

STATE OF ALASKA DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS STANDARD OPERATING PROCEDURES	NO	PAGE 1 of 14
	ISSUED August 8, 2005	EFFECTIVE Upon Issuance
SUBJECT EMPLOYEE DISCIPLINE	APPROVED BY: //signed//	
CHAPTER 16	Craig E. Campbell Commissioner	

PURPOSE:

To provide Department of Military and Veterans Affairs (DMVA) supervisors and managers with general guidelines when considering employee disciplinary action. There are many exceptions to the guidelines presented below. Each instance of disciplinary action must be considered individually. Disciplinary action **should not commence without first discussing it with the appropriate department Division of Personnel's Representative** (located in Bldg 49000 Room C211 Wednesdays Noon- 4PM).

DISTRIBUTION:

All DMVA Divisions.

AUTHORITY:

Alaska Statute 39.25.150(15)
Personnel Regulations 2 AAC 07.400, 2 AAC 07.415-420
General Government Unit (**GGU**), Supervisory Unit (**SU**), Confidential Unit (**KK**) and Labor Trades and Crafts Unit (**LTC**) collective bargaining agreements

POLICY:

Within DMVA the purpose of employee discipline is to bring unacceptable behavior or performance to the attention of the employee so that the behavior or performance can be raised to acceptable standards. The most desirable result of disciplinary action is that work place problems are resolved, relationships between supervisors and employees remain productive, and the objectives of the work unit are achieved. Careful preparation before taking disciplinary action will reduce the possibility of a grievance and will also provide a solid foundation and defensible position should a disciplinary action go to arbitration.

PROCEDURE:

1. Progressive Discipline - Progressive discipline is a long-standing principle in labor relations. It requires that appropriate forms and degrees of discipline be used for correcting performance problems. Progressive discipline is not primarily designed to be punitive, but rather affords the employee an opportunity to correct problem behavior or performance.

Progressive discipline steps need not be followed "by the book" in all cases. Clearly some behavior is so disruptive, universally understood to be wrong, and incompatible with employment as to require immediate removal of the employee from the work place. Oral instructions and written letters of instruction that provide a clear explanation of what is expected

of the employee are not considered discipline although both are often recommended as a foundation for subsequent disciplinary action. Because letters of instruction are not considered disciplinary, they are not filed in the official personnel file, a copy should only be retained in the employee's supervisory file. A copy should also be forwarded to the Department of Administration, Division of Personnel (DOP) Public Protection Management Services Team (PPMST) for statistical and consistency purposes.

Probationary employees and nonpermanent employees are never disciplined. Performance difficulties typically experienced by probationary employees are addressed through training and should be documented in interim employee performance evaluations. Issues that would warrant discipline are reasons for nonretention of probationary employees and termination of nonpermanent employees.

Progressive discipline typically includes the following five steps of increasing severity and urgency. (An example memorandum or letter for each step is provided at the end of the chapter.)

A. Warning (Oral or Written) - The warning should clearly state the problem, why it is a problem, explain how the employee is expected to remedy the problem, and document the consequences of continued poor performance or misconduct. A record of an oral warning, including the date, time, and place the oral warning was delivered should be kept in the employee's supervisory file. A copy of a written warning should be retained in the employee's supervisory file with copies forwarded to the DOP Public Protection Technical Services Group (PPTSG) for filing in the employee's official personnel file and to the appropriate union (may be sent by fax). A copy should also be forwarded to the PPMST for statistical and consistency purposes.

B. Written Reprimand - The next step in progressive discipline is written documentation for misconduct, or poor performance. The written reprimand should state the problem, explain how the employee is expected to remedy the problem, and document the consequences of continued poor performance or misconduct. A copy of a written reprimand should be retained in the employee's supervisory file with copies forwarded to the PPTSG for filing in the employee's official personnel file and to the appropriate union (may be sent by fax). A copy should also be forwarded to the PPMST for statistical and consistency purposes.

C. Suspension:

(1) If written warnings fail, then suspension may be required to demonstrate management's serious intent to fix the problem. Suspension without pay may vary in length depending on the nature and degree of seriousness of the problem and other circumstances. As in previous steps, the employee must be told what the problem is, explain how the employee is expected to remedy the problem, and document the consequences of continued poor performance or misconduct. The Fair Labor Standards Act (FLSA) mandates that employees who are overtime exempt under the FLSA can not be suspended for cause in increments less than a full work week except when imposed in good faith for violations of workplace conduct rules and for violations of safety rules of "major significance." Consequently, for example, the minimum disciplinary suspension for an FLSA overtime exempt GGU employee working a standard work week is 5 full days.

(2) Supervisors must consult with the appropriate Division of Personnel's Representative prior to suspending an employee. Suspension without pay is generally imposed as a disciplinary measure before discharge is used as discipline. The time following a suspension affords the employee another opportunity to correct the problem and management time to further monitor the situation before imposing the most severe disciplinary action. Suspension with pay or administrative leave with pay may be used during an investigation of alleged misconduct when it is not appropriate for the employee to remain in the work place. It may be used, for example, when there is concern that the employee may cause harm to self or others, tamper with evidence, or interfere in some way with the investigation. Suspension with pay should only be used when no other viable alternative exists, such as temporary reassignment of the employee.

(3) A copy of a suspension letter/memorandum should be retained in the employee's supervisory file with copies forwarded to the PPTSG for filing in the employee's official personnel file and to the appropriate union (may be sent by fax). Copies of suspension or administrative leave with pay notices are not to be forwarded to the PPTSG, as they should not be filed in the employee's permanent file. A copy of all suspension letters/memorandum should also be forwarded to the PPMST for statistical and consistency purposes.

D. Demotion - Demotion for cause is the reassignment of an employee's duties and responsibilities to those of a lower level classification and therefore to a lower level of pay. It is implemented through a formal letter or memorandum to the employee identifying the behavior or performance which provides the basis for the demotion, and explanation of why demotion is appropriate in this case, and the consequences of failure to perform or behave in an acceptable manner in the new assignment. A copy of a demotion for cause letter/memorandum should be retained in the employee's supervisory file with copies forwarded to the PPTSG for filing in the employee's official personnel file and to the appropriate union (may be sent by fax). A copy should also be forwarded to the PPMST for statistical and consistency purposes.

E. Discharge:

(1) If progressive discipline has failed to correct the problem, or if one incident is sufficiently egregious, discharge may be justified. Examples of conduct which maybe cause for immediate discharge include gross disobedience, dishonesty, intoxication, substance abuse, physical misconduct, abusive or lewd behavior, or abandonment of duties. It is important to keep in mind that the burden of proof on the State in arbitration is much greater in a discharge case than in other types of disciplinary cases.

(2) Because of the serious implications of discharge, the final decision on whether or not an employee is to be discharged is usually reserved for the division director or designee. The primary responsibility left to lower levels of management in discharge cases is to assure accurate documentation of performance problems, and all steps taken to afford the employee an opportunity to succeed. Supervisors who feel they have grounds to discharge an employee must confer with the appropriate Division of Personnel's Representative and secure necessary approvals from the division director or designee prior to taking final action.

(3) A copy of a discharge letter/memoranda must be forwarded to the PPTSG for filing in the employee's official personnel file and to the appropriate union (may be sent by fax). A copy should also be forwarded to the PPMST for statistical and consistency purposes.

State of Alaska employees covered under collective bargaining agreements are entitled to have union representation (usually a union business agent or steward) at meetings and hearings which may result in disciplinary action. The employee must arrange for such representation and exercising this right cannot unduly interfere with the legitimate business needs of an agency. Contact the appropriate Division of Personnel's Representative for specific assistance. Additionally, collective bargaining agreements covering State employees require that copies of written disciplinary actions be sent to the union concurrently with distribution to the affected employees.

2. Just Cause.

- A. All discipline issued against employees is ultimately analyzed according to whether management had "just cause" to discipline or discharge the employee. The term "just cause" is used in the State's collective bargaining agreements with its unions. Generally, the contracts will state that employees will only be disciplined or discharged for "just cause." Even among non-union or unrepresented employees, the courts will sometimes consider whether there was just cause to discharge an employee.
- B. There are many definitions of "just cause" in use today. The Alaska courts have defined just cause in cases involving non-union employees outside of the collective bargaining context and union represented employees in the collective bargaining area. The State of Alaska as an employer has adopted the definition set forth in *Braun v. CFAB*, a discharge case decided by the Alaska Supreme Court. In *Braun v. CFAB* the Alaska Supreme Court considered the case of a non-union bank officer who was discharged allegedly for economic reasons. The employee claimed that the bank breached its contract with the employee. The Court stated that a discharge for just cause "is one which is not for any arbitrary, capricious, or illegal reason and which is based on facts (1) supported by substantial evidence and (2) reasonably believed by the employer to be true." The Court found that the bank was motivated by economic reasons to discharge the employee and that this met the standard of "just cause."
- C. The definition of "just cause" set forth in *Braun v. CFAB* should be used to evaluate whether or not any disciplinary action (from warning through discharge) is appropriate and defensible. Before proceeding with disciplinary action the following three questions should be satisfactorily answered in the affirmative:
 1. Is the action being taken not for arbitrary, capricious, or illegal reasons?
 2. Is the decision to take this action based on facts supported by substantial evidence?
 3. Is the decision to take his action based on facts the employer reasonably believes to be true?

3. Due Process - Most employees have a right to due process when they are subject to disciplinary action. Otherwise, a reasonable disciplinary action may be overturned because of a

violation of the employee's right to fair and just treatment from the employer. Generally speaking, employees who have achieved permanent status are said to have a "property right" to their job. Loudermill/Storrs Rights is the basic right of permanent public employees to be given due process prior to discharge from employment. The root of due process is the right to be heard, in person, before discharge from employment. In order to comply with Loudermill/Storrs the discipline/discharge procedure should include, at a minimum, an inquiry into the facts, notice of the proposed discipline/discharge in writing, a summary of the employer's evidence in writing and an opportunity for the employee to present his/her position in person. The following requirements of due process must be observed with each step of progressive discipline.

A. Prior to discipline, the employee must be informed about the charges or allegations of problem behavior. This must be in writing and should be included in the notification letter informing the employee of the investigative meeting.

B. State of Alaska employees covered under a collective bargaining agreement must be afforded the right to representation. Whenever a supervisor meets with an employee to discuss matters which may involve discipline, the employee has the right to have a union representative present. The Weingarten doctrine states in part that employees are entitled to due process, through adequate representation, at interviews that could lead to discipline.

C. The accused employee's side of the story must be heard before arriving at any decision about discipline. Any mitigating circumstances should be considered.

D. The investigation must persuasively establish that the employee has misbehaved or performed poorly as alleged. All available documents and information from witnesses should be included in the investigation.

E. If information comes to light during the course of an investigation that indicates criminal activity may have occurred, the investigation should be stopped immediately and the department Division of Personnel's Representative contacted.

F. The past record of the employee must be reviewed to determine whether the employee's action was an isolated event or part of a related series of misbehavior.

G. If disciplinary action results from the investigation, in most cases the union must be notified concurrently with notice to the employee and a copy of any written disciplinary action must be placed in the employee's personnel file maintained by the Division of Personnel. Drafts of written discipline should be reviewed by the Division of Personnel's Representative prior to being issued.

H. In all cases, notice of disciplinary action to the employee should be made available to the union. The allegations, findings, conclusions, and recommendations may be reduced to writing in an investigation report. However, this is a confidential report and should not normally be made available to the union. Any documentation should be sent to the PPMST.

Note: This meeting is not a full evidentiary hearing. It is the employee's opportunity to hear the charges against them and provide feedback to the decision maker.

4. Conducting the Investigative Meeting - Prior to taking disciplinary action, a supervisor must ascertain all the facts involved. The investigation should include an interview with the employee.

- A. Discuss the matter with a DOP Management Consultant prior to taking disciplinary action. An example of a written notice is provided at the end of this chapter.
- B. Advise the employee in writing of the allegations and the time and place of the meeting.
- C. Give the employee reasonable time to prepare.
- D. Tell the employee discipline may result and the potential severity of the discipline, and the employee may exercise the right to have a union representative present.
- E. Think about who should be at the meeting. Keep the numbers relatively even. If the employee brings a union representative, a human resources representative or other management representative should also be present either in person or by teleconference.
- F. Give the employee a full opportunity to refute the allegations and to tell his or her side of the story.
- G. Listen carefully to what the employee has to say. Ask questions to clarify any information or comments you don't understand.
- H. Ask the employee if there is anything else you should know about the situation that you have not covered in the interview. What other people should you talk to who may have relevant information? Give the employee a way to provide additional information after the interview, directly or through the union representative.
- I. Tell the employee when you expect to get back to them with your decision.
- J. Give yourself time to make a fair and objective decision after you have evaluated all the evidence.
- K. Consider all mitigating circumstances.
- L. Keep a written record of your investigation meeting to provide to the human resources manager, if requested, but do not release such records to the employee or the union.

5. Preparing a Written Warning, Reprimand, Suspension or Dismissal

- A. State that the letter or memorandum constitutes a written warning, reprimand, suspension or dismissal.
- B. Reference all investigatory or pre-discipline meetings or hearings held prior to the decision to discipline and indicate if union representation was present at the meeting.
- C. Include a statement of the request, order, rule, regulation, conduct, or procedure which has been violated.

D. Give specific facts including date, time, place, witnesses (if any), and actions of the individual involved. Be exact and to the point. Avoid making statements of assumption or using hearsay. Indicate if any mitigating circumstances were considered when determining the level of discipline. Indicate any other considerations such as the employee's previous written acknowledgement of the policies that were violated.

E. Outline all previous warnings or oral/written reprimands given. State your intent to place a copy in the employee's personnel file.

F. Indicate that the employee is being given a chance to correct the situation. Also state that if the behavior or performance does not improve, further disciplinary action will be taken. Be sure to state clearly what specific improvement is expected.

G. Provide space at the end of the document for the employee to acknowledge receipt.

H. Forward copies of the letter/memorandum to PPTSG for inclusion in the employee's personnel file, to PPMST for statistical and consistency purposes, and to the appropriate union.

ATTACHMENTS:

1. Sample Investigatory Interview Memo
2. Sample Warning Memo
3. Sample Reprimand Memo
4. Sample Suspension/Final Warning Letter
5. Sample Dismissal Letter

Sample Investigatory Interview Memo

MEMORANDUM

STATE OF ALASKA
Department of Military and Veterans Affairs

To: Employee
Title

Date:

Phone:

From: Supervisor
Title

Subject: Investigatory Interview (Example)

It has been alleged that you (describe alleged misconduct and policies violated or the performance issues) and you are required to submit to an interview regarding these allegations.

You are directed to report for this interview in conference room (Insert Room Number) of the (Insert Department, Building or Location) at (Insert Time) on (Insert Date).

Failure or refusal to report for this interview will be considered insubordination and will result in immediate dismissal.

You will be expected to answer specific questions during the course of the interview in a forthright and honest manner, failure to do so will result in immediate dismissal.

Due to the nature of these allegations, you may be accompanied by a Union representative if you so desire. You must contact the Union directly if you wish a representative to be present.

If you have any questions or require further information, please do not hesitate to contact me.

Employee Signature Date
Acknowledgement of Receipt

cc: Division Director
Public Protection Management Services Team
Employee's supervisory file
Appropriate Bargaining Unit (by fax)

Sample Warning Memo

MEMORANDUM

STATE OF ALASKA
Department of Military and Veterans Affairs

To: Employee
Title

Date:

Phone:

From: Supervisor
Title

Subject: Warning (Example)

(History)(Date)(Incident) The Department has completed its investigation into allegations that you violated Department of Military and Veterans Affairs and State of Alaska policies by reporting to work four hours late and not calling in. You were given notice of this allegation and a meeting was held with you on (date), in the presence of your union representative.

(Expectation) From this point forward, you are to gain approval for all annual leave in advance from me directly. If you are sick and unable to be at work, I expect you to call me and speak with me personally within 15 minutes of your normal start time of 8:00a.m. If I am not available, contact my secretary and leave a phone number where you may be reached.

(Consequences) You are hereby warned that continued usage of leave without prior approval may result in more severe disciplinary action.

You are reminded of your rights outlined in the Bargaining Agreement with the State of Alaska and the (SU, GGU, LTC as appropriate) Union.

Employee Signature Date
Acknowledgement of Receipt

cc: Division Director
Public Protection Management Services Team
Public Protection Technical Services Group
Employee's supervisory file
Appropriate Bargaining Unit (by fax)

NOTE: Warnings and Reprimands will be in memorandum format; and Suspensions and Dismissals will be in letter format.

Attachment 3

Sample Reprimand Memo

MEMORANDUM

STATE OF ALASKA
Department of Military and Veterans Affairs

To: Employee
Title

Date:

Phone:

From: Supervisor
Title

Subject: Reprimand (Example)

(History of Progressive Discipline and Dates) The Department has completed its investigation into allegations that you violated Department of Military and Veterans Affairs and State of Alaska policies by failing to work on September 8, 2004 and not calling in. You were given notice of this allegation and a meeting was held with you on (date), in the presence of your union representative. On _____, you received a warning identifying that frequent absenteeism and working irregular hours was not conducive to a good supervisory relationship with your staff. In addition you were instructed to gain approval for all annual leave in advance.

(Incident/Issue and Rule). Your unscheduled leave usage has adversely affected the performance of the program and not only has a negative impact on staff and attainment of program goals, but reflects badly on the division as a whole and our ability to fulfill our mission. In order to provide effective leadership, management and supervision you must immediately curtail the excessive use of unscheduled leave. No leave will be approved without specific prior approval from myself or my designee.

(Expectations and Consequences) In the event you are unable to bring about corrections in accordance with this memo, I will be required to take further actions as required to bring about needed changes in the programs which may include disciplinary action up to and including dismissal

You are reminded of your rights outlined in the Bargaining Agreement with the State of Alaska and the (SU, GGU, LTC as appropriate) Union.

Employee Signature Date
Acknowledgement of Receipt

cc: Division Director
Public Protection Management Services Team
Public Protection Technical Services Group
Employee's supervisory file
Appropriate Bargaining Unit (by fax)

NOTE: Warnings and Reprimands will be in memorandum format; and Suspensions and Dismissals will be in letter format.

Attachment 4

Sample Suspension/Final Warning Letter

Department of Military and Veterans Affairs
Division of Administrative Services

xxxxxxx, Governor

POB 5800
Ft Richardson, AK 99505-5800

Certified Mail # xxxxxxxx

Employee
Address
City, State, Zip

Date

Dear Employee

Re: Suspension/Final Warning (Example)

(Incident/Issue and History of Actions). The Department has completed its investigation into allegations that you violated Department of Military and Veterans Affairs and State of Alaska policies. You were given notice of this allegation and a meeting was held with you on December 22, 2004, in the presence of your union representative.

The Department's investigation supports the following conclusions:

- You previously received both a written warning and a reprimand that reinforced a letter of instruction identifying frequent absenteeism and irregular work hours. You were directed to immediately curtail your excessive use of unscheduled leave, and instructed that no leave would be approved without specific approval. You were also instructed to report any unscheduled absences within 15 minutes of the start of your workday. You were warned that further disciplinary actions would result if you were unable to make this correction.
- You failed to report to work on December 1, 2004 and did not call in to report or request the absence.
- To support your claim that your absence was due to illness you were unable to provide a health care provider's certification that the absence was medically necessary.

When you did not show up for work on _____, I phoned you at your residence. You explained that your doctor had changed the medication you were taking and the medication was not agreeing with you. I requested that you immediately get an appointment with the physician and furnish me with a letter that confirmed that your absence was medically necessary. If your physician prescribed a medical leave of absence to address your condition, I would support that prescription and you would be granted necessary time off.

Your unscheduled leave usage continues to adversely affect the performance of the program and not only has a negative impact on staff and attainment of program goals, but reflects badly on the division as a whole and our ability to fulfill our mission. In order to provide effective leadership, management and supervision you must immediately curtail the excessive use of unscheduled leave. No leave will be approved without specific prior approval from myself or my designee. After carefully reviewing all of the information surrounding this matter the Department finds that the appropriate disciplinary action is a five-day (37.5-hour) suspension without pay.

The suspension is effective Monday, December 13, 2004 through Friday, December 17, 2004. You should report for work on December 20, 2004 at your normally scheduled time. During the term of your suspension you are not to return to (work site) or go to any Department of Military and Veterans Affairs facility or office. In addition, you are not to represent yourself in any official capacity during this period.

Should there be a repeat of this behavior or should you retaliate against any employee because of their participation in this investigation, you will be subject to additional discipline including dismissal.

I believe you understand the seriousness of this matter and how you are to adjust your behavior in order to avoid this problem in the future. I am confident that you can address this matter in a positive and professional manner and that this issue will not arise in the future.

You are reminded of your rights outlined in the Bargaining Agreement with the State of Alaska and the (SU, GGU, LTC as appropriate) Union.

Sincerely,

Name
Division Director

cc: Division Director
Public Protection Management Services Team
Public Protection Technical Services Group
Employee's supervisory file
Appropriate Bargaining Unit (by fax)

NOTE: Warnings and Reprimands will be in memorandum format; and Suspensions and Dismissals will be in Letter format.

Attachment 5

Sample Dismissal Letter

Department of Military and Veterans Affairs
Division of Administrative Services

xxxxxxx, Governor

POB 5800
Ft Richardson, AK 99505-5800

Certified Mail #xxxxxxx

Employee
Address
City, State, Zip

Date

Dear Employee

Re: Dismissal (Example)

(Incident/Issue and Date). The Department has completed its investigation into allegations that you violated Department of Military and Veterans Affairs and State of Alaska policies. You were given notice of this allegation and a meeting was held with you on December 22, 2004, in the presence of your union representative.

The Department's investigation supports the following conclusions:

- You previously received both a written warning and a reprimand that reinforced a letter of instruction identifying frequent absenteeism and irregular work hours. You were directed to immediately curtail your excessive use of unscheduled leave, and instructed that no leave would be approved without specific approval. You were also instructed to report any unscheduled absences within 15 minutes of the start of your workday. You were warned that further disciplinary actions would result if you were unable to make this correction.
- The behavior continued and you were suspended without pay for one week.
- You failed to report to work on December 27, 2004 and did not call in to report or request the absence. When questioned you indicated that you did report to work at 8:00 AM, however it was determined that you did not arrive until 9:00 AM.
- You failed to report to work on December 28, 2004 and did not call in to report or request the absence. You reported to work later that day at 11:00 AM.

(Outcome) Due to your continued failure to report to work on time or provide notice as instructed, you leave me with no alternative but to immediately dismiss you from your position. Your dismissal is effective close of business today.

You are directed to return all State issued property that has been provided to you.

You are reminded of your rights outlined in the Bargaining Agreement with the State of Alaska and the (SU, GGU, LTC as appropriate) Union.

Sincerely,

Name
Division Director

cc: Division Director
Public Protection Management Services Team
Public Protection Technical Services Group
Employee's supervisory file
Appropriate Bargaining Unit

NOTE: Warnings and Reprimands will be in memorandum format; and Suspensions and Dismissals will be in letter format.