

EMPLOYEE RELATIONS DIVISION

Office of Human Resources
Maryland Department of Health

PURPOSE OF COUNSELING

- Maintain open lines of communication
- Ensure that expectations are understood
- Prevent need for disciplinary action

COUNSELING

ROLE OF SUPERVISOR

- Clearly define expectations
- On-going communication with employees
- Solicit input from employees
- Provide support, when necessary
- Provide constructive feedback regarding performance
- Make informed decisions (HR is available for guidance and support)
- Document events to support and defend decisions



COUNSELING

ROLE OF SUPERVISOR

- Giving employees guidance on job performance
- Not discipline
- Should be a positive event
- A discussion between the supervisor & employee
- Supervisor advises employee of expectations
- Employee gives feedback



COUNSELING

TYPES



ORAL



WRITTEN

WHEN IS COUNSELING APPROPRIATE?

SCENARIOS

- Employee arrives 10 minutes late for work for the 2nd time within the past 5 days
- Employee does not report to work as scheduled, does not contact his/her supervisor and does not have a viable excuse when later asked for an explanation
- Employee spends 30 minutes on a non-emergency, personal telephone call
- Employee arrives 15 minutes late for work for the 4th time in 2 weeks and was counseled regarding lateness last week

SAMPLE COUNSELING LETTER

TO: Bill Employee
FROM: Joe Supervisor
DATE: February 15, 2023
SUBJECT: Counseling Session - Lateness

You were counseled on Friday, February 15, 2023 for your third occurrence of tardiness within the last 12 months. You were advised at that time that the following is expected of you:

1. Your work hours are 9:00 A. M. to 6:00 P. M.
2. You must report for work as scheduled.
3. If you are unable to report for work or you are going to report to work late, you must Call your immediate supervisor on or before 9:00 A. M.
4. You must find adequate transportation to get to work. Contact was made with the car pool coordinator for assistance in the matter.
5. Requests for annual or personal leave must be made at least two days in advance.

You indicated that you are aware of the problem concerning lateness. If no improvement is made disciplinary actions will be taken.

If you wish to respond to this memorandum or provide additional comments, please do so before February 20, 2023.

cc: Official Personnel File

I certify that I have personally reviewed this letter and understand that my signature does not imply agreement or disagreement.

Date

Signature

COUNSELING LETTER

HINTS

- ✓ The memo shouldn't be prepared until you've talked with the employee
 - ✓ Accurately portray information the employee gives you during the session
 - ✓ One issue per counseling
-
- If employee refuses to sign, have another supervisor witness and sign



COUNSELING IS [NOT] DISCIPLINE

- Counseling is instructional communication
- Counseling cannot be grieved
- Within 5 days after receipt of the counseling, the employee may submit a written response to the counseling
 - the response is sent to the appointing authority
 - the response is placed in the employee's file and attached to any record of the memorandum

Probation

- Management's opportunity to determine if an employee is a good fit for the organization
- Probation after Appointment or Promotion
- Probation can be extended once
- An employee should be counseled on their performance after 90 days
- Document any problems with written counseling
- If an employee is still performing to standard after being counseled, the employee can and should be terminated

Helping Employees

- Employee Assistance Program (EAP)
 - Maryland Cares
- State Medical Director (SMD)

PERFORMANCE PLANNING AND EVALUATION PROGRAM

- Develop Standards to rate the employees by at the beginning of the evaluation cycle
- Communicate the Standards to your employees
- Take good notes throughout the evaluation cycle
- Use your notes at the end of the cycle to do the evaluation
- Use counseling sessions to inform your employees of the results (allow them to give feedback)



PROGRESSIVE DISCIPLINE

Management must follow progressive discipline unless there is a serious breach of discipline or policy.

The principle by which MDH employees are disciplined. Supervisors take appropriate disciplinary action to change behavior and increase in severity if infractions persist or get worse.



REMEMBER:

Discipline should not come as a surprise to the employee. Occasionally employees are unaware of their supervisors' dissatisfaction until they suddenly receive a formal written reprimand or a letter of termination. Try to avoid this situation by attempting to regularly communicate issues rather than wait until the performance problems can no longer be tolerated. Remember, if the employee is surprised, then you as a manager did something wrong.

PROGRESSIVE DISCIPLINE - When All Else Fails

PURPOSE:

- Modify behavior
- Correct work performance deficiencies

DISCIPLINARY ACTIONS:

- Written Reprimand
- Forfeiture of Annual Leave
- Suspension
- Denial of Increment
- Demotion
- Termination



PRIOR TO IMPOSING DISCIPLINE

- Investigate the alleged misconduct
- Meet with the employee
- Consider any mitigating circumstances
- Determine the appropriate disciplinary action, if any is to be imposed
- Give the employee a written notice of the disciplinary action to be taken and the employee's appeal rights

INVESTIGATION

- Before a disciplinary action is taken a supervisor should
 - Have another supervisor present, taking notes
 - Determine what the infraction actually is
 - Get the employee's side of the story
 - ✓ take notes or have the employee write a statement explaining what happened
 - Talk to witnesses
 - ✓ take notes or have the witness write a statement
 - All supervisors involved should write a summary of conversations with witnesses and employees involved
 - Draft a report and date it
- Remember - you only have 30 days to impose discipline. Exception - 5 workdays for suspensions. (Will be covered in another slide.)

PRIOR TO IMPOSING DISCIPLINE

Ensure
Employee's
Rights



EMPLOYEE MOU RIGHTS

- In the following situations, the employee must be granted the right to Union representation if requested by the employee :
 - You interview that employee because you suspect him/her of misconduct (prior to imposition of discipline)
 - At mitigating circumstances conference with the employee
- The employee must be given at least one hour to obtain Union representation

MITIGATING CIRCUMSTANCES CONFERENCE

- This is an opportunity for the employee to explain to management why they should not be disciplined.
- Do NOT have the discipline (MS-4A) already prepared, signed and visible to the employee.
- If you do, the employee is likely to withhold vital information.

TIMEFRAMES FOR DISCIPLINE

- Reprimand
 - 30 days after the appointing authority acquires the knowledge of the infraction
- Forfeiture of Annual Leave
 - 30 days after the appointing authority acquires the knowledge of the infraction
- Suspension
 - 5 workdays* following the close of the employee's next shift, after the appointing authority acquires knowledge



TIMEFRAMES FOR DISCIPLINE - continued

SUSPENSION

- 5 workdays* following the close of the employee's next shift, after the appointing authority acquires knowledge of the infraction

Saturdays, Sundays, legal holidays, and employee leave days are excluded in calculating the 5 workday period

FLSA Exempt employees (comptime earners) can only be suspended for a pay period at a time

TIMEFRAMES FOR DISCIPLINE - continued

- Denial of Annual Pay Increase

- 30 days after the appointing authority acquires the knowledge

- Demotion

- 30 days after the appointing authority acquires the knowledge

- Termination

- 30 days after the appointing authority acquires the knowledge

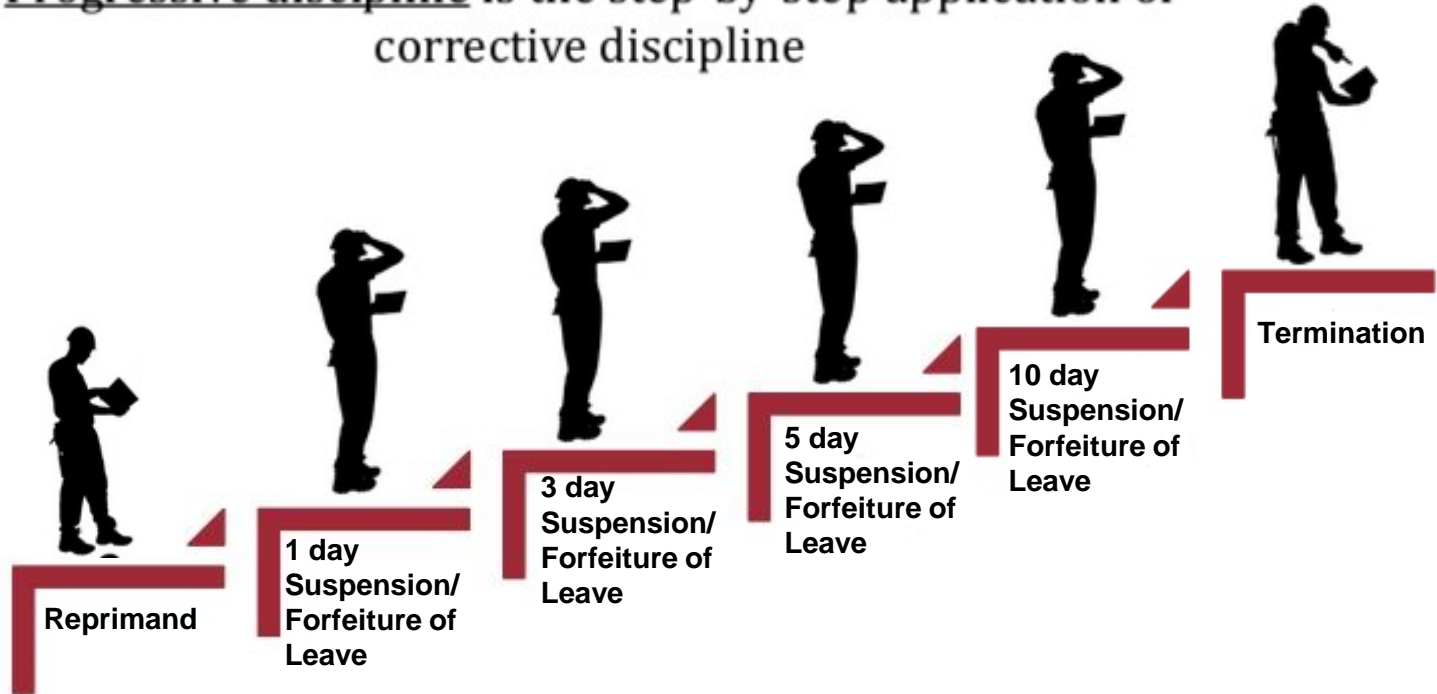


TEST YOUR KNOWLEDGE

<i>Sat</i>	<i>Sun</i>	<i>Mon</i>	<i>Tues</i>	<i>Wed</i>	<i>Thurs</i>	<i>Fri</i>
X	Leave	Off	Off	W	W	W holiday
W	W	Off	Off	W	W	Leave
W	W	Off	Off	W	W	W
W	W	Off	Off	W	W	W
W	W	Off	Off	W	W	W

STEPS FOR PROGRESSIVE DISCIPLINE

Progressive discipline is the step-by-step application of corrective discipline



PROGRESSIVE DISCIPLINE

State of Maryland
Department of Budget and Management
Office of Personnel Services and Benefits
301 West Preston Street
Baltimore, Maryland 21201

NOTICE OF DISCIPLINARY ACTION

To Employee: You or your representative may appeal this disciplinary action to the Cabinet Secretary of your department (if your agency is not headed by a Cabinet Secretary, appeal must be made to the agency head). The appeal must be in writing and filed within 15 calendar days after your receipt of this written notice. Md. Code, State Personnel and Pensions Art. ("SPP"), § 11-109(c). Should you file a timely appeal, your Cabinet Secretary or agency head shall issue to you a written decision on your appeal within 15 days of its receipt (SPP § 11-109(e)); however, the failure of your Cabinet Secretary or agency head to issue a written decision within 15 days constitutes a denial of your appeal. SPP § 11-108(b). Unless that decision is the final administrative decision, within 10 days of a denial you may appeal to the next level of the disciplinary process, where you will have the opportunity to have a hearing on your appeal if it is not resolved. SPP § 11-110.

To Agency: **COMPLETE IN DUPLICATE.** Give one copy to the employee; and retain one copy for your files. Do not send copy to Department of Budget and Management.
This action must be processed via the DBM Office of Personnel Services and Benefits electronic Statewide Personnel System (SPS).

Bill Employee

Boiler Operator

W0000000

Name of Employee

Classification

SPS Employee ID No.

Check appropriate box and complete:

Pursuant to Title 11, subtitle 1 of the State Personnel and Pensions Article, and COMAR 17.04.05.04, the above-referenced employee:

- is reprimanded.
- forfeits _____ Annual Leave days.
- is suspended without pay for _____ work days from _____ through _____.
- is denied an annual pay increase effective _____.
- is demoted to _____ at _____, effective _____.
- (Classification) (Salary Level)

DATE OF INCIDENT THAT PROMPTS THIS DISCIPLINE: February 6, 2023

DATE WHEN INCIDENT WAS DISCUSSED WITH THE EMPLOYEE: February 7, 2023

Explain what the employee did that merits disciplinary action (state the facts): (Attach pages as necessary)

Did not report for duty until 9:15 AM. Employee's duty hours are 8:30 AM to 5:00 PM.

Cite the law(s), regulation(s), or policy(ies) violated:

Policy on Employees' Timely Reporting of Unexpected Absences ("AWOL Policy") DHMH 02.09.01

Copy to Employee: Feb. 8, 2023 In Person Mailed to: _____
(Date)

(Date)

MDH
(Name of Department)

(Name and Signature of Appointing Authority)

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Department of Budget and Management
Office of Personnel Services and Benefits
301 West Preston Street
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This action must be processed via the DBM Office of Personnel Services and Benefits electronic Statewide Personnel System (SPS).

Bill Employee

Boiler Operator

W0000000

Name of Employee

Classification

SPS Employee ID No.

Check appropriate box and complete:

Pursuant to Title 11, subtitle 1 of the State Personnel and Pensions Article, and COMAR 17.04.05.04, the above-referenced employee:

- is reprimanded.
 - forfeits ____ Annual Leave days.
 - is suspended without pay for 1 work days from Feb. 25, 2023 through Feb. 25, 2023.
 - is denied an annual pay increase effective _____.
 - is demoted to _____ at _____, effective _____.
- (Classification) (Salary Level)

DATE OF INCIDENT THAT PROMPTS THIS DISCIPLINE: February 22, 2023

DATE WHEN INCIDENT WAS DISCUSSED WITH THE EMPLOYEE: February 24, 2023

Explain what the employee did that merits disciplinary action (state the facts): (Attach pages as necessary)

You reported to work at 9:30 AM. Your work hours are 8:30 AM to 5:00 PM.
You received a written reprimand for lateness on Feb. 8, 2023.

Cite the law(s), regulation(s), or policy(ies) violated:

Policy on Employees' Timely Reporting of Unexpected Absences ("AWOL Policy") DHMH 02.09.01

Copy to Employee: Feb. 25, 2023 In Person Mailed to: _____
(Date)

(Date) MDH
(Name of Department)

(Name and Signature of Appointing Authority)

PROGRESSIVE DISCIPLINE

State of Maryland
Department of Budget and Management
Office of Personnel Services and Benefits
301 West Preston Street
Baltimore, Maryland 21201

NOTICE OF DISCIPLINARY ACTION

To Employee: You or your representative may appeal this disciplinary action to the Cabinet Secretary of your department (if your agency is not headed by a Cabinet Secretary, appeal must be made to the agency head). The appeal must be in writing and filed within 15 calendar days after your receipt of this written notice. Md. Code, State Personnel and Pensions Art. ("SPP"), § 11-109(c). Should you file a timely appeal, your Cabinet Secretary or agency head shall issue to you a written decision on your appeal within 15 days of its receipt (SPP § 11-109(e)); however, the failure of your Cabinet Secretary or agency head to issue a written decision within 15 days constitutes a denial of your appeal. SPP § 11-108(b). Unless that decision is the final administrative decision, within 10 days of a denial you may appeal to the next level of the disciplinary process, where you will have the opportunity to have a hearing on your appeal if it is not resolved. SPP § 11-110.

To Agency: **COMPLETE IN DUPLICATE.** Give one copy to the employee; and retain one copy for your files. Do not send copy to Department of Budget and Management.
This action must be processed via the DBM Office of Personnel Services and Benefits electronic Statewide Personnel System (SPS).

Bill Employee

Boiler Operator

W0000000

Name of Employee

Classification

SPS Employee ID No.

Check appropriate box and complete:

Pursuant to Title 11, subtitle 1 of the State Personnel and Pensions Article, and COMAR 17.04.05.04, the above-referenced employee:

- is reprimanded.
- forfeits 3 Annual Leave days.
- is suspended without pay for ___ work days from _____ through _____.
- is denied an annual pay increase effective _____.
- is demoted to _____ at _____, effective _____.

(Classification)

(Salary Level)

March 6, 2023

DATE OF INCIDENT THAT PROMPTS THIS DISCIPLINE: _____

DATE WHEN INCIDENT WAS DISCUSSED WITH THE EMPLOYEE: _____

March 29, 2023

Explain what the employee did that merits disciplinary action (state the facts): (Attach pages as necessary)

Unalert/Unaware. You were found unalert/unaware in the boiler room.
This is a safety hazard.

Cite the law(s), regulation(s), or policy(ies) violated:

COMAR 17.04.05.04 B(1) Being negligent in the performance of duties, COMAR 17.04.05.04 B (3) Being guilty of conduct that has brought or, if publicized, would bring the State into disrepute

Copy to Employee: April 1, 2023
(Date)

In Person

Mailed to: _____

MDH

(Date)

(Name of Department)

(Name and Signature of Appointing Authority)

COMBINING MEMORANDUM

- Used to combine a number of offenses
- Streamline the disciplinary process



NOTE

- Denial of Annual Pay Increase
 - Rarely done, usually done in conjunction with an unsatisfactory final PEP
- Demotion
 - The level of evidence is the same as termination

A photograph of three business professionals in an office setting. A man in a white shirt and tie is on the left, a woman in a blue striped shirt is in the center, and a man in a grey suit and tie is on the right. They are all looking at a document held by the man on the right. The background is a bright, out-of-focus office window.

HEARING PROCESS

- Management bears the burden of proof
 - Management presents its case first
- Employee bears the burden of proof
 - Employee presents his/her case first

BURDEN OF PROOF - EMPLOYER

- Reprimand
- Forfeiture of Annual Leave
- Suspension
- Denial of Annual Pay Increase
- Demotion
- Termination



BURDEN OF PROOF - EMPLOYEE

- Grievances
- Discipline of an employee in the executive or management service, or under special appointment
- Discipline of an employee on probation in the skilled and professional services, following initial appointment



WITNESSES

- Both sides (employee/management) can call witnesses
- Witnesses are asked questions by both sides
- Witnesses receive Administrative Leave (or are counted as working) to attend hearings
- Witnesses can be sequestered

MANAGEMENT REPRESENTATIVES

- Assist the Employee Relations Officer during the hearing
 - can suggest questions
 - verify whether a witness's testimony is accurate and truthful
 - advise of inaccurate statements by the witness, or advise of need to rebut statements
- Can be a witness(es)

Settlement Conference

- Is a part of the appeal process
- It's mandated by law
- The conferences are conducted by DBM's Employee Rel. Unit
- It's an opportunity to resolve the case prior to going to the Office of Administrative Hearings (OAH)
- Management is not required to settle (but should have a settlement offer ready)

THANK YOU

Contact Us
410-767-5466