

AAdministrative
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Letter

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**A Guide to Employee Conduct
and Progressive Discipline**



Signed By	/s/ Marie Stephans, Chief Administrative Services Division	Number	08-05
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The [Employee Conduct and Progressive Discipline Guide](#) was prepared from material issued by the Department of Personnel Administration to provide assistance to supervisors and managers in handling situations related to employee conduct and discipline. It is not, however, intended for use as a stand alone tool; rather, it is one of several resources available to management in dealing with employee conduct and discipline issues. Each of the State's bargaining units have Memoranda of Understanding (MOU) which may contain provisions governing matters related to employee conduct and progressive discipline for covered bargaining unit employees. Where an MOU between the State and the employee organization is in conflict with information contained in this guide, the MOU is controlling.

Valuable information can also be found in the [Supervisor's Toolkit](#). The Human Resources and Labor Relations staff listed in the [Directory of Administrative Services](#) is available as an additional resource for discussing difficult problem cases.

CALIFORNIA AIR RESOURCES BOARD

**A GUIDE TO EMPLOYEE CONDUCT
AND PROGRESSIVE DISCIPLINE**

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INTRODUCTION

As an Air Resources Board (ARB) supervisor or manager, it is your responsibility to accomplish the work of your unit through the assistance of your staff. To be effective, you need to develop and maintain good working relationships between your employees and help them to perform and accomplish their work in a positive manner in accordance with State and ARB goals, objectives, and guidelines.

However, when issues involving work performance, behavior, attendance, interpersonal relationships, and adherence to policies and procedures occur, you need to be prepared to take appropriate action in a timely manner.

Legal Basis for Discipline

Government Code (GC) Title II, Division 5, Part 2, Chapter 7, Articles 1 and 2, Sections 19570-19593 contain the California state law regarding State employee discipline and tenure of managerial employees. Collective Bargaining Agreements (CBA) contain the terms and conditions of employment for represented employees. If an employee is subject to the terms of a CBA, the CBA should always be consulted. When the GC and CBA are in conflict, the CBA must be followed in lieu of the process identified in the GC.

PREVENTIVE ACTION

There are many steps supervisors can take to be proactive and attempt to prevent personnel problems down the road. Several positive steps are described below.

Before Hiring an Employee

To improve the likelihood that an applicant will become a successful employee and can complete the duties of the job, management should (1) verify that the applicant's skills and abilities are a good match for the position; (2) contact the applicant's prior employers to obtain information about the applicant's attitude, attendance, performance, abilities, and reason for leaving prior employment; and (3) review the applicant's Official Personnel File (OPF) to check for any red flags which stand out, and then follow up with the applicant for clarification.

Work Duties and Objectives

After hire, be sure the employee knows what is expected of them. Provide a current, signed duty statement, office protocol memos, and work flow guidelines to every new employee. Annually, review the duty statement with the employee to ensure it still describes the employee's current assignment. Discuss how and when the employee will be evaluated and discuss consequences of not meeting work/performance expectations. Document these discussions and provide a copy to the employee.

FEEDBACK ON JOB PERFORMANCE

Provide the employee with constructive, critical, and comprehensive oral and written feedback regarding job performance. Conduct performance evaluations at least three times during the employee's probationary period and at least annually throughout his/her employment.

Training and Staff Development

Provide adequate training and staff development for the employee. At least annually assess the employee's training needs required to ensure his/her success. The standard State form, Individual Development Plan (Std. 637), can be used for this purpose.

Employee Assistance Program

If an employee is having difficulty coming to work, focusing on his/her work, or if a pattern of sick leave abuse has been developed, make an informal referral to the Employee Assistance Program (EAP). The EAP is a counseling service provided for State employees whose work appears to be negatively affected by outside issues, such as emotional, family, legal, or substance abuse.

Personnel Intervention Team (PIT)

Even when good supervisory practices and preventive actions are taken, an employee may exhibit poor performance or behavior that requires action.

In order to assist supervisors in dealing with performance or behavior problems that the supervisor has been unable to resolve, the Human Resources Branch (HRB) can convene a Personnel Intervention Team (PIT) meeting. The PIT consists of the HRB Chief, Assistant Branch Chief, Labor Relations Officer, assigned Human Resources Analyst, Equal Employment Opportunity Officer, Reasonable Accommodation Coordinator, Health and Safety Officer, and legal staff as needed. The team meets with the supervisor for an initial background report and to fully discuss the problem situation. Applicable CBA provisions, Department of Personnel Administration (DPA)/State Personnel Board (SPB) laws and rules, ARB policies, attendance records, and other factors are discussed. PIT meetings can continue as needed until the situation is resolved or until formal action is taken.

Issues that may be covered during the meeting include: nature of the incident or issue, witnesses, other affected employees, prior actions, any instructions to the employee, documentation collected by supervisor, and recommendations offered to supervisor.

Constructive Intervention

The purpose of constructive intervention is to manage performance or behavioral issues early in order to preserve the opportunity for a positive outcome. Once the PIT and you agree that the situation is continuing without improvement, it is time to take action steps:

- Note and document performance deficiencies and behavioral problems as they occur. Give corrective advice and assistance at regular intervals
- Maintain a chronology of incidents and notes given to the employee about these deficiencies
- Get complaints and documentation from other employees in writing
- Keep samples of work products that are not up to standard

NON-CORRECTIVE ACTIONS

Verbal Instruction

When the situation/incident/behavior is minor, a verbal reminder is sufficient. The approach is to clarify, educate, and assist the employee to correct the situation.

Informal Counseling

If the problem persists, hold an informal meeting with the employee. Discuss the problem, the potential consequences, and provide the employee an opportunity to explain his/her viewpoint. Plan a course of action to resolve the problem. Document what is covered at the informal counseling session and make a copy of the documentation for the employee.

An informal counseling session is not a corrective interview; it is considered routine business communication. Routine business communications are not subject to the grievance process; therefore, employees are not entitled to representation. However, if an employee insists on having representation, it is acceptable to allow it.

Focus on the employee's job performance during this discussion. If the underlying problem appears to be personal (e.g., marital, emotional, financial, etc.), do not provide advice. If requested by the employee, a supervisor should consider adjusting the employee's work schedule, reducing the employee's time base, or approving a short leave of absence.

CORRECTIVE ACTIONS

Despite preventive actions, some employees will continue to perform poorly or engage in misconduct. An employee's problem behavior can undermine the morale of other employees and disrupt the work environment. As a manager, you should take steps to correctly identify the problem and gather relevant facts before deciding whether to take further action. Contact your divisions Human Resources Analyst regarding documentation requirements and to confirm that corrective action is appropriate.

Problem Identification

Determine if an employee's conduct or performance is satisfactory. If unsatisfactory, clearly identify the specific act or omission that is not acceptable. Fully understand the nature and extent of a problem before deciding on a course of corrective action. You may want to answer the following questions to ensure that corrective action is the appropriate step to take.

- What is the exact nature of the unsatisfactory conduct or performance?
- Does the employee understand the standards of conduct or the expectations for acceptable performance?
- Is the employee capable of doing what is expected?
- Has the employee received timely feedback on current performance?

Fact Gathering

Gather all the pertinent facts prior to taking corrective action. Keep a written and/or electronic record of all information gathered. Gather evidence that will show that the employee was aware of the applicable standards of conduct or performance expectations including signed copies of documents received.

Informal Corrective Action Options

Once all pertinent facts have been gathered, management can determine what action is appropriate to correct the identified problem. Some informal options include:

- Encouragement and Recognition
- Training
- Informal Verbal Instruction
- Increased Monitoring
- Informal Counseling
- EAP Referral
- Training

Formal Corrective Interview

When preventive action and informal counseling fail to resolve an employee's deficient performance or unacceptable behavior, a stronger corrective action may be needed. This is a critical point in progressive discipline; the situation has become so serious that a change must take place either in the employee's conduct or performance or in his/her status with the organization. A corrective interview serves to put the employee on notice. Even if the corrective interview does not result in the employee's improved performance, it does serve as a step in the progressive discipline process.

Meet with the employee and describe the changes that must be made in his/her performance or behavior. Establish a time frame for compliance and specify the consequences for failing to comply. After the interview, prepare a written corrective counseling memorandum summarizing the key points of the corrective interview. Give the corrective counseling memorandum to the employee and ask the employee to acknowledge receipt of the memo by signing and returning a copy. If the employee declines to sign, indicate the declination on the file copy of the memorandum.

An employee has a right to representation at a corrective interview if there is (1) a likelihood the discussion may result in formal adverse action, or (2) if the significant purpose of the meeting is to gather facts to support adverse action. A corrective interview is not an adverse action. There are no changes in the employee's employment status and the employee's rights and privileges have not been abridged. However, a copy of the corrective memo is filed in the employee's Official Personnel File (OPF). Consult the applicable CBA to see if it contains specific restrictions on the types of materials that may be retained or time frames for retention. Additionally the CBA should be checked to see if there are notification requirements to the employee when documents are filed in the OPF. Generally, corrective counseling memos are retained in the employee's OPF for a reasonable amount of time, not to exceed one year, and then purged.

ADVERSE ACTIONS

If the employee does not respond to preventive and corrective actions, the supervisor should initiate formal adverse action. Adverse action is the final phase in the progressive discipline process. The PIT will continue to work with you, and the Human Resources Analyst will prepare the action based upon your documentation.

Reduction in Salary

A reduction in salary may be appropriate when the misconduct is of a nature that it is not necessary to remove the employee from the work site or when it would create an operational hardship to do so. A five percent pay reduction for one pay period is roughly equivalent to a one day suspension without pay.

Suspension Without Pay

A suspension without pay is a temporary separation. The employee is prohibited from working for a specified period of time. A suspension is appropriate when it is desirable to have the employee removed from the work site. The employee's position remains vacant during the period of discipline. The suspension may be calculated in hours, days, weeks, months, or pay periods. The duration of the suspension is a reflection of the seriousness of the offense and may be subject to specifications established in the Collective Bargaining Agreement (CBA) or the Fair Labor Standards Act (FLSA). A suspension may have more of a deterrent effect than a reduction in pay since the discipline is more visible to other employees.

Demotion to a Lower Classification

Demotion to a lower classification is appropriate when an employee's service is valuable, but the employee is not working at an acceptable level in his/her current classification. A demotion can only occur when there is a classification for which the employee is qualified, and there is a position available. An employee may be demoted to any pay rate in a lower classification. The demotion may be for a specified period of time or may be indefinite.

Dismissal from State Service

When misconduct is so serious that an employee's continued employment cannot be tolerated, or where all reasonable efforts at progressive discipline have failed, dismissal may be the only option. A dismissal is the most serious adverse action and results in an employee's permanent separation from State service.

If the employee's misconduct is so egregious that the employee's continued presence at the work site could cause problems, the employee may be placed on paid administrative leave. This leave may be for up to 30 working days pending investigation by the appointment power, subject to extension if approved by DPA (GC 19574.5).

OTHER PERSONNEL ACTIONS

There are several forms of personnel actions that are distinguishable from formal adverse actions. These are not considered formal adverse actions.

Rejection During Probationary Period

The probationary period is considered the last phase in the selection process. A probationary employee may be rejected if the performance, conduct, capacity, moral responsibility, or integrity of the employee is unsatisfactory. A probationer may be rejected for reasons relating to qualifications, the good of the service, or failure to demonstrate merit, efficiency, fitness, and moral responsibility, and not necessarily for any specific misconduct or wrongdoing.

Denial of Salary Adjustments or Alternate Range Change

A supervisor has the discretion to either grant or deny salary adjustments based on an employee's performance. The supervisor should carefully evaluate the employee's performance to determine whether a merit salary adjustment is warranted. A merit salary adjustment should only be granted when the employee is performing satisfactorily. The denial of a merit salary adjustment is not an adverse action. It is evidence that the employee is not performing satisfactorily and may constitute a step in the progressive discipline process. A denial of a merit salary adjustment should not be the first indication an employee has that there are problems. An employee is entitled to written notice of the reasons for the denial during the pay period preceding the period in which the pay increase would otherwise become effective.

If a salary adjustment is denied, the matter should not be revisited for at least three months. When an alternate range change is denied, the employee may be retained at the lower salary range for a reasonable time period after which his/her performance must be reevaluated. If improvement has been made, the range change should then be recommended; if performance continues to be unsatisfactory, adverse action should be considered.

Failure to Meet Minimum Qualifications for Employment

When the only cause for action against a probationary or permanent employee is failure to meet an SPB minimum qualification for employment as specified in the employee's classification specification, a department may terminate, demote, or transfer the employee. Any action taken under this section is considered nondisciplinary and is not applicable to cases where medical actions or disability retirement actions are appropriate (GC 19585; SPB Rule 446).

Minimum qualifications for continuing employment are limited to the acquisition or retention of specified licenses; certificates, registrations, or other professional qualifications, education, or eligibility for continuing employment within a particular classification series.

A department may use this section in lieu of adverse action or rejection during probation when failure to meet the requirement is the only cause for action. The burden of proof is on the department to substantiate the termination for failure to meet minimum qualifications of employment.

Automatic Resignation for Absence Without Leave (AWOL)

Unless superseded by specific provisions of a CBA, an Absence Without Leave (AWOL) for five

consecutive working days, whether voluntary or involuntary, is an automatic resignation from State service as of the last date on which the employee worked (GC 19996.2). An automatic resignation under this statute is not a disciplinary action and does not preclude an employee from future State service.

When an employee has been AWOL for five consecutive workdays, it is recommended, but not required, that the department make a reasonable attempt to contact the employee before proceeding with an AWOL separation. An automatic resignation under this statute differs from an adverse action based on “unauthorized absence without leave” under GC 19572(j).

CONCLUSION

When you are dealing with unacceptable employee conduct or performance, your goal in working with the employee is to direct and guide them to the proper conduct or improved performance. If you have taken all the preventive steps suggested in this guide and are not successful in changing your employee’s behavior, please contact your Human Resources Analyst to discuss convening a PIT meeting where you can take advantage of the additional experience and resources of the other team members.

Quick Reference Sheet for Supervisors

Steps in Progressive Discipline

I. Preventive

- A. Complete all probation and annual performance reports
- B. Provide all necessary training
- C. Provide verbal and written job/performance expectations
- D. Referral to Employee Assistance Program
- E. Personnel Intervention Team (PIT) Meeting

II. Corrective Action

- A. Identify problem, gather facts
- B. Discuss with employee; agree on specific improvements; establish timeframes
- C. Document discussion
- D. If no improvement, have a Formal Corrective Interview
- E. Follow-up with Corrective Memo
- F. Denial of MSA or Range Change

III. Adverse Action

With input of Personnel Intervention Team, decide what level of adverse action is needed.

- A. Reduction in Salary
- B. Suspension Without Pay
- C. Demotion to a Lower Classification
- D. Dismissal from State Service

OTHER PERSONNEL ACTIONS

1. Rejection During Probationary Period
2. Denial of Salary Adjustment or Range Change
3. Failure to Meet Minimum Qualifications for Employment
4. Automatic Resignation for Absence Without Leave (AWOL)