

Investigation Guide for Taking Disciplinary Action



Employer-Employee Relations

Human Resources Division

INVESTIGATION GUIDE FOR TAKING DISCIPLINARY ACTION

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Introduction: “Before administering discipline, the District should make an effort to discover whether the employee did in fact violate or disobey a rule or order of management.”

Arbitrator Gentile: “Just cause is a multifaceted consideration which has been applied by arbitrators to fact portraits in various ways. A thread which runs through these numerous decisions is the concept that the company make a full, fair and objective investigation in order to be satisfied that the charged individual is in fact guilty of the offense or breach.”

Arbitrator Erbs: “When the discipline or discharge is invoked, the company bears the burden of the responsibility of having considered any and all facts, from whatever source that could have an influence on the extent of the discipline. A timely, thorough investigation of suspected misconduct is important to management for two self-evident reasons:

- **Fair play.** Due process requires that an employee be informed promptly, and in reasonable detail, of the charges (or possible charges) against him and given the chance to tell his side of the story. If the District fails to let the employee defend himself, or bypass other avenues of investigation, whatever penalty has been imposed is likely to be reduced by an arbitrator, even if the employee is clearly guilty.
- **Sufficient Proof.** A faulty and inadequate investigation often produces faulty and inadequate proof. A thorough investigation may elevate assumptions and suspicions to the status of proof; avoid reliance on hearsay and other “lightweight” or “nonweight” evidence; prevent later-discovered evidence from being thrown out on the ground that it was irrelevant to the actual decision; or provide the “extra ingredient” that tips the scales in the district’s favor.

PURPOSE OF INVESTIGATION

The basic purpose of an investigation is to find out whether an employee did in fact violate or disobey a rule or order of management. It is thus concerned mainly with problems of adequate proof, but the quality of the investigation may be critical to meeting one or more of the other tests as well. Thus, the pivotal factor in evaluating disciplinary action may be whether management determined that the grievant had adequate notice of the consequences of his or her misconduct, whether the grievant’s alleged misconduct was investigated as thoroughly as similar misconduct engaged in by other employees, or whether the investigation revealed all factors bearing on the appropriate penalty for the misconduct in question.

Whereas the District bears the burden of proving that the grievant committed the offense with which he or she is charged, and that the penalty was appropriate, it is the union (or the grievant) that has the burden of proof with respect to the investigation. That is, the District is not required to prove that it made a proper investigation; the grieving party must show that the employer failed to do so.

RESPONSIBILITIES

COLLEGES:

- Conducting a thorough investigation and, in particular, an investigative interview with the employee for whom discipline is recommended.
- Preparing the Notice of Unsatisfactory Service and other documents required for the District to prepare a Statement of Charges.
- Providing accurate, complete and relevant information to support the recommended disciplinary action.
- Sending a copy of the Notification of Recommended Discipline, the Notice of Unsatisfactory Service and the Statement of Charges to the employee. These documents must be sent by certified and regular mail with proof of service to the employee's last listed address on file in the district Human Resources Office.
- Presenting a disciplinary case to the Board of Trustees in closed session at the appropriate meeting of the Board.

DISTRICT EMPLOYER/EMPLOYEE RELATIONS OFFICE:

- Preparing the Statement of Charges and "Skelly" Letter for the college President's or Divisions Head's signature.
- Assuring that a recommended disciplinary action is in compliance with Personnel Commission Rule 735 and any other classified employee disciplinary procedures.
- Preparing the Board Report, the Board Letter, and other relevant documents that explain the basis of the disciplinary action to the members of the Board of Trustees.
- Representing the District at Personnel Commission appeal hearings.

PRE-ACTION INVESTIGATION GUIDANCE

- I. These are facts usually determined during an investigation, preliminary to a discussion with the employee who has violated a Personnel Commission law or rule, a Board rule or a site policy of the college where he/she is employed. The person completing the information requested is asked to submit it in narrative format on a separate sheet of paper.

- Person(s) Involved:
- Date(s) of Incident(s):
- Time Frame Involved:
- What Occurred:
- Where Incident Occurred:
- Why Incident Occurred:
- How Incident Occurred:

Name(s) and Title(s) of Person(s) interviewed in connection with the Pre-Action Investigation:

- II. Obtain and Provide Written and Signed Statement(s) of Witnesses:

- III. Conduct Interview with Employee Breaching Regulation(s):

- The Interviewer should present the facts uncovered above to the employee.
- The Investigator should ask the employee to tell his/her version of what happened. The employee also should be asked to furnish a written signed statement of his/her version of the incident.

- IV. The Interviewer is to sign and date the Pre-Action Investigation Report should be reviewed to ensure that it contains all available information relevant to the disciplinary action being considered. Copies of all photographs, parts of regulations, minutes of meetings, sketches, records, or any other relevant documentary material should be attached to the report.

- V. The completed Pre-Action Investigation is to be submitted to the supervisor with authority to recommend disciplinary action. The factors suggested by the Employer-Employee Relations Office on page 6 should be considered by the supervisor or manager in deciding on the appropriate disciplinary action to recommend.

The following is a list of suggested additional questions for a pre-action investigation involving an employee accused of unauthorized possession or use of drugs, alcohol, or weapons. This list is not to be considered an all-inclusive list. The answers to the questions listed below are not to be written on this paper but in narrative form on a separate sheet that is to be included with the pre-action investigation as discussed on the preceding pages.

1. What was the exact location of the incident (building number, locker number, parking lot, street, etc.)?
2. What is the description of the vehicle, if applicable (make and color of vehicle, license number, etc.)?
3. What type (description) of unauthorized drugs/alcohol/weapons was found (marijuana, Jim Beam, knife with three-inch blade)?
4. What was the amount of the unauthorized drugs/alcohol found (three marijuana seeds, one ounce of marijuana, one-half, fifth of alcohol)?
5. Where was the unauthorized drug/alcohol/weapon found (right rear ashtray, under driver's seat, on the person, etc.)?
6. Has the unauthorized drugs/alcohol been field tested or analyzed (indicate which)? If so, what were the results? If it has been tested, when will results be received?
7. What was the name and title of the person who apprehended the employee?
8. If the unauthorized drugs/alcohol/weapon was found in a vehicle, was the employee driving the vehicle or a passenger?
9. If the employee was driving the vehicle, were there any passengers? (If there were passengers, those employees should be contacted, interviewed, and signed statements obtained, if possible.)
10. To whom does the vehicle belong? Who is the registered owner of the vehicle?
11. If the employee was tested for sobriety, did he/she pass?
12. If employee was intoxicated, what was the level? Investigate as to whether a Breathalyzer test or blood test was given to the employee. Indicate the specific name of the test.

DISCIPLINARY ACTION WORKSHEET

Questions for Recommending Supervisor

Introduction: A supervisor recommending disciplinary action for an employee should take the time to carefully answer the questions listed below in deciding upon a penalty. These are the type of questions that might be asked under oath if the action is appealed to the Personnel Commission or other third party forum. Should the action be appealed to the Los Angeles Community College Personnel Commission, the District will be required to demonstrate:

- (1) There was a preponderance of evidence to substantiate the causes and charges specified in the Statement of Charges;
- (2) The disciplinary action effected was appropriate in light of the offense and any mitigating factors such as the employee's length of service, work performance record and position in the organization.

Preponderance of the Evidence Discussion

Definition. Black's law dictionary defines the term as evidence which, when fairly considered, produces the stronger impression and has the greater weight and is more convincing as to its truth when weighed against the evidence in opposition thereto.

1. Who was directly involved in the incident(s); were there any witnesses?
2. What happened?
3. When did it happen?
4. Where did it happen?
5. Why did the incident(s) occur?
6. What proof do you have that the employee in question committed the offense? For example, do you have the witness statements attesting to the employee committing the offense; do you have the time cards and leave slips if the offense is related to time and attendance; do you have the lab reports if drugs are involved; or do you have the testimony of witnesses and/or documentary evidence of violations of current regulations if violations of same are cited?
7. Is the evidence consistent? What discrepancies exist in the evidence? Can you account for these discrepancies?

8. What is the employee's side of the incident?
9. Is there any evidence related to this matter that you have not previously brought to the attention of the district's Employer-Employee Relations Office? (If the answer is yes, make sure that they are aware of it.)

NEXUS BETWEEN AN EMPLOYEE'S MISCONDUCT AND JUST CAUSE

1. How is the employee's misconduct related to his/her job?
2. How did the employee's misconduct directly affect his/her work or the work of others?
3. What did the employee's misconduct cost the District? Cost can be defined in dollars, lost production time, broken equipment, etc.

APPROPRIATENESS OF THE PENALTY

The Employer-Employee Relations Office has identified a list of relevant factors for managers and supervisors to consider in determining the appropriate penalty in disciplinary actions. The factors specifically identified by the Employer-Employee Relations Office, which are not all-inclusive, are listed below. Supervisors and Managers are to consider each factor as well as the information in the pre-action investigation before recommending disciplinary action. If you require guidance in responding to any of the factors, please contact the Employer-Employee Relations Office in Human Resources at (213) 891-2442 for assistance.

1. The nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional, technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees in the unit for the same or similar offenses;
7. The notoriety of the offense or its impact upon the reputation of the District;
8. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
9. Potential for the employee's rehabilitation;
10. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
11. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Note: Since all of these factors do not apply to every case, supervisors and managers are to only consider the relevant factors given the circumstances of each individual case. All relevant factors are to be considered thoughtfully and not in a mechanistic fashion.

**PROCEDURES FOR PROCESSING CLASSIFIED EMPLOYEE
DISCIPLINARY ACTIONS**

- 1) The supervisor considering disciplinary action will investigate the matter and document the circumstances that gave rise to that consideration.
- 2) If the supervisor decides after an investigation that discipline is warranted, he/she will provide accurate, complete and relevant information and documents, normally submitted as part of a Notice of Unsatisfactory Service, required for the preparation of a Statement of Charges by the Employer/Employee Relations Office. If the recommended action requires submission to the Board of Trustees for approval, the Employer-Employee Relations Office will prepare the necessary paperwork for an appropriate meeting of the Board of Trustees.
- 3) The Employer/Employee Relations Office will prepare and forward a Statement of Charges, a "Skelly" Letter, along with a copy of the Notice of Unsatisfactory Service, to the college President and the employee recommended for discipline. The employee is responsible for contacting the President's office and requesting a Skelly hearing with the President or his/her designee.
- 4) The Associate Vice Chancellor for Labor Relations or a designee will sign the Statement of Charges and the "Skelly Letter." All required documents will be sent to the employee recommended for discipline at his/her last known address on file in the Human Resources Office by certified and regular mail.
- 5) If recommended discipline is approved by the Board of Trustees, the Personnel Commission and the employee will be notified of the decision by the Employer-Employee Relations Office. After receipt of the decision, the Personnel Commission will notify the employee of his/her right of appeal and to have the matter heard in an third party hearing before an independent Administrative Law Judge.



NOTICE OF UNSATISFACTORY SERVICE FOR CLASSIFIED EMPLOYEE

Name _____ Employee Number _____

College/Division _____ Classification _____

This Notice is issued for the period from _____ to _____

Recommendation for discipline (if any): _____

NOTE: Attach appropriate "Recommendation" form: C2005 – Suspension; C2012 – Demotion; C2004 - Dismissal

1. This Notice is issued for the following causes (see reverse side for a listing of causes):
2. The charges, which support the above causes, are specified on the attached page(s).
3. Informal and formal conferences and counseling were conducted with the employee on (attach additional pages as necessary): _____

4. The following directions and suggestions have been made to facilitate this employee's improvement (attach additional pages as necessary). If none, so state:

Immediate Supervisor Date

Employee Date

My signature indicates that I have received a copy of this Notice, and not that I necessarily agree with its content. I understand that I may forward a written statement to the Office of Employer-Employee Relations that will be attached to the original Notice in my Personnel File.

Next higher level supervisor Date

President, (Assoc. or Sr.) Vice Chancellor or Chancellor Date

Witness (in the event employee refuses to sign Notice) Date

Note: If employee is unavailable to sign, please send to Employer-Employee Relations for issuance by certified mail.

APPENDIX AI(Contd.)

INSTRUCTIONS FOR PREPARATION AND ISSUANCE OF NOTICE OF UNSATISFACTORY SERVICE FORM

1. **Preparation** - Prepare an original and two (2) copies of the form as follows (refer to Personnel Guide B478):
 - (a) Indicate name, employee number, college, and classification at top of form.
 - (b) Enter the specific period during which the employee's services were unsatisfactory, making certain that the dates cited encompass the earliest and latest dates referred to in the Charges section.
 - (c) If discipline (suspension, demotion or dismissal) is recommended, indicate the level of discipline.
 - (d) In *section 3*, list the dates, if any, on which informal and formal conferences were held with the employee. Attach a sheet with a brief chronological synopsis of what was covered during each of those meetings.
 - (e) In *section 1*, indicate the *Causes* for issuing the Notice; choose one or more causes from among the following causes as set forth in Personnel Commission Rule 735 that best describes the unsatisfactory performance:
 1. Incompetence
 2. Inefficiency
 3. Insubordination
 4. Willful misconduct or any other willful failure of good conduct tending to injure the public service
 5. Inattention to or dereliction of duty
 6. Willful and persistent violation of the provisions of the Education Code, public policy, or of policies, rules, regulations, or procedures adopted by the Board of Trustees or the Personnel Commission
 7. Dishonesty
 8. Discourteous, abusive, or threatening language or behavior directed toward any person, including sexual harassment, racial harassment, or other legally prohibited actions or behavior
 9. Immoral conduct
 10. Appearing for work under the influence of alcohol or controlled substance or using alcohol or a controlled substance illegally while on duty
 11. Conviction of any controlled substance offense as defined in Education Code Section 87011
 12. Failure to abide by the conditions of an agreement regarding participation in an alcohol or substance abuse rehabilitation program
 13. Frequent unexcused absence or tardiness
 14. Abuse of leave privileges by habitual use of leave for trivial indispositions or by absence so frequent that the efficiency of the service is impaired
 15. Absence without leave or abandonment of position
 16. Failure to disclose material facts or the making of any false or misleading statement on any official document of the District or Personnel Commission
 17. Failure to report for a health examination after reasonable notice
 18. The discovery or development during an initial probationary period of any physical, emotional, and/or mental condition which precludes an employee from satisfactorily performing the essential duties of the position classification to which assigned
 19. Failure to disclose material facts regarding criminal records
 20. Failure to report for review of criminal records after reasonable notice
 21. One or more criminal convictions which indicate that the person is a poor employment risk in the job classification he/she holds
 22. Conviction of any sex offense as defined in Education Code Section 87010
 23. Engagement in political activities during assigned hours of employment
 24. Advocacy of overthrow of the government of the United States or the State of California by force, violence, or other unlawful means
 25. Knowingly becoming or knowingly remaining a member of the Communist Party on or after November 12, 1952, as defined in Education Code Section 88122
 26. Active participation by a management or confidential employee in the affairs of an employee organization which is an exclusive representative
 27. Unauthorized use or abuse of District or student body property
 28. Failure to successfully complete a training program or to meet a special entrance qualification that is required for a job classification
 - (f) In *section 2*, cite the *Charges* that support the causes on an attached sheet(s) of paper, if necessary.
 - (g) *Signatures* of supervisors and President (Associate or Sr.) Vice Chancellor or Chancellor must be in place **before** issuing the form.
2. **Issuance** - Arrange to meet with the employee to issue the Notice of Unsatisfactory Service. You should have a *witness* with you during the meeting.
3. **Signature** - Request that the employee sign Form C1065 as an indication that he/she has received a copy of the form. If the employee refuses to sign the form, have a witness sign Form C1065 as an indication that the employee received and/or was offered copy of the form. The employee (or witness) should sign form C1065 *and initial and date all other documents attached to it*. If the employee is not available to be served with the Notice, forward it to Employer-Employee Relations for service via certified mail.
4. **Distribution:**
 - a. *Original* – Forward to Employer-Employee Relations **immediately**.
 - b. *Copy 1* – To employee
 - c. *Copy 2* – College files.
 - d. *Original and Copy 1* – To Employer-Employee Relations if employee refused to sign or take copy or was unavailable to do so.

APPENDIX A (II)

Instruction for issuing Notice of Unsatisfactory Services Cause(s) and Charge(s) Sheet

1. After the supervisor has recorded all the required information in the record of attendance chart, he/she transfers the data and records it in the appropriate place on this page.
 - a. On the Notice of Unsatisfactory Service sheet, complete the administrative information at the top of the page. The employee number and the period covered should be the same as recorded on the coversheet.
2. List the causes for the recommended discipline. This information is obtained from Personnel Commission Law and Rules 735. If further assistance is required, call the Employer-Employee Relations Office at (213) 891-2442.
3. Under paragraph A of this document record the totals for each category listed on the record of attendance chart.
4. In paragraph B, indicate the number of workdays in the notice period for this recommended discipline; indicate the percentage of time the employee was absent during the notice period and how it contrasts with an average employee in the bargaining unit occupied by the employee recommended for discipline.
5. The information requested for the succeeding spaces on this sheet is self-explanatory. However, if a supervisor has a question about a matter, he/she may call the Employer-Employee Relations Office at (213) 891-2260 for guidance.

APPENDIX AIII

Sample Notice for Unsatisfactory Services

Issued to Ms. Mary Doe (Name), XXXXXX (Employee No.)

Covering the period from ____ to ____ (Date).

Causes:

- Inattention to or dereliction of duty.
- Frequent Unexcused Absence or tardiness.
- Abuse of leave privileges by habitual use of leave for trivial indispositions or by absence so frequent that the efficiency of the service is impaired.
- Inefficiency.

Charges:

- I. During the period covered by the notice of unsatisfactory service, which is the basis of this action, Ms. Mary Doe, (hereinafter Ms. Doe) was frequently absent from work. The number of times Ms. Doe was absent and tardy during the cited period was considered excessive by her supervisor primarily because of the negative impact that her absence had upon the work performed in the unit. A complete record of Ms. Doe's attendance during the notice period is contained in attachment A to this notice of unsatisfactory service. Ms. Doe was counseled about her unsatisfactory attendance on the following dates:
 - A. For the period of this notice, Ms. Doe was absent for the following reasons: Personal Necessity 2 days and illness 33 days. In addition, Ms. Doe was tardy on 15 separates occasions, which totaled eight (8) tardy hours. The attendance record for Ms. Doe records that she was absent a total of 36 days; this is referenced in attachment A of this notice.

- B. With the notice period containing a possible 218 workdays, Ms. Doe was absent 17 % of the time. The average absence rate for employees occupying the same bargaining unit as Ms. Doe is approximately 4%. Thus, Ms. Doe was absent more than four (4) times more often the average employee in her own bargaining unit. As a result of Ms. Doe's unsatisfactory attendance, her supervisor was unable to depend on her to perform work.

Furthermore, because of frequent absences, her supervisor often could not include Ms. Doe in work for the unit. The Supervisor had to assign another employee to complete work that Ms. Doe should have performed had she been at work on the days absent.

1. The Management of South Arkansas College has made a concerted and progressive effort to get Ms. Doe to improve his/her attendance to a satisfactory level, including changing our hours to accommodate a temporary situation. The primary efforts made are documented in this notice of unsatisfactory service. However, despite those efforts, Ms. Doe's attendance had not improved to a satisfactory level on the date of this notice.

- C. Upon receipt of this notice of unsatisfactory service, Ms. Doe is expected to demonstrate improved satisfactory attendance. More specifically, she is to improve and sustain her attendance at 4% or less following receipt of this unsatisfactory notice. If Ms. Doe fails to sustain her attendance at a satisfactory level (4% or less) after receiving this unsatisfactory notice; this unsatisfactory notice is also a warning that more progressive and more severe disciplinary action will be recommended. Future recommended discipline could range from suspension up to and including dismissal.

APPENDIX B

Attendance Record Chart

For: _____ (Name), _____ (Employee No.)

From _____ through _____ (Date)

[illegible]

Note: The abbreviations used in this attachment stand for the following: (I) for illness, (AWOL) for unauthorized absence, (PE) for personal emergency and (T) for tardy.

This chart is submitted as an attachment to applicable disciplinary action. **The supervisor recommending the disciplinary action must sign this document on the line designated below. The supervisor's signature certifies that all of the dates have been reviewed by him/her against official SAP and payroll records. More importantly, the supervisor certifies that all the data presented in the above chart accurately reflects the attendance of the employee recommended for discipline in this case. Along with this chart, the supervisor must submit a copy of the SAP attendance information for the period of the notice of unsatisfactory service. Any disciplinary action submitted without the information indicated will be returned without action.**

Recommending Supervisor