



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: December 12, 2017

Title: Revisions to Merit System Rule (MSR) 12 - Disciplinary and Other Personnel Actions

Introduction/Background:

Proposed Revisions to MSR 12

Discussion:

CURRENT PRACTICE - Merit System Rule 12 - Disciplinary and Other Personnel Actions

Documents reflecting Informal disciplinary action taken with an employee are not removed from the employee's Department Personnel File (DPF). They are retained in the employee's DPF for the same period of time specified for the retention of DPFs in Arizona state records retention requirements (currently six months after the employee separates from County employment).

Informal discipline may be cited in, and considered part of, further discipline and in some instances for up to multiple years following issuance in order to establish and memorialize progressive discipline.

Disciplinary documentation also includes a discipline history of unrelated discipline issued to employees, to include informal discipline.

NEWLY PROPOSED REVISIONS - Merit System Rule 12 - Disciplinary and Other Personnel Actions

12.1 A. - Supervisors shall conduct at least one (1) follow-up meeting with employees within six (6) months of taking informal and/or formal disciplinary action.

12.2 A. - Informal discipline shall be removed from an employee's department personnel file (DPF) twelve (12) months following the date of issuance.

- Disciplinary documents removed from the employee's DPF shall be placed in a separate file and retained for the same period of time specified for the retention of DPFs in Arizona state records retention requirements.

- Informal disciplinary documents previously removed from a DPF shall transfer with the employee, separate from the DPF, should the employee accept a position in another department.

- Informal discipline that is more than twelve (12) months beyond issuance shall not be cited in, or considered a part of, further discipline.

Conclusion:

Staff and the Merit Commission recommend changing Merit Rule 12 as attached.

Recommendation:

Staff recommends adoption of Merit Rule 12 as amended.

Fiscal Impact:

Not Applicable

Board of Supervisor District:

1 2 3 4 5 All

Department: Human Resources Telephone: 4-8028

Contact: Cory Dent Telephone: 4-3365

Department Director Signature/Date: *M. Sifoni* 12/20/17

Deputy County Administrator Signature/Date: *Jon Zuelke* 11-28-17

County Administrator Signature/Date: *C. DeLuca* 11/29/17

12.1 GENERAL PROVISIONS

A. Disciplinary Action

A disciplinary action is an action taken only for cause to correct inappropriate performance or other work-related behavior. The degree of disciplinary action shall relate to the gravity of the improper performance or conduct and the past performance and conduct of the employee. Progressive discipline, including counseling and other supervisory actions to improve conduct and performance, should be used whenever possible before taking formal disciplinary action.

WITHIN SIX (6) MONTHS OF TAKING DISCIPLINARY ACTION, THE SUPERVISOR SHALL CONDUCT AT LEAST ONE (1) FOLLOW-UP MEETING WITH THE EMPLOYEE TO REVIEW PROGRESS ON EXPECTATIONS SET FORTH DURING THE INITIAL DISCIPLINARY DISCUSSION.

B. Pre-action Meetings

Before a permanent employee is suspended, demoted for disciplinary reasons, reduced in pay for disciplinary reasons, dismissed, placed on administrative suspension without pay or with reduced pay, or involuntarily terminated under Rule 11.5 B. through D., a pre-action meeting shall be held. The affected employee shall receive written notice of the charges, an explanation of the department's evidence and an opportunity to address a department representative concerning the charges.

1. The pre-action meeting shall be held at a time when the employee is reasonably able to attend, with due notice, and prior to the effective date of the action.
2. Any relevant information presented by the employee regarding the proposed action shall be considered. The department representative will make a recommendation to the Appointing Authority to support, modify, or revoke the proposed action. If the recommendation and final action are adverse to the employee, the employee may appeal the action using the appeals procedure specified in Merit System Rule 14.
3. When a department determines that an employee should be out of the workplace while a pre-action investigation is conducted, the employee may be placed on administrative leave with pay pursuant to Personnel Policy 8-107.

C. Any of the Following Constitute Cause for Discipline:

1. Fraud in securing appointment or securing or attempting to secure workers' compensation benefits;
2. Incompetence;
3. Inefficiency;
4. Neglect of duty;
5. Insubordination, including, but not limited to, conduct which is unruly;
6. Dishonesty;
7. Possessing, dispensing, or being under the influence of alcohol, or any unlawful controlled substance such as a narcotic, barbiturate, marijuana, methamphetamine, or a tranquilizing or hallucinogenic drug, while on duty, except in accordance with medical authorization, or in the lawful performance of the employee's regular assigned duties. Under the influence of alcohol means either obvious impairment due to alcohol or a test result reflecting a blood alcohol content of .04 or greater;
8. Absence without leave without reasonable cause;
9. Commission or conviction of a felony or of a misdemeanor involving moral turpitude, either of which would affect the employee's suitability for continued employment;
10. Discourteous treatment of the public;
11. Willful disobedience, i.e. a specific violation of a command or prohibition;
12. Engaging in prohibited political activity;
13. Misuse of County computers, County internet access, County email systems, or any other County electronic communication devices;
14. Misuse of any County property and/or systems;

15. Seeking to obtain financial, sexual, or political benefit from another employee with or without his/her consent, induced by wrongful use of force or fear, or under color of official right;
16. Violation of the Rules of Conduct, Personnel Policy 8-119;
17. Failure to satisfactorily perform job duties and responsibilities;
18. Failure to maintain minimum qualifications for the position;
19. Any other improper conduct or performance, which constitutes cause for disciplinary action.

12.2 TYPES OF DISCIPLINARY ACTIONS

A. Informal Discipline

1. Verbal Counseling

A supervisor may engage in verbal counseling with a permanent employee at any time for problem resolution. If the verbal counseling is documented, a copy of the documentation, with the employee's acknowledgment of receipt and any written response, shall be placed in the employee's department personnel file. Verbal counseling is neither grievable nor appealable.

2. Letter of Counseling

An Appointing Authority or designee may issue a Letter of Counseling to a permanent employee at any time to correct or improve improper performance or conduct. The letter shall contain the specifics of the improper performance or conduct and shall be identified as a Letter of Counseling. A copy of the Letter of Counseling, with the employee's acknowledgment of receipt and any written response, shall be placed in the employee's department personnel file. A Letter of Counseling is neither grievable nor appealable.

INFORMAL DISCIPLINE DOCUMENTATION SHALL BE REMOVED FROM THE EMPLOYEE'S DEPARTMENT PERSONNEL FILE TWELVE (12) MONTHS FOLLOWING THE DATE OF ISSUANCE. THE DEPARTMENT SHALL PLACE THE DISCIPLINARY DOCUMENT(S) IN A SEPARATE FILE AND RETAIN THEM FOR THE SAME PERIOD OF TIME SPECIFIED FOR THE RETENTION OF DEPARTMENT

PERSONNEL FILES IN STATE RECORDS RETENTION REQUIREMENTS.

SHOULD THE EMPLOYEE ACCEPT A POSITION IN ANOTHER DEPARTMENT, INFORMAL DISCIPLINARY DOCUMENTS PREVIOUSLY REMOVED FROM THE EMPLOYEE'S DEPARTMENT PERSONNEL FILE SHALL BE TRANSFERRED TO THE NEW DEPARTMENT IN A FILE SEPARATE FROM THE EMPLOYEE'S DEPARTMENT PERSONNEL FILE.

INFORMAL DISCIPLINE THAT IS MORE THAN TWELVE (12) MONTHS BEYOND ISSUANCE SHALL NOT BE CITED IN, OR CONSIDERED A PART OF, FURTHER DISCIPLINE.

B. Formal Discipline

1. Letter of Reprimand

An Appointing Authority or designee may issue a Letter of Reprimand to a permanent employee to admonish the employee for serious or repetitive improper performance or conduct. The letter shall contain the specifics of the improper performance or conduct and shall be identified as a Letter of Reprimand. The Letter of Reprimand shall advise the permanent employee of the right to grieve the disciplinary action within ten (10) business days of receipt. Copies of the Letter of Reprimand, with the employee's acknowledgement of receipt, shall be placed in the employee's department personnel file and filed with Human Resources.

12.2 B. 2. Suspension

a. Suspension is considered to be a significant disciplinary action and may be used for more serious incidents or repetitions of improper performance or conduct. An Appointing Authority or designee may suspend without pay a permanent employee for a disciplinary reason. Permanent employees may be suspended for any appropriate length of time in full day increments.

b. The Notice of Suspension shall contain the specific reason(s) for the suspension in sufficient detail to inform the employee of the reason(s) for the action and shall advise the employee of the right to appeal the suspension to the Merit System Commission within ten (10) calendar days of receipt of notice.

- c. The Notice of Suspension must be delivered to the employee prior to or no later than the effective date of the suspension. The date of receipt must be documented. Copies of the Notice of Suspension shall be filed with Human Resources and the Clerk of the Board.

3. Demotion

- a. Demotion for a disciplinary reason is considered to be a significant disciplinary action and may be used for more serious incidents or repetitions of improper performance or conduct. An Appointing Authority or designee may demote a permanent employee for a disciplinary reason provided the employee meets the minimum qualifications of the demoted classification.
- b. The Notice of Demotion shall contain the specific reason(s) for the demotion in sufficient detail to inform the employee of the reason(s) for the action and shall advise the employee of the right to appeal the demotion to the Merit System Commission within ten (10) calendar days of receipt of notice.
- c. The Notice of Demotion must be delivered to the employee prior to or no later than the effective date of the demotion. The date of receipt must be documented. Copies of the Notice of Demotion shall be filed with Human Resources and the Clerk of the Board.

12.2 B. 4. Dismissal

- a. Dismissal for a disciplinary reason is the most significant disciplinary action and may be used for the most serious incidents or repetitions of improper performance or conduct. An Appointing Authority may dismiss a permanent employee for a disciplinary reason.
- b. The Notice of Dismissal shall contain the specific reason(s) for the dismissal in sufficient detail to inform the employee of the reason(s) for the action and shall advise the employee of the right to appeal the dismissal to the Merit System Commission within ten (10) calendar days of receipt of notice.
- c. The Notice of Dismissal must be delivered to the employee prior to or no later than the effective date of the dismissal. The

date of receipt must be documented. Copies of the Notice of Dismissal shall be filed with Human Resources and the Clerk of the Board.

12.3 ADMINISTRATIVE SUSPENSION

An Appointing Authority may impose a non-disciplinary suspension without pay or with reduced pay when a permanent employee is charged with a felony or other crime involving moral turpitude, or when it is deemed to be in the best interest of the County while an inquiry is being made into the conduct of the employee.

- A. Permanent employees may be placed on administrative suspension for any appropriate length of time in full day increments. Exempt permanent employees may be placed on administrative suspension only without pay.
- B. The Notice of Administrative Suspension shall contain the specific reason(s) for the administrative suspension in sufficient detail to inform the employee of the reason(s) for the action and shall advise the employee of the right to appeal the administrative suspension to the Merit System Commission within ten (10) calendar days of receipt of notice.
- C. The Notice of Administrative Suspension must be delivered to the employee prior to or no later than the effective date of the Administrative Suspension. The date of receipt must be documented. Copies of the Notice of Administrative Suspension shall be filed with the Clerk of the Board and Human Resources for placement in the employee's official personnel file.
- D. The pre-action meeting shall be held upon reasonable notice to the employee and at a time when the employee is reasonably able to attend.
- 12.3 E. Administrative suspensions that exceed thirty (30) business days must be approved by the County Administrator.
- F. At the conclusion of the administrative suspension, the employee shall be returned to work with or without back pay, or advised of disciplinary or other action.

12.4 SPECIAL OBSERVATION PERIOD

An Appointing Authority or designee may place a permanent employee on a Special Observation Period for the purpose of closely monitoring the employee's performance or conduct during the specified period of time. A Special Observation Period is a non-disciplinary action and may or may not be issued in conjunction with a disciplinary action. The Notice of Special Observation Period shall be separate from any accompanying disciplinary action documentation.

- A. The Notice of Special Observation Period shall be provided to the employee in writing upon the effective date, and shall specify the conduct involved, the purpose of the observation period and the length of the period. Copies of the Notice of Special Observation Period shall be placed in the employee's department personnel file and filed with Human Resources for placement in the employee's official personnel file.
- B. At the end of the Special Observation Period, the employee's supervisor shall prepare a special performance evaluation report specific to the performance issue(s) being monitored. Copies of the report shall be placed in the employee's department personnel file and filed with Human Resources.
- C. Unsatisfactory performance or conduct during the Special Observation Period may result in disciplinary action taken during the Special Observation Period. Unsuccessful completion of the Special Observation Period may result in disciplinary action taken at the end of the Special Observation Period.

12.5 EFFECTIVE DATE

The demotion, administrative suspension, suspension, or dismissal for a disciplinary reason shall be effective on the date stated in the notice. The effective date of the action shall not be altered by the employee exercising the right of appeal.

12.6 RIGHT TO REPRESENTATION

The affected employee is entitled to be assisted by a willing person of the employee's choosing in a meeting where a Letter of Reprimand is being issued to the employee and at pre-action meetings held prior to issuance of disciplinary actions. The employee's assistant may speak on behalf of the employee and participate in the discussions with the employee during such meetings. The employee shall be given at least three (3) full work days notice of the pre-action meeting or a meeting where a Letter of Reprimand is being issued. If the employee has not obtained an assistant within that period of time, management may proceed without further delay.