

7. Conduct

Conduct cases are those where an employee fails to comply with work rules, policies, and procedures such as arriving for work on time; treating clients and coworkers with courtesy and respect; being honest; maintaining a good attendance record; following procedures for requesting time off; using City time, supplies and property in an irresponsible manner; and other similar behavior-related areas. Violations of these work rules, policies, and procedures can form the basis for corrective and ultimately disciplinary action, including dismissal.

A. What is the supervisor's responsibility regarding employee conduct?

First, you must clearly communicate your expectations. Employees must know that they are expected to arrive for work on time, return promptly from breaks, follow procedures for requesting time off, treat customers and co-workers with courtesy and respect, etc. If your department has written policies covering these areas, make sure each employee receives a copy and knows where the unit's copy is.

Supervisors are also responsible for monitoring employees' conduct and for providing honest and timely feedback when an employee fails to meet expectations.

B. What should be done if an employee does not adhere to conduct expectations?

The first step is to conduct an investigation. If you have personally observed the misconduct (e.g. an employee arrives late for work), the investigation may consist of a simple interview of the employee to get his or her side of the story. Investigations are discussed in detail in a later section of this handbook.

When minor misconduct occurs for the first time (e.g. an employee is late arriving for work), and the interview of the employee does not indicate mitigating or extenuating circumstances that would excuse the offense, verbal counseling is usually sufficient; after the verbal counseling session, document the session in your supervisory file for record-keeping purposes. **Do not ignore the problem hoping it will correct itself. By not confronting the problem and letting the employee know it is not acceptable, you are sending a message to the employee and your staff that you are not concerned and are establishing a practice of accepting the misconduct as acceptable behavior.**

If minor misconduct of this nature recurs, you will again need to interview the employee to get his or her side of the story. If there are no extenuating circumstances that excuse the employee's behavior, you will need to counsel the employee and document that counseling



discussion. For instance, you may change an employee's work schedule or starting time to correct a tardiness or attendance problem, or may send an employee to a course to improve interpersonal skills.

If necessary, you should include in the memo a statement regarding the **Employee Assistance Program** (i.e., during the course of your interview with the employee, they mention personal/substance abuse/family/financial issues). Give the employee a copy of the memo, noting on your copy the date it was given to the employee and retaining a copy in your supervisory file.

If the misconduct continues to recur, contact Human Resources. The next step is normally a written warning, but other action may be warranted depending on the seriousness of the infraction, the length of time since the last infraction, and other mitigating factors. You should include a statement that failure to correct the misconduct may result in disciplinary action, up to and including, termination. There is no time limit in which employees may respond to or rebut written warnings. Any response or rebuttal should be associated with the copy of the warning in the departmental personnel file. A copy should also be forwarded to the Department of Civil Service and Personnel to be filed in the employee's Civil Service Personnel File.

The memos/letters referred to above, as well as your notes of discussions with the employee, will become essential parts of the employment record if the misconduct continues and disciplinary action must be taken.

C. How does the supervisor know what to do next, and when to do it?

If the misconduct still continues, or if the first instance of misconduct is serious in nature, contact Human Resources for consultation on the appropriate course of action. Following the concept of Progressive Discipline, Human Resources may advise you to take the lowest level of corrective/disciplinary action that will be likely to correct the problem. In determining the level of action to take, you will look at the following factors:

- The seriousness of the offense and the relationship to the employee's duties
- The employee's position and level of responsibility (i.e., supervisory/public trust)
- The employee's past disciplinary record (as applicable per Collective Bargaining Agreement)
- The employee's past work record and years of service
- The effect of the offense on the supervisor's confidence in the employee
- The consistency of the penalty with that imposed on other employees
- The clarity with which the employee was placed on notice
- The potential for rehabilitation



- Any mitigating circumstances (provocation by others, etc.)

D. What is progressive discipline?

When an arbitrator or the Civil Service Commission decides whether to sustain or overturn a disciplinary action, the arbitrator or Commission considers a number of factors. One of those factors is whether the level of discipline that was taken was appropriate under the circumstances. In making this determination, the arbitrator or Commission generally expects to see that any serious discipline was preceded by lesser discipline to place the employee on notice that the conduct is unacceptable and that more severe discipline may result if the conduct is not corrected. This does not mean that every infraction must go through every step of the corrective action process. Some forms of misconduct, such as theft, may warrant dismissal on the first offense.

Since each case is unique, there is no easy formula that tells you what level of progressive discipline should be taken for any given form of misconduct. Generally, for minor misconduct such as tardiness, absenteeism or discourtesy (without profanity), progressive discipline may follow these steps: verbal warning, written warning, suspension, demotion, and finally dismissal. It is possible to repeat steps in the process. For example, you may verbally warn an employee about tardiness and then issue a written warning if the tardiness continues. If the employee then goes for an extended period of time without being tardy and then is again tardy, it may be best to issue another written warning rather than move to a suspension with loss of pay.

E. Discipline of Record Program Description

In certain circumstances, it may be appropriate to utilize the Discipline of Record Program.

Overview of Traditional Discipline Program

The City practices the concept of progressive discipline. When an employee's conduct warrants disciplinary action, the supervisor/manager takes the level of disciplinary action which: 1) is appropriate to the severity of the employee's offense; and 2) is likely to result in the employee not repeating the misconduct.

Under a traditional discipline program, minor misconduct (e.g., initial instances of tardiness or absenteeism) is normally dealt with through counseling confirmed in writing. Should the misconduct be repeated, the normal progression is a warning notice followed by a suspension. Further misconduct may result in a second suspension, demotion, or dismissal. Misconduct of a more serious nature may result in suspension, demotion, or dismissal on the first offense.



The Discipline of Record Program follows the same steps as a traditional program with one exception – unpaid suspensions are replaced by disciplinary letters that equate to a suspension of a specified number of days. Discipline of Record is not a lower level of discipline than a suspension, and does not include the option to suspend rather than issuing a Discipline of Record disciplinary letter.

The Discipline of Record disciplinary letter carries the same weight as a corresponding suspension. An arbitrator hearing a grievance on a subsequent offense for an employee who had previously been issued a disciplinary letter equating to a 3-day suspension must consider the employee to have been suspended for 3 days. Since Discipline of Record discipline carries the same weight and equates to an unpaid suspension, the burden of proof to show cause is also the same. In other words, the manager/department must be prepared to produce the same level of proof before the Civil Service Commission or an arbitrator as if the employee had been suspended.

Objectives of the Discipline of Record Program

- Correcting conduct problems promptly, rationally and constructively
- Alleviating the financial impact of discipline on employees' families
- Affording employees the ability to be rehabilitated and to clear their records
- Taking disciplinary action which is just, equitable and sustainable

Discipline of Record Program Overview

The Discipline of Record Program replaces unpaid suspensions with a disciplinary letter which fully equates to a suspension of a specified length (e.g., one day, three days, etc). This process eliminates the financial impact of a suspension on the employee and the employee's family while still establishing a record of progressive discipline should the offense recur. This process also eliminates the need for the department to replace the employee during the suspension, thereby conserving City funds.

Employees retain the right to appeal non-punitive discipline through the grievance process or to the Civil Service Commission.

How the Discipline of Record Program Works

The Discipline of Record Program is designed to help correct conduct and attendance problems by serving as a step in progressive discipline. Normally, the Discipline of Record Program will not be used to correct performance problems (quantity/quality of work). Performance problems are dealt with through counseling, Performance Improvement Plans (PIPs) with performance specific objectives and outcomes, and performance evaluations.



Investigation – When an incident of misconduct or an attendance problem has been investigated and it is found that more likely than not unacceptable behavior occurred, the department confers with HR and makes a determination regarding the appropriate level of discipline. If it is determined that the infraction does not warrant demotion or dismissal, but does warrant more than verbal counseling or written counseling, the Discipline of Record program may be used.

Intent Letter – A Pre-Disciplinary Hearing Notice is issued to the employee stating that it is the intent of the department to conduct a Pre-Disciplinary Hearing regarding the specified charges.

Oral/Written Response – The normal Pre-Disciplinary Hearing process is followed, with the employee having the opportunity to make an oral and/or written response to the charges in the Notice.

- a. If the employee presents information which causes the department head to determine that the non-punitive discipline is not warranted, the case will be closed with a letter of reprimand, a warning letter, or a letter clearing the employee of the charges, as appropriate.
- b. If the department head determines that the non-punitive is warranted, he or she will issue a decision letter, imposing the Discipline of Record disciplinary letter in lieu of a suspension (also referred to as a “Suspension of Record”). The decision letter itself constitutes the disciplinary letter and a separate disciplinary letter is not issued. As in other disciplinary actions, the department head may decide to modify the proposed discipline (e.g. a letter equivalent to a 1-day suspension rather than one equivalent to a 3-day suspension) based on the employee's response. Please see [Sample Decision Letter –Discipline of Record](#).