

South Carolina Department of Public Safety

Office of the Director

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POLICY	400.08
EFFECTIVE DATE	MAY 11, 1994
ISSUE DATE	MARCH 3, 2010
SUBJECT	DISCIPLINARY ACTION
APPLICABLE STATUTES	§8-11-230, §8-11-690, R. 19-717 et al.
APPLICABLE STANDARDS	<u>26.1.1</u> , <u>26.1.4</u> , <u>26.1.5</u> , <u>26.1.6</u> , <u>26.1.7</u> , <u>26.1.8</u> , <u>52.2.7</u>
DISTRUBTION	TO ALL EMPLOYEES

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I. PURPOSE

Employees of the Department of Public Safety will conduct themselves in accordance with applicable laws, regulations, department policies and generally acceptable work behaviors. Employees in supervisory positions will set an example by their conduct, attitude and work habits. [26.1.1]

II. POLICY

Disciplinary actions imposed for unacceptable conduct should generally be progressive in nature with consideration given to the severity of the conduct and the employee's past record. The attached Guidelines for Disciplinary Action are recommendations and not mandatory. The department reserves the right to impose any type of disciplinary action for any offense as it deems appropriate, including termination from employment for a first offense. Supervisors should consult with the department's Office of Human Resources prior to imposing any corrective action or attempting to resolve any disciplinary matter. All disciplinary actions are part of the employee's official personnel file and may not be removed. [26.1.5]

III. DEFINITIONS

Appeal - A request by a covered employee to the State Human Resources Director for review of an agency's final decision concerning a grievance.

Calendar Days - The sequential days of a year. Calendar days are computed by excluding the first day and including the last; if the last day falls on a Saturday, Sunday, or legal holiday, it is excluded.

Counseling Session - A documented meeting between an employee and his immediate supervisor to address the first occurrence of a minor offense.

Covered Employee - A full-time or part-time employee occupying a part of or all of a full-time equivalent (FTE) position who has completed the probationary period and has a "meets" or higher overall rating on the employee's performance evaluation and who has grievance rights. If an employee does not receive an evaluation before the performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. This definition does not include employees such as temporary, temporary grant; time limited employees or administrative exemption personnel.

Demotion - The assignment of an employee by the appointing authority from one established position to a different established position having a lower state salary range.

Disciplinary Review Committee - An informal committee comprised of departmental employees to review recommendations for disciplinary or corrective action.

Final Agency Decision - The final administrative decision by the department that then may be appealed to the State Human Resources Director.

Grievable and Non Grievable Actions - Terminations, suspensions, involuntary reassignments in excess of 30 miles from an employee's prior work station, and demotions are grievable and appealable under the State Employee Grievance Procedure Act. A reduction in force may be considered grievable by the department or appealable to the State Human Resources Director, for an affected covered employee under the grievance plan only if based on inconsistent or improper application of a reduction in force policy, procedure or plan.

Level I and Level II reprimands and counseling sessions are not grievable or appealable.

Reclassification of a position, reassignments, and transfers within the same state salary range are not grievable or appealable. However, reclassifications may be deemed grievable or appealable if the department or the State Human Resources Director determines that there is a material issue of fact that the action is a punitive reclassification.

Compensation is not grievable or appealable. However, a salary decrease based upon the results of a covered employee's EPMS evaluation may be considered grievable or appealable.

Promotions are not grievable or appealable except where an allegation is made that the covered employee was excluded from consideration for promotion to a position for which the employee was qualified when the promotional opportunity occurred, and the covered employee applied or would have applied if he had known of the promotional opportunity, and the department, in the case of a grievance, or State Human Resources Director, in the case of an appeal, determines that there is any material issue of fact or conclusion to be drawn from the facts of the allegation. However, when the department promotes an employee one organizational level above the promoted employee's former level, that action is not grievable or appealable for any other qualified covered employee.

Grievance - A complaint filed by a covered employee or the employee's representative regarding an adverse employment action as designated in the department's Grievance Procedure Policy. [\[Policy 400.10\]](#)

Involuntary Reassignment - The movement of an employee's principal place of employment in excess of 30 miles from the prior work station at the initiative of the agency. The reassignment of an employee by an agency in excess of 30 miles from the prior work station to the nearest facility with an available position having the same state salary range for which the employee is qualified is not considered involuntary reassignment.

Level I Reprimand - Generally the first formal level of disciplinary action for a first occurrence of a minor nature. A Level I reprimand cannot be removed from the employee's personnel file.

Level II Reprimand - Generally the second level of disciplinary action for a repeated occurrence of a minor infraction or a first occurrence of a more serious offense. A Level II reprimand cannot be removed from the employee's personnel file.

Pay Band or Salary Range - The dollar amount between the minimum and maximum rates of pay to which a class or position is assigned.

Promotion - An employee's change from a position in one class to a position in another class having a higher state salary range.

Reassignment - The movement within an agency of an employee from one position to another position having the same state salary range, or the movement of a position within an agency which does not require reclassification.

Reclassification - The assignment of a position in one class to another which is the result of a natural or an organizational change in duties or responsibilities of the position.

Reduction In Force - A procedure used by an agency to eliminate one or more filled positions in one or more organizational units within the agency due to budgetary limitations, shortage of work, or organizational changes. [[Policy 400.14](#)]

Salary Decrease Based on Performance - The reduction of a covered employee's compensation based on the results of an Employee Performance Management System (EPMS) evaluation. [[Policy 400.06](#)]

State Employee Grievance Committee - A committee composed of state employees who are appointed by the Budget and Control Board and who conduct hearings involving appeals filed by state employees covered by the State Employee Grievance Procedure Act.

State Human Resources Director - The head of the Office of Human Resources of the State Budget and Control Board, or his designee.

Suspension - An enforced leave of absence, without pay, for disciplinary purposes, or pending an administrative or criminal investigation of charges against an employee.

Temporary Employee - A full-time or part-time employee who does not occupy an FTE position, whose employment is not to exceed one year, and who is not a covered employee.

Temporary Grant Employee - A full-time or part-time employee who does not occupy an FTE position, and is hired to fill a position specified in and funded by a federal grant, public charity grant, private foundation grant, or research grant and who is not a covered employee.

Termination - Action taken by an agency against an employee to separate the employee involuntarily from employment.

Time Limited Employee - A full-time or part-time employee who does not occupy an FTE position who is hired to fill a position with time-limited project funding approved or authorized by the appropriate State authority, and who is not a covered employee.

Transfer - The movement to a different agency of an employee from one position to another having the same state salary range, or the movement of a position from one agency to another agency which does not require reclassification.

IV. DISCIPLINARY ACTIONS

- A. Disciplinary actions are actions taken for the purpose of correcting or punishing inappropriate work behavior.
- B. Disciplinary actions consist of Level I and Level II reprimands, suspensions, demotions, involuntary reassignments and terminations. Ordinarily, consideration should be given to the severity of the misconduct and the employee's past record in determining the disciplinary action appropriate for an incident of misconduct. [26.1.4 (c)]
- C. Disciplinary action should be discussed with the department's Office of Human Resources prior to being imposed. A Disciplinary Review Committee may be convened by the department's Office of Human Resources to review recommended disciplinary action.
- D. Failure to obtain pre-review by the department's Office of Human Resources may result in disciplinary action being rescinded.
- E. Counseling sessions are not considered a formal level of disciplinary action. A counseling session may, at the supervisor's discretion, be used for the first occurrence of a minor offense. Minor violations of policies, procedures, rules and regulations may be an opportunity for refresher training session as opposed to a reason for disciplinary action. A counseling session should be documented and kept in the supervisor's file with a copy of the documentation forwarded to the department's Office of Human Resources for entry in the department's Personnel Early Warning System. [[Policy 400.24](#)] Documentation of counseling sessions does not become a part of the employee's personnel file. [26.1.4 (a) (b)] [26.1.5]
- F. A Level I reprimand is generally the first formal level of disciplinary action for infractions of a minor nature. A Level II reprimand is generally the second level of disciplinary action for a repeat occurrence of such infractions. However, a Level II reprimand may be imposed for a first occurrence of a more severe offense
- G. An employee may be procedurally suspended by the department while under investigation and/or further consideration of the appropriate disciplinary action. Procedural suspensions require the approval of the director or the director's designee. [26.1.5]
- H. All suspensions, demotions, involuntary reassignments or terminations require approval of the director or the director's designee prior to the discipline being administered. Divisions with employees working on weekends and shifts other than 8:30 a.m. to 5:00 p.m. may procedurally suspend an employee or

remove him from service until the director or the director's designee makes a final decision concerning suspension or termination. [26.1.5] [52.2.7]

- I. Disciplinary actions should be administered in accordance with this policy with consideration given to the nature of the misconduct and the employee's past record.
- J. A "progressive" disciplinary system should ordinarily be followed with respect to minor episodes of misconduct. This means a Level I reprimand will generally be followed by a Level II reprimand for the second instance of the same offense. If there is a third episode of the same or similar misconduct, the next step will be a suspension followed, if necessary, by termination. However, serious offenses may result in immediate suspension or termination for the first offense. The department has the right to take more severe disciplinary action against any employee whose cumulative misconduct evidences an unwillingness to comply with department policy and procedures.
- K. Temporary, temporary grant, time limited and probationary employees may be terminated from employment at the discretion of the director or the director's designee. This policy does not apply to these employees.
- L. All performance-related problems should be addressed in accordance with the Employee Performance Management System Policy. [[Policy 400.06](#)]

V. INFORMATION AND PROCEDURES

A. Level I Reprimand

- 1. A Level I reprimand will be documented by way of a memorandum addressed to the employee from the deputy director or a designee. A request for a Level I reprimand should ordinarily be submitted in writing with supporting documents to the department's Office of Human Resources for review. After review, the reprimand will be issued and signed by the employee acknowledging receipt of the reprimand. A copy of the reprimand should be given to the employee and the original forwarded to the department's Office of Human Resources to be retained in the employee's personnel file. [26.1.5] [26.1.8]
- 2. Level I reprimands cannot be grieved through the Grievance Process. However, an employee may submit a written response to the reprimand which will become part of the employee's personnel file. [26.1.6] [26.1.8]
- 3. Level I reprimands will become a permanent part of the employee's personnel file. [26.1.8]

B. Level II Reprimand

- 1. A Level II reprimand will be documented by way of a memorandum addressed to the employee from the deputy director or a designee. A request for a Level II reprimand should ordinarily be submitted in writing with supporting documents to the department's Office of Human Resources for review. After review, the reprimand will then be issued to and signed by the employee, acknowledging receipt of the reprimand. A copy of the reprimand should be given to the employee and the original forwarded to the department's Office of Human Resources to be retained in the employee's personnel file. [26.1.5] [26.1.8]

2. Level II reprimands cannot be grieved through the Grievance Process. However, an employee may submit a written response to the reprimand which will become a permanent part of the employee's personnel file. [26.1.6] [26.1.8]
3. Level II reprimands will become a part of the employee's personnel file. [26.1.8]

C. Suspensions

1. A suspension will be documented by a letter [Notice of Suspension] addressed to the employee from the deputy director or a designee. An employee will generally receive a suspension as the third step in the progressive discipline process. However, if supervisors or managers determine that the first or second offense warrants a suspension, one may be imposed. Suspensions are without pay. A recommendation to suspend should ordinarily be submitted in writing with supporting documents to the department's Office of Human Resources for review and the director's approval. After review and approval, the suspension may be imposed. The Notice of Suspension should be signed by the employee acknowledging receipt of the suspension. A copy of the suspension document should be given to the employee and the original forwarded to the department's Office of Human Resources to be retained in the employee's personnel file. The beginning date of the suspension and the ending date will be indicated on the Notice of Suspension. [26.1.5] [26.1.8] [52.2.7]
2. Covered employees may grieve a suspension. A copy of the department's Grievance Procedure Policy [\[Policy 400.10\]](#) should be attached to the written Notice of Suspension given to covered employees. [26.1.6]
3. The Notice of Suspension will become a permanent part of the employee's personnel file. [26.1.8]
4. An employee who is the focus of/or implicated in an administrative investigation into alleged misconduct may be suspended when the director or his designee determines that the employee's continued presence at work is not in the best interest of the department. Under such circumstances, the employee will be placed on an indefinite suspension pending the outcome of the investigation. If the department's investigation determines that the employee did not engage in misconduct, he may be entitled to reinstatement with back pay. An employee arrested, charged or indicted for a violation of Federal or State law which adversely reflects on his suitability for continued employment or which causes adverse publicity against the department may be suspended immediately pending final disposition by the courts or further investigation by the department. If the employee is exonerated or charges are dismissed by the court, the employee may be eligible for reinstatement with back pay. The department, however, may conduct its own investigation and take disciplinary action based upon its own findings. That is, the department is not bound to reinstate an employee simply because criminal charges are dismissed or withdrawn or because an employee is acquitted at trial. [52.2.7]
5. An employee who is suspended based on alleged violations of Federal or State laws may be terminated before disposition of the charge if the director or the director's designee administratively investigates the matter and determines that termination is warranted. Termination may occur notwithstanding the fact that

the charge or charges is ultimately dismissed or dropped or the employee is acquitted. [26.1.5]

D. Demotion or Reassignment

1. Demotions and reassignments may also be used in the progressive discipline process. In instances where they are grievable and appealable a copy of the department's Grievance Procedure Policy will be attached to the disciplinary letters. Refer to the department's Grievance Procedure Policy [[Policy 400.10](#)] to determine if a demotion or reassignment is grievable and appealable. [26.1.6] [26.1.8]
2. The department's Office of Human Resources will be consulted prior to demoting or reassigning an employee.
3. Involuntary demotion or reassignment of an employee will be submitted for review to the department's Office of Human Resources and approved by the director or his designee. [26.1.5]

E. Termination

1. An employee may be terminated from employment as the final step in the progressive discipline process or for committing a serious offense or for refusing to comply with department policy and procedures. [52.2.7]
2. Covered employees may grieve a termination as provided for under the department's Grievance Procedure Policy. [[Policy 400.10](#)] [26.1.6]
3. A recommendation to dismiss an employee should be submitted in writing with supporting documents to the department's Office of Human Resources for review. The final decision to terminate an employee will be made by the director or a designee. Notice of Termination will be in writing addressed to the employee and will explain the reason for termination. The Notice of Termination should be personally given to and signed by the employee acknowledging receipt or sent by certified mail "return receipt requested." The original or a copy of the Notice of Termination should be forwarded to the department's Office of Human Resources to be retained in the employee's personnel file. A copy of the department's Grievance Procedure Policy [[Policy 400.10](#)] will be attached to the Notice of Termination if the employee is entitled to the right to grieve. [26.1.5] [26.1.7 (a)] [26.1.8]
4. If the Notice of Termination is mailed to the employee, the certified return receipt or "green card" will be retained by the department's Office of Human Resources in their files. [26.1.7] [26.1.8]
5. A Notice of Termination will include the reason for dismissal, effective date of dismissal and a statement regarding status of benefits after dismissal. [26.1.7 (a-c)]

VI. PROPER DOCUMENTATION

- A. All disciplinary actions must be supported by appropriate documentation. Actions affecting pay may require additional documentation such as time sheets, Request for Leave forms and Personnel Action Request forms. [26.1.8]

- B. Disciplinary memo [Level I or II reprimands, Notice of Suspension and Notice of Termination] must be signed by the employee being disciplined unless the disciplinary memoranda are mailed. The employee's signature means only that the employee received a copy of the disciplinary memoranda, not that the employee agrees with the content of the memoranda or that disciplinary action is warranted. Refusal to sign disciplinary memoranda constitutes insubordination and is separately punishable as such.

VII. MAINTENANCE OF DISCIPLINARY ACTION FILES

The department's Office of Human Resources will maintain the official department disciplinary action files for employees. Supervisors may maintain supervisory notes and files. However, the files maintained in the department's Office of Human Resources shall constitute the only official personnel file. [26.1.5] [26.1.8]

Approved by Office of Human Resources, State Budget and Control Board

March 3, 2010

GUIDELINES

By Order of the Director Date: March 3, 2010
<i>Mark A. Keel</i>
Director S C Department of Public Safety
The Original Signed Copy of this Policy is on File in the Office of the General Counsel