

A Labor Relations Guide For Supervisors

ADMINISTERING EMPLOYEE DISCIPLINE



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Disclaimer

This manual is intended to be used by Multnomah County managers as a practical and informative resource only. This manual does not create new legal obligations and it does not supersede any Multnomah County Personnel Rules or County collective bargaining agreements. Supervisors should work with their Department Human Resources Units and/or Labor Relations when dealing with disciplinary issues as each situation is unique and may be governed by specific Multnomah County Personnel Rules and/ or collective bargaining agreement language. Multnomah County's Labor Relations Unit reserves the right to revise, modify or alter the contents of this manual at any time.

I.

Introduction

This reference manual is written to provide exempt supervisors and managers with a toolbox-style manual that provides direction and examples of how to manage employees' sub-par job performance and misconduct.

Many performance issues can be addressed at the earliest stages by communicating expectations, identifying and monitoring the issues, and building on the employee's strengths. The hope is that performance issues can be corrected by counseling prior to discipline. If counseling fails, then a supervisor needs to evaluate the situation and determine what appropriate steps should be taken. *The general rule is to begin with the lowest action step.* The first step may be either written expectations, or a work improvement plan, both of which are non-disciplinary actions. If these actions fail to improve performance, then the appropriate next step is a corrective disciplinary step (oral or written reprimand, suspension, pay reduction and/or dismissal). While progressive discipline is the norm, there are times when discipline does not proceed in lock-step fashion. In anticipation that a disciplinary action may be challenged by an employee, it is important that when drafting disciplinary letters that such letters identify any prior actions that were made to improve employee performance.

Supervisors and managers should be familiar with Multnomah County personnel rules (MCPRs) and applicable collective bargaining agreements (CBAs) before instituting disciplinary action against an employee. New supervisors should be aware that the County's process and procedures may be different from other jurisdictions where supervisors have previously worked.

Most Multnomah County employees have appeal rights on discipline either through one of the ten (10) CBAs or through the Merit Council process. Department Human Resources staff and Central Labor Relations staff are excellent resources in dealing with difficult disciplinary situations.

A supervisor should review and follow the steps outlined in this manual before considering disciplinary action. This will minimize the likelihood of the supervisor's actions being overturned.

II. Predisciplinary Principles

A. The Legal Environment

A supervisor should have knowledge of the labor and employment laws that impact the employees under their supervision. Generally, a manager should be familiar with principles of federal constitutional law, and federal and state statutory law applicable to public employees. Examples of those laws are:

The United States Constitution, including the Bill of Rights and other Constitutional provisions, as applied to the states and its relationships with employees through the 14th Amendment. Example: Right to due process of law (gives right to notice and hearing before removing a property interest in employment); Right to freedom of speech (may not discipline employee for content of speech unless it causes harm in the workplace, i.e. disruption).

Fair Labor Standards Act (FLSA) and Oregon wage laws. Example: A supervisor may not “suffer or permit” (allow) an employee to work overtime without appropriate compensation.

Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended, as it appears in volume 42 of the United States Code, beginning at section 2000e, and Oregon Revised Statutes chapter 659A et.seq. Title VII and ORS 659A prohibit employment discrimination based on race, color, religion, sex and national origin, and other protected class factors.

Title I of the Americans with Disabilities Act of 1990 (ADA), as amended by the Americans with Disabilities Act Amendments Act (ADAAA), 2008, and the Oregon disabilities laws. Prohibit discrimination based on disability in employment; require reasonable accommodation of employees’ qualified disabilities where accommodation will allow employees to perform the essential functions of their jobs.

The Age Discrimination in Employment Act (ADEA). Prohibits discrimination based on age.

The Family and Medical Leave Act (FMLA), and the Oregon Family Leave Act (OFLA). Provides protected leave for certain designated medical conditions and activities.

Public Employees Collective Bargaining Act (ORS 243.650 – 243.782). In a unionized environment, supervisors should be familiar with the provisions of the Oregon Public Employees Collective Bargaining Act (PECBA). Examples of actions that may violate the PECBA and constitute unfair labor practices include:

taking disciplinary action against union stewards and/or union officers that are based on protected activity; bargaining directly with employees on a subject covered in the collective bargaining agreement; and refusing to turn over relevant documents concerning a grievance to the union.

B. Multnomah County Personnel Rules (MCPRs) and the Collective Bargaining Agreements (CBAs).¹

The County Code authorizes the Chair of the Board of Commissioners to adopt executive orders approving Multnomah County Personnel Rules (MCPRs). The MCPRs cover virtually all aspects of the employment relationship between the County and its employees. The rules cover classification, leaves, employee responsibilities, and appointment procedures, among other things. All supervisors and employees are expected to be familiar with the rules. The rules are located on the County's intranet.

The rules describing the most important employee duties and responsibilities are in a group called "e-policies." E-policies are presented to employees for review upon hiring and on an annual basis thereafter. E-policies include the ethics policy, work rules, use of information technology rule, violence-free workplace rule, and the respectful workplace rule. The MCPRs govern employees' rights and responsibilities unless a more specific provision in the employee's union collective bargaining agreement (CBA) applies.

The County enters into CBAs with ten unions who represent County employees. The supervisor should be knowledgeable about the CBAs that govern the employees in their work group. Supervisors and managers do not have authority to make exceptions to the CBAs.

C. Authority to Discipline

Supervisors are authorized to impose discipline, as listed below, unless a Department Director has specifically removed that authority in writing. (For MCSO, authority rests with Sheriff.) Delegation of authority for disciplinary actions is as follows:

1. Oral and written reprimands: Immediate supervisor.
2. Demotions, Suspensions, and Reductions in Pay: Reviewing supervisor.
3. Dismissals: Supervisor who is an executive employee.

¹ In this manual we refer generally to the County's CBA with Local 88, AFSCME. AFSCME is the union that represents the great majority of the County's represented employees.

This authority may be delegated in writing. Copies of delegations must be distributed to executive employees, and the Director of Central HR/LR. This authority may be amended in writing at any time. MCPR 3-60-030.

Attached as Document 1 is a sample form of delegation.

D. Documentation

It is critical that a supervisor keep accurate documentation of events that are part of an employee's history, especially of events that support the employee's notice of policies, rules, procedures and expectations, and of events or situations that may lead to discipline. (For example, oral reprimands, counseling sessions, conversations about expectations). When detailing an event that could lead to discipline, there are several key points to consider.

1. Timing. Do not delay in documenting an event – try to write your notes contemporaneously with the event so that your memory of the event is accurate. Be sure to note the date and time if possible.
2. Accuracy. Get the story straight in writing. Follow the five W's:
 - a. *Who* was involved? (Give names and titles).
 - b. *What* happened? (What happened or failed to happen).
 - c. *When* did it occur? (Give date and time).
 - d. *Where* did it occur? (Specific locations).
 - e. *Why* is there an issue? (Violation of a work rule and/or regulation, ordinances or law).
3. How is the employee falling short; What is the desired behavior or outcome.
4. Audience. Remember that your notes may be subject to a discovery request by the union, and may ultimately be an exhibit in a hearing or trial. Avoid any indication of prejudice or emotion.

E. Purpose and Use of the Probationary Period

1. The probationary period is an integral part of the evaluation process. It is a working assessment for a classified employee to demonstrate fitness for the position based on the duties assigned. It gives the supervisor an opportunity to observe the employee's work, train and aid the employee in adjustment to the position, and to remove an employee whose performance fails to meet expectations, without "cause."

2. Probation begins on the date of appointment from a certified eligible list for classified employees. Unless otherwise agreed to in a collective bargaining agreement, probationary periods have the following duration:

- a. Generally one year for "new hire" classified employees as set forth in most CBAs.
- b. Eighteen months for sworn law enforcement; twelve months for corrections personnel.
- c. Confidential employees are treated the same as members of AFSCME Local 88, with one year probation.
- d. One year for employees or applicants upon initial appointment as management employees.
- e. Six months trial service for employees promoted within management service.

3. An authorized leave of 30 days or more during the probationary period will extend the probationary period so that the employee serves the entire probationary period.

4. If a regularly budgeted position is changed from unclassified to classified for any reason, any incumbent with less than one year of accrued service must serve a probationary period. Executive employees who accept a reassignment into a classified position and who have not attained regular status as a classified employee must serve a probationary period. The length of the probationary period will be the difference between one year and the incumbent's accrued service in a classified position.

5. Standards for removal during probation.

a. A probationary employee may be removed during probation at any time if, in the opinion of the Department Director, continuing probation is not in the best interests of the County. Employees removed during probation have no right to appeal such actions. A supervisor may vigorously use the probationary period to end the service of a problematic employee, but care should be given in the treatment of these employees. While probationary employees do not possess a property right in their positions, they are protected by Title VII of the Civil Rights Act and state anti-discrimination laws and other important protective provisions of the law. Each County department should have a probationary review process in place which will assist in a systematic and fair review of each probationary employee.

b. Regular employees who are appointed to positions in other classifications and who fail to complete the probationary period will be reinstated to their former position without loss of seniority, unless terminated for cause.

c. An employee who is removed from County service during the initial probationary period may, upon written request, be restored to the eligible list, if it has not expired.

d. Prior to the end of their probationary period, employees must be notified in writing that they are being removed or reinstated to their former position.

6. Employees who successfully complete their probationary period attain regular employee status.

7. Attached to this manual is a sample probationary employee termination letter. You will note that this includes nothing regarding the reason for termination. This is a purposeful effort to avoid issues of defamation. There is no positive purpose for reciting the reasons for termination in the letter terminating a probationary employee.

A sample letter terminating a probationary employee is attached as Document 2.

F. Administrative Leave

1. Definition. Paid administrative leave occurs whenever an employee is ready and willing to come to work and the employer tells the employee to not come to work.

2. Uses of Administrative Leave with Pay. There are occasions when an employee has committed a serious infraction and the Department does not wish to have an employee in the workplace until after the County has investigated and determined the appropriate action. In these rare cases, an employee can be placed on administrative leave with pay. Depending on the severity of the infraction, an employee may be excluded from a specific work site or numerous work sites.

3. It is important when placing an employee on paid administrative leave to do so in writing. There may be times when it is not practical to give an employee a letter prior to placement on administrative leave. In such cases, an employee may be sent home and be told not to report back to the workplace until notified otherwise. In such cases, it's important to follow up with the administrative leave letter as soon as possible. The letter outlines the terms and conditions of the paid administrative leave.

4. When placing an employee on administrative leave, it's important that the written letter contain relevant instructions in addition to the terms and conditions, for example:

- a. You must be available by phone during your normal work hours.
- b. You must be available for meetings during your normal work hours that may be arranged by human resources.
- b. You must check in with your supervisor by telephone each morning before 8:30 a.m.[usually not necessary]
- c. If you seek to leave the area to go on a vacation, you must have the prior approval of your supervisor.
- d. You are restricted from the nonpublic areas of County buildings, unless you are directed to attend a meeting with human resources.

5. Prior to placing someone on paid administrative leave it is important to collect any County property in the employee's possession, such as access cards, badges, cell phones.

A sample letter placing an employee on paid administrative leave is attached as Document 5.

6. Moving an Employee from Administrative Leave with Pay Status to Unpaid Status, Pending Completion of a Pre-dismissal Process.

- a. Background.

In rare situations an employee may be placed on leave without pay pending completion of a pre-dismissal process. Such placement into leave without pay status is called: Suspension without Pay.

Suspension without pay pending the completion of a pre-dismissal process normally occurs after an employee has potentially committed a crime or engaged in other nefarious activity, an extended period of time will elapse before an investigation can be completed, and the facts are not significantly in dispute. In such cases it is not in the County's interest to return an employee to employment nor is it in the County's interest to keep an employee in paid administrative leave status for such a long period.

- b. Process.

Before placing an employee in suspension without pay status pending completion of the pre-dismissal process, the employee must have a notice and

an opportunity to be heard. This right arises from the employee's Constitutional rights derived from the employee's property interest in their continued employment. The unpaid suspension removes part of that interest. Thus the employee must have an opportunity to respond to the employer's reasons for placing the employee on suspension without pay. The procedure for placing an employee on suspension without pay status pending completion of a pre-dismissal process is discussed generally in MCPR 3-60-060.

Notification letter to the employee:

Proposed action:	Suspension without pay pending completion of the pre-dismissal process.
Grounds:	List Union disciplinary article (Art. 17 for Local 88), and personnel rule(s) that were allegedly violated.
Background:	List any background facts that support the action.
Facts Supporting Proposed Action:	Describe specific facts supporting the action, including dates, location, people, and relevant actions or inactions of the employee.
Pre-decision Meeting:	Date, time, location, employee's right to bring a union representative to the meeting and the employee's right to submit a written response prior to the meeting.

*A sample letter **Proposing** Suspension Without Pay Pending Completion of the Pre-dismissal process is attached as Document 4.*

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G. Job Classification Specifications and Job Descriptions

1. Definition - Job Classification.

A job classification is a group of positions in the County service sufficiently similar in duties, authority and responsibility to permit grouping under a common title that would call for similar qualifications and the same schedule of pay.

All job classifications contain a definition; supervision received and exercised; detailed specifications of the types of duties performed; and qualifications.

In setting job performance expectations, job classification specifications are helpful. But they may not by themselves be sufficient in describing individual position duties and responsibilities. It is therefore important that every position also have a job description. All County employees have a job classification, and most County employees have job descriptions.

2. Job Descriptions.

a. Definition.

A Job Description document is a description of the duties, responsibilities, skill and ability requirements of an individual position within a classification.

Job descriptions are particularly important when there are more than one employee in a job classification and their duties vary – for example, the classification of Office Assistant 2. It is important that job descriptions be reviewed on an annual basis, whenever there is an organizational change that will change employees' duties or when an employee leaves the position and a new employee fills the position.

b. Use of job descriptions.

Job descriptions are a very important tool for supervisors in defining:

1. The purpose of the position the employee holds.
2. The important and essential functions expected of the employee.
3. Who the employee regularly comes in contact with.
4. The guidelines and rules the employee must be familiar with in order to perform their work, i.e., particular Oregon Administrative Regulations, provisions of state or federal law.
5. The kinds of decisions the employee is expected to make.
6. If the employee supervises and the number of positions they supervise.
7. Physical requirements of the position.
8. Working conditions the employee is expected to work in/under.

9. Additional job related conditions such as special knowledge, skills and abilities (“Knowledge, Skills and Abilities (KSAs)”). Example: Bilingual.

The job classification specifications and the job description are critical for the supervisor in describing the functions the employee must be able to perform. This is an important preliminary to the supervisor defining his or her work expectations for an employee and/or taking corrective action based on substandard work performance.

H. Work Expectations

1. General. The management and improvement of performance problems requires an investment of time and self-discipline on the part of the supervisor. The most important tool for preventing and correcting problems is setting clear expectations initially for performance and conduct.
2. Setting expectations and performance conduct standards. Important expectations and performance conduct standards are derived from the E-policies that new hires must read and acknowledge upon hiring, and all employees read and acknowledge on an annual basis; from Departmental and unit procedures; and from the job class specs and the job description. In addition, the supervisor may set specific expectations for his unit that are not inconsistent with County rules and CBAs.
3. Written Expectations. This is a document prepared by a supervisor to give an underperforming employee a detailed description outlining their performance expectations, expanding on the duties outlined in the job description. Example: Job duty: Answer phones. Performance Expectation: Answer incoming phone calls by the 3rd ring 80% of the time. Job performance expectation documents are not discipline, but they may be a step in the pre-disciplinary process.
4. Specificity of Expectations. Be specific regarding behavior expectations. If you expect employees to be at work, at their desk, when the clock strikes 8:00 a.m., be clear and specific in your expectations. Don’t say “be punctual.” Advise the employees that they need to be at their desk ready to answer telephones at 8:00 a.m.
5. When Performance Expectations conflict with a *Past Practice*. An employee’s practice of coming to work late, taking long breaks, and other practices that are not acceptable, can and should be addressed. But what if management has not enforced attendance standards for the employees in a particular unit? Management has a right to change employment work practices that don’t meet department performance expectations. When making changes, things to consider prior to making the change:

a. Have you communicated your plan to your manager? Does your manager support your planned changes and time-table for making the changes?

b. Have you discussed your plans with your Human Resources manager? Do your planned changes violate any collective bargaining provisions? Do they violate any federal or state laws?

c. If you are planning on making a change that has been a past practice, learn as much as possible as to why the past practice existed. Do not make assumptions, talk with employees.

d. Have you discussed your plans with the union steward or union representative? The union may be helpful in giving you hints on expected problem areas and how to avoid unnecessary conflict.

e. Any time a manager is implementing change the manager should communicate with all stakeholders who may be impacted by the change, that is, employees, other supervisors, upper management. Get employee buy-in whenever possible. Be patient. Changes to long standing practices may be met with strong resistance.

A sample letter of Written Expectations is attached as Document 6.

I. Work Improvement Plans

1. Introduction. A work improvement plan is a time sensitive document with a beginning date and end date, job tasks that the employee is presently performing below standards, the employer's performance expectations with respect to those tasks, and an action plan.

Work improvement plans are very helpful documents in addressing employees' sub-par work performance. Warning: Do not use work improvement plans if you don't have time to follow through. Work improvement plans require time, energy and commitment by management. Work improvement plans generally require regular meetings between the supervisor and employee to track the employee's progress (or lack thereof). If an employee fails to meet performance expectations as outlined in the work improvement plan and there is no follow up action, your action could be viewed by an outside party as accepting the employee's work performance.

2. When is a Work Improvement Plan appropriate?

Work improvement plans are very helpful tools when a manager needs to establish what is expected of an employee and the timelines for the employee's meeting the stated expectations. The previous section dealt with Job Descriptions and in more detail, Job Performance Expectations. Both of these

documents outline all the duties expected of an employee. Work improvement plans normally do not address all duties performed by an employee, but only those where the employee is not meeting expectations.

3. Are Work Improvement Plans considered Discipline?

Work improvement plans are not considered discipline. Employees may view them as discipline as they reflect that an employee is not meeting expectations. But work improvement plans are not listed as one of the disciplinary steps contained in the CBAs' disciplinary articles. Arbitrators do not view work improvement plans as discipline.

4. What is the appropriate time frame for a Work Improvement Plan?

A work improvement plan should be for a sufficient period of time such that the intended work improvement is not a temporary fix. It is important that the employee has demonstrated that the job tasks that they needed to improve on have improved and the employee can continue the consistent improvement. Normally work improvement plans are at least three (3) to six (6) months. Generally the supervisor will meet with the employee on a strict schedule, once a week or once every two weeks to review progress on the plan.

5. Can Work Improvement Plans be Extended?

Yes, but be clear on the time period and state the reasons for the extension.

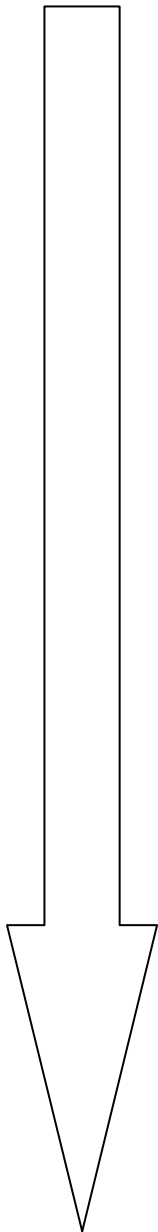
A sample Work Improvement Plan is attached as Document 7.

III.

Disciplinary Principles

A. Just Cause: Seven-Step Test

1. Setting the stage for Progressive Discipline
 - Communication is the Key – Set Expectations
 - Know the County Culture Regarding Discipline
 - Be Consistent



Expectations Policies, Position Descriptions, Written Expectations, Goals, Mission, Performance Standards
Oral Warning
Written Reprimand
Suspension Without Pay
Demotion
Reduction in Pay
Dismissal
Any Combination of the Above

2. Seven-step test for deciding whether employer has “just cause” for disciplining an employee.

The meaning of the terms “cause,” “just cause,” or “in good faith for cause,” as they are used regarding discipline has evolved over the years to now imply a fully justified basis for discipline. A common test for determining whether “just cause” exists was developed by Professor Carroll R. Daugherty in the ***Enterprise Wire*** case (46 LA 359, 1966 and 50 LA 83). His guideline consists of a list of seven questions. A “no” answer to any one, or more of the questions, which follow below, normally signifies that just and proper cause does not exist. In other

words, “no” means that the employer’s disciplinary decision contains one or more elements of arbitrary, capricious, unreasonable, or discriminatory action to such an extent that said decision constitutes an abuse of managerial discretion warranting an arbitrator to substitute his or her judgment for that of the employer.

1. Did the County give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee’s conduct?

This is usually established by written policies and procedures, written expectations or other notice. But a finding of lack of such communication does not in all cases require a “no” answer to Question Number One. Certain offenses, such as insubordination, coming to work intoxicated, drinking intoxicating beverages on the job, or theft of the property of the company, or of fellow employees, are so serious that any employee in our industrial society may properly be expected to know already that such conduct is offensive and heavily punishable.

2. Was the County’s rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the County’s business and (b) the performance that the County might properly expect of the employee?

An employee who believes a rule or order is unreasonable or improperly promulgated must nevertheless obey the rule, unless, there is a reasonable belief that obedience would seriously and immediately jeopardize the employee’s safety, or the rule violates either the law or universally accepted moral standards, e.g., an order to tell a lie.

3. Did the County, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?

To effectively meet this “due process” test, a neutral supervisor or human resources manager must investigate and document the facts supporting allegations of misconduct or poor performance.

4. Was the company’s investigation conducted fairly and objectively?

All investigatory and disciplinary interviews should be conducted in private. The supervisor should afford the employee time to fully respond to all charges. The interview should be conducted in a calm, professional manner. Any intimidating behavior should be avoided.

5. At the investigation, did the investigator obtain substantial evidence or proof that the employee had violated the relevant policies or expectations, or had failed to perform as was expected?

Proving misconduct or poor performance requires that the supervisor:

- a. Keep accurate and timely records of counseling, oral reprimands and notices and disciplinary actions taken relative to the employee, as well as details of any specific misconduct or performance failures, and any harm that resulted.
- b. Make sure that directives given to employees are in specific behavioral terms, with the importance of the directive(s) and consequences(s) emphasized, when these elements are not obvious.

The standard of proof which a supervisor is expected to meet in a disciplinary case varies depending on the nature of the charge and the severity of the penalty imposed. The general standard is preponderance of the evidence, or, put numerically, over 50% of the evidence, but some charges require clear and convincing evidence.

6. Has the County applied its rules, orders, and penalties even-handedly and without discrimination?

If the answer to this question is “no,” the disciplinary case may well be overturned, or the penalty modified, no matter how clear the misconduct and how well prepared the case. This problem frequently occurs when a supervisor is so frustrated by the continued pattern of misconduct of a particular employee that, in zeal to punish the employee, heavy reliance is placed on a recent infraction to substantiate the discipline imposed. The problem is when the supervisor neglects the fact that others have committed the same infraction without consequences.

This standard does not chain the organization to the past. At any time, the supervisor may issue and post a letter of intent to change the approach taken in the past to a rule. For example:

“My review of administrative responses to infractions of the used hypodermic and intravenous needle security rule indicates considerable inconsistency in enforcement and supervisory actions taken. Employees are advised that due to the extreme health hazards associated with violations of this rule, future violations, whether due to negligence or intent, will be consistently dealt with by severe disciplinary action.”

7. Was the degree of discipline administered by the County in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his or her service with the company?

Responsive to this question, there are occasions when the behavior of an employee is such a severe violation of written or implied duties that immediate discharge is called for.

The spirit of corrective discipline calls for specifying the behavior which is desired on the employee's part and imposing discipline, not to punish, but to give clear notice of the County's intention not to tolerate misconduct or poor performance. When the employee does not respond, the discipline must become *progressively* more severe until it is evident that the employee is unwilling to live by the expectations of the organization, in which case, discharge is warranted. An example of such a progressive pattern is as follows:

Counseling Session (not discipline)
Work Improvement Plan (not discipline)
Oral Reprimand
Written Reprimand
Suspension Without Pay
Discharge

The severity of the first step to be imposed in the steps cited above, as well as subsequent steps, is dependent on the nature of the offense and the work history of the employee as discussed below.

There is no doubt that sustaining consistent, progressive discipline is a difficult job. There is an understandable tendency to follow such a pattern for a few steps, neglect the employee for many months, and then suddenly impose severe discipline. The key is to keep the corrective program within a manageable time frame. If an employee does not respond within the time frame specified at one step of the process, the next step should be taken. What must be done at each step, however, is to measure the length and severity of the disciplinary "chain" relative to the severity of the employee's behavior. Because of the great variety of misconduct, there is no single "right" answer to disciplinary measurers, but rather a range of reasonable actions.

Turning to the issue of work history, you should be aware that an employee with years of service whose misconduct or poor performance has been tolerated during that lengthy period of time, and thus implicitly condoned, cannot be dealt with in the same manner as a new employee. Please consult with Labor Relations when you have these kinds of aberrant situations.

3. Manager's Just Cause Checklist

A "no" answer to any one of more of the following questions normally signifies that just cause did not exist.

1. Did the County give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?

2. Was the County's rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the County's business and (b) the performance that the County might expect of the employee?

3. Did the County, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?

4. Was the County's investigation conducted fairly and objectively?

5. At the investigation, did the investigator obtain substantial evidence or proof that the employee was guilty as charged?

6. Has the County applied its rule, orders, and penalties even-handedly and without discrimination to all employees?

7. Was the degree of discipline administered by the County reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in their service with the County?

B. Investigations

1. Investigative Interview. Several elements of just cause include a full and fair investigation, which includes investigative interviews of the employee and witnesses. The supervisor should notify the employee of the allegations and set a time and place to meet to verify the substance of the alleged violation. Tell the employee that the investigation might result in discipline and he/she may have a union representative present. Take complete notes or tape record the interview.

During the interview, emphasize you are fact-finding and are interested only in the facts, not conjecture about the allegation. Try not to use leading questions and do not suggest answers to your questions. Ask open-ended questions, using the “Who,” “What,” “When,” “Why,” and “Where” method.

2. **Weingarten** Rights - Union Representation during Investigatory Interviews.

a. Origin of **Weingarten** Rights. The right of employees to union representation at investigatory interviews was announced by the United States Supreme Court in a 1975 case, **NLRB v. Weingarten, Inc.**, 420 US 251 (1975). These rights have become known as **Weingarten** Rights.

These rights were made applicable to public employees in Oregon in 1988 by the Oregon Employment Relations Board (ERB) in **AFSCME Local 328 v. Oregon Health Sciences University**, ERB Case No. UP-119-87, 10 PECBR 922 (1988). ERB ruled that the **Weingarten** rule applies only to investigatory interviews where: 1) the employee reasonably believes that disciplinary action is being contemplated or may result; 2) the employer insists on the interview; and 3) the employee requests representation. A few years later ERB clarified the rights of union representatives during investigatory interviews, i.e., a union representative may inquire as to the purpose of the interview, seek clarification of questions, ask the employee questions eliciting further relevant information, and suggest other witnesses the employer should question. **Washington Co. Police Officers Ass’n v. Washington Co.**, ERB Case No. UP 15-90, 12 PECBR 693 (1991).

Do not confuse the investigatory interview of the employee with the pre-dismissal meeting. The investigatory interview provides the employer a chance to gather facts about what happened from the employee. After the investigation has concluded, the supervisor reviews all the factual information, determines the charges, issues the pre-dismissal letter, and schedules the pre-dismissal meeting. The constitutional rights of represented employees that arise at a pre-dismissal meeting are called **Loudermill** rights, discussed in Section J below. Once the pre-dismissal meeting occurs, the employer can make its final decision.

b. What is an Investigatory Interview? Employees have **Weingarten** rights only during investigatory interviews. An investigatory interview occurs when a supervisor questions an employee to obtain information which could be used as

a basis for discipline of the employee or asks an employee to defend his or her conduct. If an employee has a *reasonable belief* that discipline or other adverse consequences may result from what he or she says, the employee has a right to request union representation.

c. Workplace Conversations. The right to union representation does not arise in conversations between a manager and an employee in which the employee is only given instructions, training, or needed corrections of his or her work techniques. The right to union representation also does not apply to non-investigatory counseling sessions or meetings in which an employee is simply informed of the issuance of a disciplinary action. For example, a supervisor may talk to an employee about the proper way to do a job. Even if the supervisor asks questions, this is not an investigatory interview because the possibility of discipline is remote. The same is true of routine conversations to clarify work assignments or explain safety rules.

d.

Weingarten Rules

When an investigatory interview occurs, the following rules apply:

Rule 1. The employee must make a clear request for union representation before or during the interview.

Rule 2. After the employee makes the request, the supervisor must choose from among three options. The supervisor may:

- a) Grant the request and delay questioning until the union representative arrives and has a chance to consult privately with the employee; or
- b) Deny the request and end the interview immediately; or
- c) Give the employee a choice of: (1) having the interview without representation or (2) ending the interview.

Rule 3. If the supervisor denies the request for union representation, and continues to ask questions, the supervisor commits an unfair labor practice -- the employee has a right to refuse to answer questions and any disciplinary action taken against the employee may be overturned by the State of Oregon Employment Relations Board.

e. Role of the Union Representative. Representatives have a right to assist and counsel employees during an interview. Representatives also have the right to know the subject of the interview before the employee responds to questions, along with the right to speak privately with the employee before the interview begins. During questioning, the representative is permitted to interrupt to clarify a question or to object to confusing or intimidating tactics.

The representative cannot tell the employee what to say. At the end of an interview the representative can add information to support the employee's case.

If the representative tries to engage the supervisor in an adversarial manner, decline. If the problem persists, call a temporary recess to let tempers cool.

As a practical matter, the involvement of an employee representative in investigatory questioning of an employee can have some positive results. The union representative may be better at articulating the facts and evidence in the employee's favor. This can help you evaluate the strengths and weaknesses of evidence in support of disciplinary action. It also may help inform the representative of evidence unfavorable to the employee -- information the employee might not have shared with the representative. While not likely to occur in your presence, the representative may privately counsel the employee that the employer's action is warranted. This may help eliminate or narrow the scope of disciplinary grievances.

C. Determining Appropriate Level of Discipline

1. Factors to Weigh In Determining the Appropriate Discipline.
 - a. Fault. Includes intent, potential or actual harm to others or to the County, the seriousness of performance deficiencies.
 - b. Prior Warnings, Counseling. Warnings for the same problem for which further discipline is now considered.
 - c. Discipline History. Stage of progressive discipline, if progressive discipline has been used to attempt to correct the same or similar conduct. All recent discipline (generally, within the past two years) is relevant. Even if the conduct is not exactly the same there is usually a thread of similarity running through the different actions, such as lack of judgment for example.
 - d. Longevity. Many years of service may require special consideration – more time to correct unsatisfactory performance or demotion in lieu of dismissal.
 - e. Quality of Work. Good work in past years counts in the employee's favor.

The difference between “appropriate discipline” and “progressive discipline” is that appropriate discipline takes into account the fault or deficiency of the employee, the employee's employment history and mitigating factors, while

progressive discipline is the imposition of progressively more severe disciplines for a continuing problem.

2. Tips in Choosing the Type and Severity of Discipline.

- a. Use the lowest level of discipline that is reasonable.
- b. Try stronger discipline if milder discipline did not work before.
- c. If the employee's fault is serious, do not impose only mild discipline.
- d. Watch for uniformity of treatment of employees in comparable situations.
- e. Do not proceed to dismissal, unless no other form of discipline makes sense.

D. Garrity Rights – Criminal Misconduct (Rarely Used)

1. Background. The issue of **Garrity** rights will arise in very rare situations where an employee's conduct may have criminal law implications. In 1967, the United States Supreme Court issued a decision entitled **Garrity v. New Jersey**, 385 U.S. 493 (1967) that established **Garrity** Rights for public employees. The Supreme Court held that statements obtained in the course of an investigatory interview under threat of termination from public employment could not be used as evidence against the employee in a subsequent criminal proceeding. The Court reasoned that these rights were derived from the Fifth Amendment's protection against self-incrimination. If, however, an employee refuses to answer questions after he or she has been assured that their statements cannot be used against them in a subsequent criminal proceeding – the statements can still form the basis for discipline on the underlying work-related charge.

Like **Weingarten** rights, the employee must *ask* the employer/investigator if his/her **Garrity** rights apply. In other words, the burden is on the employee to assert their **Garrity** rights any time they believe they are being investigated for possible criminal conduct.

When investigating misconduct that may be criminal in nature, supervisors need to first check with the Office of the County Attorney to determine if the County intends to proceed with a criminal investigation prior to an administrative investigation. If the decision is to pursue a criminal investigation, answers should not be compelled from the accused employee in an administrative investigation. The administrative process may proceed after completion of the criminal case unless otherwise advised by the County Attorney's Office, since statements

compelled under **Garrity** could not be used in the criminal prosecution of the employee that made the statements.

2. When **Garrity** rights applicable.

It's important to understand when and how **Garrity** rights might be applicable.

- Prior to disciplining an employee for refusing to answer questions, the supervisor must order the employee to answer the question under threat of severe disciplinary action and must ask questions that are specifically, narrowly and directly related to the employee's duties or fitness for duty.
- **Garrity** rights attach when an employee is ordered to answer a question under the penalty of severe disciplinary action for failure to do so.
- **Garrity** rights do not apply if the employee gives the information voluntarily without a direct order to do so, nor do they apply if the employee is not facing criminal charges. Public employees can be compelled to give statements in any circumstance. The only issue here is whether or not the order gives the employee immunity from self-incrimination.
- If the employer assures the employee that their compelled statements will not be used as evidence against them in subsequent criminal proceedings AND the employee still refuses to answer questions, the refusal may lead to discipline for insubordination.
- The only limitation on future use of the compelled statement is the prohibition against use of the information in criminal proceedings against the particular employee who made the statement. Thus, the information can be used for other purposes, such as disciplinary proceedings against the employee who made the statement, criminal proceedings against other employees, civil lawsuits, administrative inquiries, etc.
- All public employees have **Garrity** rights, not just law enforcement personnel.

Again: Be sure to check with the Office of the County Attorney before proceeding with an investigation where the potential for a criminal case exists.

3. Sample **Garrity** Warning.

1. You are being questioned as a subject as part of an employment investigation. This is not a criminal investigation.

2. You must fully, truthfully and accurately answer these questions. Refusal to answer these questions may result in discipline, up to and including discharge from County service.
3. The answers you give in response to my questions cannot be used against you in a criminal prosecution nor can the information you give be provided, in any form, to criminal investigators.
4. The answers you give to these questions can be used against you in a personnel action. This personnel action could result in discipline, up to and including discharge.

NOTIFICATION ACKNOWLEDGEMENT:

I acknowledge, prior to being asked any questions, that I have read and understand the above Garrity Notification and have been informed of the following:

- The nature of the allegation(s) made against me or for which I may have knowledge.
- Upon the request of any employee who is called to an investigatory meeting or a meeting which may result in discipline being imposed upon the employee, the employee shall be entitled to the presence of a Union Representative (County/AFSCME Contract _____).
- If I initially choose not to have union representation, I can request such representation at any time during the interview.
- I am expected to comply with County Policy 3-10, by providing truthful and accurate responses, and that my failure to do so may result in discipline up to and including discharge from County service.

I understand that my signature below does not constitute acknowledgement of wrong-doing, but only that I have been informed of the notifications stated above.

At this time, **I do/do not** elect to have union representation present at this interview.

Employee's Name (print)	Signature	Date
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Union Representative's Name (print)	Signature	Date
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E. Disciplinary Path Potholes and their Avoidance

1. Supervisor **Not Aware of What Employees Are Doing.**
 - a. Examples: Supervisor, whose office is away from employees' work stations, does not know employees are using County vehicles for personal errands.
 - b. If supervisor could have discovered the activity by reasonably diligent monitoring of the employees, failure to put a stop to the activity will be tantamount to condoning. County cannot suddenly discipline an employee for conduct it has been condoning. If Union raises unfair treatment defense at arbitration, showing that other employees have been engaging in the same conduct for a long time without being disciplined, the supervisor's "I-didn't-know-it-was-going-on" defense is not good.
 - c. Pothole avoidance: Supervisors need to use diligence in knowing what employees are doing.
2. **Supervisor does little, or nothing, to address problem employee conduct or performance of which supervisor is aware.** Worst case: Supervisor gives all employees excellent performance evaluations despite their shortcomings.
 - a. Down home condoning. Requires starting disciplinary process from square one, no matter how long the problem has continued.
 - b. Pothole avoidance:
 - a. Supervisors need to address problem conduct or performance and keep addressing it until the problem is corrected.
 - b. Supervisors are responsible for disciplining employees who do not maintain acceptable standards of performance or conduct.
3. **Employee is continually warned** of need to correct problem conduct or performance, but never warned of eventual dismissal, and discipline is

never imposed. Related Pothole: Supervisor imposes repeated reprimands, instead of moving the situation to more severe discipline.

a. Employee will credibly claim to have been misled into thinking no severe discipline would ever be imposed for continuation of the problem. If only reprimands have been imposed, a supervisor cannot move to the level of suspension without pay without advance notice that suspension without pay will now be next discipline.

b. Pothole avoidance:

(1) Do not get stuck on one level of discipline. Move up the severity scale if the problem continues or, at least, warn more emphatically of ultimate dismissal.

(2) Break through the employee's denial syndrome instead of fostering it. It's easy for employee to believe, supervisor is not too serious about the problem, if no strong discipline is imposed.

4. **Compassion** – “We Thought We Were Doing the Employee a Favor.”

a. Backing off discipline out of compassion for employee (with family troubles, etc.) usually backfires on the supervisor.

b. Pothole avoidance: Keep compassion out of the disciplinary process. Feelings of compassion are fine, but discipline that is reasonable should be imposed.

5. **Supervisor emphasizes the positive and downplays the negative** in performance evaluations in order to encourage the employee to do well.

a. This can mislead the employee and can make supervisor look dishonest if supervisor later imposes discipline for the performance problem.

b. Pothole avoidance: Use positive reinforcement without minimizing seriousness of problems to be corrected.

6. **Supervisor feels strong negative feelings** about employee who files repeated grievances and is an irritant to management.

a. Anger, resentment, etc., toward an employee can sabotage logical analysis of employee fault by causing an anti-employee interpretation of facts, unwarranted assumptions of fault, and blindness to holes in the case. Strong negative feelings of an

assertive manager can warp group analysis of a disciplinary situation.

- b. Pothole avoidance:
 - (1) Recognize negative feelings, then discount them and put them completely to one side.
 - (2) Pretend to be employee's representative and figure out every possible way the County's case against the employee could be questioned. Decide what the evidence really proves.
- 7. **Supervisor, with knowledge of facts showing cause for discipline, lets months go by before taking disciplinary action.**
 - a. Discipline should be expeditiously imposed. Long delay shows lack of serious County concern about the cause for discipline and makes arbitrators suspicious of supervisors' motives.
 - b. Pothole avoidance: Begin investigating a potential disciplinary situation soon after learning about it. Do not rush the investigation but, by all means, do not let it lag
- 8. **Supervisor, over time, imposes inconsistent disciplines for like cause.**
 - a. Unions relish cases of inconsistent discipline.
 - b. Pothole avoidance:
 - (1) Check with your HR unit to see if there if proposed disciplinary action is consistent with how other employees have been treated.
 - (2) If dismissal would be logical but the employee is, instead, given one more chance, explain carefully in the disciplinary notice why dismissal is not imposed.
 - (3) Make sure no "good-old-boy" favoritism, or resentment against an employee who is an irritant to management, has any part in the recommended discipline.
 - (4) If lighter disciplines in the past pose a risk that current reasonable discipline may be nullified at arbitration, put out a

notice to all department employees of the discipline they should expect in the future for the types of conduct at issue.

9. Supervisor overreaction to misconduct.

- a. The “front page of the Willamette Week” test is an insufficient basis upon which to take disciplinary action.
- b. Pothole avoidance: Conduct a full and proper investigation. Take the time to make a reasoned decision. Think through how you, as the decision-maker, will explain the decision on the witness stand.

F. Oral Reprimands

1. General information. The oral reprimand is probably the most common type of discipline. An oral reprimand consists of the supervisor verbally warning the employee concerning his/her work performance and counseling the employee specifically how to improve. The oral reprimand should be prompt, calm, and constructive action. The supervisor should advise the employee that his/her actions are unacceptable and must be corrected. The supervisor's goal is to determine the underlying causes and solutions, and to bring about acceptable conduct by the employee.

It is important to give oral reprimands when they are due. Without the reprimand, the employee does not know there is a need to change behavior, so the behavior continues. Other employees may copy the behavior because it has now become acceptable.

It is also important not to give too many oral reprimands for the same or similar violations, without progressing to more severe disciplinary action.

2. Recommended Procedure for Disciplinary Oral Reprimands.

- a. Investigate: Investigate the incident or situation to be sure you have all the facts and that your facts are accurate. The investigation may include an investigative interview of the employee, if so, follow the investigative interview process outlined on pages 22-24.

Check the employee's previous record for the same or similar incidents. Determine when and how the rule and the consequences of a violation of the rule were communicated to the employee.

- b. Review the situation, the evidence, and the employee's record to make sure the action you are taking is appropriate. Review department disciplinary records to determine if the action you are taking is consistent.

- c. Give the Oral Reprimand.
 - a. Arrange meeting time and private meeting place.
 - b. Notify the employee of meeting time and place. If a Union contract applies and there will be investigatory interview questions, then the employee is entitled to union representation. If the purpose of the meeting is to issue the oral reprimand, union representation is not required. However, the presence of a steward can help. A union representative may assist the supervisor and confirm to the employee that the oral reprimand is justified.
 - c. Supervisor should work from notes.
 - d. Acknowledge the positive aspects of the employee's performance.
 - e. Clearly state the rule, policy or standard violated.
 - f. Review the facts of the violation. Be specific and include names, dates, places, etc.
 - g. Explain the problems caused by the violation or inappropriate act. This may include dollar loss, time loss, health or safety risks or damage to public perception.
 - h. Mention any previous disciplinary actions for the same or similar offenses.
 - i. Give the warning. Fit the warning to the individual and the circumstances. Do not use sarcasm or anger. State that you will not tolerate continued inappropriate behavior or inadequate performance.
 - j. Ask for the employee's comments and listen.
 - k. Offer constructive suggestions of how the employee can prevent further disciplinary action, but let the employee know the consequences if the problem recurs.
 - l. Seek to get the employee's agreement to perform properly in the future.
 - m. Advise the employee, that this is the first step of the disciplinary process. Express confidence the employee will solve the problem as a result of the discussion and will continue to maintain that

standard in the future. Express that if his/her problem behavior continues, more serious disciplinary action will result.

- n. Advise the employee, that you will make a notation for your records only, it will not go into the employee personnel file, that you are recording the date, time and employee's performance that caused the oral reprimand.
- o. Remember to document the oral reprimand.

G. Written Reprimand

1. Characteristics of a written reprimand:

- It is corrective in nature;
- It is punitive (in the sense that is "reprimands");
- It outlines the performance deficiencies which gave rise to the reprimand;
- It indicates why the employee should have known better (which may include an advisory given earlier);
- It specifies performance objectives;
- It warns that failure to meet performance standards (or recurrence of the deficient performance) will result in further discipline, up to and including dismissal; and
- It includes a place for the employee to sign in acknowledgement of receipt of the letter and it states that a copy will be placed in the employee's personnel file.

2. Justification.

- a. The employee fails to respond to one or more oral warnings.
- b. Cases where violation is such that action stronger than an oral warning is necessary and warranted.

3. Recommended Procedure for Issuing Written Reprimands:

- a. Investigate the incident or situation to be sure you have all the facts and that the facts are accurate. If an employee is to be interviewed, follow the investigatory interview procedure outlined on pages 21-23.

- b. Review the situation, the evidence, and the employee's record to make sure the action you are taking is appropriate to the situation. Review disciplinary records to determine if the action you are taking is consistent.
- c. Prepare the Letter of Reprimand.
 - (1) This is a written reprimand.
 - (2) The grounds against the employee: The grounds need to refer to the violation of a County or Departmental Personnel Rule or other policy or procedure.
 - (3) Background: Including such matters as length of service, employee's duties, employee's training relevant to the charges, prior warnings, other notice given to the employee of management's expectations or standards, relevant policies or rules, and other pertinent information.
 - (4) Supporting facts: Specific statement of misconduct or poor performance by the employee, including dates, times, locations, names and details of the unacceptable action or performance.
 - (5) A description of future behavioral expectations, including the consequences of further misconduct or non-performance.
 - (6) Conclusion: A statement of employee's appeal rights under the CBA. If non-represented, a statement of the right to respond in writing within 10 days and to have that response placed in the employees personnel file.
 - (7) Signature block of the person authorized to impose the discipline.
 - (8) A notation of all copies furnished, specifically to include:
 - Employee's personnel file.
 - Collective bargaining representative.
 - Department HR Manager.
 - Central HR/LR Manager
 - (9) Signature block of employee acknowledging receipt of letter.

- (10) The supervisor should attempt to deliver the written reprimand personally, but that is not required. The supervisor can discuss the significance of the reprimand and clarify the future work expectations at the time of delivery, but the supervisor should avoid a punitive discussion that could be perceived by the employee as disciplinary (this violates the principle of “double jeopardy”). The discipline is the letter itself.

A sample Written Reprimand is attached as Document 8.

H. Insubordination (A common grounds for discipline)

1. Definition

For purposes of Multnomah County Personnel Rule 3-10-020(K) and just cause under collective bargaining agreements, insubordination is the intentional and willful refusal of an employee to follow a lawful and proper direct order of a supervisor or manager.

2. Key Factors

There are six (6) distinct requirements for insubordination:

Direct Order:	Was the employee given a direct order?
Clarity/Awareness:	Was the employee given a clear and unambiguous order? Was the employee aware that this was not merely instruction or advice, but was indeed an order?
Compliance:	Did the employee disregard and fail to follow the order intentionally and willfully?
Consequences:	Was the employee aware of the consequences of non-compliance?
Reasonable:	Was the supervisor or order reasonable?

Fairness:

Was the order unfair, unjust, illegal, inequitable, inconsistent, arbitrary or capricious? Can the employee reasonably argue that compliance with the order would have endangered him/herself or others?

3. Examples of Insubordination

An employee was properly suspended for refusing to obey an order to move her car. After the employee refused to move her automobile that was parked in a restricted area on the company's parking lot, she was issued a ticket by the safety manager. The ticket warned the employee that she was parked illegally in an area reserved for motorcycles. When the employee refused to accept the ticket, her supervisor ordered her to accompany him to the associate manager's office where she would be given a memo directing her to move the car. However, the employee again refused to comply, and subsequently, was suspended for insubordination. Arbitrator upheld suspension.

An employee who refused to report to his supervisor at the beginning and end of his shifts was properly discharged. The worker was clearly informed of the procedure and warned of the consequences of noncompliance, but repeatedly refused to follow the check-in procedure on the grounds that the rule was unreasonable and discriminatory since it applied only to a two employee unit.

4. Obey Now-Grieve Later Rule

The general rule is employees must not take matters into their own hands—also known as resorting to self help—but must obey orders and carry out their assignments, even when they believe those assignments are in violation of a collective bargaining agreement.

5. Exceptions to the “Obey Now-Grieve Later” Rule

a. Safety/Health. Exceptions to the “obey now-grieve later” doctrine exist where obedience would involve an unusual or abnormal safety or health hazard to the employee or to others. The employee must show that a safety or health hazard was the real reason for the refusal and that the alleged hazard existed at the time of the employee's refusal.

b. Illegal/Violation of Constitutional Rights. Exceptions to the “obey now-grieve later” doctrine may also exist if a supervisor directs an employee to violate the law or a clear public policy, or if a supervisor violates the employee's free speech rights. These rights must be laws that an arbitrator would consider inviolable. Each case is determined based on the specific facts of the situation.

The burden of proof is on the employee when refusing to follow an order. A belief that the order was illegal or violative of constitutional rights may be insufficient, even though the belief may have been reasonable under the circumstances.

I. Pre-discipline Notices

1. Definition.

Pre-discipline notices are *not* disciplines; they are notices of the initiation of the disciplinary process that is required for action with respect to employees with a property interest in the continuation of their employment. Pre-discipline notices are crucial disciplinary documents. Proper drafting of these notices is as important as the discipline letter because the content of these notices, including the statement of charges against the employee, becomes the content of the ultimate discipline notice.

2. The charges in a pre-discipline notice cannot vary from the charges in the final discipline notice. This means:

Accurate and adequate drafting of the pre-discipline notice is more difficult and crucial, and requires more thought than the drafting of the discipline document, which is, in pertinent part, a duplicate of the pre-discipline notice. Even if new charges develop at the pre-discipline meeting, the supervisor cannot just add these new charges as additional new charges in the discipline letter. If you find yourself adding new charges to a discipline letter, STOP and consult with your Department Human Resources Manager and/or Labor Relations Manager.

3. If new charges develop at a pre-discipline meeting, the supervisor must give a second pre-discipline notice of the new charges and schedule a second pre-discipline meeting.

4. A supervisor can drop charges in a discipline letter if he or she decides a particular charge is not shown to support discipline (is not proven as serious for some reason) and the remaining charges do support the action. The supervisor simply drops that charge (e.g., charge no. 3) and renumbers the remaining charges. In the summary section, the supervisor may, if he/she wants, simply and succinctly give a reason why he/she dropped a charge. (For example, "I re-contacted Ms. Alan as you requested. Ms. Alan told me that she mistakenly confused you with Mr. Long and no longer can state, with certainty that you yelled at her.")

5. Audience. Disciplinary notices are written to communicate to **four audiences.**

- a. The employee being disciplined.

- b. That employee's representative (the Union if the employee is represented).
- c. The agency imposing discipline.
- d. The forum, whether it's arbitration, the Employment Relations Board, or perhaps a jury or a judge.

Of these four audiences, the two with whom it is most important to communicate in the disciplinary notice, are the employee being disciplined and the forum. The disciplined employee is important because he or she has a constitutional right to be specifically notified in the charges of the reasons why the discipline has been imposed. The forum is important because the forum will hold the agency bound to its charges, and will review the evidence to determine whether the charges have been proved.

*A general format for a **pre-suspension**, **pre-demotion**, and **pre-reduction in pay**, is attached as Document 9.*

J. Predisciplinary Meetings - *Loudermill*

1. Except in the instance of oral and written reprimands, pre-disciplinary meetings are required as part of an employee's due process rights provided by the United States Constitution (See ***Loudermill*** discussion below), and as reflected in County personnel rules and collective bargaining agreements. The process ensures that an employee is not deprived of his or her property (employment) right without due process of law (notice and adequate procedures). The predisciplinary meeting is not a hearing (witnesses are not called under oath or subject to direct/cross-examination), but simply an informal meeting where the specific charges set forth in the written pre-discipline notice are reviewed with the employee, and the employee is able to provide mitigating information both as to the specific charges, and any additional matters that may dictate the charges should not be brought, or the level of discipline is too high.

2. As a practical matter, the meeting is very important for the employer for several reasons. This meeting is the one time during which the employee's specific responses to the actual charges can be requested.

3. Although employees are interviewed with respect to allegations during an investigation, this meeting is the only opportunity to review with the employee the specific charges upon which the supervisor will rely in making the personnel decision. Thus, it is the one time for there to be interaction between the supervisor and employee on the grounds that will go to hearing if a discipline is taken and then contested. The meeting also provides an opportunity to find out

the employee's position on whether the elements of fair treatment have been met.

4. It is therefore, important for the supervisor to have an established procedure for these meetings. The supervisor representative must maintain control of the meeting so that specific responses are elicited and that follow-up questions are asked, as necessary, to clarify contentions raised by the supervisor during the meeting.

5. The **first phase of the meeting** should involve a methodical review of the letter. It would be helpful for the supervisor to have a clean copy of the letter so it can be marked as admissions and denials are elicited from the employee.

6. The **second phase of the meeting** is to permit the employee to make any comments and bring forward information he/she wants to be considered. There can be a full range of issues, and the supervisor should be careful not to let matters slip through the cracks. Typically, during this phase of the meeting, individuals may be identified who the employee thinks have relevant information that the supervisor should consider.

7. Providing notice and an opportunity to meet are always required. This is even true if the employee is being dismissed because he or she is medically unable to return to work. The employee has the right to choose not to appear at the meeting, and instead to present mitigating information in writing.

8. Union represented employees are entitled to have a Union Representative present. The employer should then have a second management person (or HR representative or Labor Relations manager) to avoid a "two on one" situation.

9. Inform the union representative that he/she is free to consult with the employee, present his or her views and ask questions of the employee, but the employee, not the representative must respond to the charges.

10. The supervisor should take thorough notes during the pre-disciplinary meeting. The supervisor may wish to read the notes back to the employee to be sure the employee agrees that his/her side of the story is presented accurately. Let the employee know that these notes will be considered before making the final decision. Keep these notes. As an alternative, supervisors may choose to tape record the meeting, however they must let employee know the meeting is being taped.

11. After receiving the employee's response (oral or written) tell the employee when he/she may expect a decision. Supervisor may need time to check elements of the employee's story, consult other managers and arrive at a final decision.

12. Do not confuse the investigatory interview of the employee with the pre-discipline meeting. The investigatory interview provides the supervisor a chance to gather facts about what happened from the employee. After the investigation has concluded, the supervisor reviews all the factual information, determines the charges, issues the pre-discipline letter and schedules the pre-discipline meeting. Once the pre-discipline meeting occurs, the supervisor can make a final decision. Do not use the pre-discipline meeting as a method of investigation.

13.

Loudermill Rights, Summary

When just cause is required to impose discipline that rises to the level of a suspension without pay, involuntary demotion, reduction in pay or involuntary termination, employees are entitled to due process. Prior to being disciplined, "The tenured [define]public employee is entitled to oral or written notice of the charges against him or her, an explanation of the employer's evidence, and an opportunity to present his or her side of the story."

This right is known as the "*Loudermill* Right" and is based upon the 1985 U.S. Supreme Court decision of ***Cleveland Board of Education v. Loudermill***, 470 US 532 (1985).

- Unlike ***Weingarten***, the County has an obligation to inform the employee of his/her ***Loudermill*** Rights.
- The employee has a right to speak or not to speak at the ***Loudermill*** (or pre-disciplinary) hearing. Also, represented employees have a right to Representation and their Representative may speak on behalf of the member.
- If an employee chooses not to attend the ***Loudermill*** (or pre-disciplinary) hearing, the County may proceed with proposed discipline.
- At-will employees and probationary employees do not have a property right in their jobs and therefore are not entitled to *Loudermill* right.

K. Discipline and Dismissal

1. Supervisors must fairly administer provisions governing discipline for violations of work and conduct rules. They are also responsible for dismissing employees who do not maintain acceptable standards of performance or conduct.

3. Causes For Disciplinary Action

a. County employees are subject to disciplinary action for cause which can be any violation of the MCPRs, or violation of other policies and procedures or work expectations.

b. The most common MCPRs that are violated by employees:

MCPR 3-10	Employee Responsibilities
MCPR 3-30	Code of Ethics
MCPR 3-35	Use of Information Technology
MCPR 3-40	Harassment-Free Workplace
MCPR 3-45	Violence-Free Workplace
MCPR 3-47	Respectful Workplace Policy

4. Forms of Disciplinary Action

Unless prohibited by a collective bargaining agreement, any of the following disciplinary actions may be imposed. Other forms of disciplinary action may be imposed subject to the approval of Central HR/LR. No FLSA exempt employee is subject to discipline by suspension without pay for increments of less than full workweeks, unless it is discipline for a major safety violation which may be for less than a full workweek, nor to a reduction in pay.

- a. Oral reprimand
- b. Written reprimand
- c. Suspension without pay
- d. Demotion*
- e. Reduction in pay
- f. Dismissal
- g. Any combination of the above.

**A demotion is the reassignment of an employee to a class with a lower pay range. Demoted employees will receive the pay specified by the discipline. The new pay will be no less than the first step or minimum for the lower pay range.*

An employee may be demoted as a disciplinary measure. Demotion may be made on the basis of either unsatisfactory, gross inefficient job performance or unacceptable personal conduct. Demotions are amongst some of the more complex disciplinary issues. If you are considering demotion as a means of discipline, please work closely with your appropriate Human Resources and Labor Relations Representative

5. Notification Procedures

a. Notice of Proposed Discipline

Except in the instance of oral or written reprimands, an employee will be notified of specific charges, the key elements of the evidence that support such charges, and the specific disciplinary action proposed before discipline may be imposed by the supervisor. The notice of proposed discipline must also include the employee's right to respond to the charges orally and in writing, and provide the date, time and place for the oral response. This notification will be in writing except that employees may be immediately suspended without written notice of proposed action when the supervisor deems that the employee's continued presence in the work place presents a safety or security hazard to the employee, coworkers, or the employer. (See Document 9 for example of pre-discipline notice).

b. Discipline document

Except for oral reprimands, the discipline document must be mailed to the appropriate collective bargaining agent and delivered to the affected employee or last known mailing address by the date the discipline is to be imposed. If the discipline is a suspension, reduction in pay, demotion or discharge, the discipline letter to the employee will be either sent by certified mail/return receipt requested or hand delivered with a dated written receipt.

6. Format and Procedures for Disciplinary Action:

a. Letter Content. Letters of discipline will include sufficient information to inform the employee of the nature of the discipline, the grounds for the action, and the specific facts upon which the action is based. Generally, letters should contain the following information, as appropriate:

(1) **Action:** The nature of the discipline imposed, e.g., suspension without pay.

(2) **Effective Date of Action:** e.g., date a suspension begins, or an employee is dismissed.

(3) **Grounds:** The charge against the employee, e.g., just cause.

(4) **Background:** Includes such matters as length of service, prior warnings, prior discipline, other notice given to the employee of management's expectations or standards, training relevant to the charges, relevant policies or rules, and other pertinent information.

(5) **Supporting Facts:** This is the most crucial section of the disciplinary document because this section states the "cause" for the action. This section is best written in the active voice, because it is a statement of the employee's faultworthy conduct and so should state that an employee **did** an act or **failed to do** an act that he/she was required or expected to do. The facts may lead to a conclusion, but do not use a conclusion that is not supported by facts. If others are involved, use their names and titles. (except for client confidentiality). Include the specific dates on which the employee engaged in the faultworthy conduct. Avoid overstating or exaggerating the facts.

Example: Where the conclusion is "You were sleeping on the job."

"On April 1, 2013, your supervisor, Sam Smith, saw you sitting in the chair at the desk in the unit with your arms across your chest, your head tilted back against the wall and your eyes closed. Your breathing was regular and measured and your mouth was open and you were making a snoring sound***. Mr. Smith concluded that you were sleeping on the job."

(6) For *pre*-dismissal letters, include the pre-dismissal date, time and process. For dismissal letters, include a section responding to each point made by the employee at the pre-dismissal meeting.

(7) For the final disciplinary letter, include a Conclusion, including:

(a) A description of future behavioral expectations including the consequence of further misconduct or non-performance. (do not include this in *pre*-dismissal letter)

(b) A statement of the employee's appeal rights as set forth in the CBA.

(c) A statement of the right to respond in writing within 10 days and to have that response placed in the personnel file. (Non-represented only.)

(8) The signature of the supervisor with authorization to impose disciplinary action, or of the Director.

(9) A notation of all copies furnished, including:

(a) Employee's department personnel file

(b) Collective bargaining representative

(c) Department HR Manager

(d) Central HR/LR manager

b. Privacy. Every reasonable effort will be made to impose discipline in a manner that will not embarrass the employee before other employees or the public.

c. Appeals

Any represented employee has the right to appeal any discipline other than an oral reprimand in accordance with the terms of the collective bargaining agreement.

d. Imposition of a Lesser Discipline: Where there is a decision to impose a lesser discipline, two letters will be prepared:

(1) The first will state that the earlier discipline is withdrawn and a lesser form of discipline is anticipated;

(2) The second will impose the lesser discipline without reference to the withdrawn disciplinary action.

After it is issued, the employee has the right to appeal the lesser disciplinary action unless it was imposed as part of a written settlement agreement involving the employee, Central HR/LR and, if appropriate, the collective bargaining representative

e. Withdrawal of Charges: Supervisors may withdraw or modify any of the above disciplinary actions by notifying, in writing, all those originally notified. When charges are withdrawn, the copy of the notice of discipline in the personnel file will be destroyed. Central HR/LR will retain a notated copy in case of litigation.

f. Imposition of More Serious Discipline Based on New Information: If new facts are discovered during the disciplinary process that would result in the imposition of a more serious discipline than that originally proposed, a new notice must be sent to the employee incorporating the new facts as an additional basis for discipline, and giving the employee the opportunity to refute the new facts and charges.

A sample discipline letter (suspension, demotion, reduction in pay) setting forth the general format, with explanations, is attached as Document 10.a.

A sample discipline letter (suspension, demotion, reduction in pay) is attached as Document 10.b.

A sample discipline letter (suspension, demotion, reduction in pay) is attached as Document 10.c.

A sample Predissmissal Letter is attached as Document 11.

A sample Dismissal Letter is attached as Document 12.

L. Grievance Handling

1. Right to appeal disciplinary action by filing a grievance.

See AFSCME, Local 88 CBA, Article 18, Section II (Filing a Grievance).

The grievant may use a grievance form provided by the Union or submit a memorandum containing the following information:

- a. Name of the grievant(s).
- b. The date of filing.
- c. Relevant facts and explanation of the grievance.
- d. A list of the articles of the contract allegedly violated.
- e. A description of remedy sought.

2. Checklist for Management handling grievances (disciplinary appeals) at Steps 1 and 2 of the grievance process.

- a. Initial Review of Grievance.

_____ Determine if you need to do an information request of the union

_____ Check grievant's alleged facts

_____ Obtain names of all relevant individuals and interview -- supervisors, managers and coworkers if necessary

_____ Don't personalize the issues

_____ Keep a good record

_____ Obtain all relevant dates, times

_____ Review the section of the contract allegedly violated

_____ Review the remedy desired

3. Review defenses.

_____ Ensure appropriate contract provisions cited

_____ Check the time limits, statute of limitations

_____ Check the grievability of the complaint

_____ Check the availability of the remedy

_____ Check department policy and practices

_____ Check previous grievance settlements for precedent

_____ Check the experience of others in similar cases

_____ Seek advice (Consult with Dept. HR and Central Labor Relations)

_____ Make sure you can prove the employer's position by a preponderance of the evidence

_____ Reach a preliminary decision and check it with your supervisor, Human Resources and Labor Relations

4. Write your response.

_____ If the grievance needs to be settled, settle the grievance at the earliest moment that a proper settlement can be reached – not always the longest time granted on the grievance form

_____ Explain your position

_____ Write a simple answer to the grievance – note timeliness or procedural problems

_____ Explain the employee's right to further appeal

_____ Arrange for grievance meeting at Step 1 or 2

Attached is a sample Grievance Response Format as Document 13.

Attached is a sample Grievance Response Step 1 as Document 14.

Attached is a sample Grievance Response Step 2 as Document 15.

5. Follow-up

_____ Make sure any action you promised was carried out

_____ Be alert to situations that might bring additional grievances

_____ Correct such situations before a grievance is filed

_____ Explain change to your employees

_____ Be consistent

_____ Know your employees and their interests

_____ If disciplinary action is taken do it privately

6. Management Checklist for Assisting with Arbitration of Grievance

a. Study the Case Objectively

_____ Is the matter grievable?

_____ Have the procedures been followed?

_____ Are you dealing with the party specified in the contract (e.g. business representative, employee Union committee, etc.)?

_____ Identify the contract clauses that apply to each issue.

_____ Check old contracts and bargaining history:

- _____ How did the provision get into the contract?
- _____ Who proposed the provision?
- _____ Who wrote the provision?
- _____ What changes were sought by either party?
- _____ Identify the facts that go with each issue.
- _____ Identify the witnesses that support the facts.
- _____ Look for other supportive evidence.
- _____ Look for other arbitrations on the same issue.
- _____ Estimate your chances of winning:
 - _____ What evidence is available to support management's position?
 - _____ How effective are the available witnesses?
 - _____ Who will present the case for the grievant?
 - _____ What evidence is available for the grievant?
 - _____ How effective are the grievance witnesses?
 - _____ Who has the most emotionally persuasive case?
 - _____ Who will the arbitrator be?
- _____ Is the issue important to management?
 - _____ What management purpose will be served by a favorable arbitrator's decision?
 - _____ Will a favorable decision establish a needed guideline?
 - _____ Will a decision settle a continuing dispute?
 - _____ What will be the result of an unfavorable decision?
 - _____ What will it cost to get a decision?

_____ Consider possible settlements

b. Assisting in preparation of the case

_____ Identify the County's main argument.

_____ Assist in identifying each witness

_____ Determine what he or she knows about the case.

_____ Make sure the witness understands the relationship of their testimony to your argument.

_____ Cross-examine him or her to determine his/her testimony and to get him or her use to cross-examination.

_____ Make a written summary of the important points of his/her testimony.

_____ Outline the questions you will ask him or her.

_____ Try to talk to grievance witnesses.

_____ Decide the order you will call the witnesses.

_____ Decide what the weak spots in your case are and how you will plug them.

_____ Organize your supportive evidence:

_____ Consider graphs, charts, records, pictures, video tapes, moving pictures, etc.

_____ Decide which witnesses will introduce evidence.

_____ Make duplicate copies for arbitrator and grievant.

_____ If other party has documents ask for them and if refused, ask arbitrator to get them for you.

M. Sample Letters/ Documents

1. Delegation of Authority
2. Probationary Employee Termination Letter
3. Paid Administrative Leave Letter
4. Proposed Suspension without Pay pending Completion of the
Pre-dismissal Process
5. Suspension without Pay pending Completion of the Pre-
dismissal Process
6. Letter of Expectations
7. Work Improvement Plan
8. Written Reprimand
9. Pre-Suspension Letter [SAME FORMAT FOR REDUCTIONS
IN PAY AND DEMOTIONS]
10. Suspension Letter [SAME FORMAT FOR REDUCTIONS IN
PAY AND DEMOTIONS]
11. Pre-dismissal Letter
12. Dismissal Letter
13. Grievance Response Format
14. Grievance Response Step 1
15. Grievance Response Step 2

[LETTERHEAD]

1. Delegation of Disciplinary Authority

MEMORANDUM

TO: All Exempt Employees - Department of Ecological Services

FROM: Jane Doe, Director
Ecological Services

DATE: June 30, 2013

SUBJECT: Delegation of Authority

The following positions in Ecological Services are delegated authority to act as Appointing Authorities for disciplinary purposes for the specific forms of discipline indicated and for any combination thereof:

	Oral/Written Reprimand	Demotions, Suspensions and Reductions in Pay	Discharge
Waste Water Director	X	X	X
Solid Waste Director	X	X	X
Dump Supervisor	X	X	
Sewage Plan Supervisor	X		

cc: Central Human Resources
Labor Relations Manager

[LETTERHEAD]

2. Probationary Employee Termination Letter

DATE

NAME

Dear [NAME]: (Do not use first name)

Multnomah County uses the new hire probationary period as a time to evaluate an employee's performance on the job. You were hired as a/an _____ on _____. Based on our evaluation of your performance during your initial probationary period, it has been determined that your continued employment with the Department of _____ is not in the best interest of the County.

Your last day of employment with Multnomah County's Department of _____ is _____.

We regret this employment relationship did not work out and wish you the best in your future endeavors.

Sincerely,

NAME

TITLE

cc: Labor Relations Manager

[LETTERHEAD]

3. Paid Administrative Leave letter

DATE

Mr. Mitchell Bland
Address

Dear Mr. Bland:[Do not use first name]

This letter is to notify you that you are being placed on paid administrative leave effective 8:00 a.m. tomorrow, January 15, 2012, due to an incident that occurred in your cubicle this afternoon involving you and two other employees. You will remain in this status until an investigation into this incident has been undertaken and concluded. You will be on paid status during this time with no impact to your salary or benefits.

While on administrative leave you must be available by telephone during your normal working hours. Therefore, you must keep [SUPERVISOR] informed of your current home telephone number and/or cellular phone. The telephone number we currently show for you is _____.

During this time if you wish to take vacation leave for your own purposes or to participate in activities which would require you to use accrued leave or take approved leave without pay, you should request such leave by calling [SUPERVISOR].

This afternoon you will need to turn over your badge, bus pass and any County property to [SUPERVISOR]. While you are on leave, you are restricted from the nonpublic areas of the building, unless you are coming to see [SUPERVISOR] to obtain your paycheck, or to Human Resources for any meetings or interviews which may be scheduled with you.

If you have any questions during this time, please contact _____.

Sincerely,

SUPERVISOR

cc: HR Manager
Labor Relations Manager
Union Business Representative

[LETTERHEAD]

**4. Proposed Suspension without Pay
Pending Completion of Pre-dismissal Process.**

DATE

Heather Cowan
Home address

Dear Ms. Cowan:[Do not use first name]

As an employee of the Department of County Human Services (DCHS) assigned to the Developmental Disabilities Division in the classification of Case Manager 2, you are hereby notified of the following proposed personnel action:

ACTION: Notice of potential suspension without pay pending completion of the pre-dismissal process.

GROUND: Article 17, AFSCME Local 88 / Multnomah County Collective Bargaining Agreement (CBA): In Good faith for cause, including misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance, and/or failure to fulfill responsibilities as an employee by Violation of MCPR 3-10-20 (N).

BACKGROUND:

You were originally hired as an Office Assistant 2 in the Developmental Disabilities Division in August 1995 and became a Care Worker 1 in February 2005. You work at the Oak Park Home, providing care to vulnerable consumers who are unable to care for themselves due to disabilities.

Residents are often unable to communicate or control their behavior. Some residents act aggressively at times toward staff or other residents. By state law, the County is responsible for the care of this vulnerable population.

Staff are expected to be watchful for the safety of the residents of the Oak Park Home. The expectation is that staff will display and model appropriate behavior as part of their services for the residents.

Under the Oregon Administrative Regulations, individuals convicted of certain felonies and misdemeanors are disqualified from the position of Care Worker due to the vulnerability of the clients.

FACTS SUPPORTING PROPOSED ACTION:

1. The County learned today that you were arrested and charged with elder abuse and fraud, felony charges, by the Multnomah County District Attorney's Office on May 15, 2013, in connection with harm you allegedly caused to an individual who resides near you.
2. You allegedly caused physical and financial harm to this elderly individual.

PREDECISION MEETING:

A hearing will be held on July 15, 2013, at 3:00 p.m. in the Cedar Conference Room on the 4th Floor in the Multnomah Building for you to present mitigating information as to why you should not be suspended without pay pending completion of the pre-dismissal process. You have not attended work since May 15, 2013, and you have been placed on administrative leave with pay. You may bring a union representative to this meeting if you wish. In lieu of this hearing, you have the option to submit a written response to these charges to me in Human Resources by June 15, 2013.

PENDING CRIMINAL CHARGES:

The conduct described above has resulted in the filing of criminal charges against you by the Multnomah County District Attorney's office.

It is your choice to provide any information or make statements during the meeting scheduled for July 15, 2013.

If you decide not to provide information, that fact will not be held against you and will not be viewed as admitting the conduct just because you did not respond. The personnel review will simply move forward with available information.

Sincerely,

Manager

cc: Personnel file
Division Manager
HR Manager
Labor Relations Manager
Union Business Representative

[LETTERHEAD]

**5. Suspension without Pay
Pending Completion of the Pre-Dismissal Process**

[DATE]

Ms. Heather Cowan: [Do not use first name]
Home Address

Dear Ms. Cowan:

As an employee of the Department of County Human Services (DCHS) assigned to the Developmental Disabilities Division in the classification of Case Manager 2, you are hereby notified of the following personnel action:

ACTION: Suspension without pay pending completion of the pre-dismissal process.

GROUND: Article 17, AFSCME Local 88 / Multnomah County Collective Bargaining Agreement (CBA): In good faith for cause, including misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance, and/or failure to fulfill responsibilities as an employee by Violation of MCPRs 3-10-20 (N).

BACKGROUND:

You were originally hired as an Office Assistant 2 in the Developmental Disabilities Division in August 1995 and became a Care Worker 1 in February 2005. You work at the Oak Park Home, providing care to vulnerable consumers who are unable to care for themselves due to disabilities.

Residents are often unable to communicate or control their behavior. Some residents act aggressively at times toward staff or other residents. By state law, the County is responsible for the care of this vulnerable population.

Staff are expected to be watchful for the safety of the residents of the Oak Park Home. The expectation is that staff will display and model appropriate behavior as part of their services for the residents.

Under the Oregon Administrative Regulations, individuals convicted of certain felonies and misdemeanors are disqualified from the position of Care Worker due to the vulnerability of the clients.

FACTS SUPPORTING PROPOSED ACTION:

1. The County learned on June 30, 2012 that you were arrested and charged with elder abuse and fraud, felony charges, by the Multnomah County District Attorney's Office on May 15, 2012, in connection with harm you allegedly caused to an individual who resides near you.
2. According to the police reports in the case file, you caused physical and financial harm to this elderly individual.

PREDECISION MEETING:

A hearing was held on July 15, 2012, at 3:00 p.m. in the Cedar Conference Room on the 4th Floor in the Multnomah Building to provide you an opportunity to present mitigating information as to why you should not be suspended without pay pending completion of the pre-dismissal process. While you attended, you did not provide any mitigating information based on the advice of your counsel. This fact was not held against you.

The County has decided that you are placed on suspension without pay effective July 20, 2012. You will continue in this status pending completion of the pre-dismissal process.

If there is not discipline as a result of the pre-dismissal process, you will be reinstated and all back pay restored. If there is discipline, any pay lost during the suspension is not restored; you will be advised of your right to appeal the suspension without pay pending conclusion of the pre-dismissal process under Article 17 of the CBA.

Sincerely,

Manager

cc: Personnel file
HR Manager
Labor Relations Manager
Union Business Representative

[LETTERHEAD]

6. Letter of Expectations

TO: John Doe, Human Resources Technician

FROM: Jane Darcy, SUPERVISOR (TITLE)

DATE: December 2, 2012

SUBJECT: Letter of Expectations

This memorandum is meant to assist you by clearly identifying my expectations. Please keep in mind these expectations are intended to supplement any countywide, departmental or other applicable policies or rules.

1. Adhere to your established work schedule; any deviation from your schedule of 8:00 to 5:00 requires my advance approval.
2. If you are going to arrive late to work you need to contact me or my designee as soon as possible, but no later than 15 minutes before your scheduled start time either by phone or email
3. Adhere to and execute the tasks assigned by me or my designee in the priority order of their assignment.
4. Process all SAP entries in an accurate and timely manner.
5. Access SAP for business purposes only. Under no circumstances should you access SAP for personal reasons.

To ensure understanding, I would like to encourage you to talk with me about any questions or concerns you may have. Please let me know what I can do to offer you the support and resources you need to achieve your best outcomes. Your failure to meet and sustain these expectations may constitute grounds for appropriate disciplinary action.

Sincerely,

Jane Darcy

TITLE

cc: Employee Personnel File
Patricia Smith, Council Representative, AFSCME, Local 88
Ralph James, Departmental HR
Bob Jenkins, Labor Relations Manager

Signed: John Doe – Employee Acknowledges Receipt of this Letter
Date: _____

7. Work Improvement Plan

December 3, 2012

Employee: John Doe
Position: Office Assistant II
Supervisor: Jane Smith [TITLE]
Time Period: November 3, 2010 to May 1, 2011 (Review and progress meeting every 30 days from starting time period)
 (Given to Bartholomew on 11/3/10; schedule to review progress on a Monthly Basis until May 2011*)

Description of Job Duties	Performance Expectations	Actual Performance Demonstrated
1. General position requirements:	<ul style="list-style-type: none"> ➤ Perform the tasks requested of you in their order of priority, and if the priority is unknown to request clarification from your manager. ➤ Notify your manager of issues that may result in a risk of your inability to perform or complete work requested in the time given. ➤ Arrive to work on time and work the hours per your work schedule of M-F 8am-5pm. (In keeping with Personnel Rule 3-10-020 A). ➤ If you need to arrive late to work you need to contact your manager or her designee as soon as possible, but no later than 15 minutes after your scheduled start time either by phone or email. Upon your arrival, you need to let your manager or her designee know that you have arrived at work and how you plan to account for your lateness. ➤ If you are sick and unable to report to come in to work, you must notify your manager or her designee as soon as possible, but no later than 15 minutes after your scheduled start time by either phone or email. ➤ In advance, notify your manager when you are going to be off-site attending a meeting and when you plan to return to your office. ➤ Refrain from unprofessional behavior directed to your co-workers, managers, and our customers in all forms of communications, including at meetings. (In keeping with Personnel Rule 3-10-020 E). ➤ Refrain from discourteous and confrontational treatment of your manager. (In keeping with Personnel Rule 3-10-020 E). ➤ Do not refuse to perform assigned work or neglect your duties and responsibilities unless the work constitutes a safety 	➤

Description of Job Duties	Performance Expectations	Actual Performance Demonstrated
	hazard. (In keeping with Personnel Rule 3-10-020 K).	

Description of Job Duties	Performance Expectations	Actual Performance Demonstrated
2. General position requirements:	<ul style="list-style-type: none"> ➤ Perform the tasks requested in their order of priority, and if the priority is unknown to request clarification from your manager. ➤ Notify your manager of issues that may result in a risk of your inability to perform or complete work requested in the time given. ➤ Arrive to work on time and work the hours per your work schedule of M-F 8am-5pm. (In keeping with Personnel Rule 3-10-020 A). ➤ If you need to arrive late to work you need to contact your manager or her designee as soon as possible, but no later than 15 minutes after your scheduled start time either by phone or email. Upon your arrival, you need to let your manager or her designee know that you have arrived at work and how you plan to account for your lateness. ➤ If you are sick and unable to report to come in to work, you must notify your manager or her designee as soon as possible, but no later than 15 minutes after your scheduled start time by either phone or email. ➤ In advance, notify your manager when you are going to be off-site attending a meeting and when you plan to return to your office. ➤ Refrain from unprofessional behavior directed to your co-workers, managers, and our customers in all forms of communications, including at meetings. (In keeping with Personnel Rule 3-10-020 E). ➤ Refrain from discourteous and confrontational treatment of your manager. (In keeping with Personnel Rule 3-10-020 E). ➤ Do not refuse to perform assigned work or neglect your duties and responsibilities unless the work constitutes a safety hazard. (In keeping with Personnel Rule 3-10- 	➤

Description of Job Duties	Performance Expectations	Actual Performance Demonstrated
	020 K).	

I hereby acknowledge that I have reviewed and agreed to the expectations set out in this performance work plan.

Employee signature and Date

Supervisor Signature and Date

[LETTERHEAD]

8. Written Reprimand

DATE

Lisa M. Bankhead
Administrative Assistant
Department or Division
Multnomah County

Dear Ms. Bankhead: (Do not use first name)

As an employee of Multnomah County in the classification of Administrative Assistant since July 1, 2005, you are notified of the following personnel action:

ACTION: Written Reprimand

EFFECTIVE DATE: Immediately

GROUND: Article 17, AFSCME Local 88 / Multnomah County Collective Bargaining Agreement (CBA): In good faith for cause, including misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance, and/or failure to fulfill responsibilities as an employee by violation of Multnomah County Personnel Rule (MCPR) 3-10-20 (A) and CBA Article 13.VII. B1

This is a written reprimand for your continued tardiness. Your tardiness is a violation of the following:

MCPR 3-10-020(A):

Employees must at their designated work area on time and ready to work.

AFSCME Local 88 CBA, Article 13.VII.B1

An employee who starts work after their start time is considered to be late. Being late to work can be grounds for discipline up to and including dismissal.

Background:

In an effort to clearly state your attendance expectation in your role as an Administrative Assistant, I provided you with a letter of expectation on March 30, 2012. Included in that letter was a provision that covered your work schedule,

which stated that if you were going to arrive late to work you needed to contact me or my designee as soon as possible, but no later than 15 minutes before your scheduled start time, either by telephone or email. Despite this letter of expectation, your tardiness continued. On Monday, April 9, 2012, you were given an oral reprimand by me for tardiness that occurred on Thursday, April 5, 2012.

Since issuing you this oral reprimand, you have had two separate instances of late arrivals.

This first occurred on May 15, 2012, on which date you did not inform me that you would be late until 9:31 a.m. You emailed me at 9:31 a.m. stating that you had arrived to work at 9:25 a.m. Your normal start time is 9:00 a.m.

The second incident occurred on May 30, 2012, on which date you did not inform me that you would be late until 9:20 a.m. You emailed me at 9:20 a.m. stating you had arrived to work at 9:12 a.m.

Your continued tardiness violates both the Local 88 CBA, Article 13.VII.B1 and MCPR 3-10-020 (A).

As previously specified in your letter of expectation, in the future if you need to arrive late to work or if you cannot come into work for any reason, you need to contact me or my designee as soon as possible, but no later than 15 minutes before your scheduled start time either by phone or email. Future violations of this rule may lead to further discipline, up to and including dismissal.

You are also advised that you may elect to grieve your written reprimand in accordance with the terms and conditions of the Local 88 CBA.

Sincerely,

Supervisor
[TITLE]

cc: Employee's Personnel File
Union Business Representative
Department HR Manager
Labor Relations Manager

Signed: Lisa Bankhead – Employee Acknowledges Receipt of this Letter
Date _____

[LETTERHEAD]

9.a. Proposed Pre-Suspension [or Pre-REDUCTION IN PAY, Pre-DEMOTION] Letter – General Format

DATE

Employee's Name
Address

Dear (Employee's Name):[Do not use first name]

As an employee of Multnomah County in the classification of _____ since _____, you are hereby notified of the following proposed personnel action.

ACTION:

Notice of Proposed _____.

(Note: Need to be specific, in case of suspension state how many days or in case of demotion/reduction in pay, how much and for how long.)

(Important: Do not do impose pay reductions for an exempt employee as it may cause the employee to lose their FLSA-exempt status, entitling them to overtime. Suspensions in full work-week increments where the exempt employee does no work are allowed.)

EFFECTIVE DATE:

To be determined following pre-disciplinary meeting.

GROUND:

State the grounds against the employee, first the applicable collective bargaining agreement article and standard; e.g. AFSCME, Local 88 CBA Art. 17, In Good Faith for Cause, including misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance, and/or failing to fulfill responsibilities as an employee. Then state the Multnomah County Personnel Rule or other county rule or practice, or contract provision violated. State number and title of rule violated and rule contents applicable to the discipline -- for example: (conduct: absence without leave) MCPR 3-10-020 (A) provides: Employees must be at their designated work area on time and ready to work. Employees must remain at their work area, at work, until the scheduled quitting

time unless permission to leave is granted by the supervisor.

BACKGROUND:

[Include such matters as length of service in job classification(s), job duties set forth in job description including guidance documents (for example, OARs and rules that the job description states “guide” the position)[these duties are particularly important in disciplinary letters relating to performance] prior coaching and discipline that is not “stale,”² including prior warnings, letters of expectation, work improvement plans, prior discipline and other notices given to the employee of management’s expectations or standards, training, relevant policies or rules and other pertinent objective information **that is relevant to the present charges**. If employee has a long work history with no progressive discipline, explain why this situation is so egregious that progressive discipline is not warranted. Note: Under the Local 88 CBA, performance evaluations cannot be used as evidence in a disciplinary or arbitration hearing.]

[Important to include dates, if prior violations state what was violated and a brief summary describing each ground for issuing the action, particularly emphasizing conduct or behavior that is similar to the current conduct cited in the letter.]

SUPPORTING FACTS:

[This section is the most crucial section because it states the “cause” for the action. List the specific charges and the key elements of the evidence that support such charges, e.g., “You were witnessed leaving the work site, etc.” This section is best written in the active voice, because it is a statement of the employee’s faultworthy conduct and so should state that the employee **did** an act or **failed to do** an act that he/she was required or expected to do. State facts, not just conclusions.]

If true, these charges constitute _____ and a violation of MCPR _____.

PRE-_____ PROCESS:

Prior to making a decision on your proposed _____, I wish to have any evidence or argument you may have to offer to rebut the charges against _____

²For example, the Local 88 CBA provides that an employee may request and have removed from his or her personnel file any letter of reprimand which is more than two years old. Letters of reprimand more than two years old will not be used in subsequent disciplinary action. Letters of discipline imposing discipline more severe than a letter of reprimand which are more than five years old will be removed from an employee’s personnel file upon the employee’s request. If there is more than one letter imposing discipline which is more severe than a letter of reprimand on file, none of the letters may be removed until the most recent letter is more than five years old. If subject to removal, the letters cannot be used in disciplinary proceedings.

you, as well as, any matters in extenuation or mitigation which you may feel are relevant. You are, therefore directed to be at the _____ conference room in the _____ at _____ on _____ to respond to the above charges. If you wish to respond in writing, please ensure that I am in receipt of such response no later than the close of business day prior to the scheduled meeting.

You have a right to representation by _____ in the matters concerning your employment relations. (Does not apply to non-represented employees.)

Sincerely,

(Name)

(Title)

cc: Employee's Department Personnel File
Union Representative (Does not apply to non-represented employees.)
Department HR Manager
Labor Relations Manager

I have reviewed and have received a copy of this pre-suspension notice:

Employee acknowledgement of receipt of this letter (Name and Date)

[Employee should sign disciplines (with the exception of predissmissal notices and dismissal actions)]

[LETTERHEAD]

9.b. Pre-suspension letter sample

Lisa M. Blue
Administrative Assistant
[Appropriate Division]
Multnomah County

Dear Ms. Blue: (Do not use first name.)

As an employee of Multnomah County since June 11, 2001, currently in the classification of Administrative Assistant, you are hereby notified of the following proposed personnel action:

DATE: To Be Determined

ACTION: Notice of Proposed One (1) Day Suspension without Pay

GROUND: AFSCME, Local 88 Collective Bargaining Agreement (CBA): Article 17, In Good Faith for Cause, including misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance, and/or failing to fulfill responsibilities as an employee.

CBA: Article 13 VII. B1:

An employee who starts work after their start time is considered to be late. Being late to work can be grounds for discipline up to and including termination.

CBA: Article 13 VII. B1:

An employee who starts work after their start time is considered to be late. Being late to work can be grounds for discipline up to and including termination.

Multnomah County Personnel Rule (MCPR) 3-10-020:

(A) Employees must be at their designated work area on time and ready to work. * * *

BACKGROUND:

You were hired by the County as an Administrative Assistant, on June 11, 2001. Since your employment, you have had a continuing problem with reporting to work on time in compliance with the above-referenced rules. Your behavior violates County work rules and the Local 88 Collective Bargaining Agreement. The following is a summary of corrective action the County has taken to improve your behavior:

- 1) March 30, 2009, Letter of Expectations - In an effort to clearly state the expectation of your position as an Administrative Analyst you received a letter of expectations. Included in that letter was a provision that covered your work schedule. The letter also outlined the expectations of you if you are going to be late to work. Despite this letter of expectations, your tardiness and your failure to follow protocol continued.
- 2) April 6, 2009, Oral Reprimand - for late arrival which occurred on Thursday April 2, 2009.
- 3) August 11, 2009, Written Reprimand – for two (2) separate instances of late arrivals which occurred on July 15, 2009 and again on August 3, 2009.

In addition to these specific actions, I have coached you on numerous occasions about your tardiness, and the reasons why your being at work on time is important.

SUPPORTING FACTS:

Despite the corrective actions described above, you have had ten (10) additional separate instances of unplanned late arrivals to work without prior supervisor approval since the August 11, 2009, written reprimand.

The most recent occurrences were on January 7, 2010, when you arrived to work 15 minutes after your scheduled 9:00 am start time without prior notification; and on January 8, 2010, when you arrived to work at 9:40 am, 40 minutes late. You confirmed your tardiness on those days to be true.

In addition to the aforementioned occurrences, you've had five (5) other instances of tardiness since August 11, 2009. Below is a timeline of these events.

9/23/09 (Wed) You arrived at 9:30, 30 minutes after your scheduled start time.
9/30/09 (Wed) You arrived at 9:40, 40 minutes after your scheduled start time.
10/28/09 (Wed) You arrived at 9:18, 18 minutes after your scheduled start time.
11/12/09 (Thurs) You arrived at 9:18, 18 minutes after your scheduled start time.
12/16/09 (Wed) You arrived at 9:30, 30 minutes after your scheduled start time.

Your continued pattern of tardiness, despite our numerous coaching meetings and the corrective action cited above, demonstrates continued violation of County work rules and the Collective Bargaining Agreement. Your tardiness demonstrates your disregard for County policies and rules. It is also disrespectful of your coworkers and team members with whom you are expected to work collaboratively. You have had numerous opportunities to improve your behavior and because you have not corrected this behavior we are forced to impose the next level of progressive discipline.

If true, these charges constitute failure to fulfill the responsibilities as an employee, a violation of County Personnel Rule 3-10-020(A), and Local 88 Contract; Article 13 VII. B1, just cause for this discipline under the CBA.

PRE-SUSPENSION PROCESS:

Prior to making a decision on your proposed suspension, I wish to have any evidence or argument you may have to offer to rebut the charges against you, as well as, any matters in extenuation or mitigation which you feel are relevant. You are directed to be at the Isotopes Conference room on the 12th floor of the Burns Building at 11:00am on Friday January 22, 2010. to respond to the above charges. If you wish to respond in writing, please ensure I am in receipt of such response at least 24 hours prior to the scheduled meeting.

You have the right to representation by AFSCME Local 88 in matters concerning your employment relations.

Sincerely,

Waylon Jones
[TITLE]

cc: Employee's Personnel File
Union Business Representative
Departmental HR
Labor Relations Manager

Signed: Lisa M. Blue – Employee Acknowledges Receipt of this Letter Date

[LETTERHEAD]

10.a. Suspension letter (or Demotion, Reduction in Pay) General Format and Instructions

DATE

Employee's Name
Address

Dear (Employee's Name):(Do not use first name)

As an employee of Multnomah County in the classification of _____ since _____, you are hereby notified of the following personnel action.

EFFECTIVE DATE: (Note: Need to be specific, in case of suspension state how many days or in case of demotion/reduction in pay, how much and what period of time.)

(Important: Do not do impose pay reductions for an exempt employee as it may cause the employee to lose their FLSA-exempt status, entitling them to overtime. Suspensions in full work-week increments where the exempt employee does no work are allowable.)

ACTION: Demotion, Reduction in Pay or Suspension: _____

GROUND: Cite the article of the contract that was violated and the Multnomah County Personnel Rules that were violated. Sample language:

AFSCME/Local 88 Collective Bargaining Agreement (CBA): Art. 17 In good faith for cause, including misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance, and/or failing to fulfill responsibilities as an employee, by your violation of Multnomah County Personnel Rule(s) (MCPR), Employee Responsibilities, 3-10-020(A) which provides: Employees must be at their designated work area on time and ready to work.

Important: The grounds need to be the same as the grounds contained in the pre-disciplinary letter. If new grounds are added, you need to rescind the original pre-disciplinary letter, reissue a pre-disciplinary letter and schedule a new pre-

disciplinary meeting; in the alternative, you can do a separate letter and have a separate pre-disciplinary meeting on the supplemental charges.

BACKGROUND:

[Include such matters as length of service in job classification(s), job duties set forth in job description including guidance documents (for example OARs and rules that the job description states “guide” the position), all previous coaching and discipline that is not “stale,”³ including prior warnings, letters of expectation, work improvement plans, prior discipline and other notices given to the employee of management’s expectations or standards, training, relevant policies or rules and other pertinent objective information **that is relevant to the present charges**. If employee has a long work history with no progressive discipline, explain why this situation is so egregious that progressive discipline is not warranted. Note: Under the AFSCME, Local 88 CBA, performance evaluations cannot be used as evidence in a disciplinary or arbitration hearing.

Important to include dates, if prior violations state what was violated and a brief summary describing each ground for issuing the action, particularly emphasizing conduct or behavior that is similar to the current conduct cited in the letter.

SUPPORTING FACTS:

List the specific charges and the key elements of the evidence that support such charges, e.g., “You were witnessed leaving the work site, etc.” Use statements of fact, not bare conclusions.

Important: Needs to be the same as contained in the pre-disciplinary letter.

PRE-DISCIPLINARY MEETING:

A pre-disciplinary meeting was held on _____, wherein you were allowed to present oral and/or written statements of facts and arguments that would mitigate the discipline proposed in pre-disciplinary letter. You were present along with your Union Representative (name), _____ [list attendees], and me. At this meeting you [discuss arguments presented and employer’s reaction to each item, or, if employee did not refute charges state such. State why the mitigating information presented was not persuasive [if true] and does not change your decision to impose the noticed discipline.]

³ For example, the Local 88 CBA provides that an employee may request and have removed from his or her personnel file any letter of reprimand which is more than two years old. Letters of reprimand more than two years old will not be used in subsequent disciplinary action. Letters of discipline imposing discipline more severe than a letter of reprimand which is more than five years old will be removed from an employee’s personnel file upon the employee’s request. If there is more than one letter imposing discipline which is more severe than a letter of reprimand on file, none of the letters may be removed until the most recent letter is more than five years old. If subject to removal, the letters cannot be used in disciplinary proceedings.

(Note: If employee elects not to attend meeting but provides written response or does neither letter needs to capture for the record if no meeting and/or written response and position of the employee. If employee does not refute charges, so note.)

CONCLUSION:

State the basis for the disciplinary decision. Include language that explains why the misconduct or poor performance has breached the trust required for an effective employer/employee relationship. Explain why you have determined that corrective action (less than the discipline imposed) will not be effective to change this employee's behavior or performance.

(Suspensions) You are suspended effective _____ through _____ without pay. You will return to work starting on _____.

(Demotion/Reduction in Pay) You are _____ effective through _____.

For Suspensions, If applicable: You are restricted from non-public Multnomah County property, all equipment and office buildings during this time. You may not come on the worksite unless you have been explicitly directed by your supervisor, manager or human resources representative to attend a meeting or otherwise be present at a specific time and place. Your duties will be covered by someone else and you may not contact fellow employees during work hours regarding County business.

FUTURE EXPECTATIONS:

In the future, you are expected to correct your performance in the following areas:

(List expectations)

Any future violations will be grounds for discipline up to and including dismissal.

You are advised that you may elect to grieve your _____ in accordance with the terms of the _____ collective bargaining agreement.

(Note: For classified non-represented employees, appeal rights are in accordance with Personnel Rule 2-20-010.

You may appeal your disciplinary action to the Merit System Civil Council per Personnel Rule 2-20-010 (A). Your appeal must be delivered to Ann Boss, the Executive Secretary of the Council, no later than 10 calendar days after the

discipline. You may contact Ann Boss at (503) 988-5015, ext. 28434/3rd Floor/Labor Relations.)

Sincerely,

(Name)
(Title)

cc: Employee's Department Personnel File
Union Representative (Does not apply to non-represented
employees.)
Department HR Manager
Central HR/LR Manager

I have reviewed and have received a copy of this suspension notice:

Employee acknowledgement of receipt of this letter (Name and Date)

[LETTERHEAD]

b. Sample Suspension Letter

[LETTERHEAD]

Date: September 24, 2012

Employee's Name
Address

Dear (Employee's Name)(do not use first name):

As an employee of Multnomah County in the classification of Office Assistant 2 since July 1, 2008, you are hereby notified of the following personnel action.

ACTION: Five (5) Working Day Suspension Without Pay

EFFECTIVE DATE: Beginning Wednesday, September 25, 2002 through Tuesday, October 1, 2012. Returning, Wednesday, October 2, 2012.

GROUND: AFSCME, Local 88 Art. 17, In Good Faith for Cause, including misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance, and/or failing to fulfill responsibilities as an employee. Insubordination, in violation of County Work Rule 3-10-020 (E,H,J).

BACKGROUND:

You were hired by the County as an Office Assistant 2 on July 1, 2008. Since your employment the following is a summary of efforts to correct behavior issues that you have had with co-workers and your supervisor:

On February 1, 2012, you were given a Work Plan dealing with team issues, anger management and responsibilities pertaining to mail delivery.

On June 1, 2012, in a conversation between you and the Operations Manager, you were told that you needed to find a way to deal with your anger and performing your duties. You were directed to communicate with your co-workers in a professional manner and refrain from using profanity.

SUPPORTING FACTS: [Detailed Specifications of the Charge]

The specification of the charge against you is that on August 26, 2012 at 9:30 p.m., you were given a Step 1 grievance response by your supervisor. This response was given to you in a sealed envelope. Upon opening the envelope, you accused Sara of being a heartless, critical manager with no vision. You continued with additional comments that accused your manager of being unfit to supervise. These comments were made in an angry tone, in front of co-workers. You're your manager directed you to go to her office, you refused, saying that you would not go to her office without your Union Representative. Your supervisor repeated the order as you were loud and causing a disruption in the work place. One co-worker asked you to cool it and you yelled at him, telling him to shut up. You told your manager that you would not come to her office and wanted to call her superior. Staying in the same work area, you called the Operations Manager who informed you to follow your manager's directive. Upon hanging up, you again told your manager that she was unqualified to do her job. She once again informed you that she did not want to discuss this further in the open office and directed you to come to her office. You refused, saying you wanted your Union Representative. You then threw a hole-punch at your manager – it barely missed hitting her and fell to the floor. Your manager then directed you to leave and go home. She then contacted security and you were escorted from the building.

PRE-DISMISSAL MEETING:

A pre-dismissal meeting was held on September 17, 2012, wherein, you were given the opportunity to respond to the charges that you violated a direct order and were insubordinate on August 26, 2012.

You confirmed that you violated a direct order by not performing your duties as directed by your manager.

You confirmed that you were given ample time to change your position and you continued to refuse to do your duties. You told management that you have no regrets in regards to your actions on August 26, 2012.

You modified your position, once your Union Representative stepped in to the conversation, and said that you would deal with your supervisor and co-workers on a professional basis. You showed no remorse for your actions on August 26, 2002, in fact, your attitude was one of defiance.

CONCLUSION:

In lieu of terminating you, you are being placed on five day suspension, effective Wednesday, September 25 through Tuesday, October 1, 2012, to report back to work on Wednesday, October 2, 2012. The County seriously considered dismissing you, but believed suspension without pay and a clear expectation of future expected behavior was warranted, short of dismissal.

FUTURE EXPECTATIONS:

In the future, you are expected to correct your behavior in the following areas.

1. You will agree to work and communicate respectfully with your supervisor and co-workers.
2. In the work place you are expected to refer to your supervisor and co-workers in a neutral, non-judgmental manner.
3. Your work plan of February 1, 2002 has been updated and will become part of the expectations of your return to work.
4. Within the next 6 months you will be expected to attend an Anger Management Course and provide documentation of your attendance.

Any further refusals to follow a directive, and/or act(s) of insubordination or defiance will be grounds for discipline up to and including dismissal.

You are advised that you may elect to grieve your suspension in accordance with the terms of the Local 88 collective bargaining agreement.

Sincerely,

(Name)

(Title)

cc: Employee's Department Personnel File
Union Representative
HR Manager
Labor Relations Manager

Employee's acknowledgement of receipt of this letter. (Name/Date)

10.c. Suspension Letter

Department of [_____]
MULTNOMAH COUNTY OREGON
[_____] **Division**

111 N. Any Street
Portland, Oregon 97214
P:503-988-XXXX
F: 503-988-XXXX

January 14, 2010.

Lisa M. Blue
Administrative Assistant
_____ Division
Multnomah County

Dear Ms. Blue: (Do not use first name.)

As an employee of Multnomah County since June 11, 2001, currently in the classification of Administrative Assistant, you are hereby notified of the following proposed personnel action:

ACTION: Notice of Proposed One (1) Day Suspension without Pay

GROUND: AFSCME, Local 88 Art. 17, In Good Faith for Cause – misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance, and/or failure to fulfill employee responsibilities, by violation of the following:

Multnomah County Personnel Rule 3-10-020(A):

Employees must at their designated work area on time and ready to work. * * *

Violation of Local 88 Contract; Article 13 VII. B1:

An employee who starts work after their start time is considered to be late. Being late to work can be grounds for discipline up to and including termination.

BACKGROUND:

You were hired by the County as an Administrative Assistant, on June 11, 2001. Since your employment, you have had a continuing problem with reporting to work on time in compliance with the above-referenced rules. Your behavior violates County work rules and the Local 88 Collective Bargaining Agreement. The following is a summary of efforts to correct your behavior:

- March 30, 2009, Letter of Expectations - In an effort to clearly state the County's expectations of you in your position as an Administrative Analyst I issued you a letter of expectations. Included in that letter was a provision that covered your work schedule, which clearly outlined what were expected to do if you were going to be late for work. Despite this letter of expectation, your tardiness and failure to follow protocol continued.
- April 6, 2009, Oral Reprimand - for late arrival which occurred on Thursday April 2, 2009.
- August 11, 2009, Written Reprimand – for two (2) separate instances of late arrivals which occurred on July 15, 2009 and again on August 3, 2009.

SUPPORTING FACTS:

Despite the corrective actions described above, you've had seven (7) more separate instances of unplanned late arrivals to work without prior supervisor approval since the August 11, 2009, written reprimand.

The most recent occurrences were on January 7, 2010, when you arrived to work 15 minutes after your scheduled 9:00 am start time; and on January 8, 2010, when you arrived to work at 9:40 am, 40 minutes late. You failed to call in on both occasions. Upon learning this, I told you that your tardiness was unacceptable. You confirmed your tardiness to be true.

In addition to the aforementioned occurrences, you've had five (5) other instances of tardiness. Below is a timeline of these events.

9/23/09 (Wed) You arrived at 9:30, 30 minutes after your scheduled start time.
 9/30/09 (Wed) You arrived at 9:40, 40 minutes after your scheduled start time.
 10/28/09 (Wed) You arrived at 9:18, 18 minutes after your scheduled start time.
 11/12/09 (Thurs) You arrived at 9:18, 18 minutes after your scheduled start time.
 12/16/09 (Wed) You arrived at 930am, 30 minutes after your scheduled start time.

Your continued pattern of tardiness, despite our numerous coaching meetings and the corrective action cited, above demonstrates continued violation County work rules and the Collective Bargaining Agreement. You have had numerous opportunities to improve your behavior and because you have not corrected this behavior we are forced to impose the next level of progressive discipline.

If true, these charges constitute failure to fulfill the responsibilities as an employee, a violation of County Personnel Rule 3-10-020, A, and Local 88 Contract; Article 13 VII. B1.

PRE-SUSPENSION PROCESS:

Prior to making a decision on your proposed suspension, I wish to have any evidence or argument you may have to offer to rebut the charges against you, as we as, any matters in extenuation or mitigation which you may feel are relevant. You are, therefore, directed to be at the Isotopes Conference room on the 12th floor of the Burns Building at 11am on Friday January 22, 2010. to respond to the above charges. If you wish to

respond in writing, please ensure I am in receipt of such response at least 24 hours prior to the scheduled meeting.

You have the right to representation by AFSCME Local 88 in matters concerning your employment relations.

Sincerely,

Waylon Jones
[TITLE]

cc: Employee's personnel file
Department manager
HR Manager
Labor Relations Manager

Signed: Lisa M. Blue – Employee Acknowledges Receipt of this Letter Date

11. Pre-Dismissal Letter

[ON LETTERHEAD]

Date: September 10, 2002

Employee's Name
Address

Dear (Employee's Name)

[This is the paragraph that identifies the employee's position, service and regular status.] As an employee of Multnomah County in the classification of Office Assistant 2 since July 1, 1998, you are hereby notified that you will remain on paid administrative leave and are hereby notified of the following proposed personnel action.

ACTION: [Identify the Action being proposed] Notice of Proposed Dismissal

GROUND: Article 17, AFSCME Local 88 / Multnomah County Collective Bargaining Agreement (CBA): In Good faith for cause, including misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance, and/or failure to fulfill responsibilities as an employee by violation of MCPR 3-10(E) and (K).

BACKGROUND:

[Include such matters as length of service in job classification(s), job duties from job description, all previous coaching and discipline that is not "stale,"⁴ including prior warnings, letters of expectation, work improvement plans, prior discipline and other notices given to the employee of management's expectations or standards, training relevant to the charges relevant policies or rules and other pertinent information, and the citation to the relevant rules violated.] Note: Under the AFSCME, Local 88 CBA, performance evaluations cannot be used as evidence in any disciplinary or arbitration hearing.

MCPR 3-10(E) provides:

⁴ For example, the Local 88 CBA provides that an employee may request and have removed from his or her personnel file any letter of reprimand which is more than two years old. Letters of reprimand more than two years old will not be used in subsequent disciplinary action. Letters of discipline imposing discipline more severe than a letter of reprimand which is more than five years old will be removed from an employee's personnel file upon the employee's request. If there is more than one letter imposing discipline which is more severe than a letter of reprimand on file, none of the letters may be removed until the most recent letter is more than five years old. If subject to removal, the letters cannot be used in disciplinary proceedings.

(E) Employees must relate to the public and other employees in a courteous, respectful and professional manner.

MCPR 3-10(K) provides:

(K) Employees must not neglect their duties and responsibilities or refuse to perform assigned work unless to perform such work will constitute a safety hazard.

You were hired by the County as an Office Assistant 2 on July 1, 1998. Pursuant to your job description, your duties are

_____. You have read and acknowledged MCPR 3-10 on _____. You have received training on _____ on _____. I advised you of my expectation that you _____ on _____ and again in a meeting on _____.

Since your employment the following is a summary of efforts to correct behavior issues that you have had with co-workers and your supervisor:

On February 1, 2002 you were placed on a Work Plan dealing with team issues and anger management.

On June 1, 2002 in a conversation between you and Operations Manager, Tim Uphill, you were told that you needed to find a way to deal with your anger and perform your duties. You were directed to communicate with your supervisor in a professional manner and refrain from using profanity.

SUPPORTING FACTS: [Detailed Specifications of the Charge]

The specification of the charge against you is that on August 26, 2002 at 9:30 p.m. you were given a Step 1 grievance response by your supervisor. This response was given to you in a sealed envelope. Upon opening the envelope, you accused your manager of being heartless and disrespectful. You continued with additional comments that accused your manager of being unfit to supervise. These comments were made in an angry tone, in front of co-workers. You're your manager directed you to go to her office, you refused, saying that you would not go to her office without your Union Representative. Your supervisor repeated the order as you were loud and causing a disruption in the work place. One co-worker asked you to cool it and you yelled at him, telling him to shut up. You told your manager that you would not come to her office and wanted to call her superior. Staying in the same work area you called the Operations Manager, who informed you to follow your manager's directive. Upon hanging up, you told your manager that she was unqualified to do her job. She again informed you

that she did not want to discuss this further on the shop floor and directed you to come to her office. You refused, saying you wanted your Union Representative. Your manager then directed you to leave and go home. Your manager then contacted security and you were escorted from the building.

If true, these charges constitute insubordination and discourteous and inappropriate behavior in violation of County Work Rule 3-10-020 (E) and (K).

[If employee has a long work history with no progressive discipline, explain why this situation is so egregious that dismissal is warranted.]

PRE-DISMISSAL PROCESS:

Prior to making a decision on your proposed dismissal, I wish to have any evidence or argument you may have to offer to rebut the charges against you as well as any matters in extenuation or mitigation which you may feel are relevant. You are therefore directed to be at the 7th floor conference room in the McCoy Building at 9:00 a.m. on September 17, 2002 to respond to the above charges. If you wish to respond in writing, please ensure that I am in receipt of such response the day prior to the scheduled meeting.

You have the right to representation by AFSCME Local 88 in matters concerning your employment relations.

Sincerely,

(Name)

(Title)

cc: Employee's Department Personnel File
Collective Bargaining Representative
Department HR Manager
Central HR/LR Manager

Employee's acknowledgement of receipt of this letter. (Name/Date)

[LETTERHEAD]

12. Dismissal Letter

a. General format and instructions

[LETTERHEAD]

Date:

Employee's Name
Address

Dear (Employee's Name):(don't use first name)

As an employee of Multnomah County in the classification of _____
since _____, you are hereby notified of the following personnel
action.

ACTION: Dismissal

EFFECTIVE DATE: Date

GROUND: [Cite the article of the contract that was violated and the
Multnomah County Personnel Rules that were violated.]
Sample language:

AFSCME, Local 88 CBA Art. 17 In good faith for cause,
including misconduct, inefficiency, incompetence,
insubordination, indolence, malfeasance, and/or failing to
fulfill responsibilities as an employee, by your violation of
Multnomah County Personnel Rule(s), Employee
Responsibilities, Rule 3-10-020(A)

Important: The grounds need to be the same as the grounds contained in the
pre-dismissal letter. If new grounds are added, you need to rescind the original
pre-dismissal letter and reissue a pre-dismissal letter and schedule a new pre-
dismissal meeting, or do a supplemental pre-disciplinary letter and schedule a
pre-disciplinary meeting.

BACKGROUND:

[Include such matters as length of service in job classification(s), job duties from job description, all previous coaching and discipline that is not “stale,”⁵ including prior warnings, letters of expectation, work improvement plans, prior discipline and other notices given to the employee of management’s expectations or standards, training relevant to the charges relevant policies or rules and other pertinent information. If employee has a long work history with no progressive discipline, explain why this situation is so egregious that dismissal is warranted.]
Note: Under the AFSCME, Local 88 CBA, performance evaluations cannot be used as evidence in any disciplinary or arbitration hearing.

[If there are prior violations, it is important to include: 1) the date(s) of occurrence; 2) the rule(s) violated; and 3) a brief summary describing each ground for issuing the action, particularly emphasizing conduct or behavior that is similar to the current conduct cited in the letter.]

Note: The background facts should be the same as in pre-disciplinary letter.

SUPPORTING FACTS:

List the specific charges and the key elements of the evidence that support such charges, e.g. “You were witnessed leaving the work site, etc.”

Important: The supporting facts need to be the same as those contained in the pre-dismissal letter. If supporting facts differ from the pre-dismissal notice, you will need to rescind the original letter, reissue pre-dismissal notice and schedule a new pre-dismissal meeting, or do supplementary pre-disciplinary letter, and schedule a new pre-disciplinary meeting.

PRE-DISMISSAL MEETING:

A pre-dismissal meeting was held on _____, wherein, you were allowed to present oral and/or written statements of facts and arguments that would mitigate the discipline proposed in pre-dismissal letter.. You were present along with your Union Representative (name), _____ [list attendees], and myself. At this meeting you [discuss arguments presented and employer’s reaction to each item, or, if employee did not refute charges state such. State why the mitigating information presented was not persuasive [if true] and does not change your decision to dismiss the employee.]

⁵ For example, the Local 88 CBA provides that an employee may request and have removed from his or her personnel file any letter of reprimand which is more than two years old. Letters of reprimand more than two years old will not be used in subsequent disciplinary action. Letters of discipline imposing discipline more severe than a letter of reprimand which is more than five years old will be removed from an employee’s personnel file upon the employee’s request. If there is more than one letter imposing discipline which is more severe than a letter of reprimand on file, none of the letters may be removed until the most recent letter is more than five years old. If subject to removal, the letters cannot be used in disciplinary proceedings.

(Note: If employee elects not to attend pre-dismissal meeting but provides a written response, or does neither, the letter needs to capture for the record if there was no meeting and/or written response and position of the employee. If the employee does not refute the charges, it should be noted.)

CONCLUSION:

State the basis for the decision to dismiss the employee. Include language that explains why the misconduct or poor performance has breached the trust required for an effective employer/employee relationship. Explain why you have determined that corrective action (less than dismissal) will not be effective to change this employee's behavior or performance.

Based on the evidence, you are dismissed from your employment with Multnomah County effective upon the close of business on _____.

You are advised that you may elect to grieve your dismissal in accordance with the terms of the _____ collective bargaining agreement.

(Note: For classified Non-Represented employees, appeal rights are contained in Personnel Rule 2-20-010. You may use the following language: [You may appeal your disciplinary action to the Merit System Civil Services per Personnel Rule 2-20-010 (A). Your appeal must be delivered to Ann Boss, the Executive Secretary of the Merit Council, no later than 10 calendar days after the discipline. You may contact Ann Boss at (503) 588-5015, ext. 28434, 3rd Floor/Labor Relations.]

Sincerely,

(Name)

(Title)

cc: Employee's Department Personnel File
Collective Bargaining Representative (Does not apply to non-represented employees)

Department HR Manager
Central HR/LR Manager

[LETTERHEAD]

b. Sample dismissal letter

DATE

Employee's Name
Address

Dear (Employee's Name): [Do not use first name]

As an employee of Multnomah County in the classification of Office Assistant 2 since July 1, 1998, you are hereby notified of the following personnel action.

ACTION: Dismissal

EFFECTIVE DATE: July 17, 2002

GROUND: In Good Faith for Cause – Insubordination
Violation of County Work Rule 3-10-020 (J).

BACKGROUND:

You were hired by the County as an Office Assistant 2 on July 1, 1998. Since your employment, the following is a summary of efforts to correct your behavior:

1. August 12, 2001, Oral Warning for use of foul language.
2. February 10, 2002, Written Warning for failure to deliver mail.
3. May 3, 2002, Suspension Without Pay for Three Days for failure to deliver mail.

SUPPORTING FACTS: (Detailed Specifications of the Charge)

The specification of the charge against you is that on July 1, 2002 at 10:30 a.m. you were ordered by your supervisor, Mary Thomas, to deliver the mail to the East County Office and that you directly disobeyed that order. Specifically, you stated, "I won't do it. Get someone else to do the scum work." Your supervisor advised you that the consequences of another insubordinate act would be dismissal and advised you to take a few minutes to think the matter over. Fifteen minutes later she repeated the order and you stated, "I don't care what happens."

I won't be demeaned by such work again." Following your second refusal, your supervisor put you on administrative suspension with pay.

PRE-DISMISSAL MEETING:

A pre-dismissal meeting held on July 17, 2002, wherein, you were given the opportunity to refute the charges or present mitigating circumstances. You were present along with your Union Representative (name), Operations Manger (name) and myself. At this meeting you did not refute the facts as outlined above. Your position was that the work was demeaning and that it should be performed by someone else.

CONCLUSION:

You have been employed by Multnomah County for approximately 4 years. You received an oral warning for foul language on August 12, 2001, written warning for failure to deliver mail on February 10, 2002 and suspension without pay for three days for failure to deliver mail on May 3, 2002. On July 1, 2002, you refused to follow a direct order, you were advised of the consequences of such refusal and continued to refuse when such order was repeated.

Based on the evidence, you are dismissed from your employment with Multnomah County effective the close of business of July 17, 2002.

You are advised that you may elect to grieve your dismissal in accordance with the terms of the Local 88 collective bargaining agreement.

Sincerely,

(Name)

(Title)

cc: Employee's Department Personnel File
Collective Bargaining Representative
Department HR Manager
Central HR/LR Manager

Employee's acknowledgement of receipt of this letter. (Name/Date)

Copy:

[LETTERHEAD]

13. Standardized Grievance Response Format

MEMORANDUM

TO:

FROM:

DATE:

SUJECT: (Example: Local 88 Step 1 Grievance Response)

I am in receipt of your grievance of (Date) concerning (Subject Matter).

1. **Timeliness and Procedure**

Comments: All responses should note whether time lines and procedures have been adhered to and specifically cite any time extensions which have been granted by either party. The date of any grievance meeting held should be cited with the names of those in attendance.

2. **Contract**

Comments: A copy of the written grievance should be attached and cited.

The specific Articles which the Union claims have been violated should be listed. Where the Union's citations were vague or overly broad, the results of your efforts to clarify, should be explained. Articles, which you deem relevant, which the Union hasn't cited, should be noted.

3. **Facts**

Comments:

This statement should generally be in chronological story form, beginning with setting the scene and citing the series of events leading up to and including the filing of the grievance. This section is the heart of a grievance response. Note any procedural defenses (such as failure to timely file) first. Then, challenge the merits of the union's claim(s). Remember, this will be read by persons who have no knowledge of your operations or the personalities involved.

4. **Response**

Comments:

If the Union is right, state: The grievance is hereby allowed. The remedy is:

If the Union is wrong, state: The grievance is hereby denied.

If the matter is unclear, state: The grievance is hereby denied.

If the matter is trivial, murky, and the remedy is of little fiscal consequence, consult with your Department Human Resources Office. If approved, state: An offer of compromise without precedence is offered, as follows: (Describe the compromise clearly.)

5. **Discussion**

Comments: In this section, you lay out the line of reasoning, based on the facts and application of the contract which led you to your conclusion. It is just as important, however, to explain the Union's arguments and claim of facts and to explain why you disagree, or agree, with their particular claims and arguments.

6. **Appeal Procedure**

Comments: This section should detail for the grievant, to whom and under what time constraints, an appeal is due at the next step.

cc: Union Representative
Department Head
Department Human Resources Manager
Central Human Resources Manager

14. Grievance Response, Step 1

[LETTERHEAD]

MEMORANDUM

TO: (Grievant's Name)

FROM: (Name)

DATE: September 10, 2012

SUBJECT: Local 88, Step 1 Grievance Response

I am in receipt of your grievance of September 3, 2012, concerning your suspension without pay for five (5) working days. See attached.

1. **Timeliness and Procedure**

You were suspended without pay for five (5) working days, effective August 26, 2002 through August 30, 2002. Your grievance was received September 4, 2002 and is within the timelines established for the grievance procedure.

2. **Contract**

Your grievance specifies that Article 17 of the labor contract has been violated.

Article 17, Section 1 states: "Employees may, in good faith for cause, be subject to disciplinary action by oral or written reprimand, demotion, reduction in pay, suspension, dismissal, or any combination of the above; provided, that such action, shall take effect only after the exempt supervisor gives written notice of the action and cause to the employee and mails notice to the Union. Oral and written reprimands do not receive prior written notice."

Article 17, Section 2 states: "Cause shall include misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance, or failing to fulfill responsibilities as an employee."

3. **Facts**

Your suspension without pay for five (5) days was for cause, specifically, failure to fulfill responsibilities as an employee/substandard performance, insubordination and disobedience of a direct order. The details surrounding these charges are discussed in the August 23, 2002 letter of suspension. See attached.

4. **Response**

The grievance is hereby denied.

5. **Discussion**

Article 17 of the contract states that an employee may be subject to disciplinary action in good faith. The August 13, 2002 letter of contemplated discipline, summarized the actions taken to improve your work performance. These actions were taken in good faith and the desired improvements were not met. [Summarize highlights of misconduct or poor performance.] The letter of August 13, 2002 states charges that meet the definition of cause under Article 17 of the contract. [State specifically why the union's claims are not tenable, and the charges should stand.]

6. **Appeal Procedure**

If the grievance has not been answered or resolved, it may be presented by the grievant or his or her representative to the department director. Unresolved grievances must be submitted within fifteen (15) days after the response is due at step 1. The department director shall respond to the grievant or his or her representative within fifteen days of receipt.

If you choose to appeal, please explain the facts or reasoning which are the basis of your appeal.

Sincerely,

Name

Title

cc: Union Representative
Department Director
Department Human Resources Manager
Central Human Resources Manager

15. Step 2 Response

[LETTERHEAD]

Date:

Name

Address

Subject: Step 2 Grievance Response – (State Name of Grievant)

Dear _____: [Do not use first name]

I am in receipt of your Step 2 letter of September 13, 2002 concerning the suspension of (name) for five (5) working days.

The grievance was presented to the supervisor on September 4, 2002. The supervisor (Name) denied the grievance in a memorandum dated September 10, 2002, within the seven day time limit specified in Article 18, Section III.

A Step 2 meeting was held on September 17, 2002, which was attended by the grievant, Union Representative (Name), Supervisor (Name) and Department Human Resources Manager (Name). No new evidence was presented by the grievant or the Union. The Union basis for appeal is that the County did not have just cause to suspended (Name) for five working days.

(Name) suspension without pay for five (5) days was for cause, specifically failure to fulfill responsibilities as an employee/substandard performance, insubordination and disobedience of a direct order. The details surrounding these charges are discussed in the August 23, 2002 letter of suspension.

At the Step 2 meeting, the grievant and the Union had full opportunity to present any new evidence or mitigating circumstances that would cause my office to reconsider the action against (Name). None were presented. Supervisor's actions were taken in good faith and the desired improvements were not met. I sincerely hope the actions taken against (Name) will be viewed as corrective in action and that no further action will be necessary.

The grievance is hereby denied.

Sincerely,

Department Director (Name)
Title

cc: Grievant letter is addressed to Union Representative or vice versa
Supervisor
Department Human Resources Manager
Central Human Resources Manager

