

40-11 Employee Disciplinary Action and Termination

40-11-1 Purpose • 40-11-2 Policy • 40-11-3 Administration • 40-11-4 Required Approval by the Office of Human Resources • 40-11-5 Responsibilities and Rights • 40-11-6 Investigation • 40-11-7 Suspension or Release from Employment • 40-11-8 Types of Termination • 40-11-9 Supervisor Responsibilities • 40-11-10 Progressive Discipline • 40-11-11 Proper Cause • 40-11-12 Notice Requirements • 40-11-13 Adequate Notice of Termination for Professional Employees • 40-11-14 Pay in Lieu of Notice for Professional Employees • 40-11-15 Notice of Termination for Support, Temporary, and Probationary Employees

1. **Purpose.** The purpose of these policies and procedures is to recognize the need of the Eastern New Mexico University System (the System) to manage its work force in accordance with applicable federal and state laws and System policies and to determine the methods, means and personnel required to maintain efficient operations.
2. **Policy.** Employee management and disciplinary action practices within the System are subject to the following policies:
 - A. The System recognizes that misconduct and continued performance problems may require disciplinary action.
 - B. The System normally uses the progressive discipline process described in this policy to address misconduct and continued performance problems. Progressive discipline is intended to be corrective, *not* punitive in nature. It is designed to provide employees with notice of deficiencies and an opportunity to improve. However, some violations of policies and procedures or continued negative behavior or performance may be of such a serious nature that immediate suspension or discharge may be appropriate.
 - C. The System retains the right, in accordance with applicable federal and state laws and System policies, to maintain efficient operations. This includes the right to hire, promote, transfer, assign and retain staff employees in positions within the System.
 - D. The System recognizes several categories of termination or separation from employment: resignation, release, relieved, layoff, discharge, retirement or death.
 - E. For purposes of this policy "employees" include regular staff, at-will, temporary and term employees. Faculty discipline and termination policies are addressed in the Faculty Handbook.

Procedures

3. **Administration.** These policies and procedures shall be administered and enforced by the ENMU System director of Human Resources (SDHR), with oversight from ENMU System chief financial officer (CFO) or his or her designee.
4. **Required Approval by the Office of Human Resources.** Supervisors contemplating the suspension, demotion or discharge of any employee, including probationary and temporary employees, must consult with the SDHR before taking such action. Whenever prior consultation is not practical because of reasons perceived to be of an urgent or serious nature, the employee must be placed on administrative leave with pay until the case can be discussed with the SDHR.

5. **Responsibilities and Rights.** Employees are responsible for following established System policies, procedures, regulations and practices. They shall work in an efficient, competent and cooperative manner and fulfill their job requirements.
6. **Investigation.** The System recognizes that misconduct and continued performance problems may require disciplinary action. Once the campus becomes aware that a possible infraction of the rules or policies has occurred, appropriate management personnel shall immediately conduct a preliminary, confidential investigation.
7. **Suspension or Release from Employment**
 - A. Temporary and on-call employees may be released from employment with or without cause.
 - B. Probationary employees are those employees who have *not* completed the appropriate probationary period defined in their employee contract and may be suspended or released from employment with or without cause. However, supervisors should make reasonable efforts to train and work with probationary employees to achieve satisfactory performance.
 - C. Post-probationary employees may be suspended or discharged only for proper cause (discussed in section 11). Supervisors should normally use progressive discipline when resolving disciplinary problems involving post-probationary employees.
 - D. Post-probationary employees hired under a term appointment agreement may be suspended or discharged only for proper cause (discussed in section 5, below) during the term appointment. However, the individual's employment will end as of the specified date, unless the supervisor notifies the employee that the appointment will be extended.
 - F. At-will employees are employees designated by the president and/or chancellor who are hired on periodic employment contracts. Conditions of employment for at-will employees are identified in their employment contracts. The System has the right *not* to renew these contracts when they expire.
8. **Types of Termination.** The System recognizes seven categories of termination or separation from employment: resignation, retirement, release, relieved, layoff, discharge or death.
 - A. Resignation
 - (1) In the event an employee decides to resign, a written resignation must be submitted to the employer as soon as possible and no less than two (2) weeks prior to the effective date of proposed separation.
 - (2) An employee who has walked off the job or who is absent for two (2) consecutive work days without permission except when an emergency situation precludes giving notice is considered to have resigned.
 - (3) An employee who fails to return to work within the prescribed time limit following a leave for extended illness, injury or personal reasons is considered to have resigned.

- B. Retirement. Employees may elect to retire after meeting eligibility requirements for retirement and should give two (2) weeks' notice.
- C. Release. Employees are terminated at the end of temporary employment.
- D. Relieved. Employees may be terminated during their probationary period (six [6] months for support employees, twelve [12] months for professional employees) without cause or recourse.
- E. Layoff. Employees may be terminated because of reduction in force due to lack of funds, work or other compelling reasons.
 - (1) For an employee in good standing, every effort is made to place that employee in another position within the System prior to layoff.
 - (2) The order of layoff shall be based on performance, ability, training, seniority and other qualification as determined by the System. When performance, ability, etc., are equal, seniority shall be the determining factor.
 - (3) Probationary, temporary and occasional employees are normally laid off before regular employees in the same classification and department.
- F. Discharge. An employee may be terminated after corrective discipline has failed or the seriousness of the misconduct or situation so warrants.
- G. Death. Upon the death of an employee, the supervisor shall notify Human Resources. That office will assist the next of kin in completing termination forms, filing insurance claims, etc.

9. Supervisor Responsibilities

Supervisors should seek to achieve a productive, effective work environment by ensuring that each employee's job performance meets expectations. Supervisors should make appropriate efforts to ensure that employees understand job requirements and expectations, and supervisors should address problems that may impact performance in a timely, constructive and corrective manner.

When an employee is not suited to a specific position, a supervisor may wish to consider a lateral transfer to a different position, which may be better suited to the employee. A lateral transfer may be appropriate when there is a comparable position open within the department and such a transfer is reasonably predicted to result in improved performance. In cases of poor performance where an employee performed satisfactorily in a lower level position, a demotion may be appropriate if there is a lower level position open in the department. Since a demotion results in a salary reduction, this can only be done with the employee's agreement. All demotions and transfers must be approved, in advance, by the director of Human Resources of the campus with oversight of the SDHR.

When performance problems continue or employee misconduct is of a serious nature requiring discipline, the actions described in section 10 may be appropriate. The objective of the following corrective actions is to help the employee to positive productive performance.

10. Progressive Discipline

The System uses progressive discipline for regular, temporary, term or at-will employees. Progressive discipline is designed to allow an employee a reasonable opportunity to meet the requirements of the job, comply with policies, procedures, practices and regulations of the System, campus and department, and allow the employee an opportunity to improve performance.

Progressive discipline may not be appropriate in all instances, such as when health or safety is at risk or a crime has been committed, and does not prevent a supervisor from imposing stronger discipline with the approval of the campus director of Human Resources, depending on the individual circumstances. Some violations could be of such a serious nature that disciplinary action could lead directly to suspension or discharge with the approval of the campus director of Human Resources and/or SDHR.

Progressive discipline actions include the use of oral warnings, written warnings, suspensions and/or discharge. Discipline should be administered equitably, consistently and progressively. Depending on the nature of the performance problem or misconduct, a supervisor, in consultation with the Office of Human Resources, may start progressive discipline at any appropriate point in the process. The following sections describe in detail the actions used in progressive discipline.

A. Oral Warning

The primary objective of oral warning(s) should be to advise the employee that there is a performance problem and to tell the employee what he or she can do to restore satisfactory performance. It is expected that such discussions will result in improved performance. The supervisor should advise the employee about:

- (1) the nature of the problem and allow the employee to explain any reason for the problem and suggest ways to correct the situation; this should include an explanation of the policies or rules violated (if any);
- (2) the specific performance expectations the supervisor has for the employee;
- (3) the specific actions to be taken by the employee and/or supervisor to correct the problem, including specific time frames, if appropriate;
- (4) that further disciplinary action will occur should the problem persist.

The supervisor must make it clear to the employee that this is an "oral warning." An oral warning may be documented in the employee's official personnel file, maintained by the Office of Human Resources. The supervisor shall maintain a record of any oral warnings given which should be referred to in any further disciplinary action taken.

B. Written Warning

A written warning provides the employee with a written explanation of the events leading to the warning, an explanation of any applicable rules, and any subsequent information that can help the employee improve the identified performance problem. The supervisor must make it clear to the employee that this is a "written warning" and that if the employee does not improve performance to a satisfactory level within the time frames listed more serious disciplinary action will take place. A written warning is documented in the employee's official personnel file maintained by the Office of Human Resources. The written warning should include:

- (1) the nature of the problem and allow the employee to explain any reason for the problem and suggest ways to correct the situation; this should include an explanation of the policies or rules violated (if any);

- (2) the specific performance expectations the supervisor has for the employee;
- (3) the specific actions to be taken by the employee *and/or* supervisor to correct the problem, including specific time frames, if appropriate;
- (4) that further disciplinary action will occur should the problem persist.

Since the purpose of discipline is to help employees correct problems, when an employee has corrected a problem and the supervisor is satisfied that it will not reoccur, subsequent performance evaluations should reflect the improved performance. After an employee has received at least three (3) positive evaluations, an employee may petition his or her area executive director to have the written warning removed from the employee's official personnel file.

C. Suspension

A suspension is a temporary involuntary leave without pay, for performance problems that have not been satisfactorily corrected through the use of oral and written warnings or for misconduct or serious violation of policy. Suspensions range from one (1) work day up to thirty (30) work days, depending on the seriousness of the problem. The supervisor must comply with the notice requirements listed below, and should inform the employee in writing that the suspension is a disciplinary action and that discharge could occur should the problem persist. A suspension requires approval, in advance, of the supervising dean or director and the director of Human Resources.

D. Discharge

A discharge is a permanent, involuntary separation of employment from the campus for disciplinary reasons. Discharges must be approved, in advance, by the supervising dean or director and the director of Human Resources. The supervisor must comply with the notice requirements listed below.

11. Proper Cause

Proper cause is any behavior significant or substantial in nature relating to the employee's work that is inconsistent with the employee's obligation to the System and campus. The list of examples of behavior below, when they are significant or substantial in nature, constitute proper cause. This list is for guidance only and is not considered an all-inclusive list.

- Assault or battery on another person
- Conviction of a felony or misdemeanor where the provisions of the Criminal Offender Employment Act apply, depending on the nature of the offense and the type of position
- Conduct which causes damage to the System and/or campus, its reputation, programs, property, employees or students
- Creating a hostile working environment
- Excessive absenteeism or tardiness without reasonable cause
- Falsification (deliberate) or omission of information on employment applications or resumes, time cards/records, or other System records
- Illegal drugs and alcohol--violation of the System's Drug-Free Work Place policy (AGP&P 40-13)
- Incompetence
- Inefficiency
- Insubordination
- Intoxication on the job

- Misappropriation or personal use of System and/or campus funds, property, possessions, or resources
- Misconduct
- Negligence
- Performance which continues to be inadequate after reasonable time has been allowed to correct it
- Sexual harassment
- Theft or fraud
- Uncooperative behavior
- Violation of confidentiality or the release of confidential information
- Violation of System policies or the state code of conduct.

12. Notice Requirements

A. Notice of Contemplated Action

To initiate a suspension or discharge of a post-probationary regular, term, or contract employee, the supervisor must serve the employee with written notice of the contemplated action. Suspensions and discharges require approval of the supervising dean or director and the director of Human Resources prior to issuing a Notice of Contemplated Action. This notice must include *all* the following points:

- (1) The acts which the supervisor believes may constitute proper cause
- (2) A summary of the evidence against the employee
- (3) Specify the contemplated action
- (4) Instructions on how and when the employee should respond to the notice
- (5) The notice may include subsequent steps that will be taken in the discipline process

A copy of the notice will be sent to the Office of Human Resources for placement in the employee's official personnel file.

B. Notice of Final Action

After considering the employee's response, a decision on the final action will be determined and the employee shall be provided a written notice of the final action. The notice of final action shall be within thirty (30) calendar days after receipt of the employee's response and include *all* the following points:

- (1) The final action to be taken
- (2) The acts constituting just cause, which shall only include allegations specified in the Notice of Contemplated Action
- (3) A summary of the evidence
- (4) The effective date of any disciplinary action
- (5) A statement that the employee may appeal to the area executive administrator within five (5) days of receiving the notice of final action.

A copy of the notice will be sent to the Office of Human Resources for placement in the employee's official personnel file.

C. Pay Status

An employee may be placed on administrative leave *with pay* pending completion of the investigative or disciplinary process (for more information, refer to "Leave without Pay" (AGP&P 40-7-8).

13. Adequate Notice of Termination for Professional Employees

Professional employees with at least one (1) and not more than three (3) years of completed service may be discharged or laid-off from System and/or campus employment by a written notice of termination delivered two (2) weeks prior to the effective date of termination. Professional employees with more than three (3) years of service may be discharged or laid-off from employment by a written notice of termination delivered to the employee four (4) weeks prior to the effective date of termination. Employees who have completed the probationary period must be given written reason(s) for their termination.

14. Pay in Lieu of Notice for Professional Employees

When giving notice of discharge or layoff is not practical, pay in lieu of notice may be given at straight time rate. Pay in lieu of notice will not be granted if in the judgment of the System and/or campus it is determined that immediate dismissal for serious misconduct is warranted.

15. Notice of Termination for Support, Temporary, and Probationary Employees

Support, temporary and probationary employees should be given notice, where practical, but no minimum notice is required.

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