

DHHS POLICIES AND PROCEDURES

Section V:	Human Resources
Title:	Employee Relations
Chapter:	Disciplinary Action
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Purpose

The purpose of this policy is to provide guidance to managers, supervisors and human resources staff members in appropriately responding to North Carolina (NC) State Personnel Act employees' performance and conduct issues in the workplace.

Policy

It is the policy of the NC Department of Health and Human Services (DHHS) to recognize the dignity and value of the individual employee, to address workplace conduct and performance problems in accordance with existing law and state personnel policy and to use best management practices in dealing with employee disciplinary issues.

Implementation

The department has a commitment:

1. To treating employees fairly in all our dealings.
2. To ensuring equal employment opportunity.
3. To supporting employees in our mutual dedication to quality service to the citizens of NC.
4. To providing employees all rights and privileges granted by law and state personnel policy.

This commitment recognizes that every employee has the right:

1. To be treated with respect.
2. To open communication with supervisors.
3. To information on the rules and regulations that affect the employee's job.
4. To a written statement of the duties and responsibilities of the employee's job.
5. To participate in training and career development opportunities consistent with the employee's qualifications and department goals and resources.
6. To objective job performance reviews on a periodic basis.
7. To equitable access to the available materials, supplies and resources necessary to do the assigned job.
8. To safe and healthy working conditions.

This commitment cannot be realized without ongoing and open communication. The informed and consistent application of the state's disciplinary action policy is a crucial element in the communication process.

1. Purposes of Disciplinary Action

The purposes of disciplinary action are correction of performance problems that employees may have and elimination of unacceptable employee conduct. Many situations can be rectified through coaching and counseling without formal disciplinary action. When disciplinary action is necessary, the supervisor must approach the employee as an adult and emphasize the employee's responsibility in resolving the problem. Disciplinary action should never be a surprise to the recipient.

Before taking disciplinary action, the supervisor always should do the following:

- A. Gather the relevant facts.
- B. Get the employee's side of the story.
- C. Consider any extenuating circumstances.
- D. Determine the applicable policy and, if necessary, seek technical advice.
- E. Thoroughly document the matter.

2. Sources of Material

The proper administration of state disciplinary policy requires knowledge of the policy. Official NC State Personnel Commission policy on disciplinary action, suspension and dismissal, and employee appeals and grievances is contained in Volume 25 of the NC Administrative Code, Subchapter 1J, Section .0600, etc. The policy and guidelines are also contained in the NC State Personnel Manual, Section Number 7. The DHHS has also adopted supplemental disciplinary and grievance policies, procedures and guidelines that are summarized herein.

3. Where You Can Get Help

The department aims to present its policies and procedures in clear, easily understood terms. However, questions will arise as to meaning, intent and application. Questions should first be directed to your division/facility/school human resources manager or employee relations specialist. Division/facility/school human resources staff may contact the employee relations section (919-733-2660) for further technical advice and assistance. When necessary, the employee relations section will secure legal services from the NC Office of the Attorney General.

4. Who Is Covered By These Policies

These policies and procedures apply to department employees who are subject to the State Personnel Act, N.C.G.S. Chapter 126. They do not apply to department

employees in teaching and related educational classes who are subject to the provisions of N.C.G.S. 115C-325. In administering the policy for employees subject to the NC State Personnel Act, it is important to understand that the act exempts certain categories of employees from either specific provisions of the act and/or from various policies, rules and plans established by the NC State Personnel Commission pursuant to the act.

The following categories are presented to aid your understanding and application of the disciplinary and grievance policies and procedures:

5. Employees with Probationary Appointments

- A. New employees must serve a probationary period. The length of the probationary period shall be no less than three (3), nor more than nine (9) months unless interrupted by a period of leave without pay. During the probationary period, the supervisor is responsible for working with the employee in counseling and assisting the employee to achieve a satisfactory performance level. Progress should be reviewed periodically. If it is determined that the employee's performance or conduct indicates that the employee is not suited for the job and cannot be expected to meet acceptable standards, the employee should be separated before the end of the probationary period. If the employee is not separated before the end of the probationary period, the employee automatically receives a permanent appointment.
- B. Supervisors should follow as many of the disciplinary steps as time and the employee's performance allows. However, a probationary employee may be separated without prior discipline for either job performance or conduct reasons.
- C. A former employee with a probationary appointment may file a claim for unemployment benefits. Supervisors must maintain documentation of the probationary employee's performance sufficient to meet the department's obligations and to protect the department's interests under employment security law.
- D. An employee with a probationary appointment has no grievance or appeal rights under law, DHHS policy or NC Office of State Personnel policy, except for appeals alleging employment discrimination or harassment (under N.C.G.S. 126-36), inaccurate or misleading information in a personnel file (N.C.G.S. 126-25), non-selection for a position due to political affiliation or influence (N.C.G.S. 126-14.2 and 14.4), denial of a requested accommodation for a disability and alleged violations of the Fair Labor Standards Act (29 U.S.C. 201 et. seq.), Age Discrimination in Employment Act (29 U.S.C. 621, et. seq.), Family and Medical Leave Act (29 U.S.C. 2601, et.seq.) and Americans with Disabilities Act (42 U.S.C. 1201, et. seq.).
- E. The status of an employee with a trainee appointment is similar to an employee with a probationary appointment for the duration of the traineeship.

The duration of a trainee appointment is outlined in the class specification for the position.

- F. An employee may be dismissed during the trainee period for causes related to job performance or personal conduct. A dismissed trainee employee with a trainee appointment has no appeal rights except for allegations of employment discrimination or harassment, inaccurate or misleading information in the employee's personnel file, denial of a requested accommodation for a disability and alleged violations of the Fair Labor Standards Act, Age Discrimination in Employment Act, Family and Medical Leave Act and Americans with Disabilities Act, unless the employee was already a career employee.

6. **Employees with Permanent Appointments**

An employee who satisfactorily completes a probationary period of three (3) to nine (9) months is granted a permanent appointment. Such employees are deemed to be subject to NC State Personnel Commission disciplinary policies and procedures, but they do not have an absolute right of appeal to the NC State Personnel Commission. A right of appeal to the NC State Personnel Commission, however, does exist when the appeal alleges employment discrimination or harassment, inaccurate or misleading information in the employee's personnel file, denial of a requested accommodation for a disability and violations of the Fair Labor Standard Act, Age Discrimination in Employment Act, Family and Medical Leave Act and Americans with Disabilities Act.

An employee with a permanent appointment has all appeal rights as specified in the DHHS employee grievance policy.

7. **Career Employees**

A career employee is subject to all NC State Personnel Commission disciplinary and grievance policies and procedures and enjoys all appeal rights under state law and policy and DHHS policy, including appeal (although not necessarily direct appeal) to the NC State Personnel Commission. A career employee is an employee who:

- A. Is in a permanent position appointment; and
- B. Has been continuously employed by the state or a local entity in a position subject to the NC State Personnel Act for the immediate 24 preceding months.

8. **Exempt Employees**

DHHS and NC State Personnel Commission disciplinary and grievance policies and procedures do not apply to employees in positions that are exempt from the NC State Personnel Act by specified provisions of N.C.G.S. 126-5, except as provided under N.C.G.S. 126-5 (c).

9. **Just Cause**

Any employee, regardless of occupation, position, or profession, may be warned, demoted, suspended, or dismissed by the appointing authority. Such actions may be taken against career employees and employees with a permanent appointment only for just cause. The degree and type of action taken shall be based upon the sound and considered judgment of the appointing authority in accordance with the provisions of state personnel policy.

10. **Bases for Discipline**

There are two (2) bases for the discipline and/or dismissal of employees under the statutory standard of just cause as set out in G.S. 126-35. These two (2) bases are:

- A. Discipline or dismissal imposed on the basis of unsatisfactory job performance, including grossly inefficient job performance; and
- B. Discipline or dismissal imposed on the basis of unacceptable personal conduct.

Either unsatisfactory job performance or unacceptable personal conduct constitutes just cause for discipline or dismissal. The categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case.

11. **Performance**

The term “unsatisfactory job performance” means work-related performance that fails to satisfactorily meet job requirements as specified in the job description, work plan, or as directed by management of the work unit or division/facility/school.

The term “grossly inefficient job performance” means a type of unsatisfactory job performance that results in:

- A. The creation of the potential for death or serious bodily injury to one (1) or more employees or to members of the public or to one (1) or more persons over whom the offending employee has responsibility; or
- B. The loss of or damage to state property or funds that seriously impact the state and/or work unit.

12. **Examples of Unsatisfactory Job Performance**

- A. Failure to maintain a filing system after having been instructed in its operation;
- B. Failure to prepare written reports free of factual errors and grammatical mistakes;
- C. Failure to maintain control over patients, clients, residents, students, etc.

- D. Failure to complete work in a timely manner;
- E. Failure to perform assigned tasks in a satisfactory manner;
- F. Failure to maintain harmonious working relationships with co-workers;
- G. Poor work quality;
- H. Poor judgment;
- I. Allowing patients, clients, residents, etc. to escape from custody (grossly inefficient job performance); or
- J. Accounting errors that result in substantial loss of state funds (grossly inefficient job performance).

13. **Conduct** - The term unacceptable personal conduct is defined as:

- A. Conduct for which no reasonable person should expect to receive prior warnings;
- B. Job-related conduct which constitutes a violation of state or federal law;
- C. Conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the state;
- D. The willful violation of known or written work rules;
- E. Conduct unbecoming a state employee that is detrimental to state service;
- F. The abuse of clients, patients, students, or persons over whom the employee has charge or to whom the employee has a responsibility, or an animal owned by the state;
- G. Absence from work after all authorized leave credits and benefits have been exhausted; or
- H. Falsification of a state application or other employment documentation.

14. **Examples of Unacceptable Personal Conduct**

- A. Insubordination (defined as willful failure or refusal to carry out a reasonable order from an authorized supervisor);
- B. Violation of a criminal statute on the premises or in conjunction with work which adversely affects the employee's ability to perform assigned duties such as using or selling illegal drugs at the work site;
- C. Misuse of state property such as excessive use of state equipment for a non-state purpose, and willful or reckless abuse of state equipment, state vehicles, or state monies, such as illegal use of telephone, unauthorized use of credit card and reckless driving in a state vehicle;
- D. Violation of a criminal statute not on premises but where conduct adversely impacts ability to do work such as conviction of a social worker for child abuse and conviction of a courier driver for DWI;
- E. Patient, client, resident, and student abuse and neglect as defined by agency policy;
- F. Workplace harassment as defined by law and state personnel and department policy;
- G. Unauthorized practice of professional services;

- H. Intoxication or drug impairment while at work;
- I. Willful disclosure of confidential information;
- J. Fighting or instigating a fight in the workplace;
- K. Excessive use of abusive or vulgar language in the workplace;
- L. Conflict of interest or self-dealing;
- M. Failure to follow known call-in policy or to report for work as scheduled;
- N. Smoking in a non-smoking area after having been warned not to do so;
- O. Willful failure to obtain approval before engaging in secondary employment;
- P. Failure to report abuse or neglect;
- Q. Willful or habitual violation of safety, health, or security rules or regulations;
- R. Failure to follow procedures for signing out equipment;
- S. Sleeping on the job;
- T. Willful unauthorized release of individually identifiable health information;
- U. Intentional disruption in the workplace; or
- V. Falsification of documents.

15. False and Misleading Information on Employment Application

N.C.G.S. 126-30 provides, in relevant part, that "any employee who knowingly and willfully discloses false or misleading information, or conceals dishonorable military service; or conceals prior employment history or other requested information, either of which are significantly related to job responsibilities on an application for state employment may be subjected to disciplinary action up to and including immediate dismissal from employment." Such actions are considered personal conduct violations under state disciplinary policy.

16. Falsification of Employment Application

When credential or work history falsification is discovered after employment by the state, disciplinary action shall be administered as follows:

- A. If an employee was determined to be qualified and was selected for a position based upon falsified work experience, education, registration, licensure or certification information that was a requirement for the position, the employee must be dismissed.
- B. In all other cases of post-hiring discovery of false or misleading information, disciplinary action will be taken, but the severity of the disciplinary action shall be at the discretion of the division/facility/school head.

The division/facility/school head's decision, while discretionary, should consider: sensitivity of the division's/facility's/school's mission; sensitivity of the employee's position; effect of the false information on the hiring decision; advantage gained by the employee over other applicants; effect of the false information on the starting salary; and the advantage gained by the employee in subsequent promotion and salary increases. Job performance shall not be considered in such cases, nor can decisions be

made on the basis of race, creed, color, religion, national origin, sex, age, handicapping condition or political affiliation.

Providing false information on an employment application or concealing information shall be considered unacceptable personal conduct.

17. Failure to Maintain Required Credentials

By statute, regulation and/or administrative rule, some duties assigned to positions in the state service may be performed only by persons who are duly licensed, registered or certified as required by the relevant law, rule, or provision. All such requirements and restrictions should be specified in the statement of essential qualifications or recruitment standards for position classifications established by the State Personnel Commission. Employees in such classifications are responsible for obtaining and maintaining current, valid credentials as required by law, rule, or regulation. Failure to obtain or maintain the legally required credentials constitutes a basis for immediate dismissal without prior warning consistent with dismissal for unacceptable personal conduct or grossly inefficient job performance. When an employee in such a position is no longer licensed, etc., management has one of two (2) options; the employee may be retained, but in a position which does not require licensure, etc. or, management may terminate the employee.

18. Internal Investigations/Refusal to Cooperate

An employee's refusal to cooperate in a reasonable, administrative investigation will be considered a personal conduct issue and may result in disciplinary action, including dismissal.

Some investigations may involve a search of the employee or of state property temporarily assigned to the employee; a requirement to take a breathalyzer or similar test; or a requirement to provide a urine sample. Any such search or test shall be conducted in accordance with department policy and procedures.

19. Performance or Conduct

There are some actions or behaviors that fall into a gray area between job performance and personal conduct and could easily be considered in either category. The division/facility/school human resources office can be of assistance in categorizing an action/behavior as job performance or personal conduct. The division/facility/school human resources office may choose to seek assistance from the department's employee relations section. Regardless of how the determination is made, identification of an action/behavior as either job performance or personal conduct is basic to applying corrective disciplinary procedure.

20. **Performance Dismissals**

In order to be dismissed for a current incident of unsatisfactory job performance, an employee must have received at least two (2) active disciplinary actions; one (1) or more written warnings followed by another written warning or other disciplinary action which notifies the employee that failure to make the required performance improvements may result in dismissal. Dismissal of an employee for job performance without the two (2) required actions may result in the employee's reinstatement, as well as awards of back pay and attorney's fees. Successive disciplinary actions need not concern the same type of unsatisfactory performance. Actions for unacceptable personal conduct may be included in the two (2) active actions that are required prior to a dismissal for unsatisfactory job performance.

21. **Written Warnings**

Warnings are intended to bring about a permanent improvement in job performance. Should the required improvement later deteriorate, or other inadequacies occur, and there are one (1) or more active warnings in the employee's personnel file, then further disciplinary action may be considered. The following shall be the procedure for issuing written warnings to department employees:

- A. Tell the employee that the employee is being issued a written warning and not a non-disciplinary action such as counseling.
- B. Tell the employee the specific issues that are the basis for the warning.
- C. Tell the employee what specific improvements or corrections must be made to address the issues.
- D. Tell the employee the time frame for making the required improvements or corrections.
- E. Tell the employee the consequences for failing to make the required improvements or corrections.
- F. All of the above information shall be included in the warning itself along with the employee's appeal rights.
- A. A copy of the warning shall be provided to the employee in such form as to provide certification of the date it is received by the employee (either personal delivery with signature by either the recipient or deliverer acknowledging date of receipt, or certified mail-return receipt requested). Do not use other means of delivery such as UPS, Federal Express, etc.

Reference may be made in this warning to earlier active disciplinary actions.

A written warning is grievable under DHHS policy to Step 2 of the grievance process. It is not appealable to Step 3 or to the NC State Personnel Commission.

Grievance Rights: Inform the employee that the grievance must be submitted in writing and received by the employee's immediate supervisor and the human

resources office within 15 calendar days from the date of receipt of the written warning. Give the employee a copy of the DHHS Employee Grievance Policy.

If possible, have the employee acknowledge receipt of the warning in writing. If the employee refuses, document the date the warning was received and the fact that the employee refused to sign acknowledging receipt. Sign and date the document.

22. **Timing**

How much time should be allowed for an employee to demonstrate improved performance will vary from employee to employee. Absent a specified time frame, 60 days is the time frame allowed for unsatisfactory job performance, and immediate correction is required for grossly inefficient job performance or unacceptable personal conduct. Any disciplinary action (other than dismissal) issued to an employee will remain active until:

- A. The employee's supervisor or manager notes in the employee's personnel file that the reason for the action has been resolved or corrected;
- B. The purpose of a performance based action has been achieved as evidenced in the employee's latest overall performance review following the action by an overall performance rating of good or better and a rating of good or better in the area of performance cited in the action; or
- C. Eighteen months have passed since the action, the employee does not have another active warning or other disciplinary action which occurred during the 18 months and the employee's supervisor or manager has not issued to the employee notice of extension of the action prior to the expiration of the 18 months.

23. **Mailing**

Occasionally, it may be necessary to mail a warning (or suspension, demotion, or dismissal) letter to an employee. Management must make a reasonable effort to inform the employee. Such letters should be mailed certified (return receipt requested) to the last known address of the employee. Do not use other delivery services such as UPS, Federal Express, etc.

24. **Consistency**

In the disciplinary process, the similarity of treatment of persons in similar situations is an important consideration. Inconsistent use of discipline in similar situations may lead to poor morale, grievances and lawsuits.

25. **Removal of Warnings**

While some agencies have a policy or practice of removing warnings from the personnel file after a certain period of time, others do not. In the absence of an agency policy, warnings may be removed at any time by supervisors or higher levels of management. The current supervisor may remove warnings placed in a personnel file by a previous supervisor.

26. **Conduct Discipline**

Employees may be dismissed, demoted, placed on disciplinary suspension without pay or warned on the basis of unacceptable personal conduct. Discipline may be imposed, as a result of unacceptable conduct, up to and including dismissal without any prior disciplinary action against the employee. Written warnings given for unacceptable personal conduct may not be used to shorten the successive disciplinary action process required to dismiss an employee on the basis of unsatisfactory job performance (two (2) prior active actions are still required).

Generally, the form of discipline most often used in the personal conduct process is dismissal. This is because personal conduct discipline, unlike job performance discipline, is usually for more serious offenses for which corrective action is not required.

27. **Placement on Investigation**

Investigation status is used to temporarily remove an employee from work status. Placement on investigation shall be with pay and does not constitute a disciplinary action and is, therefore, not grievable. Management must notify an employee in writing of the reasons for investigatory placement not later than the second scheduled work day after the beginning of the placement. An investigatory placement with pay may last no longer than 30 calendar days without written approval of extension by the division/facility/school director and the state personnel director. When an extension beyond the 30-day period is required, the employee must be notified in writing of the extension, the length of the extension and the specific reasons for the extension. If an extension is anticipated, contact the employee relations section at least a week in advance, so that a request for extension from the state personnel director can be made prior to the expiration of the initial placement. If no action has been taken by the end of the 30-day period and no further extension has been granted, management must either take appropriate disciplinary action on the basis of the findings upon investigation or return the employee to active work status. Under no circumstances is it permissible to use placement on investigation status for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee. It is permissible to place an employee in investigative status with pay only under the following circumstances:

- A. To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
- B. To provide time within which to schedule and conduct a pre-disciplinary conference; or
- C. To avoid disruption of the work place and/or to protect the safety of persons or property.

28. Pre-Disciplinary Conference

- A. The supervisor recommending disciplinary suspension without pay, demotion or dismissal shall discuss the recommendation with appropriate division or facility management and receive management's authorization to hold a pre-disciplinary conference with the employee. The person conducting the pre-disciplinary conference must have the authority to recommend or to decide what, if any, disciplinary action shall be imposed on the employee. The purpose of the pre-disciplinary conference is to review the recommendation with the affected employee, and to listen to and consider information put forth by the employee in order to insure that the decision is not based on misinformation or mistake.
- B. The supervisor or designated management representative shall schedule and conduct a pre-disciplinary conference with the employee. Advance written notice of the pre-disciplinary conference must be given to the employee of the time, location, and the issue for which the discipline has been recommended. The amount of advance notice shall be as much as is practical under the circumstances. If possible, at least a one (1) day advance notice should be given. A second management representative and a security person may be present at management's discretion. No attorneys representing either side may attend the conference. In the conference the supervisor shall give the employee oral or written notice of the recommendation for disciplinary action, including specific reasons for the proposed action and a summary of the information supporting the recommendation. The employee shall have an opportunity to respond to the proposed action, to refute information supporting the recommended action and to offer information or arguments in support of the employee's position. Every effort shall be made by the supervisor or the designated management representative to assure that the employee has had a full opportunity to set forth any information in opposition to the action prior to the end of the conference. This opportunity does not include the right to present witnesses.
- C. The occurrence of a pre-disciplinary conference shall be documented, showing the date of the conference and the names of the participants. This can be in the form of a note or memorandum to the employee's personnel file and/or a reference in the disciplinary letter.
- D. In the unusual case where the employee is unavailable for a pre-disciplinary conference, the purpose of the conference can be satisfied by telephone or

through written correspondence, as discussed with the division/facility/school employee relations specialist or human resources manager.

29. Disciplinary Suspension

- A. An employee may be suspended without pay for unsatisfactory job performance after the receipt of at least one (1) prior active disciplinary action, or for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance. For employees subject to Fair Labor Standards Act overtime provisions, the length of disciplinary suspensions without pay can be from one (1) work day up to two (2) full work weeks at the discretion of management. For employees not subject to Fair Labor Standards Act overtime provisions, the length of disciplinary suspensions without pay shall be either one (1) full work week or two (2) full work weeks, at the discretion of management.
- B. Prior to placing an employee on disciplinary suspension without pay, a management representative shall conduct a pre-disciplinary conference with the employee (see pre-disciplinary conference hereinbefore).
- C. An employee who is being placed on disciplinary suspension without pay must be furnished a written notice setting forth the specific reasons for the suspension and the employee's appeal rights (that the employee has 15 calendar days from the date of receipt of the notice to file a written appeal with the employee's immediate supervisor and human resources office). The notice shall be issued in a fashion that provides a record of the date it is received by the employee. If the notice is provided other than in person, use certified mail (return receipt requested) addressed to the employee's last known address. Do not use other delivery services such as UPS, Federal Express, etc.

30. Demotion

Any employee may be demoted as a disciplinary measure. Demotion may be based on either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct.

- A. Job Performance – An employee may be demoted for unsatisfactory performance after the employee has received at least one (1) prior active disciplinary action. An employee may be demoted for grossly inefficient job performance without any prior action.
- B. Personal Conduct – An employee may be demoted for unacceptable personal conduct without any prior action.
- C. An employee who is demoted must receive written notice of the specific reasons for the demotion, as well as notice of the employee's appeal rights (the employee has 15 calendar days from the date of receipt of the written notice to file a written appeal with the immediate supervisor and human resource office). The notice shall be issued in a fashion that provides a record of the date it is received by the

employee. If the notice is provided other than in person, use certified mail (return receipt requested) addressed to the last known address. Do not use other delivery services such as UPS, Federal Express, etc.

Disciplinary demotions may be accomplished in several ways. The employee may be demoted to a lower pay grade with or without a loss in pay, except that no salary may exceed the maximum rate of the salary range, or the employee's salary may be reduced within the same pay grade. In no event shall an employee's salary rate be reduced to less than the minimum rate or the special entry rate for the applicable pay grade. Prior to the decision to demote an employee for disciplinary reasons, a management representative must conduct a pre-disciplinary conference with the employee (see pre-disciplinary conference hereinbefore).

31. **Dismissal**

An employee may be dismissed for unsatisfactory job performance with two prior active disciplinary actions or for grossly inefficient job performance or unacceptable personal conduct without any prior action required. Before an employee with a permanent appointment may be dismissed, the employee shall be afforded a pre-disciplinary conference (see pre-disciplinary conference hereinbefore) and furnished a dismissal letter as provided below.

32. **Dismissal Letter**

- A. Following the conference, management shall review and consider the response of the employee and reach a decision on the proposed action. If management's decision is to discipline the employee, a written letter of discipline containing the specific reasons for the action, the effective date of the action and the employee's appeal rights shall be issued to the employee in person or by certified mail, return receipt requested, to the last known address of the employee. Do not use other delivery services, such as UPS, Federal Express, etc. The letter of dismissal should not be prepared prior to the pre-disciplinary conference. To minimize the risk of discipline upon erroneous information, and to allow time following the conference for management to review all necessary information, the decision to discipline shall not be communicated to the employee prior to the beginning of the next business day following the conclusion of the pre-disciplinary conference or after the end of the second business day following the completion of the conference.
- B. The disciplinary letter shall specify that an appeal must be received by the division/facility human resources manager within 15 calendar days of the employee's receipt of the letter; and shall include a copy of the DHHS Employee Grievance Policy as an enclosure or attachment.
- C. There may be legal consequences in failing to apply these procedures. Specifically, a disciplinary letter without specific reasons for the discipline is

ineffective. Further, failure to provide the appeal rights in a letter of discipline may extend the time the employee has to appeal.

33. Resignation in Lieu of Dismissal

There are times when an employee may want to resign rather than be dismissed. In most cases, it is a better practice for management not to initiate a discussion of this option, because if the employee voluntarily resigns without being influenced to do so by management, the matter is not grievable. On the other hand, if management gives the employee the “choice” of resigning or being dismissed, such a resignation is likely to be considered “forced” and, therefore, grievable.

34. Effective Date of Dismissal

Management shall determine the effective date of a dismissal for unsatisfactory job performance. Such dismissals are usually effective immediately upon notice to the employee. A career employee who is to be dismissed for unsatisfactory job performance may at management's discretion be given up to two (2) weeks working notice of dismissal. Instead of providing up to two (2) weeks' working notice and at the discretion of management, a career employee may be given up to two (2) weeks' pay in lieu of the working notice. Such working notice or pay in lieu of notice is applicable only to dismissals for unsatisfactory job performance. The effective date of the dismissal shall not be earlier than the date of the letter of dismissal nor more than 14 calendar days after the date of the letter.

35. Reporting

The department requires that all dismissals, demotions, and disciplinary suspensions be reported in advance to the DHHS Division of Human Resources Employee Relations Section.

36. Disciplinary Actions and Performance Management System

The NC State Personnel Manual and DHHS Department policy provide that a disciplinary action issued during an employee's performance management system work cycle shall be considered in rating the employee's overall work performance during the cycle. An employee's disciplinary record and overall performance rating during a particular cycle should be consistent. Any disciplinary action taken for a performance deficiency shall be documented as a special review to incorporate into the performance management system rating process.

37. Right to Appeal

An employee with a permanent appointment who has received a disciplinary action shall have 15 calendar days from the date of the employee's receipt of written notice

of such action to file an appeal under the department grievance procedure. Grievances which do not allege unlawful discrimination or which involve a disciplinary action allegedly resulting from unlawful workplace harassment must follow the department grievance procedure. Complaints alleging unlawful workplace harassment but not a resulting disciplinary action shall be filed with the division/facility/school human resources office no later than 30 calendar days following the alleged act(s) of harassment. An appeal of a final department decision regarding a suspension, demotion, or dismissal may be filed by a career employee with the Office of Administrative Hearings (OAH), 6714 Mail Service Center, Raleigh NC 27699-6714, within 30 calendar days of receipt of the final department decision. Grievances of disciplinary actions which allege unlawful discrimination may, at the election of the employee, proceed through the department's procedure or proceed directly to the State Personnel Commission for a hearing by the OAH and a decision by the commission. A direct appeal to the State Personnel Commission (such appeal involving a contested case hearing by the OAH and a recommended decision by that agency to the Commission) must be filed in the OAH within 30 calendar days of receipt of notice of the act complained of. Grievances, complaints, and appeals filed in an untimely manner must be dismissed.

38. Employee Grievance Policy

The DHHS Employee Grievance Policy has been approved by the NC State Personnel Commission and is contained in DHHS.

39. The Employee Assistance Program

The Employee Assistance Program (EAP) provides the supervisor and the employee an additional tool to use in addressing and correcting performance inadequacies and conduct problems. The EAP is neither an alternative to, nor a substitute for the corrective disciplinary process; rather, it is an additional route that may be used. At some point in the disciplinary process, the supervisor can inform the employee of the EAP and the possibility that use of this program may help the employee in making the necessary performance or conduct improvements. Both the supervisor and the employee should be aware of the following concerning the EAP:

- A. The EAP is confidential. Supervisors and managers are only informed that an employee has enrolled in the EAP. No progress reports or other information are shared with the supervisor.
- B. The EAP, and the employee's use of it, is independent of the disciplinary procedure. Use of the EAP does not necessarily stop the progress of the disciplinary and dismissal procedure.

- C. The EAP is designed to address personal problems which may be causing performance or conduct problems at work. The EAP cannot address lack of competence or ability.

For questions or clarification on any of the information contained in this policy, please contact [Human Resources](#). For general questions about department-wide policies and procedures, contact the [DHHS Policy Coordinator](#).