

PERFORMANCE ACTION/IMPROVEMENT PLANS

Guidance for Supervisors

In support of Boise State University's commitment to attract, retain, reward and develop a high-quality workforce, Human Resource Services ("HRS") has developed this Performance Action/Improvement Plans Guidance for supervisors who feel that an employee's performance or conduct is deficient. The Guidance explains how Employee Relations partners with supervisors and managers to provide assistance throughout the performance management process.

No one likes to discipline employees, and as a result, supervisors may ignore problem behavior just to avoid confrontation. Yet, inaction can be equally dangerous if employee behavior or performance problems are consistently ignored. When managers do not actively address poor performance and misconduct, morale and productivity will suffer.

Some of this unavoidable stress can be relieved by establishing clear expectations for performance and employee behavior (University Shared Values and Standards of Conduct) and supervisors taking a proactive approach using a combination of corrective coaching/counseling and progressive discipline. This approach coaches supervisors to confront employee performance and misconduct problems and to document the proceedings. Further, it provides employees specific feedback, plus action plans and timelines for improvement.

Step One: Informal Coaching/Counseling (Initial Issue)

Unless an employee has engaged in a serious or repeated offense, the typical initial response to a performance/behavioral issue is to have an informal, yet specific, solutions-oriented coaching session with the employee. During this discussion you should:

- Meet with the employee to discuss the matter. Remind the employee of pertinent policies, work rules and performance or behavior expectations.
- Inform the employee of the nature of the problem (provide concrete examples of how the employee's behavior or performance has fallen short of expectations) and state your expectations (including actions and timeframes the employee needs to take to correct the problem).
- Explain the impact of the employee's deficiencies on the customers, organization and coworkers.
- Explain the adverse consequences if the performance or behavior is not corrected.

Step one is intended to coach/counsel the employee on improvement and provide appropriate coaching and guidance to correct the problem. The employee should understand that she/he is now at risk for additional disciplinary action if the performance or behavior does not improve. The supervisor should take notes or prepare a memorandum for the supervisor's own records indicating that the meeting has taken place and summary of conversation, expectations and agreement(s). This informal record helps supervisors remember the details of the first occurrence if other problems arise.

In many instances, having one or two candid discussions is all you need to help a wayward employee get back on track.

Step Two: Formal Reprimand (Second Occurrence)

If there is an additional occurrence of the performance/behavioral issues, the supervisor should hold another meeting with the employee and take the following actions:

- Issue a written reprimand to the employee and again inform the employee of the performance expectations and required changes. Summarize new/continued issues and previous discussions held and/or actions/agreements made and time frames.
- Convey the increased seriousness of the performance/behavior concerns including the possibility of disciplinary action up to and including termination.
- A Record of Employee Conference Form is available as an option to guide documentation of this step. A copy of the warning should be placed in the employee's official personnel file (retained in HRS).
- Performance Improvement Plan.
- A Performance Improvement Plan (PIP) may be a more effective option when there are various performance and behavior issues. A PIP may include additional directive or instructional communications about expected performance/behavior including written warnings and plans for follow-up progress or special evaluations or it may include training/development requirements with specific application and outcome expectations and/or both. A manager should contact and partner with an Employee Relations representative to formulate and develop such a plan.

Step Three: Final Warning/Disciplinary Consideration (Additional Occurrences)

The type of corrective action a supervisor should take in a given situation generally depends on four issues: (1) the nature and seriousness of the infraction, (2) whether it is a first time or repeat offense, (3) past handling of similar disciplinary problems, and (4) whether there are special circumstances impacting the level of needed response. In addition, both the severity of the problem and the length of time between incidents should be considered when discipline is considered for repeat offenses. For relatively minor issues, it may be appropriate to reduce the importance of previous incidents after a year or more has passed between occurrences. However, if there is an ongoing problem, pattern, or if the employee is involved in several different types of occurrences, disciplinary action may be appropriate.

When the informal (verbal) coaching attempts fail, or when there is a more serious issue or a pattern or continuation of performance/behavior issues, a formal disciplinary action may be necessary. The recommended progression may include a written warning, possibly suspension or other disciplinary action (final warning measure) and finally, termination. However, it is important to note that the decision to impose discipline as well as the severity and/or nature of the discipline is a discretionary matter resting solely with the University.

If there are additional occurrences of performance or behavioral issues, the supervisor may consider taking the following action(s), depending on the severity of the problem:

- Issue a final reprimand or warning and summarize new/continued issues and previous discussions and/or actions/agreements made and time frames.
- This step may include a suspension without pay (or other disciplinary action (optional)). This action is often referred to as a decision-making leave. Its purpose is to place the employee on final notice and force a commitment to improve, or face termination. This step may be replaced with a final warning letter or reduction in pay or some other disciplinary measure less than termination; or it may be omitted all together and the department may move to a termination action if appropriate and warranted.
- The supervisor should discuss any recommendation for disciplinary action, which may include suspension, demotion, reduction in pay, etc. with the Department Director or Dean and an HRS Employee Relations Representative. The discussion should include reason(s) and documentation why disciplinary action is being recommended and the efforts and discussions that have taken place to improve the performance of the employee (the Dean would review the recommendation with the appropriate Vice President/Provost or President). No disciplinary action can be implemented without the preparation and issuance of a Notice of Contemplated Action (coordinated by Employee Relations) and providing the employee with an opportunity to respond; this is referred to as “due process.” This review provides a system of checks and balances and should identify issues/concerns or decisions that warrant further review.

Step Four: Final Action - Termination

If all efforts fail to produce the desired changes in the employee’s performance/behavior, the final step is termination.

- To ensure that the recommendation to terminate is the proper course of action, all recommendations for termination must be reviewed by the Department Director/Dean and an HRS Employee Relations Representative. The discussion should include reason(s) and documentation why termination is being recommended and the efforts and discussions that have taken place to improve the performance of the employee. No disciplinary action can be implemented without the preparation and issuance of a Notice of Contemplated Action (coordinated by Employee Relations) and providing the employee with an opportunity to respond; this is referred to as “due process.” This review provides a system of checks and balances and should identify issues/concerns or decisions that warrant further review.

5. Serious Misconduct/Performance Requiring Immediate Action

In cases involving serious misconduct and/or performance issues, such as a major breach of policy or violation of law, the steps outlined above, may be disregarded. In these situations, the employee is typically suspended (with or without pay – depending on circumstances) and an investigation of the incidents leading up to the suspension should be conducted to determine if any further action, such as termination, should be taken.

Employee Relations typically reviews all recommendations for disciplinary action* (including termination) before any final action is taken.

Additional Guidance:

When counseling employees about problems, supervisors should limit their remarks to objective, factual evidence and focus on the work rule violation or performance concern. In addition, supervisors should offer assistance, specify a timeline for improvement, and clearly state the consequences of the employee’s continued misconduct or inability to meet

performance goals. Further, supervisors should document their disciplinary discussions and actions. This documentation can assist the supervisor in conducting performance appraisals, provide an objective basis for future personnel decisions, and help defend the University against possible legal claims.

Not all performance issues warrant the same disciplinary action. When considering discipline, it is important to weigh the performance concern and the impact it has on the organization. It is also important to consider whether policies, rules or laws were broken. Infractions should be weighed individually and collectively in the context of the circumstances. For example, an employee who repeatedly breaks a rule may be treated differently from a first time offender.

Finally, an employee's work history may be considered when deciding disciplinary matters. Depending on the situation, a person with a strong performance history may deserve to be handled more favorably than someone who rarely performs up to acceptable standards. These are value judgments best made by supervisors, in consultation with the HRS Employee Relations staff.

When applying discipline, managers should be careful not to show favoritism or act arbitrarily. Much of the litigation aimed at employers arises out of the on consistent application of discipline. To prevent these claims, some employers assume that they must apply the exact same discipline and follow identical procedures for each employee in order to be "consistent." However, employers are not required to treat every employee the same way. Rather, they should try to treat "similarly situated" employees in the same manner.

Typically, courts consider a number of factors to determine if employees are similarly situated, including the nature and severity of the incidents leading to discipline, past performance and disciplinary records, job duties and status, and length of employment. For example, an employee who has been with the University for five years and has a good performance record with no disciplinary infractions may be treated more leniently than an employee who has only worked for a year and has several documented performance or disciplinary problems. Alternatively, a manager may be disciplined more severely than a non-managerial employee for the same offense, because the manager is expected to enforce work rules and set an example.

* Below is a summary of the processes that may be involved in taking disciplinary action:

1. If the supervisor determines that a situation exists which requires immediate disciplinary action, contact an HRS Employee Relations Representative immediately to review the documentation, recommended action and to assist the department with implementing appropriate actions and/or disciplinary measures. In most cases, due process notice must be given to employees prior to taking disciplinary action.
2. The supervisor should discuss a recommendation for disciplinary action, which may include suspension, demotion, reduction in pay, or dismissal, with the Department Director or Dean and an HRS Employee Relations Representative. The discussion should include reason(s) why disciplinary action is being recommended and the efforts and discussions that have taken place to improve the performance of the employee. Supporting documentation should be reviewed at this time.
3. If the appropriate Dean or Department Director supports disciplinary action, a notice of contemplated action (NOCA) will be developed by HRS in cooperation with the department to be signed by the department Director or Dean. HRS may involve legal counsel as appropriate.
4. The notice of contemplated action (NOCA) is delivered to the employee by the department director/Dean and/or immediate supervisor. The employee is given a designated period of time to respond to the NOCA. This step provides the employee an opportunity to respond to the notice and present his/her reason(s) why the contemplated action(s) should not be taken. The employee's response is directed to the President, Provost or appropriate Vice-President (or designee) to determine the final decision.
5. The President, Provost, appropriate Vice-President, or their designee will notify the employee of the final decision in writing in accordance with the appropriate due process policy. If final action determined is to proceed with disciplinary action, it may be implemented immediately and a notification of final disciplinary action is prepared and delivered to the employee.
6. The employee may appeal the University's disciplinary decision in accordance with appropriate rules and policies.

