

Once the determination has been made to begin the Progressive Discipline process, and regardless of the step in the process where you begin, the employee and the employee's association must be noticed and written documentation of every step is placed in the employee's personnel file in HR.

Rights and Standards in Applying Progressive Discipline

Employee Rights

Employees have the right to have union representation at meetings regarding disciplinary action (see Weingarten Rights, pg. 14 and sample letter pg. 26). Additionally, employees have the right to appeal disciplinary actions through the grievance procedure set forth in the applicable collective bargaining agreement. Non-represented employees are given the same due process as those who are represented. Per Washoe County Code 5.313-5.333.

All written notifications to an employee of demotion, suspension, or other disciplinary action is not to be used against him or her if it has been in the employee's HR file for a period of eighteen months, discounting leaves of absence. This is provided that there has been not notification for the same or similar conduct during that eighteen month period. This eighteen month limitation does not apply to any discipline rising to the level of a suspension or demotion, or to any disciplinary action taken against an employee arising out of a matter covered under Title VII of the Civil Rights Act of 1964.

Did you know?

Information regarding the application of Progressive Discipline and employees' rights in the process is found in the Collective Bargaining Agreements (CBAs) and in Washoe County Code Always check the applicable collective bargaining agreement/code before beginning any disciplinary procedure. Bargaining agreements and Washoe County Code can be found on the HR website.

After a period of six years, an employee may make a written request to HR to have the disciplinary material removed from their HR file (excludes materials subject to the 18 month provision). Disciplinary materials removed from an employee's HR file may be maintained separately by the Human Resources Department as historical records of discipline imposed and for the purpose of providing a defense in any future employment litigation involving the County. However, in such event, the County shall not disclose the identity of an employee unless a court of competent jurisdiction determines that such disclosure is relevant to the litigation.

Did you know?

It is good practice to follow the same procedures for disciplining probationary employees as you would for those who are permanent. Following the procedures outlined in this guide will ensure that you have applied the disciplinary measures appropriate for the situation and managed the process properly. However, the same rights afforded to permanent employees do not apply to probationers. The right to notification, union representation and protest of a disciplinary action does not apply to probationary employees.

Conducting an Investigative Meeting

In most cases rising to the level of disciplinary action, an investigation into the employee's conduct or behavior will be undertaken. Investigations into allegations of misconduct are handled by department management and are used to prove the truth of the matter and to determine that the discipline is justified. Investigations typically include:

- Reviewing relevant documentation of performance management activities
- Reviewing other relevant documentation relating to the conduct in question
- Meeting with and interviewing the employee and the supervisor
- Meeting with and interviewing other employees who may have relevant information pertinent to the matter in question

Following these procedures will help ensure a fair and defensible outcome:

1. Notify your senior management of the allegations against the employee and the recommendation to conduct an investigative meeting.
2. Once approval is given to conduct the meeting, arrange for a private location, date and time.
3. Provide written notification of the investigative meeting to the employee, the appropriate collective bargaining unit, management and human resources. (See pg. 26 for a sample letter)
4. Review pertinent information and documentation regarding the matter and write the questions you will ask during the meeting.

5. Investigative meetings should be conducted by the supervisor of the employee being investigated or by the Department Head or designee.
6. Record notes/minutes of the meeting discussion and any actions or next steps identified.
7. Provide the meeting notes to department management for review and determination of whether or not further investigation or disciplinary action is to be pursued.

Just Cause Standards

Just cause is a burden of proof or standard that an employer must meet to justify discipline or discharge. Just cause usually refers to a violation of a company policy or rule. In some cases, an employee may commit an act that is not specifically addressed within the employer's policies but one of which the employer believes warrants discipline or discharge. In such instances, the employer must be confident that he can defend his decision.

Typically, an employer must prove just cause before an arbitrator to sustain an employee's termination, suspension, or other discipline. When an arbitrator looks at a discipline dispute, the arbitrator first asks whether the employee's wrongdoing has been proven by the employer, and then asks whether the method of discipline should be upheld or modified. These principles are reflected in the following seven tests for just cause:

1. **Reasonable Rule:** Was the employer's rule or managerial order reasonably related to the orderly, efficient, and safe operation of the business and the performance that the County might properly expect of the employee?

2. **Notice:** Did the County give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct or actions?

3. **Sufficient Investigation:** Did the County, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?

4. **Fair Investigation:** Was the County's investigation conducted fairly and objectively?

5. **Proof:** At the investigation did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?

6. **Equal Treatment:** Has the employer applied its rules, orders and penalties fairly and without discrimination to all employees?

7. **Appropriate Discipline:** Was the degree of discipline administered by the County in a particular case reasonably related to the seriousness of the employee's proven offense and the record of the employee in their service with the County?

Weingarten Rights: Employees' Right to Representation

Weingarten Rights refer to an employee's right to union representation at a disciplinary investigative interview. In 1975, the United States Supreme Court, in the case of *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975), upheld a National Labor Relations Board (NLRB) decision that employees have a right to union representation at investigatory interviews that may reasonably result in a disciplinary action and have the right to refuse to submit to an investigatory interview unless union representation is permitted. These rights have become known as the Weingarten Rights.

During an investigatory interview, the Supreme Court ruled that:

RULE 1: The employee must make a clear request for union representation before or during the interview. The employee cannot be punished for making this request.

RULE 2: After the employee makes the request, the employer must choose from among three options. The Employer must either: 1) grant the request and delay questioning until the union representative arrives and has a chance to consult privately with the employee; 2) deny the request and end the interview immediately; or 3) give the employee a choice of having the interview without representation or ending the interview.

RULE 3: If the employer denies the request for union representation, and continues to ask questions, it commits an unfair labor practice and the employee has a right to refuse to answer. The employer may not discipline the employee for such a refusal.

Considerations:

- The employee must reasonably believe the investigation will result in discipline.
- The union representative is present to assist the employee, and may attempt to clarify the facts.
- An investigation does not take place when an employer informs the employee of a disciplinary decision.

Represented Washoe County employees may have union representation at all meetings regarding formal discipline. Therefore, it is incumbent upon the supervisor to inform the employee that they are being requested to attend a meeting that may result in disciplinary action, regardless of where in the process they are beginning. Employees do not have the right to (but may be granted) representation during normal supervisor/employee or performance management discussions.

Progressive Discipline

The typical progression through and a description of each step in the discipline process follows.

Verbal Reprimand

The verbal reprimand is used for less serious or first time offenses. The supervisor sets a meeting with the employee and:

- describes the unacceptable behavior
- indicates expected behavior
- outlines future consequences of failing to correct the behavior

A written memo to the employee documents the meeting discussion, identifies this as a verbal reprimand, and is placed in the employee's HR file as a record of the conversation.

Written Reprimand

A written reprimand can be issued for repeated offenses or first time offenses of a more serious nature. If applicable, it may reference the verbal warning and a copy is placed in the employee's HR file. The document:

- clearly identifies that it is a written reprimand
- describes the unacceptable behavior
- describes how the behavior violated expectations or rules
- describes the impact of the behavior on the department and/or county
- indicates what the employee needs to do to improve
- outlines future consequences if there is no improvement
- indicates what the employee's rights are

Suspension

Suspension is used when an employee continues to violate rules after receiving a written reprimand or when the offense is of a very serious nature. The employee is suspended from his or her position without pay for the duration of the suspension, not to exceed 30 calendar days.

Suspension without pay is intended to signal the seriousness of the matter and gives the employee the opportunity to review his or her commitment to changing / improving behavior.

Sample letters can be found in Section Two.

Demotion

A demotion may be imposed where misconduct or willful action indicates it is appropriate.

Note: Demotion also may occur as the result of an employee's inability to perform the duties and responsibilities of their job. In this case, a demotion would not be considered a disciplinary action.

Termination

Termination is used as the final result of moving through well-documented steps of the progressive discipline process or in the case of an extremely serious first offense such as criminal activity or violence on the job. The County does not discharge a permanent, classified employee without just cause. The right to protest a discharge is limited to non-probationary, classified employees.

Procedure for Suspension and Demotion

Once the determination to proceed with either a suspension or a demotion has been reached, there are specific requirements which must be met. Contact HR for help with suspensions and demotions as well as terminations.

In general, the order, issued by an appointing authority, to suspend or demote must:

- Be in writing
- State specifically the action to be taken
- State specifically the cause or causes for the action to be taken
- State the effective date of such action
- State that the employee has 7 calendar days within which to appeal the action
- Be served on the employee , either personally or by posting by certified mail no later than 24 hours after the effective date of the action
- Be filed with the department of human resources

Procedure for Termination (Discharge)

If a termination has been deemed appropriate, specific steps and requirements must be followed (contact HR for assistance). First, the proposed termination must be noticed upon the employee and the association, before proceeding with the discharge order. This Notice of Proposed Action must be served on an employee by an appointing authority and must:

- Be in writing

- Be served on the employee, either personally or by posting by certified mail no later than 24 hours after the effective date of the action
- State specifically the action proposed to be taken
- State specifically the charges upon which the action is based
- State that the employee has 7 calendar days to respond to the appointing authority either orally or in writing

After having complied with the requirements above, the appointing authority may order the discharge of the employee. The order must:

- Be in writing
- State specifically the cause or causes for the action
- State the effective date of such action, which shall be no less that 7 calendar days from the date of issuance of the notice of proposed action
- State that the employee as 7 calendar days within which to appeal the action
- Be served on the employee either personally or by posting by certified mail, prior to the effective date of such discharge
- Be filed with the department of human resources

Common Disciplinary Offenses

Below are a few of the more common disciplinary offenses and some things you need to consider prior to taking disciplinary action.

Attendance

One of the most difficult areas of performance management and discipline is attendance. The varying requirements for work coverage across the County's departments and within the departments themselves contribute to the subjectivity and confusion in managing this common employee issue.

Issues of absences and tardiness must be managed in accordance with county and departmental policies and procedures on attendance, leave usage, and work/shift hours. As always, these policies and procedures must be clearly communicated to employees and enforced in a fair and equitable manner. A good rule of thumb when determining the seriousness of an attendance issue is to consider the employee's job/position requirements. For example, a front desk receptionist must be present and ready to begin work when the office front door is unlocked at 8:00 AM. If that employee is chronically late or absent, customer service may be jeopardized and an undue burden may be placed on other employees to cover for the absent receptionist.

However, there must be a balance between the employee's ability to remain away from work when ill and the employer's need for reliable attendance to assure smooth operations. Chronic and excessive absenteeism can be just cause for discharge; however, determining when absenteeism is excessive requires careful examination. Federal laws, such as the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA), may need to be considered. Therefore, work closely with Human Resources in evaluating such absence cases.

Following are several of the most common attendance issues and how to address them.

Excessive Absences

The right to terminate employees for excess absences, even where they are due to illness, is generally recognized by arbitrators. Keep in mind that there may be additional factors that a manager should consider, including:

- *Are the absences intermittent in nature as opposed to extended absence? Long-term illnesses should be looked at on a case-by-case basis with real consideration being given.*
- *Does there appear to be a pattern to the days of the absences (i.e. Mondays, Fridays, days preceding or following scheduled time off or holidays)?*
- *Is this an employee with long service / seniority?*

- *Has the employee been given an opportunity to improve their record with good attendance?*

Failure to Call In

Disciplinary action may be warranted when an employee fails to follow the department/division policy regarding notification to the employer when absences will be necessary. Nevertheless, before disciplinary action is taken, an investigation must take place in which the employee receives an opportunity to provide his or her explanation as well as any mitigating circumstances. Things to consider are:

- *Was the employee properly notified of the expectations and procedures for calling in (i.e. phone number, how long before the start of shift, etc.)?*
- *Has this behavior occurred and been addressed with the employee before?*

Misuse of Contractually Provided Time Off

Should an employee intentionally misuse contractually justified absences (e.g., by claiming jury duty when one was not called), disciplinary action would be warranted and normally supported.

Tardiness

One of the most troublesome attendance issues for employers is tardiness. This is an infraction that can be perceived as minor in some cases (e.g., payroll clerk) and major in others (e.g., Sheriff's Deputy). Therefore, it is often inconsistently enforced. Arbitrators recognize the reasonableness of an employer's expectation that its workers will report for work on time. As always, clear communication, consistent enforcement, thorough investigation, and penalties consistent with the offense and the past disciplinary record of the employee are critical.

Chronic Poor Performance

An employee can be disciplined for poor performance when communication, coaching and a Performance Improvement Plan have failed to result in the necessary changes and improvement. The supervisor is responsible for establishing and communicating reasonable performance standards prior to taking any corrective or disciplinary action and there must be clear evidence that the employee failed to meet the established standards and expectations.

Before completing corrective or disciplinary action for poor performance, managers must ask themselves these questions that outline the proactive performance management steps they should take to prevent the need for disciplinary actions.

- *Has the employee received adequate training?*
- *Has the employee received adequate supervision?*

- *Does the employee have suitable equipment, tools, or supplies?*
- *Was the employee's performance judged against reasonable job standards and expectations?*
- *Was the employee made aware of these standards?*
- *Was the employee made aware of or warned of his or her sub-standard performance?*
- *What have you and/or previous supervisors documented in annual performance evaluations?*
- *Was the employee warned specifically that discharge or demotion would result unless performance improved?*
- *Were other employees with the same or similar work records treated in the same manner?*

Discourtesy to the Public and Co-Workers

Employees who serve the public are expected to be courteous to and solicitous of customers and clients. In public settings, discipline is appropriate where employees abuse either the public or their coworkers. It is important to ask:

- *Did the evidence convincingly support the allegations of discourtesy? Are there witnesses or written statements from customers?*
- *Did the incident adversely effect the operation of normal business by causing public embarrassment or a disruption?*

Insubordination

Management has the right to direct the labor force. An employee who refuses to follow a direct order or an established procedure is insubordinate. Insubordination includes:

- Refusal of a direct order.
- Intentional act of disrespect.

Part of a manager's or supervisor's responsibilities is to assign work, tasks, etc. Employees are expected to follow these directives, even if they question them. However, there are two circumstances under which an employee may legitimately refuse to carry out an order:

- If the employee reasonably believes the order would require them to engage in illegal or immoral behavior.
- If the employee contends that the carrying out of an order would be dangerous or unsafe.

If the employee's contention is that the task is unsafe, the supervisor must investigate the allegation. Upon determining that the operation can be conducted safely, the employee must comply with the order.

Insubordination is a serious offense and must be dealt with immediately by taking these steps:

- Repeat the order clearly, using the word "order"
- Ask another supervisor to serve as a witness
- Repeat the order
- Warn of the consequences of non-compliance
- Contact labor relations, human resources or your immediate manager for assistance

Off-Duty Conduct

An employee's conduct outside of work can be the basis for disciplinary action if the activity or behavior has an adverse impact on the organization. The adverse impact must be reasonably discernible and not mere speculation.

To determine if the conduct warrants disciplinary action, ask yourself:

- *Did the behavior harm the organizations' reputation?*
- *Did the behavior render the employee unable to perform his or her duties (inefficiency) or to appear at work (absenteeism)?*
- *Did the behavior lead to refusal, reluctance, or inability of other staff members to work with the employee?*

Theft

Employees who steal from the county can expect to be terminated for their offense. Intent to steal can be critical in matters concerning time theft such as misrepresenting the report of hours worked.

SECTION TWO:
Tools for Progressive Discipline

Tool: Discipline Checklist

Prior to disciplinary action:

❒ Do your best to correct the behavior/improve performance through performance management.

❒ Exhaust all other reasonable alternatives.

❒ Use appropriate timing - should it be done immediately or do you need time to cool off?

❒ Notify appropriate management.

❒ Notify Human Resources.

When administering disciplinary action:

❒ Make sure you have all the facts; don't make assumptions; investigate.

❒ Notify the employee and the appropriate association.

❒ Make certain the discipline is appropriate to the offense.

❒ Ensure the discipline is appropriate to the individual—first offense; repeat offense.

❒ Make certain the discipline is consistent with treatment accorded other offenders and similar offenses.

After disciplinary action (non-termination):

❒ Set up a time frame to review the employee's progress.

❒ If performance has improved, let the employee know. Give positive reinforcement.

❒ If adequate progress has not occurred, take appropriate action depending on the circumstances—repeat the discipline; recommend more severe discipline; recommend discharge.

Tool: Washoe County Performance Improvement Plan (PIP)

Washoe County Performance Improvement Plan (PIP)

Employee name _____

Supervisor's Name _____

Department/Division _____

Position/Title _____

Date of PIP _____

Specific job requirements	Specific job expectations

Specific improvement needed

Consequences if performance improves or does not improve

Washoe County Performance Improvement Plan (PIP)

Action Plan for Improvement		
Specific Actions to be taken		Timeframe
Assistance and support to be provided	Provided by	Timeframe

Overall timeframe for improvement (Typically 30/60/90 Days)

/

Days | From Date | To Date

Progress review schedule (Weekly/Bi-weekly)

Date:	Time:
Date:	Time:
Date:	Time:
Date:	Time:
Date:	Time:

Employee signature _____ Date _____

Supervisor signature _____ Date _____

Reviewing authority signature _____ Date _____

SAMPLE LETTER: NOTICE OF VERBAL REPRIMAND

(*Date*)

TO: (*Employee Name*)
FROM: (*Manager*)
SUBJECT: Notice of Verbal Reprimand

As a follow-up to our discussion on (Date) regarding your work priorities, I have outlined my expectations for improvement regarding the establishment of a formal, written system of job priorities. This is an attempt to assist you in clarifying the relative importance of given jobs as work requests are received to improve overall workflow.

The following action or indicators should be implemented by you within 30 days of receipt of this letter:

- Compose a memorandum specifying relative priorities of typical work requests.
- Submit a draft of this memorandum to me for review and approval prior to distribution to all division personnel
- Integrate into the listing of priorities, typical miscellaneous work requests
- Attend at least one training session relating to time management and one relating to personal effectiveness

We will meet weekly to discuss the implementation of this plan and its effect on your workflow. I will also be available to address any questions or concerns that may arise in the interim. I would like to thank you in advance for you cooperation in addressing this issue.

cc: Human Resources Director
(*Collective Bargaining Unit*)

SAMPLE LETTER: NOTICE OF WRITTEN REPRIMAND

(*Date*)

TO: (*Employee Name*)
FROM: (*Manager*)
SUBJECT: Notice of Written Reprimand

On (Date) I issued to you a Notice of Verbal Reprimand summarizing our meeting in which I outlined my expectations regarding your attendance and adherence to departmental procedures for requesting time off and calling in sick.

As previously discussed, during the last six months you have:

- taken X hours of sick leave which exceeds the department's average by X%. While I am cognizant of the need to stay home when ill, further analysis of your sick leave usage indicates that there is a pattern of Mondays and Fridays associated with the days you are out ill. In fact, X hours of your X hour total occurred on a Monday and another X hours occurred on a Friday.
- on X number of occasions you notified the office that you were calling in sick between 9:00 AM and 9:20 AM.
- additionally, you have made requests for X number of Mondays and X number of Fridays off as vacation leave during the last six months. These requests were made, on average, late in the afternoon two days preceding the day being requested and did not indicate any emergency need for the time off.

During our meeting on (Date), summarized in the Notice of Verbal Reprimand, I reminded you :

- the department's procedure for calling in sick requires notification to your supervisor at least 30 minutes prior to your scheduled start time of 8:00 AM.
- the department's procedure for requesting vacation leave requires a written request to your supervisor one week prior to the requested time, except in the event of an emergency need for the time.

I also advised you of the pattern and excessiveness of your sick leave usage.

Beginning on (Date), you were given a 60 day timeframe in which to correct these behaviors and improvement was noted. Your absenteeism rate went down X% and you followed the department's procedures as asked. The additional burden placed on other employees to cover your responsibilities was reduced.

SAMPLE LETTER: NOTICE OF WRITTEN REPRIMAND

(*Date*)

TO: (*Employee Name*)
FROM: (*Manager*)
SUBJECT: Notice of Written Reprimand, pg. 2

However, 47 days have passed since the end of your 60 day timeframe for correcting this behavior and there is evidence that the number of days of sick leave usage has once again begun to climb and the pattern of days called in sick appears to be Mondays and Fridays. In those 47 days you have used X days of sick leave, X of them on Mondays and Fridays.

A pattern such as this and the excessive number of days indicates potential abuse of the sick leave benefit provided by the County and puts an undue burden on the department to cover your position in your absence.

Effective immediately, you must:

- reduce your sick leave usage to match the department average
- provide a note from your doctor confirming your illness for every instance of sick leave usage. This note must be given to your supervisor immediately upon returning to work.

Your supervisor will continue to monitor your pattern and hours of sick leave usage and provide you with feedback regarding same on a monthly basis, at a minimum.

It is my expectation that your sick leave usage will improve immediately and be sustained with no further need for disciplinary action. However, in the event this does not occur, I will be forced to consider additional disciplinary action, up to and including termination.

I hope that this will not be necessary and that you will make every effort to correct this behavior and follow the directives as indicated above.

cc: Human Resources Director
(*Collective Bargaining Unit*)

SAMPLE LETTER: NOTICE OF INVESTIGATIVE INTERVIEW

Date

TO: *Employee*
FROM: *Department Manager*
SUBJECT: *Notification of Investigative Interview*

This is to advise you that you that I will be scheduling an investigative meeting for next week. You are directed to attend this meeting. As this matter could potentially result in progressive discipline, you are entitled to bring a representative from the (*Collective Bargaining Unit*) with you to the meeting.

The specific purpose of the meeting is to address the following:

It appears that you have not followed the Washoe County Substance Abuse Policy and Procedures and the DUI procedure.

Due to the nature of this issue, I am placing you on administrative leave effective today, _____ . Human Resources will contact you regarding the date and time of the meeting soon.

If you have any questions concerning this meeting, please contact me.

cc: Human Resources Director
(*Collective Bargaining Unit*)

SAMPLE LETTER: NOTICE OF INVESTIGATIVE INTERVIEW

Date

TO: *Employee*
FROM: *Department Head*
SUBJECT: Notification of Investigative Interview

This is to advise you that you that I have scheduled an investigative meeting for (*Time, Location*). You are directed to attend this meeting. As this matter could potentially result in progressive discipline, you are entitled to bring a representative from the (*Collective Bargaining Unit*) with you to the meeting.

The specific purpose of the meeting is to address the following:

It appears that you have not followed department policy in the use of a County vehicle.

If you have any questions concerning this meeting, please contact me.

cc: Human Resources Director
(*Collective Bargaining Unit*)

SAMPLE LETTER: NOTICE OF INVESTIGATIVE MEETING

(*HAND DELIVERED, CERTIFIED MAIL*)

(*Date*)

TO: (*Employee Name*)
FROM: (*Manager*)
SUBJECT: Notice of Investigative Meeting

There are a number of employment-related issues that must be addressed with you as an employee of the (___) Department, (___) Division. I have scheduled an investigative meeting for you on (*Date, Time and Location*).

You are required to attend this meeting. Because the meeting involves matters that could result in discipline, potentially including termination of employment, you may arrange to have a (*Collective Bargaining Unit*) representative present at the meeting.

The meeting relates to the following: (*List all performance and/or behavioral infractions. The list below is intended only to provide examples of the types of items you may need to include*).

- *Use of County-owned equipment and facilities for personal gain.*
- *Use of County compensated working time for personal business.*
- *Conduct resulting in the damage/destruction of County-owned equipment.*
- *Possession and use of illegal drugs in the workplace.*

At the meeting you will be asked questions specifically related to your duties, responsibilities and conduct as an employee of the Washoe County (___) Department, (___) Division, including potential violations of policy and public trust.

Because of the nature of the matters involved, you have the right not to be compelled to incriminate yourself. You are, however, legally required to answer questions regarding the matters specified above. Any statements made by you, or any information or evidence obtained as a result of the statements, cannot be used against you in a criminal proceeding. Accordingly, you will be provided with a document acknowledging this and will be asked to sign it. A copy of the document is enclosed.

Please contact me if you have any questions concerning this correspondence.

encl.

cc: (*Collective Bargaining Unit)*
Human Resources

SAMPLE LETTER: REFUSAL TO ANSWER QUESTIONS

You are being questioned as part of a formal employment related administrative investigation conducted by the Washoe County (____) Department, (____) Division. You will be asked questions specifically, directed and narrowly related to the performance of your official duties, job responsibilities, your conduct as an employee of the Department and your knowledge of a potential violation of public trust.

You have the right not to be compelled to incriminate yourself. However, as a condition of your employment and the position you hold, you are required to answer questions relating to the performance of your official duties, job responsibilities, your conduct as an employee of the (____) Department, (____) Division and your knowledge of the potential violation of a public trust. Any statements which are made by you during this administrative interview or any information or evidence obtained as a result of those statements cannot be used against you in any criminal proceeding.

Although neither your statements, nor the fruits thereof, can be used against you in a criminal proceeding, if you refuse to answer relevant questions fully and honestly, you subject yourself to disciplinary action, up to and including termination.

I have read and understand the above statement:

_____ _____

Signature Date

_____ _____

Witness Signature Date

SAMPLE LETTER: NOTICE OF INVESTIGATIVE MEETING

(*Date*)

(***HAND DELIVERED, CERTIFIED MAIL***)

TO: (*Employee*)
FROM: (*Manager)*
SUBJECT: Notice of Second Investigative Meeting

I have scheduled another investigative meeting concerning your (*travel expenses*) for (*Day, Month, and Year*) at (*Time*) in Human Resources, Large Conference Room, Bldg. A. (*List all)* will be in attendance. You are hereby directed to attend this meeting. Because the investigation involves matters that could result in discipline, potentially including termination of employment, you may arrange to have a (*collective bargaining unit*) representative in attendance.

The purpose of the meeting is to continue our investigation into (*the miles and dates you reported incurring in your expense records*). One specific [*date on your expense travel record is (Date), when you submitted one claim for deliveries in the amount of X miles, and another for deliveries in the amount of X miles (attached)*.] To the extent you have any records/information concerning this situation, please bring them to the meeting, along with any of the records/logs, etc. that you have used in the past (*in preparing your expense reports*).

Attachment

cc: (*Collective Bargaining Unit)*
Human Resources

SAMPLE LETTER: NOTICE OF DISCIPLINE

(*Date*)

(***HAND DELIVERED, CERTIFIED MAIL***)

TO: (*Employee*)
FROM: (*Manager*)
SUBJECT: Notice of Discipline

This is to notify you I have concluded my investigation concerning (*your mileage claims*.)

I first interviewed you on (*Date*) and questioned you on (*mileage claims that appeared to be inflated, claims for mileage for reporting to Saturday work, and claims for mileage on dates that you were not working*.) You responded that you (*were advised by support staff to claim all mileage, including reporting to work on Saturdays*.) Concerning the (inflated *mileage claims you stated "…"*). For (*dates you did not work, your explanation was "…"*).

Based upon your responses, I interviewed the individuals you claimed (*told you to report mileage for reporting to work*.) These individuals denied (*stating such claims were appropriate*.) When I reviewed (*their mileage claims, I found they did not claim such miles for reporting to work on Saturdays and that their mileage reports did not inflate the mileage for their actual trips, numerous of which were to the identical locations for which you claimed mileage*.)

I interviewed you again on (*Date*), to advise you of my findings. Upon questioning you further on (*how you completed your mileage reports*), you provided nothing different from previously discussed, and in summary said you (*either wrote miles on the log, on scraps of paper or reconstructed it from your calendar*.)

While I want you to recognize that (*submitting false expense reports*) is generally a terminable offense, I have taken into consideration your responses and have concluded you were not intentionally (*defrauding the County*.) However, I have concluded you have been grossly negligent (*in submitting expense claims that were inflated, and for trips that were never incurred*.) Accordingly, it is my decision that you be suspended without pay for (*X)* work days, and be required to (*reimburse the county for the excess miles claimed*.) Your suspension will be effective the week of (*Date*) and upon your return you will be advised (*of the amount owed Washoe County for excess mileage.*)

You are also advised that any future violations of this nature will result in termination of your employment with Washoe County.

(*Manager*)

cc: Collective Bargaining Unit
Personnel File

SAMPLE LETTER: NOTICE OF DISCIPLINARY ACTION-SUSPENSION

(*Date*)

(Hand delivered, Certified Mail)

TO: (Employee)
FROM: (Manager)
Subject: Formal Notice of Disciplinary Action – Suspension

(*Employee*),

As a follow up to the Investigative Meeting of (*Day, Month, and Year*), you are hereby notified of a (*X)* week suspension without pay, effective (*Day, Month, and Year*), through (*Day, Month, and Year*.)

This discipline is the result of your continued failure to adhere to the (*Department*) Office Policy regarding the use of leave. Most recently, on (*Day, Month, and Year*), you failed to report to work at your starting time, and did not call in to advise you were not reporting until we heard from you at (*X* a/p.m.) This failure to adhere to our Policy follows (*X-number*) occurrences of your failure to notify this office of not reporting to work in a timely manner, since (*Date*), and on (*Date*), you were disciplined with a (*X*) day suspension for violating the Policy and advised that future problems would result in further discipline.

You are further advised that this is a last chance opportunity for you to continue your employment and that any further violation of the (*Department*) Office policy regarding the use of leave shall be considered to constitute just cause sufficient to result in termination of your employment.

If you have any questions concerning this action, please contact me immediately. Otherwise, following your suspension, you are directed to report to work at your regular starting time on (*Day, Month, and Year*).

_____ _____

(*Manager*) Date

Cc: (*Collective Bargaining Unit*)
HR Personnel File

SAMPLE LETTER: NOTICE OF PROPOSED ACTION-DISCHARGE OF EMPLOYMENT

(Date)

(Employee)
(Employee's Address)
Re: Notice of Proposed Action-Discharge of Employment

Dear Mr./Ms. (*Employee last name*):

On (*Date*), we issued a Notice of Disciplinary Action – Suspension and Notice of Final Opportunity putting you on notice that any future violations (*concerning tardiness and/or unexcused absences from the work place)* will lead to your immediate termination of employment with the County (Attachment #1). Following the suspension, there were further (*attendance issues*) which the County was prepared to discuss with you. You failed to appear at requested Investigative Interviews scheduled for (*Date*), and (*Date*), (Attachments #2 and #3). You have further failed to (*report to work or provide notice to the department concerning your intentions*.)

Accordingly, based upon my investigation and findings, I am herein issuing you a Notice of Proposed Action in accordance with Article (*X, Discharge, of the labor agreement between Washoe County and the Collective Bargaining Unit*). Effective (*Date*), you are on unauthorized leave without pay, and advised it is my intention to discharge you from employment with Washoe County following seven (7) calendar days, which is afforded you and the Association to respond, verbally or in writing, to this notice. This action is based on the following findings:

(*List specific examples and dates/times of the occurrences for which the employee has been in violation*.)

In closing, please be apprised of the following:

- You have the right to review and request copies of any of the written materials upon which the proposed action to discharge you from employment is based.
- You have the right to meet with me to discuss the foregoing findings if you desire prior to responding pursuant to Article (*X*) of the labor agreement.
- If you do not desire a meeting, you are hereby advised that you have seven (7) calendar days to respond or protest to me, either orally or in writing, regarding this Notice of Proposed Action.

Sincerely,

(*Manager, Title, Department*)

encl.

cc: (*Supervisor/Director*)
(Collective Bargaining Unit)
Director Human Resources
Employee file

Appendix A: Glossary of Terms

Classified Employee/Service: an employee of the County whose position is appointed according to the Merit Personnel Ordinance, based on merit and fitness from eligible lists prepared in accordance with an open and competitive examination process.

Covered (Represented) Employee: an employee in a job classification that is eligible for representation by a collective bargaining unit or has voted in a union.

Disciplinary Action: an adverse personnel action taken by the supervisor against an employee.

Due Process: the right of a county employee to be afforded those procedural protections expressly established by applicable provisions of the county code, merit system law, and collective bargaining agreements in any matter affecting terms or conditions of employment.

Grievance: a formal complaint of a covered employee arising from a misunderstanding or disagreement between the employee and supervisor over a term or condition of employment.

Just Cause: a common standard in labor arbitration and included in labor union contracts to provide important protections against arbitrary or unfair termination and other forms of inappropriate workplace discipline.

Probationary Employee: an employee recently hired by the county who has not completed the initial probationary period for the classification and gained merit system status.

Probationary Period: the initial period after employment during which an employee must demonstrate proper behavior and ability in order to be granted merit system status. Probation generally lasts for 6 or 12 months dependent upon the position held.

Progressive Discipline: a series of increasingly serious corrective actions taken in compliance with collective bargaining agreements and Washoe County Code to address behavior that violates rules, regulations or orders from a supervisor, and may result in discharge of employment.

Unclassified Employee/Service: an employee of the County holding a position not subject to the Merit Personnel Ordinance. Unclassified employees serve at the pleasure of the appointing authority and are not entitled to the rights, privileges or provisions of the classified service relative to appointment, promotion, demotion, transfer or rehire.

Unrepresented Employees: employees of Washoe County who are not eligible to representation by a collective bargaining unit, per statute, or those who have not voted in a union.