

FSU-4.070 Guidelines for Disciplinary Action.

(1) Scope. This rule applies to all University Support Personnel System (USPS) employees of the University with regular status and Administrative and Professional (A&P) employees. The provisions of this rule are subject to applicable provisions of collective bargaining agreements. The disciplining of an employee is considered to be a very serious action that is undertaken with care, objectivity and full consideration for the rights and interest of both the employee and the University. Discipline shall be administered in a judicious manner that assures equitable treatment for all employees included in the University Support Personnel System and A&P Pay Plan.

(2) Progressive and Cumulative Discipline. Disciplinary actions described by this rule are based on the concepts of progressive and cumulative discipline. Progressive discipline is based on the idea that employees have been informed of the performance and behavior expected of them. As offenses occur appropriate discipline will be administered in a progressive manner. Penalties shall be appropriate to the circumstances of the offense. In prescribing disciplinary actions it is recognized that some offenses are so serious that suspension or dismissal may be warranted on the first occurrence even though the employee has no prior record of having been disciplined. All offenses can have a cumulative effect and offenses need not be identical to impose a penalty more severe than prescribed for a similar offense.

(3) Delegated Authority. The appropriate disciplinary action may be taken only by a supervisor who has been delegated authority from the University President. The level of delegation varies with the severity of the particular disciplinary action and is identified in the following table.

Disciplinary Action	Authority Delegated to the
Oral Reprimand	Immediate Supervisor
Written Reprimand	Immediate Supervisor with approval of next higher level Supervisor
Demotion and/or Reduction in Pay	Vice President or Designee
Suspension	Vice President or Designee
Dismissal	Vice President or Designee

(4) Types of Disciplinary Action. The type of disciplinary action taken will depend upon the gravity of the employee's offense and the type of disciplinary action that has been taken in the past for similar offenses. Except in extraordinary situations, prior to the dismissal or suspension without pay of a regular employee, the University shall give the employee written notice as required in the University's Predetermination Procedures (7/98). The disciplinary proceedings shall proceed as set out in the University's Predetermination Procedures which are hereby adopted by reference. The following types of disciplinary actions may be imposed.

(a) Oral Reprimand. This is the least severe disciplinary action. The purpose of this action is to bring a problem to the attention of an employee. Where practical, the reprimand will be delivered in private and the supervisor will clearly state that the employee is receiving an oral reprimand. The supervisor will indicate the nature of the improper behavior, cite the work standard governing the situation and explain precisely what corrective action is expected. The employee shall also be informed that future similar behavior may result in more serious disciplinary action consistent with the guidelines herein. Two copies of a completed Oral Reprimand Record will document the meeting with the

original filed in the employee's official personnel file and a copy given to the employee. The Oral Reprimand Record shall include the date, time and location at which the oral reprimand was delivered and indicate the nature of the reprimand.

(b) Written reprimand. This type of disciplinary action is issued for a more serious offense than one that warrants an oral reprimand. The purpose of a written reprimand is to help an employee recognize errors made and to correct them. The contents of the written reprimand will be concise and to the point. It will specifically state that the employee is receiving an official written reprimand, cite the specific performance or conduct standard that was violated, briefly note the specific incident prompting the discipline, indicate the corrective action expected and state that future violations may result in more severe disciplinary action consistent with the guidelines herein. The written reprimand shall be signed by the immediate supervisor and approved by the next higher level supervisor, with a signature line for the employee to acknowledge receipt. The completed written reprimand will be delivered to the employee in private, where practical. A copy of the completed reprimand shall be filed in the employee's official personnel file and a copy given to the employee.

(c) Demotion and/or Reduction in Base Pay. The disciplining authority shall consult with the appropriate Vice President and Human Resources prior to taking this type of action. The employee shall be provided written notice by personal delivery or certified mail, return receipt requested, prior to the action being taken with notification of the employee's appeal or negotiated contract provision rights and this notice shall become a part of the employee's official personnel record.

(d) Suspension and Dismissal. These actions are the most severe form of disciplinary action that may result from the commission of one offense or as the result of cumulative offenses. The disciplining authority shall consult with the appropriate Vice President and Human Resources prior to initiating these actions.

1. Extraordinary Situations. When the retention of an employee is likely to result in damage to property or injury to any individual or would be detrimental to the best interest of the University, such employee will be suspended without pay or dismissed immediately, provided that written notice of such action is furnished to the employee. These procedures shall be invoked only when an extraordinary situation exists and shall comply with the provisions of the University's Predetermination Procedures.

2. Abuse of Alcohol. When an employee knows or suspects that he/she may have a drinking problem or be abusing alcohol, he/she should take advantage of the University's many available resources to aid in rehabilitation, including the Employee Assistance Program, the University Counseling Center and the Health Promotion Department of University Health Services. Similarly, when a supervisor knows or suspects that an employee under his/her supervision may have a drinking problem or be abusing alcohol, the supervisor should refer the employee to any or all of the available resources. ~~When an employee drinks alcohol to the extent that it affects work performance the employee is a problem drinker. The employee shall be treated in accordance with the State Policy on Alcoholism as adopted by the Administration Commission, (7-17-73) which is hereby adopted by reference.~~

3. Disciplinary Action. Included below are standards for the administration of disciplinary actions for various types of offenses. The disciplinary actions for the listed offenses have been established to assure that employees who commit offenses receive similar treatment in like circumstances. The suspension of an exempt employee shall be for no less

than one workweek, unless required for a major safety violation. Within each level of occurrence a range may be provided to allow the supervisor flexibility in selecting appropriate discipline in order to take into consideration mitigating or aggravating circumstances.

(a) Absence Without Authorized Leave. This includes:

1. Failure to obtain approval prior to any absence from work, except in the case of a proven emergency where the employee must be absent prior to receiving approval from the proper authority, or failure to notify or call in on the first day of an absence.

2. Obtaining leave based upon a misrepresentation or falsification.

a. First occurrence: written reprimand to dismissal.

b. Second occurrence: suspension to dismissal.

c. Third occurrence: dismissal.

An employee who is absent without approved leave for three or more consecutive workdays shall be considered to have abandoned the position.

(b) Assault or Fighting. Physically assaulting or fighting with another person.

1. First occurrence: written reprimand to dismissal.

2. Second occurrence: suspension to dismissal.

3. Third occurrence: dismissal.

(c) Conduct Unbecoming a Public Employee. Conduct whether on or off the job, that adversely affects the employee's ability to continue to perform his or her current job, or that adversely affects the agency's ability to carry out its assigned mission.

1. First occurrence: written reprimand to dismissal.

2. Second occurrence: suspension to dismissal.

3. Third occurrence: dismissal.

(d) Conviction of a Crime. The conviction of an employee for a crime where such conviction adversely affects the employee's ability to perform his or her job, or adversely affects the agency's ability to carry out its assigned mission.

1. First occurrence: written reprimand to dismissal.

2. Second occurrence: suspension to dismissal.

3. Third occurrence: dismissal.

(e) Drinking on the Job or Reporting to Work Under the Influence of Alcohol.

1. Drinking any alcoholic beverage on the job is prohibited.

a. First occurrence: suspension to dismissal.

b. Second occurrence: dismissal.

2. Reporting to work under the influence of alcohol is prohibited.

a. First occurrence: written reprimand to suspension.

b. Second occurrence: suspension to dismissal.

c. Third occurrence: dismissal.

3. Rehabilitation is the University's preferred goal for an employee who has a drinking problem or is abusing alcohol, and reasonable efforts will be made to refer such an employee to the University's many available resources and to assist and support the employee. However, an employee shall be subject to disciplinary action, as outlined herein, when the use of alcohol adversely affects job performance or the employee's behavior otherwise warrants disciplinary action. The State Policy on Alcoholism adopted by the Administration Commission (7-17-73) provides that when the drinking of an employee affects the employee's work performance the employee is a problem drinker. The problem drinker, once identified, will be counseled and encouraged to secure appropriate medical or other professional help. The problem drinker shall not be dismissed until after he or she has had an opportunity to seek treatment. Discipline shall be administered if the problem drinker:

- a. ~~Refuses to recognize his or her condition and fails to seek help; or~~
- b. ~~Fails to complete the program of treatment; or~~
- c. ~~Treatment is unsuccessful.~~

4. ~~If public relations or working conditions are obviously and adversely affected by the problem drinker's behavior, the employee's removal from the job will be accomplished by placing the employee on compulsory disability leave.~~

(f) Reporting to Work Under the Influence of Illegal Drugs or Illegal Use of Drugs (Controlled Substances).

1. The illegal use of drugs on the job is prohibited.
 - a. First occurrence: suspension to dismissal.
 - b. Second occurrence: dismissal.
2. Reporting to work under the influence of any illegal drug or testing positive on a drug test is prohibited.
 - a. First occurrence: written reprimand to suspension.
 - b. Second occurrence: suspension to dismissal.
 - c. Third occurrence: dismissal.

(g) Possession, Sale, Distribution of Alcoholic Beverages or Illegal Drugs (Controlled Substances). The possession, sale or distribution of alcoholic beverages or illegal drugs on state property or on the job is prohibited.

1. First occurrence: suspension to dismissal.
2. Second occurrence: dismissal.

(h) Excessive Absences. An attendance record of recurring absences, even though all or a majority of the absences were necessary and excused. This also includes a pattern of absences by the employees, such as but not limited to, consistent absences on the day preceding or following the employee's regular days off or absence on the same day of each month.

1. First occurrence: oral to written reprimand.
2. Second occurrence: written reprimand to suspension.
3. Third occurrence: suspension to dismissal.
4. Fourth occurrence: dismissal.

(i) Tardiness. The failure to follow established work schedules. Includes reporting late at the beginning of the work schedule, leaving early or returning late from lunch or breaks, or leaving work early at the end of the work schedule, all without approval.

1. First occurrence: oral reprimand.
2. Second occurrence: written reprimand.
3. Third occurrence: suspension.
4. Fourth occurrence: dismissal.

(j) Falsification of Records. Includes misrepresentation, falsification or omission of any fact, whether verbal or written, on such records as, but not limited to: time, attendance and leave; employment status; employment application; travel vouchers; and work and production.

1. First occurrence: written reprimand to dismissal.
2. Second occurrence: suspension to dismissal.
3. Third occurrence: dismissal.

(k) Horseplay. Actions whether intended or unintended to be mischievous or prankish which disrupt or have the effect of disrupting the work of the participants or other employees or have the potential for personal injury to other employees or oneself.

1. First occurrence: oral reprimand.
2. Second occurrence: written reprimand.
3. Third occurrence: suspension.
4. Fourth occurrence: dismissal.

(l) Improper or Careless Use or Operation of State Property or Equipment. The improper or careless use of state property or equipment including abuse or misuse. This includes failure to observe the established speed limit while driving a state vehicle.

1. First occurrence: written reprimand.
2. Second occurrence: suspension.
3. Third occurrence: dismissal.

(m) Unsatisfactory Work Performance Including Continuing Inefficiency, Inability to Perform Assigned Duties and/or Substandard Performance of Assigned Duties. The failure to satisfactorily meet the minimum performance standards that specifically relate to the employee's duties and responsibilities. An employee's failure to meet established work standards may be addressed through the performance evaluation process and/or the use of progressive discipline.

1. First occurrence: oral to written reprimand.
2. Second occurrence: written reprimand to suspension.
3. Third occurrence: suspension to dismissal.
4. Fourth occurrence: dismissal.

In the case of Inability to Perform Assigned Duties due to medical reasons, the University will proceed with termination notwithstanding the above schedule of progressive discipline.

(n) Insubordination. A deliberate and inexcusable refusal to obey a reasonable order that relates to an employee's job function. An unwillingness to submit to authority. Includes both an expressed refusal to obey a proper order and a deliberate failure to carry out an order.

1. First occurrence: written reprimand to dismissal.
2. Second occurrence: suspension to dismissal.
3. Third occurrence: dismissal.

(o) Leaving Work Area or Duty Assignment Without Authorization. Absence from the work area or duty assignment during a work period without permission of the appropriate supervisor. Includes leaving a work area for lunch or a break, or at the end of a work schedule without proper relief where such relief or permission is a specific requirement.

1. First occurrence: written reprimand.
2. Second occurrence: suspension.
3. Third occurrence: dismissal.

(p) Loafing. Continued and deliberate idleness during work periods that results in the employee's failure to perform assigned tasks. This includes, but is not limited to, deliberately wasting time, engaging in idle talk or gossip or conducting personal business during work periods.

1. First occurrence: oral reprimand.
2. Second occurrence: written reprimand.
3. Third occurrence: suspension.
4. Fourth occurrence: dismissal.

(q) Negligence. Carelessness in omission of, or inattention to the performance of assigned duties and responsibilities. Negligence is synonymous with carelessness and signifies lack of care, caution, attention, diligence or discretion.

1. First occurrence: written reprimand to dismissal.
2. Second occurrence: suspension to dismissal.
3. Third occurrence: dismissal.

(r) Sabotage. Participation in an act of destruction or attempted destruction of state property or equipment, or an act or attempted act that obstructs or has the potential to obstruct productivity, or normal functions or operations of the department or the University.

1. First occurrence: suspension to dismissal.
2. Second occurrence: dismissal.

(s) Sexual Harassment. Violation of The Florida State University Policy on Sexual Harassment, Rule FSU-6.013, F.A.C.

1. First occurrence: written reprimand to dismissal.
2. Second occurrence: suspension to dismissal.

3. Third occurrence: dismissal.

(t) Sleeping on Duty. The failure of an employee to remain awake while on duty during working periods.

1. First occurrence: written reprimand.

2. Second occurrence: suspension.

3. Third occurrence: dismissal.

(u) Strike or Concerted Activity. Instigating or supporting in any manner a strike. A strike is defined as: The concerted failure of employees to report for duty; the concerted absence of employees from their positions; the concerted stoppage of work by employees; the concerted submission of resignations by employees; the concerted abstinence in whole or in part by any group of employees from the full and faithful performance of the duties of employment with a public employer for the purpose of inducing, influencing, condoning or coercing a change in the terms and conditions of employment or the rights, privileges or obligations of public employment; participating in a deliberate and concerted course of conduct that adversely affects the services of the public employer; the concerted failure of employees to report for work after the expiration of a collective bargaining agreement; and picketing in furtherance of a work stoppage. The term "strike" shall also mean any overt preparation including but not limited to: the establishment of strike funds with regard to the above listed activities.

First occurrence: dismissal.

(v) Threatening or Abusive Language. The use of language that is threatening or abusive, whether directed towards a supervisor, another employee or any other person. Includes any offensive language whether or not directed toward anyone in particular regardless of intent.

1. First occurrence: written reprimand to dismissal.

2. Second occurrence: suspension to dismissal.

3. Third occurrence: dismissal.

(w) Unauthorized Solicitation. The unauthorized solicitation by employee of another employee including the distribution of material while either employee is on duty.

1. First occurrence: written reprimand.

2. Second occurrence: suspension.

3. Third occurrence: dismissal.

(x) Unauthorized Taking of Property. The unauthorized taking of any property of the State or another person.

1. First occurrence: suspension to dismissal.

2. Second occurrence: dismissal.

(y) Unauthorized Use of State Property, Equipment or Personnel. The use of any state property, equipment or personnel for any purpose other than official state business.

1. First occurrence: written reprimand to dismissal.

2. Second occurrence: suspension to dismissal.

3. Third occurrence: dismissal.

(z) Violation of Safety Practices. The failure to follow established safety practices. This includes the performance of unsafe acts or failure to wear or use safety equipment including but not limited to safety belts.

1. First occurrence: oral reprimand to suspension.
2. Second occurrence: suspension to dismissal.
3. Third occurrence: dismissal.

(aa) Violation of a Provision of Law or University Rule or Policy. The violation of the provisions of law or agency rules or policies. This may include but is not limited to: failure to obtain approval for outside employment; misuse of position; giving or accepting a bribe; discrimination in employment or illegal campaigning.

First occurrence: oral reprimand to dismissal.

(bb) Failure to Follow Instructions. An employee's failure to follow oral or written instructions from supervisory personnel.

1. First occurrence: oral to written reprimand.
2. Second occurrence: written reprimand to suspension.
3. Third occurrence: suspension to dismissal.
4. Fourth occurrence: dismissal.

(cc) Disruptive Conduct. Behavior that interferes with the employee's work performance or the work performance of others. This may include, but is not limited to: loud, boisterous language; creating a disturbance; throwing objects; slamming doors, or other activities which would have a detrimental effect on the work environment.

1. First occurrence: oral to written reprimand.
2. Second occurrence: written reprimand to suspension.
3. Third occurrence: suspension to dismissal.
4. Fourth occurrence: dismissal.

(dd) Chargeable Crash in a University Vehicle (Applicable to Sworn Law Enforcement Personnel Only)

A chargeable crash is any accident involving a university vehicle resulting in physical damage to the vehicle or to other property or personal injury which could have been charged as a vehicular offense, whether actually charged or not.

A "minor violation" is a chargeable crash, which is caused by slight negligence, or carelessness, which does not have the potential for serious injury. A "more serious clear-cut violation" is a chargeable crash, which is caused by greater negligence, or carelessness, which has the potential for serious injury or damage. An "extreme violation" is a chargeable crash, which is caused by driving in a reckless or irresponsible manner, or with gross disregard for the safety of persons or property or a crash which exhibits willful abuse of authority.

1. Minor Violation

- a. First or second occurrence: counseling [counseling is not considered discipline]
- b. Third occurrence: written reprimand
- c. Fourth occurrence: suspension

- d. Fifth occurrence: Dismissal
2. More Serious Clear-Cut Violation
- a. First occurrence: written reprimand and driver training
 - b. Second occurrence: suspension
 - c. Third occurrence: suspension to dismissal
 - d. Fourth occurrence: dismissal
3. Extreme Violation
- a. First or second occurrence: suspension to dismissal
 - b. Third occurrence: dismissal

(8) Appeal and Grievance Rights. USPS employees with regular status and A&P employees may appeal or grieve any disciplinary action taken against them in accordance with this rule, or any applicable collective bargaining agreement. An employee who resigns from employment shall not have any rights of appeal. Both USPS employees and A&P employees may use the USPS and A&P Complaint Procedure in accordance with the USPS and A&P Complaint Procedure (7/98) and Form (7/98) which is hereby adopted by reference.

(9) USPS and A&P Arbitration Appeal Procedure.

USPS employees who have earned regular status in their current classification and A&P employees shall have the right to appeal to an arbitrator any suspension without pay, dismissal, layoff, demotion, job abandonment, transfer (greater than 50 miles), or reduction in pay, provided that the employee has not signed a statement indicating the action was voluntary. An employee whose position is classified to a lower class shall have the right to appeal only the reduction in pay, if any, which has occurred as a result of the demotion appointment.

(a) Request for Processing.

1. If an employee requests an arbitration, the employee shall, within 14 calendar days after the receipt of notice of the employment action from the University, file with the Director of Human Resources or designee a completed Arbitration Request Form-~~2003~~ 2013 which is hereby incorporated by reference.

2. Failure to file an Arbitration Request Form within the time limits prescribed shall be deemed a waiver of the right to arbitration. In the event of a question regarding timeliness, the date of first receipt by Human Resources shall be determinative.

3. After the Request for Arbitration has been received, the Director of Human Resources or designee will determine whether the request has been filed in accordance with the provisions of this section and shall notify the employee or his/her representative and immediate supervisor of this determination.

4. The Director of Human Resources or designee shall select an arbitrator on a rotational basis from an odd-numbered panel of at least three arbitrators maintained by Human Resources and shall notify the employee or his/her representative of the arbitrator selected. If the parties do not agree on the arbitrator selected, the selection shall be made by alternatively striking names from the panel. The right of first strike shall be determined by a coin toss. The employee will receive notice of the identity of the arbitrator selected and may request disqualification

of the arbitrator based on cause within five calendar days of receipt of the notice. Cause is present when the arbitrator was chosen through corruption, fraud, or other undue means.

5. When an action is both appealable under this rule and grievable under a collective bargaining agreement, the employee shall have the option of using either procedure. The filing of the Arbitration Request Form constitutes a waiver of any rights to review of the matter under an applicable collective bargaining agreement, Chapter 120, F.S., or any other review procedures. If the employee seeks a review of a matter in an alternative forum after requesting arbitration under this rule or fails to appear at the scheduled arbitration hearing, the University shall have no obligation to proceed further.

(b) Fees and Expenses.

1. All fees and expenses for the arbitrator will be paid by the University. However, when an employee is represented by an employee organization, the arbitrator's fees and expenses shall be paid by the party who fails to prevail in the arbitration or evenly split if the award sustains the appeal in part and denies it in part.

2. The party desiring a transcript of the arbitration proceedings shall provide written notice to the other party of its intention to have a transcript of the arbitration made at least one week prior to the date of the arbitration and shall be responsible for scheduling a reporter to record the proceedings. The party desiring the transcript shall be responsible for the appearance fee of the reporter and the cost of obtaining an original transcript. The requesting party shall provide the other party a photocopy of the transcript received from the reporter and deliver the photocopy to the other party within five calendar days after receiving the copy of the transcript from the reporter.

(c) The employee may self represent or be represented. If the employee elects to be represented, the employee must deliver or send to the Director of Human Resources or designee within five working days after filing a Request for Arbitration, a written statement indicating the name, address, telephone number and qualifications of the representative and confirming that the employee as well as the representative will be present during the arbitration hearing, and that the employee agrees to this representation.

(d) If the aggrieved employee participates during working hours in the arbitration, the employee's compensation will not be affected by the time spent at the arbitration hearing. The employee must notify the immediate supervisor seven days in advance of his/her anticipated absence. An employee will not be permitted to prepare the case during working hours.

(e) Hearing.

1. The arbitrator shall hold the hearing in Tallahassee, Florida, unless otherwise agreed by the parties. The hearing shall commence within 30 working days of the arbitrator's acceptance of selection, or as soon thereafter as practicable. Arbitration proceedings shall be conducted in accordance with this rule, supplemented by the current Labor Arbitration Rules published by the American Arbitration Association which are hereby incorporated by reference.

2. The arbitrator may subpoena witnesses and compel the production of documents pertinent to the appeal. All requests for subpoenas must be made to the arbitrator no later than 10 working days prior to the arbitration date and each party is responsible for providing its own witnesses and documents which it wishes to present. The

party requesting a subpoena or the production of documents from the arbitrator shall promptly provide the other party a copy of the request.

3. Within 60 calendar days, the arbitrator shall issue to the University and the employee a written order which may affirm, reverse, or alter the decision of the University.

4. The employee and the University agree that the decision of the arbitrator shall be final and binding on both parties. No judicial review of the arbitration order is available except as provided by Chapter 682, F.S.

(f) Jurisdiction of Arbitrator.

1. The arbitrator shall neither add to, subtract from, modify, or alter the provisions of these rules, University rules and policies or procedures, or an applicable collective bargaining agreement. Arbitration shall be confined solely to the application and/or interpretation of those provisions and limited to the matters in the Request for Arbitration Form submitted for arbitration. No statements of opinion or conclusions not essential to the determination of the matters submitted shall be permitted. The arbitrator shall not review managerial decisions, nor substitute his judgment for that of management, other than to ensure that such actions are in accordance with the applicable procedures under review. In the case of suspension without pay, dismissal, and reduction in pay taken as a disciplinary action, the arbitrator shall determine whether there is just cause for such action.

2. The burden of proof shall be on the employee in layoff, demotion, reduction in pay and transfer actions when not taken as a disciplinary action, and in job abandonment. The burden of proof shall be on the employer in suspension without pay, dismissal, demotion, and reductions in pay when taken as disciplinary actions.

3. The arbitrator's order and award may reinstate an employee, with or without back pay. The back pay award shall not exceed the amount of pay the employee would otherwise have earned at the employee's regular rate of pay and shall not be retroactive to a date earlier than the date of the occurrence of the event giving rise to the action at issue and in no event more than fourteen (14) calendar days prior to initiation of the arbitration request. In no situation will the award exceed the actual loss to the employee or provide attorney fees to either party.

4. Punitive damages are not permitted.

5. The arbitrator may reduce a dismissal to a suspension for such time as the arbitrator may fix, or reduce the period of suspension, which order shall be binding on the University and employee concerned subject to the jurisdiction of the arbitrator.

6. The arbitrator may reduce a dismissal to a suspension for such time as the arbitrator may fix or reduce the period of suspension which order shall be binding on the University and employee concerned subject to the jurisdiction of the arbitrator.

Specific Authority: BOG Regulation 1.001(3)(j) , B O G Reg. Procedure July 21, 2005 Law Implemented BOG 1.001(5)(a) . History–New 6-16-87, Amended 9-24-98, 6-15-99, 4-16-03, 11-29-07, 6-25-2010, _____