

CITY OF PORTSMOUTH
ADMINISTRATIVE POLICY

#10

August 2011

SUBJECT: STANDARDS OF CONDUCT, CORRECTIVE ACTION, AND PROGRESSIVE DISCIPLINE

PURPOSE: This policy is intended to keep employees and management equally aware of each employee's responsibility of maintaining a positive and productive work environment. The intention of this policy is to clarify the City's position concerning standards of conduct, appropriate corrective action, and progressive discipline. This is to be accomplished by way of:

- . Establishing a uniform set of guidelines of conduct that are fair and objective.
- . Establishing a uniform set of guidelines for correcting and treating unacceptable conduct.
- . Distinguishing between less serious and more serious actions of misconduct.
- . Providing consistent, appropriate corrective action.

SCOPE: This policy shall apply to all City employees. In some cases, due to access to other grievance procedures, employees may require different administrative action, although the principles of this policy are applicable to all matters related to employee conduct.

STANDARDS OF CONDUCT: ("STANDARDS")

Many of the standards of conduct will be readily understood and recognized as those that guide behavior with other people anywhere in social or business relationships. Other standards or procedures are particularly applicable to employees working together in City government.

Timely and Regular Attendance Performance - Planned use of leave time should be arranged with supervision in advance. Unexpected use of time should be reported as promptly as possible to supervision prior to the beginning of the employee's work schedule.

Dependable Application of Time - Employees are expected to apply themselves to their assigned duties during the full schedule for which they are being compensated, except for reasonable time provided for meals and personal needs.

Satisfactory Work Performance - Employees are expected to meet established performance standards. Conditions or circumstances, as they become known, which will prevent employees from performing normally or completing their assigned task, should be reported to supervision. Likewise, unclear instructions or procedures should be brought to the attention of supervision.

CORRECTIVE ACTION PROCEDURES:

In order to effectively correct or treat unacceptable conduct, disciplinary action must be a progressive process. An example of a standard application of this process is:

- . Verbal discussions between the employee and the supervisor.
- . Written Supervisor's Memorandum detailing the problems and possible solutions discussed.

- . Written Notice of Disciplinary Action for any second group offense, with or without suspension without pay.
- . Suspension without pay, requiring a written Notice of Disciplinary Action.
- . As a final recourse, termination, requiring a written Notice of Disciplinary Action.

It is important to note that although the process is a progression of increasingly more serious actions, each action (verbal discussion, written Notices of Disciplinary Action, suspensions, and terminations, etc.) may be used by itself under certain conditions and still be a part of the progressive process for corrective action. All written Notices of Disciplinary Action and written disciplinary Supervisor's Memorandums for non-probationary employees are grievable.

The following procedures will set forth uniform guidelines for determining the severity of offenses of undesirable conduct and the specified corrective action; this specified action shall not be exceeded. When a Department Head, with review by the Human Resource Management Department, decides that mitigating circumstances exist, specified corrective action may be reduced. Mitigating circumstances include those conditions related to a given offense that serve to support a reduction of corrective action. Mitigating circumstances may include consideration of an employee's long service (more than 3 years) with no second or third group offenses, and no unsatisfactory performance evaluations, within the last year; or a sudden/major life-style event (such as, but not limited to, death of a family member, severe financial loss, or divorce) that impacts on the employee's work behavior which has otherwise been satisfactory.

The offenses listed in this policy are not intended to be all inclusive. Any conduct which, in the judgment of a Department Head, although not listed, undermines the effectiveness of the department's activities, would discredit or injure the public service, should be treated consistent with the provisions of this policy.

A record of all written corrective actions must be filed with the Human Resource Management Department for inclusion in the employee's personnel file. Such written accounts should mention any previous verbal discussions. Failure to have such actions on file can materially affect successful completion of the action taken.

Prior to taking disciplinary action based on the "Standards," each employee must be given oral or written notice of the offenses and a reasonable opportunity to respond to the supervisor taking the action, with the exception of a positive drug/alcohol test or refusal to take the test, when the employee may be terminated immediately. Under most conditions, one work day is a reasonable opportunity to respond.

TYPES OF OFFENSES AND SPECIFIC ACTION:

It is reiterated that these lists of types of offenses are only a few examples and are to be used as guidelines. No attempt has been made to make them all inclusive. It is expected that many, if not most, infractions will not be specifically listed herein.

1. **First Group Offenses** - These offenses include those types of behavior less severe in nature, but which require corrective action in the interest of maintaining a well-managed and productive work force.

EXAMPLES:

- . Unsatisfactory attendance or excessive tardiness as defined by individual departments.
- . Abuse of City time such as use of City time for personal business, or abuse of sick leave.
- . Failure to notify supervisor promptly of completion of assigned work.
- . Conviction of a traffic violation while using City or other Public Use vehicles.
- . Unsatisfactory job performance.
- . Use of obscene or abusive language when dealing with other employees, supervisors, and/or the public.

- Disruptive behavior.

- Refusal to work reasonable overtime.

Corrective Action - Supervisors must discuss a first group offense situation with the employee and advise the employee of the need for correction. If the condition is not resolved by verbal discussions, the employee must be given a written Supervisor's Memorandum to document the failure to correct the stated offense.

2. **Second Group Offenses** - Any incidents which are more severe in nature will constitute a second group offense. The accumulation of three written disciplinary Supervisor's Memorandums of the same first group offense constitutes a second group offense. For example, if the employee has had two written Supervisor's Memorandums regarding tardiness, the next incident of tardiness within one year would warrant a disciplinary action which is a second group offense, i.e., a suspension. Disciplinary actions for Exempt employees shall be in compliance with the Fair Labor Standards Act.

OTHER EXAMPLES:

- Failure to follow supervisor's instructions, perform assigned work, or otherwise comply with applicable established policy, except for refusal to cooperate with respect to alcohol/drug testing which is a Third Group Offense under this policy.
- Violating safety procedures where there is not a threat to life.
- Reporting for work unable to perform duties. The supervisor shall be the sole judge of such an occurrence.
- Gambling.
- Continued failure to comply with Fair Labor Standards Act (FLSA).
- Failure to comply with state/federal standards regarding documentation of services to citizens/clients.
- Receipt of confirmed/substantiated complaints from agencies or public regarding non-professional or inappropriate behavior.
- Violating confidentiality when department rules on subject have been explained.
- Unauthorized use or misuse of City property or records.
- Continued inadequate or unsatisfactory job performance.
- Leaving the work site without permission during working hours.
- Failure to report to work as scheduled without proper notice to supervisor.

Corrective Action - These offenses require a written Notice of Disciplinary Action form, and employees are normally suspended without pay. Exceptions to a suspension require review by the Human Resource Management Department. Employees, however, may not be suspended in excess of 10 work days for an offense of this nature. Three group two offenses equals a third group offense. Three documented group two offenses of any kind in any one year constitutes grounds for termination.

Use of Suspension - Before or promptly following a suspension, whether disciplinary or administrative, as discussed below under Suspension Provisions, a written notice confirming the cause and nature of suspension, as well as the employee's right to grieve, shall be provided the employee and to the Human Resource Management Department.

An employee may be suspended or removed immediately only when the employee's continued presence at the work site is a clear threat to the welfare of the department or fellow employees as determined by the Department Head and the Human Resource Management Department.

In all other suspensions, the employee must be allowed to respond to the charges before action is taken. Under most conditions, one work day is a reasonable opportunity to respond.

3. **Third Group Offenses** - The offenses included in this group are most serious in nature. A review by the Department Head and the Human Resource Management Department is required before corrective action is taken.

EXAMPLES:

- Accumulation of 3 second group offenses of any kind within any one year.
- Confirmed, positive drug/alcohol test, as defined by AP#2.
- Refusal to cooperate with respect to alcohol/drug testing.
- Possession of alcohol or unlawful possession of any controlled substance.
- Absence or leave in excess of 5 working days without prior authorization or good cause.
- Falsifying any records, such as, but not limited to, vouchers, reports, leave records, or other official City documents.
- Willfully or neglectfully damaging, defacing, or losing City, client, or private property.
- Acts of violence or fighting or assault.
- Loss of license for positions requiring licensure – for example, a professional license, a driver's license, or a commercial driver's license.
- Behavior that in the opinion of the Department Head or City Manager constitutes unethical and/or unprofessional conduct with clients, citizens, program participants, or other employees.
- Abuse, neglect, or exploitation of clients or program participants.
- Theft including City, employees', or clients' property.
- Violating or failure to follow safety policies and standard operating procedures where there is a threat to life.
- Participating in or encouraging any type of work slow down, sick-out, sit-down, strike, walk-out, or similar interference with City Operations.
- Possession or use of firearms or dangerous weapons or explosives without the express written consent of the City Manager.
- Overt or implied threatening or coercing of employees or supervision to include, but not be limited to, incidents of bodily contact, whether intentional or not.

- Criminal conviction of such a nature that to continue the employee in the assigned position would constitute negligence in regard to departmental duties to the public, or to City employees, or make the employee unavailable for work.
- Sleeping on the job (or absent from duties with apparent intent to sleep).

Corrective Action - Due to the serious nature of these offenses, any occurrence normally warrants dismissal. The supervisor shall communicate to the employee orally and in writing on the Disciplinary Action form:

1. That his/her employment with the City has been terminated for cause.
2. Specific reason(s) for this action.
3. That the employee may have the right of appeal, whether through the City Grievance Procedure or another medium.
4. Employee is to be given a reasonable opportunity to respond to the supervisor before the termination takes effect. A reasonable opportunity to respond is one work day.

A copy of this Disciplinary Action and the employee's response shall precede or accompany the termination document that must be forwarded to the Human Resource Management Department within 48 hours of termination.

DISCRIMINATION AND SEXUAL HARASSMENT:

Employees found to have engaged in discrimination on the basis of race, color, religion, national origin, political affiliation, disability, age, or sex (including sexual harassment) may be counseled or may be disciplined with either a first, second, or third group offense depending on the specific facts and circumstances surrounding the incident. Supervisory and management personnel are specifically included in the application of this policy.

SUSPENSION PROVISIONS:

- A. **Administrative Suspension** - When an employee is removed from the work group pending completion of a departmental disciplinary investigation into an alleged misconduct or violation of established work rules, such Administrative Suspension shall not exceed 10 working days.

If the employee is cleared of any alleged violations, the employee shall be reinstated and paid for this period of suspension. When the decision is for less than 10 days, the employee will be appropriately reimbursed. When no decision on disciplinary action occurs within 10 working days, the employee shall be permitted to return to work pending a final decision.

If the Department Head decides suspension is warranted, the period of Administrative Suspension is to be applied to the period of Disciplinary Suspension and only the remaining days, if any, shall be served. Should the decision be for a 20-day suspension in lieu of termination, the employee would receive an additional 10 days without pay.

- B. **Suspension Pending Court Action or Official Investigation** - The City Manager or his designee has the sole authority to approve the suspension of the employee without time limitation, pending completion of court action or an officially convened investigation, provided such court action or investigation involves alleged civil/criminal violations that occur on the job, or are plainly related to job performance, or are of such a nature that to continue the employee in the assigned position would constitute negligence in regard to the department's duties to the public and to other City employees. Upon completion of such court action or officially convened investigation, the employee may be disciplined or removed or may be reinstated with full or partial back pay as the City Manager determines to be appropriate under the circumstances. ("Official Investigation" shall be

limited in interpretation to those investigations authorized by the City Manager or conducted by agencies or departments of the criminal justice system.)

- C. **Suspension/Disciplinary Penalty** - Suspension for second group offenses is provided for elsewhere in this policy and may not exceed 10 days.

In certain cases involving mitigating circumstances, disciplinary suspension may be used for group three offenses. However, Suspension in Lieu of Termination may be applied only once during a three-year period and shall be for 20 working days. Should the employee violate any policy, procedure, or rule within a three-year period after receiving a Suspension in Lieu of Termination, termination will follow without regard to the level of the offense.

Mitigating circumstances will not be applicable to employees that test positive for drugs and alcohol, as defined by AP #2. Employees who test positive will be terminated.

ACCESS TO CITY PREMISES AND WORK WHILE ON SUSPENSION:

Employees who are suspended from work shall not be allowed to be on City premises, without express written permission of the Department Head.

RESPONSIBILITIES:

- A. **Department Head** - It is the responsibility of the Department Head to ensure that corrective actions are timely and consistently applied. Fair and objective corrective action requires that "actions" rather than "personalities" be the consideration. It is the Department Head's responsibility to review and authorize all disciplinary actions and ensure that the employee has had an opportunity to respond to the supervisor before the action takes effect. The Department Head is responsible for actions taken by department supervisors and for ensuring that supervisors are fully knowledgeable of this policy. The actions authorized must be consistent with departmental and Citywide actions for similar cases.
- B. **Human Resource Management Department** - It is the responsibility of the Human Resource Management Department to provide guidance and support in all matters concerning Standards of Conduct and Disciplinary Actions. Copies of all Supervisor's Memorandums and all Disciplinary Action Notices must be forwarded to the Human Resource Management Department, in accordance with the time limits of this policy.

When cumulative offenses are moving an employee's disciplinary actions from one group to another, supervisors are specifically encouraged to contact the Human Resource Management Department.

- C. **Department Head and Human Resource Management Department** – All terminations must be reviewed by the Department Head and the Human Resource Management Department before action is taken.

POST ACTION REVIEWS IN ADDITION TO THE CITY OF PORTSMOUTH'S GRIEVANCE PROCEDURE:

The discharge or suspension of a City employee is subject to a number of possible reviews by such agencies as:

City Manager's Office	State Merit Review
Virginia Employment Commission	Civil Service Commission
Equal Employment Opportunity Commission	State Office of Rehabilitative Services
State EEO Office	

These agencies are empowered to provide a variety of remedies from reinstatement, to payment of back pay, to Unemployment Insurance; however, they will rarely substitute their judgment for that of the supervisor.

This means that a supervisor who has documented the situation, acted responsibly and consistently, and explained his/her actions in a clear and timely manner, will most often be supported by the reviewing agency. An agency review should never be considered as a challenge or an affront to management. An employee has the right to use a valid review and appeal process in place of or in addition to the City Grievance Procedure.

The supervisor's actions may be reviewed by some agencies, as noted above. However, they may be contacted by others who have no such automatic right:

Employee Organizations	Friends or Agents of the Employee
Elected Officials	Attorneys
News Media	Civic or Special Interest Groups

While the above agencies may properly become involved in some stage of the review procedure, they may not deal directly with the department. All questions from outside agencies concerning disciplinary action should be referred to the Human Resource Management Department.

PROBATIONARY EMPLOYEES:

As of July 1, 2011, all newly hired employees will be considered probationary for one full year from the employee's continuous service date (i.e. an employee with a continuous service date on July 1 is probationary through July 1 of the following year). A probationary employee does not have access to the City's Grievance Procedure.

EMPLOYEE ASSISTANCE PROGRAM:

- A. Prior to the need for disciplinary action, or in addition to corrective actions provided for in this document, it is recommended that supervisors refer employees to the City's Employee Assistance Program when appropriate.
- B. Referral to the Program shall not be considered as discipline, but as the department's effort to assist in resolving the problem.
- C. Also, referral to the Program is not a substitute for disciplinary action. Violation of these Standards of Conduct shall still be disciplined as provided for in this document.
- D. Employees with personal problems which may be affecting their job performance are encouraged to seek assistance on their own through the City's Employee Assistance Program.

SUMMARY:

Disciplinary action, whether a written warning, suspension, or termination, is the most serious and visible personnel action supervisors can take. If the actions are prompt, reasonable, and direct, their judgment will usually be confirmed by subsequent review. In those cases where the supervisor's actions are unrealistic, arbitrary, or improperly administered, the likelihood of reversal, personal embarrassment, and incurred cost to the City is greatly increased.

The process of department and Human Resource Management Department review is intended to provide guidance and support prior to, as well as during, the course of any action. Legal review is available at all times for your general guidance, as well as for any official procedures.