

Human Resources Training

Performance Management Training Module 4:

Progressive Discipline

(Classified Employees)


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Learning Objectives

By the end of this session participants will be able to:

- Know the importance of having a solid foundation and documentation for a formal corrective action (discipline).
- Know the role of Union Stewards, Weingarten Rights, Fact-Finding meetings and Just Cause.
- Know the importance and best practices of investigatory meetings.
- Understand and utilize the steps of progressive discipline, and when and how to apply each step in working with Human Resources.



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- Know the role of Union Stewards, Weingarten Rights, Fact-Finding meetings and Just Cause.
- Know the importance and best practices of investigatory meetings.
- Understand and utilize the steps of progressive discipline and when and how to apply each step in working with HR.

Remember: Trial Service

It is good at this point to reiterate the importance of Trial Service. For a new employee, whether a new hire or a promotion, progressive discipline and the possible union grievances they can generate, can be avoided if supervisors and manager employ due diligence during the Trial Service period.

Remember: Trial Service

- Each employee initially hired, or promoted to a position shall serve a TS period.
- TS may be extended (allow 30 days).
- Do interim performance appraisal reviews for TS employees.
- At the end of TS the employee gains regular status.
- Do not wait until the end of TS to remove an employee if needed.

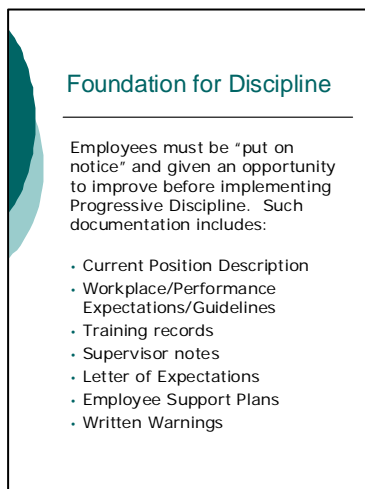
A problematic employee still in Trial Service would not be subject to progressive discipline. If behavioral or performance problems are on-going and unresolved during Trial Service, where coaching and counseling has not been successful, the supervisor must determine if the employee merits continuance in the position or should be removed.

If the employee new to the job is just not able to meet expectations and performance standards despite the supervisor's best efforts, then removal from trial service is the best course of action. Removal from trial service is not grievable or arbitrable under the SEIU Contract; it is considered a "no harm, no fault" removal.

However, if the problematic employee is allowed to complete their Trial Service period, and gains regular status, then the only way the supervisor can address unresolved and on-going behavioral or performance problems is through progressive discipline. It is much more expedient to address unresolved and on-going problems by removal from Trial Service, rather than through progressive discipline once the employee gains regular status.

Foundation for Discipline

When a corrective action is needed for unacceptable behavior or job performance, a well documented record of the supervisor's performance management efforts are required if the action being considered is a disciplinary action. The supervisor must ensure that they have clearly documented their efforts to ensure that the employee knows and understands the requirements of their job.



Foundation for Discipline

Employees must be "put on notice" and given an opportunity to improve before implementing Progressive Discipline. Such documentation includes:

- Current Position Description
- Workplace/Performance Expectations/Guidelines
- Training records
- Supervisor notes
- Letter of Expectations
- Employee Support Plans
- Written Warnings

The primary documentation which demonstrates that the employee knows and understands the duties and responsibilities of their job as an employee of WOU are:

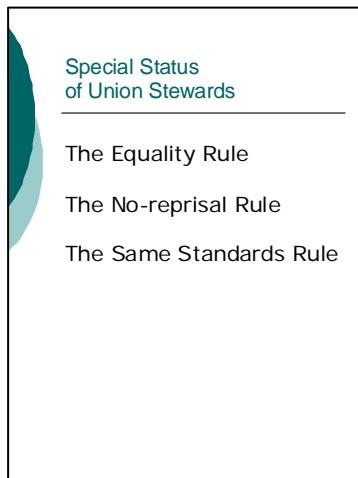
- **Current Position Description:** signed by the employee, the supervisor, and Appointing Authority.
- **Unit Workplace and Performance Expectations (Guidelines):** signed signature sheet acknowledging the employee has received and had an opportunity to discuss.
- **Training session/workshop records:** record of training and workshops the employee attended relative to the specific issue.

Other documentation is also required to ensure the employee has been made aware ("put on notice") of the supervisor's concerns regarding his/her specific behaviors or job performance issue(s), and has discussed them with the employee. This can be in the form of Supervisor Notes containing dates and subjects of coaching and counseling discussions with the employee. It can also be in the form of informal written notifications such as Letters of Expectations (LOE's), Employee Support Plans, and Written Warnings. All of these documents are kept in the Supervisor's File to track the progress of employee's efforts to improve their behavior or job performance.

This documentation is required as the Foundation for implementing formal Progressive Discipline. **No Surprises.**

The Special Status of Union Stewards

Under labor law, stewards and union officers have a protected legal status. When engaged in representational activities, stewards and union officers are considered to be equals with management. Three rules apply to stewards and union officers in recognition of their need to vigorously advocate when representing an employee:



The Equality Rule:

Allows a steward to raise a voice, gesture, challenge management's claim of truthfulness, threaten legal action or raise the possibility of group protests. The employer cannot label this behavior as insubordinate and impose discipline. This rule applies only when a steward acts in his/her representational capacity.

The No-reprisal Rule:

A steward cannot be punished or threatened with punishment because management considers his/her grievance to be overly frequent, petty or offensively written. Reprisals against stewards are Unfair Labor Practices. An employer violates the No-reprisal Rule if it segregates a steward from other workers; deprives a steward of overtime or other benefits; or transfers a steward to a different job or shift, etc.

The Same Standards Rule:

Employers must apply the same standards to stewards as they do to other employees. Employers cannot say, "Of all people, you're supposed to know the rules," then impose discipline for failure to meet a higher standard. The only circumstance in which a steward may be held to a higher standard than a rank-and-file worker occurs when a no-strike clause imposes duties on union officials.

Weingarten Rights

Weingarten Rights allow an employee to have union representation at an investigatory meeting, which the employee reasonably believes may result in discipline.

Weingarten Rights

Right to representation if employee believes the meeting may result in a disciplinary action.

Needs to be reasonable.

Steward may ask clarifying questions.

Steward may make a closing statement.

The union representative may inquire, *at the onset of the interview*, regarding the purpose, including inquiring about the general subject matter of the questioning to follow.

During the investigatory meeting, the union representative may ask clarifying questions *but may not counsel* an employee on how or whether to answer the employer's questions.

After the employer has completed asking questions of the employee, the union representative may ask the employee questions designed to clarify previous answers or to elicit further relevant information.

Before the end of the meeting, the representative may suggest to the employer other witnesses to interview and may describe relevant practices, prior situations or mitigating factors that could have some bearing on the employer's deliberations concerning discipline.

Investigatory Meeting Roles

If discipline is being contemplated you **must** conduct an investigatory meeting with the employee. Failure to do so may delay and/or prevent you from taking disciplinary action that is warranted. Each party plays an important role in the investigatory meeting.

Investigatory Meeting Roles

- Human Resources' Role
- Manager's Role
- Employee's Role
- Steward's Role

Human Resources' Role:

It is imperative the manager consult with the Human Resource (HR) Office early in the process where an issue has developed requiring an investigatory meeting that could lead to a disciplinary action. In preparing for and conducting all such investigatory meetings, HR provides support and assistance to the manager collaboratively defining the problem/issue, identifying/gathering relevant facts, the needed resolution, and what level of disciplinary action should be considered. This consultative and

collaborative approach will allow HR to provide maximum assistance in the resolution of the issue, and assure that if discipline is required, that all the requirements of due process and the current Union Contract are followed.

Manager's Role:

This is your meeting as a manager. You called it. The purpose of the meeting is to investigate an issue, to get the employee's version and ask clarifying questions. You are there to seek information. You need to maintain control of the meeting. Keep the meetings low key. Role model respectful behavior. If a second manager or Human Resources staff is attending the meeting, agree on who will lead the meeting, asking questions, take notes, etc. prior to the start of the meeting. Either participant can ask the employee to repeat and/or clarify an answer.

Employee's Role:

The employee is there to listen to and understand the area(s) of concern and respond to the specific facts (as you know them). This allows the employee to present his/her side; explaining circumstances and presenting mitigating facts.

Steward's Role:

The union steward is there to support and represent the employee. A Steward can only ask clarifying questions. They may not advise the employee how to answer or to not answer questions. They may not leave the room to have a "caucus" or speak in private. The representative may suggest to the employer other witnesses to interview and may describe relevant practices, prior situations or mitigating factors that could have some bearing on the employer's deliberations concerning discipline.

Investigatory Meeting Best Practices

Investigatory Meeting Best Practices

- Contact Human Resources
- Schedule the meeting in advance.
- Offer representation
- Prepare in advance
- Identify time period under investigation
- Have your questions ready

- **Contact your Human Resource Office.**

- **Schedule the meeting in advance.**

In a private setting, let the employee know the purpose of the meeting and that it is investigatory.

- **Offer union representation.**

The employee has a right to have representation (Weingarten Rights). You need to allow enough time prior to the meeting for the employee to obtain union representation. If an employee declines representation **DO** get the decline in writing (e-mail OK). If an employee wants representation they need to use the nearest steward and make the arrangements. A union steward may represent an employee telephonically. We do not delay meetings so that an employee can use a specific steward nor do we pay steward's travel expenses. The steward must arrange with their supervisor to take time away from their job to represent the employee.

- **Prepare for your investigative meeting in advance.**

Conduct preliminary interviews with witnesses, technical experts, etc. to gather pertinent facts. Get specifics – what happened, when, where, who witnessed, supporting documentation.

- **Identify the time period(s) under investigation.**

Understand the time frame you are covering when investigating an issue or concern. When investigating a specific incident, identify the date (or as close as possible) of the incident. If prior corrective steps were taken (i.e. written or verbal coaching, LOE, written warning or formal discipline) and were unsuccessful – cover from the date the employee knew or should have known that improvement was needed to the date of the investigative (fact-finding) meeting. That is the only time that can be covered in supporting facts if formal discipline is being used.

- ***Have your questions prepared in advance.***

Or, identify the specific topics/incidents you want to address with enough information available to allow the employee to accurately respond. HR is available to help you if you need assistance.

Conducting the Meeting

Conducting the Meeting

- Set ground rules.
- Describe the issue being discuss.
- Listen objectively to the employee's response.
- Ask open-ended "Big Picture" and follow-up clarifying questions.
- Take notes.
- Close the Meeting.
- Meet with HR to finalize recommended action.

Conduct the meeting by...

- Setting simple ground rules at the start of the meeting such as *confidentiality*, the steward's role, the employee must answer the questions, no leaving the meeting to consult, etc.
 - Disclosing enough specific information for the employee to be able to respond. This can include covering a brief history of actions previously taken to help the employee correct an issue and/or to confirm what the employee knew or should have known.
-
- Keeping an open mind. The intent of the meeting is to provide an opportunity for an employee to present his/her side of the story before deciding whether or not to take disciplinary action so that you can objectively evaluate the circumstances and determine whether disciplinary action is warranted.
 - Asking open ended (big picture) questions. Examples:
 - Was there something that prevented you from/caused you to _____??
 - Is there anything that is going to get in your way of being able to accomplish _____??
 - Asking follow-up clarifying questions.
 - Take notes. Have a second manager (or HR staff) in the room to take notes. You do not have to give the employee or the union representative a copy of your notes. They have the same opportunity you do to take notes for themselves.

Close the meeting by...

- Stating that you will take all of the information provided under consideration.
- If applicable, commit to any follow-up investigation steps identified as needed in the meeting.
- Identify an approximate time that the employee will hear back from you (set depending on what follow-up is needed, extent of actions being considered, etc.).
- And finally, remind all parties of the importance of confidentiality.

After the meeting, meet with Human Resources...

Considerations on how to proceed may involve review of past feedback and coaching, actions, progressive discipline, etc. that have taken place with the employee on related issues; how like concerns have been addressed, contract language and past practices.

Your HR Representative can help you with all of these considerations and recommend the best course of action for the circumstances being addressed.

Avoid These Actions in an Investigatory Meeting

Investigatory Meeting Practices to Avoid

- No preliminary discussion
- Do not come into the meeting with your mind made up
- Do not ask closed questions
- Do not allow recording
- Do not commit to an action
- Do not keep the employee in limbo

Do not let the employee engage you in a preliminary discussion. When scheduling a meeting stick to the topics you plan to cover and if there is a potential for formal discipline as a result of the meeting.

Do not make your decision to discipline before the meeting.

Remember you are gathering information to determine if you need to proceed and how to do so. With this mindset you will be better able to listen to what the employee is telling you.

Do not ask closed questions.

If closed questions (those that can be answered by a yes or no) cannot be avoided follow them up with a “why” question or ask them to please explain their response.

Do not allow recording.

You have no control where that recording will end up. If on a limited basis recording the meeting is being considered, consult with your HR Representative. Also, all parties must agree to be recorded in person; however, it is permissible to record a phone conversation if only one party agrees.

Do not close the meeting by committing to a specific level of discipline.

Don't tell the employee what you have decided in the meeting. Take the information and go over it with your HR Representative and your supervisor. Take facts and mitigating circumstances into consideration before making your decision to discipline and at what level.

Do not keep the employee in limbo.

Make sure you get back to the employee either by meeting with them to present a disciplinary document or to tell them that there will be no discipline.

The Seven Elements of Just Cause

The Seven Elements of Just Cause

1. Was the employee forewarned?
2. Was the rule involved related?
3. Was there an investigation?
4. Was it fair?

1. *Did employer forewarn employee of possible consequences of conduct?*

Are the rules about the type of conduct at issue? Are they oral or written? If oral, how would employee hear about them? If written, has employee been given access? Did employee say she/he knew about the rule? How would employee know about the rule? If there is no formal or informal rule, is the conduct the type that employees could still be expected to know was not permitted?

2. *Was rule or order involved reasonably related to orderly, efficient, and safe operation of business?*

Why was the rule put in place? Does the rule protect others? Does the rule fairly give guidance to employee about how to act? Without the rule would employee be uncertain what to do?

3. *Before administering discipline did employer make effort to discover whether employee did, in fact, violate or disobey rule or order?*

Did anyone find out what happened? Who was the person? Is there a report? If no report, is there a reason that one was not drafted? Are their notes showing an investigation?

4. *Was employer's investigation conducted fairly and objectively?*

Are there any prior problems between investigator and employee that could be raised to question objectivity of investigator? Can any claim of bias be made based on the wording in the investigation report? Did investigator evidence anger or frustration during interview that could be raised to claim bias? Does the report cover the facts, both harmful and helpful, to the employee? Were all logical sources that could provide

information covered or does report leave questions in the mind of the reader about why other sources were not contacted?

The Seven Elements of Just Cause (Cont.)

5. Was there substantial evidence?
6. Have penalties been applied evenly?
7. Was the discipline reasonable?

5. *In investigation, did employer obtain sufficient evidence or proof that employee was guilty as charged?*

What did employee do? Any physical evidence to show what happened? Are there any witnesses that observed the conduct? Are the conclusions about what happened logical in light of the existing evidence? Is there “speculation: to fill in gaps in the evidence? Do the conclusions take into account all the evidence, even if some evidence is contrary to other evidence?

6. *Has employer applied its rules, orders, and penalties evenhandedly and without discrimination?*

Has this conduct, or similar conduct, happened before in this workplace? Was discipline imposed? At what level? Did the prior disciplines contain any explanation to support why they were given? If this is the first time this type of conduct has occurred, what factors make you want to impose discipline? Examples: (a) employee needs to understand not to do it again; (b) other employees would do the same if this employee allowed to; (c) past actions of employee show she/he needs to be put on notice; (d) the conduct has the potential to create great risk for the employer.

7. *Was degree of discipline reasonably related to seriousness of offense and employee’s record?*

On a continuum, is it intrinsically unethical behavior on one extreme or a lapse in judgment on the other extreme? Has there been adverse publicity about the conduct? Would publicity about the conduct be detrimental to the public’s view of the employer? Should employee have known better? Was conduct intentionally done or the result of poor judgment?

Progressive Discipline - Overview

Progressive Discipline Overview

- Officially puts employee "On Notice."
- Imposes increasingly severe sanctions for repeated infractions.
- Is always used except for very serious incidences of misconduct.
- Timing in implementing further steps in progressive discipline for repeated infractions depends on the nature of the individual performance problem.

Discipline is designed to officially put an employee on notice that he/she must correct their behavior or face increasingly severe forms of discipline, and ultimately, dismissal. Progressive discipline means imposing increasingly severe sanctions for repeated infractions. It must be administered with genuine interest in helping the employee correct performance or behavior problem(s).

Except where dismissal is justified by very serious misconduct (for example: falsification of official documents, theft, physical abuse of coworkers, overt harassment or substantial misuse of the employees official position), progressive discipline should be used, and is required by the SEIU Contract for classified employees (Article 17, "Discipline and Discharge".)

Depending on the circumstances, formal discipline may be a written reprimand or an economic sanction such as a temporary salary reduction. Repetition of the misconduct should result in a more severe economic sanction, which may be followed by demotion or dismissal if the conduct is repeated.

If the problem is skill or knowledge-based (for example, entering a set number of documents in a certain timeframe, processing a certain number service requests each day) the employee should be given reasonable opportunity at each step of the process to correct the deficiency.

If the problem is behavioral (for example, consistent tardiness, harassment, rude treatment of the public or students, etc.), there is no need to give the employee time to improve. You may require the employee to **immediately** cease and desist from engaging in the behavior. If the behavior is repeated, impose a more severe sanction.

Steps of Progressive Discipline

Progressive Discipline Steps

Progressive Discipline Steps for Classified Employees	
Step 1: Letter of Reprimand	
Step 2: Economic Sanction:	<ul style="list-style-type: none"> a. Pay Reduction b. Suspension Without Pay c. Involuntary Demotion
Step 3: Predissmissal:	<ul style="list-style-type: none"> a. Written Notice b. Meeting
Step 4: Predissmissal Outcome:	<ul style="list-style-type: none"> a. Discipline Other Than Dismissal b. No Action c. Last Chance Agreement d. Dismissal

Types of Formal Discipline

- Written Reprimand
- Temporary Salary Reduction
- Suspension (Without Pay)
- Involuntary Demotion
- Pre-Dismissal Meeting (Not Discipline)
- Dismissal

Progressive Discipline Steps for Represented Employees	
Step 1: Letter of Reprimand	
Step 2: Economic Sanction:	<ul style="list-style-type: none"> a. Pay Reduction b. Suspension Without Pay c. Involuntary Demotion
Step 3: Pre-dismissal:	<ul style="list-style-type: none"> a. Written Notice b. Meeting
Step 4: Pre-dismissal Outcome:	<ul style="list-style-type: none"> a. Discipline Other Than Dismissal b. No Action c. Last Chance Agreement d. Dismissal

**Types of Disciplinary Letters -
Who Issues Them?
When Should They Be Used?**

There are generally five types of progressive discipline:

- Written reprimand;
- Temporary salary reduction;
- Suspension without pay (FLSA exempt);
- Demotion (if appropriate to the situation); and
- Dismissal.

To be progressive, and to be used effectively, each level or type of disciplinary action is built upon the previous disciplinary action for the same behavioral or performance deficiency.

Remember: Every case will have different circumstances and administrative authorities. There may also be circumstance where the progressive ordering of corrective disciplinary actions are not required. For example, a demotion is optional, not a required step; and it could be used earlier in the process if it were the best option for the situation.

A Reminder:

Before any discipline is administered, managers and supervisors must objectively evaluate the circumstances and determine whether disciplinary action is warranted.

This means always gathering the facts and providing an opportunity for an employee to present his/her side of the story before deciding whether or not to take disciplinary action. Failure to do so may delay or prevent you from taking disciplinary action that is warranted.

Employees who are represented must be given the right to union representation in the investigatory meeting when a disciplinary action is being considered.

Always consult with Human Resources PRIOR to implementing any progressive disciplinary action.

Written Reprimand

Written Reprimand

- A written communication to the employee.
- Generally written by the employee's immediate supervisor.
- Is given to the employee personally by the supervisor (or manager).
- Issued to employee as the first formal corrective action when informal coaching and counseling has not been successful.

What is a Written Reprimand?

A written reprimand is a written communication to the employee describing what the employee did that was wrong, why it was wrong, what management's specific expectations are regarding the employee's future performance, and the consequences of not meeting those expectations. A written reprimand is the only disciplinary action that does not result in a loss of pay.

Who Issues a Written Reprimand?

A written reprimand is generally written by the employee's immediate supervisor in close consultation with HR. It should be written in first person (from the supervisor to the employee) and does not require the signature of the appointing authority. When the reprimand is signed by the supervisor, the following should be given a copy and be listed as a "Cc." on the reprimand itself: Supervisor's Manager/Director, Union Steward, and Personnel File.

The reprimand must have the employee's signature and date, and include the following statement: Employee's signature confirms that the supervisor has discussed and given a copy of the material to the employee and that a copy will be placed in the employee's official personnel record. The signature does not indicate agreement or disagreement.

How is a Written Reprimand Communicated to the Employee?

The written notice is given to the employee **personally** by supervisor or manager. The union steward does not have the right to be present.

When Should a Written Reprimand Be Given?

In general, a written reprimand is appropriate when the employee has failed to heed a previous expectation and/or verbal or written warnings and the employee's conduct or action is not serious enough to warrant an economic sanction. A reprimand should **not** be given for repetition of conduct for which an employee has previously received a formal disciplinary action (i.e. an earlier formal written reprimand, temporary salary reduction or demotion); that would be the opposite direction of progressive discipline.

Written Reprimand Template

(use University Letterhead)

(Date)

(Employee Name)

(Employee Address)

(City, State Zip)

Mr./Ms. XXXXX:

As a **Classification Name (Class #)**, in position #XXXXXX, in the **Unit Name** of the **Section Name** at Western Oregon University (WOU), you are hereby notified of the following personnel action:

ACTION: Written Reprimand

GROUND: Just Cause

BACKGROUND:

A brief employment history, training history (if applicable) and summarize informal steps taken so far (i.e. coaching meetings, date of LOE, date of verbal warning(s), date of Written Warning).

INVESTIGATORY MEETING:

A brief summary of the meeting; date, attendees, discussion, etc.

SUPPORTING FACTS:

List reason(s) for action. Be sure that you list only the facts as you know them; do not draw conclusions in this section. (The items listed here are the charges in support of the disciplinary action.)

SUMMARY/CONCLUSION:

*Here you list expectation(s), impact of poor performance, summarize your conclusions and include the specific **jeopardy statement**:*

Please understand that you must immediately and permanently correct these performance deficiencies. Failure to correct these performance deficiencies as identified within Supporting Facts will result in further progressive discipline being implemented, up to and including dismissal.

APPEAL RIGHTS:

You need to include appropriate language covering the employee's right to appeal under the current SEIU Contract. Insert the following Appeal Rights language:

As a formal disciplinary action, a copy of this Written Reprimand will be placed in your official personnel file. If you choose to contest this action you have the right to be represented by the SEIU Local 503, OPEU and SEIU must file an appeal within thirty (30) calendar days from the effective date of this action in accordance with Article 18, Grievance and Arbitration Procedure, of the current Collective Bargaining Agreement. If you choose to contest this action, you should contact SEIU Chief Steward (**Name**); his WOU telephone number is (503) 838-XXXX.

If outside issues are negatively impacting your ability to perform your duties in a positive and successful manner, the Employee Assistance Program (EAP) is available to you. It is an employer provided benefit. It is confidential, and appointments can be scheduled at your convenience. I have included a brochure for your reference.

Respectfully,

Supervisor's Name and Title

Cc: Manager/Director
Union Steward of Record
Employee File

The employee's signature confirms only that the supervisor has discussed and given a copy of the material to the employee. The employee's signature does not indicate agreement or disagreement with the contents of this material.

Employee signature

Date

Temporary Salary Reduction

Temporary Salary Reduction

- Is a decrease in pay for a specified period of time.
- Is imposed in one or two full-step increments for one or two months.
- Must be written and issued by the Appointing Authority. (For WOU, it is the HR Director.)
- Is given to the employee personally by the supervisor (or manager).
- Is issued to the employee as the next appropriate step to take after an employee has failed to heed a Written Reprimand.

What is a Temporary Salary Reduction?

A temporary salary reduction is a decrease in pay for a specified period of time. As a matter of practice, temporary salary reductions are imposed in full-step increments for one or more months (for example, a one-step, one-month reduction; a two-step, one-month reduction; a two-step, two-month reduction).

Who Issues a Temporary Salary Reduction?

A temporary salary reduction must be written and issued by the appointing authority.

How is a Salary Reduction Communicated to the Employee?

The written notice is given to the employee ***personally*** by supervisor or manager. The union steward does not have the right to be present.

When Should a Temporary Salary Reduction Be Used?

A temporary salary reduction is an appropriate step to take after an employee has failed to heed a written reprimand. They are particularly appropriate for performance-related deficiencies in which you are attempting to improve the quality and/or quantity of work the employee performs. There are limited occasions when an employee's behavior is so egregious that a salary reduction is warranted in lieu of a written reprimand and a dismissal action is determined too severe for the situation.

Suspension

Suspension

- Is a cease of work mandated for a specified period of time on a Without Pay basis.
- Must be written and issued by the Appointing Authority.
- Is given to the employee personally by the supervisor (or manager), OR is mailed to the employee via certified mail.
- Is issued as an appropriate step to take after the employee had failed to heed a lesser disciplinary action or their behavior is so egregious that a lesser action is not appropriate.
- Generally used for behavioral and/or judgement deficiencies, and not for performance-related deficiencies.

What is a Suspension?

A suspension is a cease of work mandated for a specified period of time on a without pay basis.

Who Issues a Suspension?

A suspension must be written and issued by the appointing authority.

How is a Suspension Communicated to the Employee?

The written notice is given to the employee **personally** by supervisor or manager OR mailed to the employee via certified mail. The union steward does not have the right to be present.

When Should a Suspension Be Used?

A suspension is an appropriate step to take after an employee has failed to heed a lesser disciplinary action or the employee's behavior is so egregious that a lesser action is not appropriate. They are particularly appropriate for addressing behavioral and/or judgment deficiencies and/or when an economic sanction is warranted, but not possible due to the employee's current salary level. Generally suspensions are not considered for performance-related deficiencies in which you are attempting to improve the quality and/or quantity of work the employee performs.

Involuntary Demotion

Involuntary Demotion

- Is moving an employee for disciplinary reasons from their position in one class to a position in another class having a lower salary range.
- Must be issued by the Appointing Authority.
- Written notice is given to the employee personally by the supervisor or manager.
- Is imposed only after lesser disciplinary actions have failed, and there is reason to believe that the employee will perform successfully in the lower classification.
- Generally not used for behavior related deficiencies.

What Is an Involuntary Demotion?

A demotion is the movement of an employee for disciplinary reasons from a position in one class to a position in another class having a lower salary range. When a represented employee is demoted, the salary will be determined based upon the applicable union contract. The employee's salary eligibility date is not affected.

Who Issues an Involuntary Demotion?

A demotion must be issued by the appointing authority.

How is the Notice of Involuntary Demotion Communicated to the Employee?

The written notice is given to the employee **personally** by supervisor or manager. The union steward does not have the right to be present.

When Should an Involuntary Demotion Be Used?

As a general rule, demotion is best used in situations where an employee's performance in the employee's present class of work is unsatisfactory and management has reason to believe the employee could function successfully in a lower class. A demotion would never be considered when performance concerns are behavioral in nature. Also, a demotion is never an appropriate sanction for an employee on initial trial service; nor is a demotion an appropriate sanction for an employee on a promotional trial service, because the employee can be returned to the class of work he/she held immediately before promotion, without resorting to the disciplinary process.

One important factor to consider in deciding whether to impose a demotion is how a lower-level position will be obtained for the employee. If there is a current vacancy in the lower-level class, the demoted employee may be assigned to the vacant position before it is posted.

In most cases, demotion should be used only after lesser disciplinary actions have failed with an employee who has a long service history with the University, including service in the class (or class with equivalent salary range) to which the employee will be demoted.

Pre-Dismissal Meeting

Pre-Dismissal Meeting

- When dismissal is being considered, special notice is sent/given to the employee to schedule this specific meeting.
- Is issued by the Appointing Authority. (at WOU, this is the HR Director)
- Scheduling this specific meeting is sent in writing to the employee via certified mail.
- Attending this meeting will be the employee, Union representative, employee's supervisor, and the HR Director.
- The HR Director in consultation with the employee's supervisor or manager, decides whether to proceed with dismissal, or not.
- If the decision is to dismiss, the HR Director writes the Notice of Dismissal letter which is sent to the employee via certified mail.

When Should a Pre-Dismissal Meeting Take Place?

When dismissal is being considered, a pre-dismissal meeting must be scheduled. This process requires specific notices be sent/given to the employee.

When circumstances warrant it, an employee may be placed on paid administrative leave (duty stationed at home) during the course of an investigation where dismissal is being considered. Should this occur a written notice is required and must be signed by HR Director.

Who Issues a Pre-dismissal Meeting notice?

The appointing authority issues the pre-dismissal meeting notice. For WOU, this is the HR Director.

How is the Pre-dismissal Meeting Communicated to the Employee?

The scheduling of the pre-dismissal meeting is communicated in *writing* to the employee and is sent to the employee via certified mail.

The notice advises the employee that the appointing authority is **considering** dismissing the employee and states the reason(s) why. The notice identifies the supporting facts and advises the employee of the right to meet with the Human Resource Director and/or to prepare a written statement to refute the reason(s) for potential dismissal. The notice also advises the employee of their right to union representation at the pre-dismissal meeting. The notice includes a scheduled time and date for the meeting with the Human Resource Director or Labor Relations Manager. The pre-dismissal notice does not include a summary statement or conclusion paragraph as the final information (mitigating circumstances) is not available until the conclusion of the pre-dismissal meeting.

Who Attends a Pre-Dismissal Meeting?

The employee, union representation, employee's supervisor and the Human Resource Director or Labor Relations Manager. With very limited exceptions, attorneys are not allowed to attend pre-dismissal meetings.

What Happens after the Pre-Dismissal Meeting?

After meeting with the employee, the Human Resource Director and Labor Relations Manager review all the information available and decide in consultation with the supervisor or manager of the employee, whether to proceed with the dismissal.

If the Human Resource Director decides to proceed, he/she writes the employee a notice of dismissal. The notice is signed by the appointing authority (HR Director).

Dismissal Process

Dismissal Process

- Dismissal is implemented when all efforts to correct an employee's conduct or performance through progressive discipline have failed.
- OR... When an employee engages in misconduct that is so egregious that their continued presence in the workforce would be an intolerable liability to the University.
- If the decision from the Pre-Dismissal meeting is to proceed to dismiss, the Appointing Authority (HR Director) writes the Notice of Dismissal letter and sends it to the employee via certified mail.
- If the decision from the Pre-Dismissal meeting is not to dismiss, the HR Director in consultation with the employee's supervisor and manager determine the appropriate action to implement.

When Should Dismissal Take Place?

Dismissal takes place when all efforts to correct an employee's conduct or performance through progressive discipline have failed.

—OR—

When the employee engages in an act or acts of misconduct that are so egregious that the employee's continued presence in the workforce would constitute an intolerable liability (for example, theft of University monies or property, overt harassment, falsification of documents, etc).

Who Issues a Dismissal notice?

The Human Resources Director, who serves as the University's Appointing Authority, issues the dismissal notice.

How is the Dismissal notice Communicated to the Employee?

The written notice is sent by the Office of Human Resources via certified mail. The notice includes essentially the same information that was in the pre-dismissal notice with the addition of a summary and/or conclusion paragraph.

What if the Decision is Made Not to Dismiss?

The Human Resources Director in consultation with the employee's supervisor and manager may issue a lesser form of discipline, or offer a last chance agreement in lieu of dismissal, or a written notice that no disciplinary action will be taken.

This notification will be given to the employee personally.

Disciplinary Actions - Tips To Remember

Tips to Remember

- HR – your best resource!
- Molehills – no mountains!
- Be fair
- Get the facts
- Document – Lets say it again – **Document!**
- Be consistent
- Know your timeframes
- Keep confidentiality
- Don't issue statements

- **Always consult with Human Resource when implementation of Progressive Discipline is being considered.**
- **Except for Written Reprimand letters, Human Resources will write and issue all disciplinary letters.**

- Keep molehills from becoming mountains. Address misconduct or performance deficiencies immediately when first noted. (Good performance management may help avoid the need for progressive discipline.)
- Be fair.
- Be consistent. (Apply same rules and standards to everyone.)
- Get the facts. (Don't jump to conclusions as they might be wrong!)
- **DOCUMENT, DOCUMENT, DOCUMENT.**
- Know your timeframes. (How far do you look back and what history should be considered?)
- **NEVER** discuss disciplinary information with anyone other than the affected employee, Human Resource staff or DOJ legal counsel, and other management staff in the employee's chain of command.
- **NEVER** issue written statements regarding the action taken and why it was taken. (Be very conscious of what you say in e-mails.)