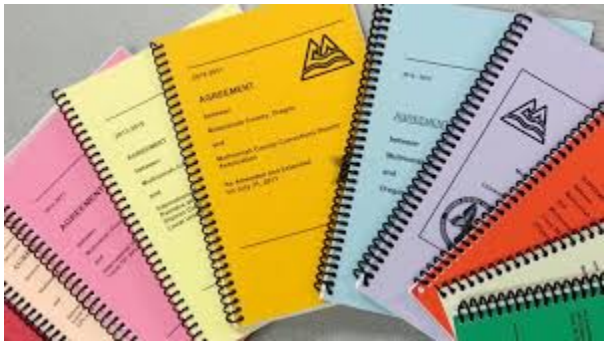
A SUPERVISOR'S GUIDE FOR LABOR RELATIONS AND ADMINISTERING PROGRESSIVE DISCIPLINE



Multnomah County

Central Human Resources

2023 Edition

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I. Introduction and Purpose of the Manual

This document is written to provide supervisors with a toolbox-style manual that provides direction and examples of how to manage employee performance issues 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 coaching prior to discipline.

If coaching 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, demotion, temporary 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 when drafting disciplinary documents to identify any prior actions that were taken 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, and are encouraged to partner with their department Human Resources team in determining levels of corrective action.

Most Multnomah County employees have appeal rights on discipline either through one of the thirteen (13) CBAs or through the Merit Council process. Department Human Resources staff are excellent resources in dealing with performance management situations. Due to the complexity of having so many CBAs, in this guide, we refer generally to the County's CBA with AFSCME Local 88 since it represents the majority of represented employees.

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

Disclaimer: This guide is intended to be used by Multnomah County supervisors as a practical and informative resource only and does not create new legal obligations nor supersede any County MCPRs or CBAs. Supervisors should

consult with their Department Human Resources partners when administering progressive discipline as each situation is unique and may be governed by specific rules. Multnomah County reserves the right to revise, modify or alter the contents of this manual at any time.

II. Understanding Employee Rights Under the Law

A supervisor should have a basic understanding of the labor and employment laws that impact the employees under their supervision and recognize when they need to contact Human Resources for assistance. Below are some federal and state laws that provide public employee rights that supervisors should be mindful of.

A. Public Employees Collective Bargaining Act (PECBA)

As a public employer, the County is not covered by the National Labor Relations Act (NLRA), which only covers private employees. The County is covered by an Oregon statute called PECBA. PECBA provides the rules for public sector unions and employers, as well as actions that may violate the PECBA. Some examples of these types of violations include taking disciplinary action against represented employees based on protected activity, bargaining directly with employees rather than with their union representatives, and refusing to turn over relevant documents concerning a grievance to the union. A violation of the PECBA is brought forward by filing a claim, also known as an “Unfair Labor Practice” or “ULP, ” with the state Employment Relations Board (“ERB”).

B. Freedom of Speech

Public employees have the right to freedom of speech, which means that employers may not discipline employees for content of speech unless it causes harm (such as disruption) in the workplace. There are also state statutory political advocacy limits on public employee free speech.

C. Equality Rule

The "Equality Rule" makes stewards "legally equal" to management and allows a union representative broader latitude to address management in ways that might otherwise be considered “insubordinate” or a violation of personnel rules. Functionally, this rule allows stewards, when acting in their union capacity, to raise their voice, gesture, use “salty” language, contest a supervisor’s credibility, or threaten concerted activity. Supervisors may not discipline stewards for acting in a steward capacity.

The equality rule does not apply when a steward acts in their individual capacity as an employee, such as objecting to a work assignment, responding to criticism of their job performance, or receiving notice of their own discipline. If a steward is acting in their individual capacity as a County employee, management may impose discipline for “egregious” misconduct that includes extreme profanity, racial epithets, physical

threats, and blocking or touching a supervisor. If the behavior is egregious, supervisors should end the meeting and consult with their Human Resources partners on next steps before taking any progressive discipline or statements about potential discipline.

D. Union representation - Weingarten rights

Represented employees have the right, upon request, to have a union representative present during an investigatory interview that the employee reasonably believes could lead to discipline. The right applies to investigatory interviews where

- a supervisor is seeking facts, asking the employee to explain their conduct or performance, or to obtain other admissions or evidence;
- disciplinary action may result,
- a supervisor insists on the interview, and the employee requests representation.

There are no Weingarten rights when coaching an employee or when issuing a disciplinary or non-disciplinary notice (the decision to discipline has already been made at that point).

The role of the union representative is to inquire as to the purpose of the interview, seek clarification of questions, elicit further information from an employee, and suggest additional witnesses. The union representative does not have the right to answer for an employee or to disrupt the interview.

E. Due process - Loudermill meeting

Under the U.S. Constitution and most CBAs, many public employees have the right to due process when discipline above the written reprimand level is being considered. Due process requires that a notice of allegations is presented along with the proposed discipline level. The employee has the right to meet with their supervisor or provide a written statement to correct any factual errors in the investigation and/or explain mitigating circumstances before a discipline decision is made. This due process meeting is called a Loudermill meeting.

Unless CBAs otherwise grant them rights, employees that are on-call, in a temporary or limited duration appointment, on trial service, or classified as executive service (at-will) do not have due process guarantees under the Constitution.

F. Right to not self incriminate in criminal matters - Garrity rights

The U.S. Supreme Court ruled in the *Garrity vs. New Jersey* case that if a public employee is ordered by their employer to answer questions under the threat of discipline about a potential criminal matter, they are not voluntarily waiving their rights against self-incrimination, but are making statements under duress. If supervisors are investigating misconduct that could result in a law enforcement investigation, they should consult with their Human Resources partners, who will seek advice from the County Attorney's Office.

G. Discrimination and harassment

Supervisors may not discipline an employee as a form of discrimination or harassment due to an employee being a member of a protected class. There are many federal, state, and local laws that define protected class membership, including::

1. **Title VII of the Civil Rights Act of 1964,** which prohibits employment discrimination and harassment based on race, color, religion, sex, or national origin, and other protected class factors.

2. The **Americans with Disabilities Act (ADA),** which prohibits discrimination in employment based on disability and requires reasonable accommodation of employees' qualified disabilities where accommodation will allow employees to perform the essential functions of their jobs.

3. The **Age Discrimination in Employment Act (ADEA),** which prohibits discrimination based on age.

4. **State of Oregon Administrative Rule (OAR) 839.005,** which prohibits discrimination based on race, color, national origin, religion, disability, sex (including pregnancy), sexual orientation, gender identity, age, or marital status.

H. Protected leave

Employees have the right to take protected leave for certain designated medical conditions, activities, and events under the following protected leaves:

- **Family Medical Leave Act (FMLA)**
- **Washington Paid Family Medical Leave (WPFMLA)**
  (Routine teleworkers in WA only)
- **Washington Paid Sick Leave**
  (Routine teleworkers in WA only)
- **Oregon Family Leave Act (OFLA)**
- **Paid Leave Oregon (PLO)**
- **Oregon Paid Sick Leave Law**

Prior to coaching or disciplining an employee for absenteeism, supervisors must ensure that the time they are considering for discipline is not protected leave.

I. Insubordination and Oregon Occupational Safety and Health Administration (OSHA)

Under Oregon OSHA, an employee acting in good faith has the right to refuse to work under conditions they reasonably believe presents an imminent danger of death or harm to themselves or others. The hazardous condition must be immediately reported to management to investigate, identify potential hazards, and implement actions required to prevent harm to others while implementing corrections to the unsafe condition. If a supervisor encounters a situation where an employee refuses a directive and cites safety concerns as the reason, they should consult with their human resources partner prior to coaching and counseling.

III. County Rules and Collective Bargaining Agreements

A. Multnomah County Personnel Rules

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 describing the most important employee duties and responsibilities are grouped as "E-Policies." E-Policies are presented to employees for review upon hiring and on an annual basis thereafter as part of the E-policy program. E-policies include the ethics policy, work rules, use of information technology rule, violence-free workplace rule, prohibition of discrimination and harassment, and the respectful workplace rules.

B. Collective Bargaining Agreements

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 unions who represent County employees. Supervisors 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, or agreements outside of, the CBAs.

C. Administrative Procedures

The County has administrative procedures that outline the expectations, rules and protocols that guide employees' work. Supervisors should be familiar with these procedures and ensure that employees are aware of what is expected of them prior to going down a disciplinary path.

D. Department Work Rules

Departments may implement department-specific rules that supplement the County's rules, but can not supersede County rules without specific approval from the Chair. Employees can be disciplined for failing to follow departmental rules, but it is important that supervisors can show that the employee was aware of the rule or should have known about the rule.

E. Authority to Discipline

Supervisors may impose discipline up to the level authorized by the Department Director or elected official to whom they report. If you are unsure what level of disciplinary action you are authorized to administer, consult your supervisor or human resources partner prior to taking action.

1. Delegation of authority in MCPRs

MCPR § 3-60-030 states the following -

"Supervisors are authorized to impose discipline, as listed below, unless a Director has specifically removed that authority in writing. Delegation of authority for disciplinary actions is as follows:

A. **Oral and Written Reprimands:** Immediate supervisor

B. **Demotions, Suspensions, and Reductions in Pay:** Reviewing supervisor

C. **Dismissals:** Supervisor who is an Executive employee."

2. Delegation of Authority letter template

[LETTERHEAD]

M E M O R A N D U M

TO: All Exempt Employees Department of Ecological Services
FROM: Department Director
DATE: June 30, 202X
SUBJECT: Delegation of Authority

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

	Trial Service	Oral	Written	Suspension/ Demotion	Dismissal
Manager A					
Manager B					
Manager C					

cc: Chief Human Resources Officer
Labor Relations Manager

IV. Job Profile Specifications and Position Descriptions

Job profiles and position descriptions are critical for the manager in describing the functions the employee must be able to perform. This is an important preliminary to the manager defining their work expectations for an employee and/or taking corrective action based on substandard work performance. Employees should only be held accountable for expectations that are made known to them or that they should know is expected of them.

A. Job Profiles

A job profile 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 profiles contain a definition; supervision received and exercised; detailed specifications of the types of duties performed; and qualifications.

In setting job performance expectations, job profile 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 has a position description. All County employees have a job profile, and most County employees have position descriptions.

B. Position Descriptions

A position description is a list of the duties, responsibilities, skill and ability requirements of an individual position within a job profile.

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

Position descriptions are an important tool for supervisors in defining:

1. The purpose of the position the employee holds.

2. The 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.

V. 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, and coaching on, policies, rules, procedures and expectations, and of events or situations that may lead to discipline. Supervisors should maintain notes that can be referenced later if an employee goes through a progressive discipline process that may result in a grievance and potentially an arbitration. If an event is not documented, it may be harder to prove that it happened, especially after significant time has lapsed.

A. Information Requests

It is important that supervisor notes are written in objective terms and with the understanding that the notes may need to be provided to unions and other parties through the grievance and/or legal process.

1. PECBA requests

Supervisor notes are subject to disclosure to a union under PECBA. The duty of public employers and labor organizations to bargain in good faith under PECBA includes the duty to provide information, if the information requested is "of probable or potential relevance to a grievance or other contract administration issue" or is "reasonably necessary to allow meaningful bargaining on a contract proposal."

Under PECBA, the union may request information to:

a. Investigate an existing grievance,

b. Investigate a matter in order to determine whether or not to bring a grievance, or

c. Allow for meaningful bargaining on a contract proposal.

The information the union is requesting must have some **probable or potential relevance** to a grievance or other contractual matter. Unless management has a good reason for not disclosing information, or can prove that it is in fact irrelevant, the information must be provided to the union upon request. Please also note that the relevance threshold is low.

If the request, or the relevancy of the documents is unclear, management may ask the union for clarification in writing as to the nature of the request and the relevance of the requested documents.

2. Public Records Law requests

The duty to provide information under PECBA is independent from a public employer's duty to provide information under the Oregon Public Records Law (ORS 192.410 through 192.505). This type of information request could come from an employee, a union representative, a member of the public, or the media. Public information requests are handled by the County Attorney's Office. Under the Public Records Law, disclosure is the norm and exclusion from disclosure is the exception that must be justified by the public entity. If you receive a public information request, you should ask your human resources partner to contact the County Attorney's Office for guidance. Of note, the Public Records Law expressly authorizes a public body to establish fees "reasonably calculated to reimburse the public body for the public body's actual cost of making public records available."

B. Documentation Basics

Documenting coaching conversations, support provided, and employee behavior eliminates the pressure of mentally keeping track of who did what, how conversations went, and what actions were taken. It also serves as a record that can be viewed by third parties as necessary. If you don't document something, it may be hard to prove that it actually happened.

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.

2. Accuracy

Get the story straight in writing by following the five W's:

a. *Who* was involved - list names and job titles.

b. *What* happened - factual account of what happened or failed to happen.

c. *When* did it occur - include the date and time.

d. *Where* did it occur - document specific locations.

e. *Why* is there an issue - what work rule or expectation was potentially violated.

3. Audience and tone

Remember that supervisor notes may be subject to an information request and may ultimately be an exhibit in a legal proceeding. Supervisor notes can be a useful exhibit supporting a disciplinary action or can be an exhibit used by the union to show supervisors did not take action for appropriate reasons or lacked sufficient justification. It is important that supervisors keep their language professional and minimize the use of subjective statements. Supervisors also should not assume reasons for employee behavior.

C. Manager & Employee Check-Ins

Employee check-ins are regularly scheduled meetings between an employee and their manager to discuss various aspects of the employee's work and progress towards their goals. These meetings help establish effective communication between the manager and employee while also providing opportunities for feedback, guidance, and support.

Check-ins serve not only as a platform to exchange information, but also as a means of frequently providing feedback on work-related matters. They recognize accomplishments and identify areas for improvement, allowing for clear expectations and potential areas where additional support may be necessary. Employee check-ins are an essential tool for fostering open communication, building trust and accountability, and supporting employees in their professional development.

It is important to document check-ins to ensure clear communication. The following template can be used to document manager and employee check-ins.

CHECK-IN TEMPLATE

[LETTERHEAD]

John Doe
Date of Hire: 01/15/2023
Current Position: Program Specialist

Employee Contact:

Employee	Supervisor	Address	Phone No.
John Doe john.doe@multco.us	Sally Smith sally.smith@multco.us	Hawthorne Bldng 501 SE Hawthorne Blvd. Suite ABC Portland, OR 97214	503-123-4567 Office 503-456-7890 Direct 503-555-5555Mobile

Employee/ Management Activity Sheet - Include the Who, What, When, Where, Why and How

- **Who- Who was present and who was involved.**
- **What - Purpose of meeting (Check in? Concern? Complaint? Is there follow-up needed? Action items?**
- **When - Include date/ time**
- **Where - Details relevant to where incidents occurred**
- **Why - Explanations offered**
- **How - Mode of contact - email, in-person, telephone, google meet, google chat, text message**

Date & Time	Notes
~~2/1/23~~ 2/15/23 3:30 PM	2/1/23: Rescheduled by SSmith 2/15/23: What's gone well this week? *e.g. Is there anything else you'd like to discuss?* Discussed on-boarding; set up mentor meeting; reviewed current projects- updating office procedures
3/01/23 2:00 PM	*e.g. How are you progressing with your objectives* Debriefed presentation to team; felt went well; concerned about next steps; reviewed timeline for next steps, stakeholders, etc.
3/15/23 2:00 PM	*e.g. How are you progressing with your objectives* Reviewed goals for next year; discussed missed timeline for office procedures; discussed competing timelines, prioritized office procedure manual, will be completed by 5/1/23
4/1/23	*e.g. What's gone well this week? Do you feel challenged at work? Are*

	you learning new things? Is there anything else you'd like to discuss? Check in on policy reviews; discussed equity training, signed up for June class; John requested additional training on County procedures, will review classes and discuss at next meeting
4/15/23	*e.g. What's gone well this week? What could have gone better for you this week?* John has been late 5 times over the last 2 weeks; reviewed attendance policy, discussed importance of being on time, discussed call in procedures; John committed to being on time
5/2/23	*e.g. How are you progressing with your objectives; Do you feel challenged at work? Are you learning new things?* 3 month check in - improved attendance; received office procedure manual on 4/29, shared kudos for completing; reviewed goals for next few months
5/15/23	*e.g. What's gone well this week?How are you progressing with your objectives?* Check in on training; will sign up for 3 classes; John received positive feedback from Director on office manual, forwarded email to John

VI. Work Expectations

The management and improvement of performance problems requires an investment of time and self-discipline on the part of the manager. The most important tool for preventing and correcting problems is setting clear expectations initially for performance and conduct. Failure by an employee to "act in accordance with the rules" is often due to a lack of understanding of what the supervisor expects.

A. Setting Expectations and Performance Standards

Important expectations and performance conduct standards are derived from the E-policies that employees must read and acknowledge both upon hire, and on an annual basis. Standards are also set from departmental and unit procedures, the job profile and the position description. In addition, the manager may set specific expectations for their unit that are consistent with County rules and CBAs.

B. Specificity of Expectations

Managers should be as specific as possible regarding performance expectations. For example, if it is expected that employees be at their desk at 8:00 a.m., the expectations should clearly state that rather than saying "be punctual."

C. When Performance Expectations conflict with a *Past Practice*

An employee's practice of coming to work late, taking long breaks, and other unacceptable practices 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, there are some things to consider prior to making the change:

1. Learn as much as possible about why the past practice existed. Do not make assumptions; talk with employees.

2. Communicate the plan to your manager to ensure there is support.

3. Talk with Labor Relations or Human Resources to ensure the changes are in alignment with CBAs and MCPRs and whether there is a potential duty to notice the unions about the change in practice.

4. Develop a plan with Labor Relations to discuss the change with the union, if applicable. The union may be helpful in giving hints on expected problem areas and how to avoid unnecessary conflict.

5. Communicate with all stakeholders who may be impacted by the change, such as employees, other supervisors, and upper management.

6. Get employee buy-in whenever possible. Be patient. Changes to long standing practices may be met with strong resistance.

VII. Coaching

Managers are critical to the success of the County's mission, and so are effective coaching skills. Consistent coaching helps with employee onboarding and retention, performance improvement, skill improvement, and knowledge transfer. While there are many important leadership skills and competencies, coaching is central to improving the performance of entire teams.

Managers play a vital role in achieving the County's mission, and effective coaching skills are equally essential. Consistently providing coaching support benefits employee onboarding, retention, performance enhancement, skill development, and knowledge sharing. While numerous leadership skills and competencies are important, coaching holds a central position in enhancing the overall performance of teams.

If there is an employee whose performance requires attention but does not involve any serious misconduct that would call for immediate disciplinary measures, managers should typically initiate a coaching process to address the issue. Prior to resorting to a progressive discipline approach, it is important to provide employees with clear guidance regarding the expected standards of performance, how they are falling short, and afford them an opportunity to rectify their behavior before facing disciplinary action. Coaching also entails working together with employees to identify any support they may require in order to meet the desired expectations.

Here are some tips for successful employee coaching.

A. Give Regular Feedback

Employees need constructive feedback from their managers, but don't always get it. Most employees want to know how their performance is viewed, what they're doing well, and what they need to improve. If managers regularly provide feedback, it can ease some of the discomfort when constructive feedback needs to be given, because employees will be used to receiving feedback. Managers should intentionally set aside time to provide feedback on employee performance and take advantage of one-on-one meetings for regular feedback periods.

Also, managers should use opportunities to coach in the moment. If a manager sees an employee struggling or not following processes and/or rules, the manager should talk to them about it promptly in a manner that does not embarrass the employee. If an employee asks a question about a process or protocol, use this opportunity to teach them something new. If coaching is not practical in the moment, the manager should schedule time with them as soon as possible to go over it.

B. Recognize the Positives

Coaching requires both encouragement and empowerment in addition to constructive feedback. A manager's job is to build one-on-one relationships with employees that result in performance that meets expectations.

If coaching conversations are completely focused on what's not working, the conversation can be demoralizing rather than inspirational. The ultimate goal is for the employee to meet expectations and feel good about the work they are doing.

Recognition of the things an employee is doing well can be a springboard into how they can build from that to improve. It also builds trust capital with the employee in that they can see that the manager recognizes where they are being successful. If the coaching is a mixture of what is going well and what isn't, the employee knows where they need to focus their improvement efforts and may not be so overwhelmed by the feedback.

With that said, giving compliments that are not sincere can have a worse effect than not giving any at all, so managers should take the time to think about specific things that are going well and let employees know that their efforts are appreciated.

C. Understand the Employee's Perspective

When coaching employees to improve performance and engagement, approaching things from their perspective will help with seeing needed changes and results.

Asking open-ended, guiding questions can lead to more thoughtful and productive coaching conversations. Asking employees if they understand what is expected of them, if they have any barriers to meeting expectations, and what support they need is critical to understanding what the underlying issue is.

Coaching isn't a one-size-fits-all endeavor. Managers need to meet their employees where they're at since some employees will need more support than others depending on their job role and overall experience. The best managers don't use the same coaching style for each individual team member. They're flexible enough to adapt to the situation at hand.

Everyone has different motivations, preferences, and personalities, so if you ask questions to help you understand where their "why" comes from and what their preferred "how" looks like, then you can tailor your

coaching conversations to align the way they work best with the improvements you're both aiming for.

Employees are likely to have a lot of input, questions, and feedback for the manager about their on-the-job experience. It's important for them to know managers care enough to listen to what they have to say, and they should be encouraged to share their opinions and thoughts on how their performance can improve.

Some employees will have no problem speaking their mind, while others will need a lot of encouragement before they share an opinion openly. Once they do open up, be sure to respect those opinions by discussing them rather than dismissing them.

It is critical that managers develop strong relationships with their employees and engage in performance related conversations. Understanding the employee's perspective will help determine if employees have the capacity to perform and improve, and what kind of attitude they have towards their work. Also, employees learn and grow the most when they uncover the answers themselves.

D. Clarity on Expectations and Consequences

A manager may try to deliver a message as "nicely" as possible because they are sensitive to how an employee will take criticism. Sugarcoating performance issues with positive language runs the risk of the problem never coming to the employee's attention or them misunderstanding the importance of the issue. Employees can not be expected to change their actions if they are not given clear notice that a problem exists and guidance on how to correct it.

Managers should ask employees if they understand the expectations and allow them to seek clarification. Managers should also make it clear when there is an issue that needs to be addressed or there could be consequences for failing to meet the expectations, and what those consequences could be. This notice is not meant to scare or intimidate the employee and should be delivered in a respectful manner. It should also be clear to the employee that they can turn the behavior around and not face those consequences.

E. Summarize Next Steps

Coaching conversations are meant to yield changes and results, so managers should clearly define and outline what needs to happen next in terms of employee behavior, training, and check-ins on the issue. Also,

managers should ask the employee if they have other thoughts on how they could be supported given their workload and the complexity of the issues.

As previously discussed, managers should document the coaching conversation. Emailing the employee a summary of what was discussed and next steps may also be useful if the behavior could lead to consequences for the employee.

VIII. Purpose and Use of the Trial Service Period

Managers should know that the terms “probationary period” and “trial service period” are used interchangeably depending upon whether looking at the County Code, MCPRs, or CBAs.

A. Purpose of the Trial Service Period

The purpose of the trial service period is to evaluate an employee’s performance to determine whether they can successfully perform the essential functions of the position, including behavior expectations.

MCPR § 2-15-010 states **-** “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 Appointing Authority 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.”

An employee can be released from a trial service period without recourse to the grievance procedure. Once an employee completes their trial service, they become regular status and can only be disciplined for “just cause.” Progressive discipline principles also apply.

B. Trial Service exclusions

The following employees are not subject to a trial service period because they are considered at-will and may be terminated at any time with or without cause.

1. Executive Service
2. On-call
3. Temporary
4. Limited duration
5. Interns

C. Types of Trial Service Periods

There are two types of trial service:

1. **Initial trial service** - An employee serving a trial service period to determine the employee's suitability for continued employment, such period to begin on the date of the employee's appointment to a regular status position from a certified list of eligibles.

2. **Promotional trial service** - A regular status employee serving a trial service period upon promotion to determine the employee's suitability for continued employment in the classification to which they were promoted, such period to begin on the date of the employee's appointment to a higher classification from a certified list of eligibles

D. Length of Trial Service Periods

The length of the trial service period for an employee is governed by MCPR § 2-15-020 or their CBA. An employee's trial service period may be extended under the MCPRs and under some CBAs if they are on an extended leave of absence. Managers should consult with their department human resources partner on whether a trial service period can be extended. Generally, a trial service period can not be extended to only review performance for a longer period unless there was a leave of absence.

E. Standards for Removal During Trial Service

1. Notice and opportunity to correct

Managers should provide consistent coaching and feedback to employees on a trial service, including performance evaluations. Employees should know whether they are meeting expectations and what resources are available to them in order to meet expectations. Employees should not be surprised if they are notified that they are not meeting expectations and are being released from trial service. They should have received previous notice with an opportunity to improve their performance. Of note, some CBAs require payments to employees if they are released from initial trial service and have not received performance evaluations.

2. “Best interests of the County”

An initial trial service employee may be released from employment at any time if, in the opinion of the Department Director, continuing the employment is not in the best interests of the County.

3. Employee rights

Prior to the end of their trial service period, employees must be notified in writing that they are being removed from employment or in the case of a promotional trial service, reinstated to their former position.

Employees removed during trial service have no right to appeal such actions, but care should be given in the treatment of these employees. While initial trial service employees do not possess a property right in their positions, they are protected by Title VII of the Civil Rights Act, state anti-discrimination laws and other important protective provisions of the law. Each department should have a trial service review process in place, which will assist in a systematic and fair review of each probationary employee.

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

Under most CBAs, 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 or classification without loss of seniority, unless terminated for cause.

4. Initial Trial Service Release Letter template

The initial trial service release notice template listed below does not include a reason for the termination. This is purposeful and simply states that their employment is no longer in the best interest of the County.

Initial Trial Service Release Letter template

[LETTERHEAD]

March 28, 202X

First Last Name

Dear Mr./Ms./Mx. Last Name:

Multnomah County uses the initial trial service period as a time to evaluate an employee's performance on the job. You were hired as a Job Profile on September 14, 202X. Based on our evaluation of your performance during your initial trial service period, it has been determined that your continued employment with the Department is not in the best interest of the County.

Your last day of employment with the Department is March 28, 202X. You are to return your County equipment to your Manager. You may pick up your paycheck at the Central Payroll Office in the Multnomah Building or you may ask them to mail it to you.

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

Sincerely,

Manager

cc: Department Human Resources
Labor Relations Manager
Union Representative

IX. Non-Disciplinary Performance Improvement Documents

When expectations have not been met, and the employee's performance has not seen measurable changes after coaching, the next step may be to put expectations in writing in the form of a non-disciplinary notice, such as a Letter of Expectation or Performance Improvement Plan. These documents provide employees with clear notice of where they are not meeting expectations in an effort for the employee to be successful.

These documents are **not considered discipline**. Employees may view them as discipline because the documents reflect that an employee is not meeting expectations and the process feels like the beginning of a disciplinary path. However, these documents are not listed as one of the disciplinary steps contained in the CBAs' disciplinary articles or MCPRs. Arbitrators also do not view these documents as discipline.

Non-disciplinary notices should be maintained in the manager's working file rather than the employee's personnel file, unless otherwise stated in the employee's CBA.

A. Letter of Expectations (LOE)

An LOE is a document prepared by a manager to give an underperforming employee a detailed description outlining their performance expectations. This is typically in the form of expanding on the duties outlined in the position description and/or pointing them to specific work rules they are not adhering to.

1. Forward looking

The LOE should be forward looking at future behavior rather than citing prior examples of behavior, so that it does not look like a disciplinary written warning.

2. Clarity and understanding

The LOE should clearly state what behavior is expected and that r failing to meet the expectations could result in a disciplinary path. It is important that managers ask employees if they understand the expectations and work to clarify any ambiguous language.

3. Regular feedback

Managers should provide regular feedback to employees on whether they are meeting the expectations. If the employee is meeting expectations, managers should praise them and encourage the continued behavior. If a manager does not follow-up with the employee, the employee may assume they are meeting the expectations identified in the LOE.

4. LOE Template

[LETTERHEAD]

TO: First Last Name, Title

FROM: Manager, Title

DATE: December X, 202X

SUBJECT: Letter of Expectations

CC: Departmental HR
Supervisor file

This memorandum is meant to help you by clearly identifying my expectations and providing examples of how I can support you along the way. Please keep in mind these expectations are intended to supplement any countywide, departmental, or other applicable policies or rules as a result of concerns regarding <BLANK>.

1. <Expectation>
2. <Expectation>

You are a valued and respected member of our team. I am committed to supporting you both in meeting these expectations and in achieving your professional development goals. You can count on me to listen to the questions and concerns you bring me, and to take them seriously. It is my intention to do what I can to ensure you benefit from the same supportive and safe workplace to which all county employees are entitled.

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 when there is anything I can do to provide you the support and resources you need to achieve your best outcomes.

I have confidence in your ability to meet these expectations. If you fail to meet and sustain these expectations, it may constitute grounds for appropriate progressive action.

Respectfully,

Program Supervisor

CC: HR Analyst Sr

_____ _____

Employee's acknowledgement of receipt of this letter Date

B. Performance Improvement Plan (PIP)

A PIP 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 that includes regular check-ins about performance. An LOE is generally more suitable than a PIP for addressing behavior issues that may not be easily measured in terms of product output, such as professional conduct, since the PIP typically has measurable outcomes.

1. Check-ins

PIPs require time, energy and commitment by management because they require regular meetings between the manager and employee and tracking of the employee's progress (or lack thereof). If an employee fails to meet performance expectations as outlined in the PIP and there is no communication or follow up action, you could be viewed by an outside party as accepting the employee's work performance.

2. Duration

A PIP should be in place 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 improvement and the employee can continue the consistent improvement. Normally performance improvement plans are put in place for at least three

(3) to six (6) months. A PIP can be extended by the manager by giving notice and stating the reason for the extension.

3. PIP Template

SAMPLE Performance Improvement Plan

Employee Name:		**Duration:**		**through**
Manager / Supervisor:		**Date Discussed:**		
Department / Division:		**Work Unit:**		

Description of Areas Needing Improvement	Description of Expected Performance Standards	Product and Due Dates
Needs Improvement #1.	**Consistent Attendance** ● Request all leaves in advance from supervisor (Adrienne). This includes sick leave, vacation, leaving early, arriving late. ● Provides on-site administrative coverage (see #3) in order to fully support unplanned staff absences	● Provide at least 1 hour notification to supervisor when requesting sick time for same- day illnesses. ● Consistent work attendance so that unplanned absences from other administrative team members and management meeting support may be fully covered.
Needs Improvement #2.	**Project and Work Completion** ● When a project is assigned, confirm understanding of project, timeline and details (via email or orally) with staff members assigning	● Fully completes work as assigned by established due dates ● Proactively provides updates on progress of project work to supervisor so that supervisor is

	work within 1 work day or less. ● Provide regular (weekly unless specified otherwise) project status updates to supervisor or other staff assigning work.	informed of work completed
Needs Improvement #3.	**Administrative Support** Without prompting, provide office management support for administration, including: ● Coordinate office supply orders and inventory (tracking, ordering, and managing supply room) ● Maintaining copy machine and other shared technology ● Assure facilities is aware of cleaning and maintenance needs ● Manage laptop and computer check out system ● Maintain secure and confidential office technology, including shred bins	● Office supplies are maintained, organized, and inventoried so that supplies are constantly stocked for the office ● Proactively communicates with office staff and facilities the completion of service orders for all shared office technology (including printer and copier) (ongoing) ● Ensures that administrative coverage documentation is updated, accurate, and communicated with

Support (i.e. training, meetings, etc.) employee needs to complete as part of a performance improvement plan.

- Performance improvement shall be immediate and on-going. We will meet *(weekly, biweekly, a specific date, etc.)* to review your progress in meeting the performance expectations that are agreed upon in this document. Failure to improve performance may lead to discipline.

- This performance improvement plan becomes effective *(Start Date)* and shall remain in place through the close of business on *(End Date)*.
- If at any time during the term of this performance improvement plan, *(Employee Name)* fails to abide by the expectations and conditions set forth above, the plan may be terminated and further corrective action may be taken, including discipline.

Signatures here indicate an understanding of performance expectations and that the employee has received a copy of the plan.

_____ _____

Employee Signature/Date Manager Signature/Date

Employee Comments (optional):

X. Just Cause for Administering Discipline

"Just cause" is a principle developed by labor arbitrators and means a reasonable and lawful basis for discipline. Arbitrators follow a standard of seven tests of just cause to make this determination. A "no" answer to any one of these tests normally signifies that just cause does not exist. If an employer fails to meet these seven tests, the discipline may be overturned.

A. NOTICE. Did the County give the employee notice 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" to this question. Certain offenses, such as discrimination, harassment, insubordination, coming to work impaired, use of intoxicating substances on the job, violence, or theft , are so serious that any employee is expected to know already that such conduct is offensive and will result in discipline..

B. REASONABLE RULE OR ORDER. Was the County's rule or directive 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.

C. INVESTIGATION. Did the County perform an investigation before administering discipline?

To effectively meet this test, a manager or human resources member must investigate and document the facts supporting allegations of misconduct or poor performance. Employees may be placed on paid administrative leave during an investigation.

D. FAIRNESS. Was the investigation conducted fairly and objectively?

All investigatory and disciplinary interviews should be conducted in private. The manager should afford the employee time to fully respond to all charges. Interviews should be conducted in a calm, professional manner. Persons with knowledge of the incident should be interviewed. Any intimidating behavior should be avoided. Union-represented employees who may be subject to discipline have the right to have a union representative at the investigatory interview.

E. PROOF. Did the investigator obtain substantial evidence or proof that the employee violated the relevant policies or expectations, or had failed to perform as expected?

Proving misconduct or poor performance requires that the supervisor:

1. Keep accurate and timely records of counseling, 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.

2. Make sure that directives given to employees are in specific terms and expectations, with the importance of the directive and consequences emphasized when these elements are not obvious.

The standard of proof which a manager 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, which means it's more likely than not that the employee violated the policy or expectation, but some charges require clear and convincing evidence. For example a manager may want specific evidence that an employee failed to arrive on time (e.g. timecards, badge swipes, etc.) to prove an employee falsified time, rather than one co-worker reporting that an employee has been late numerous times.

F. EQUAL TREATMENT. 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 be overturned, or the penalty modified, no matter how clear the misconduct and how well prepared the case. This problem frequently occurs when a

manager 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 manager neglects the fact that others have committed the same infraction with lesser or no consequences.

This standard does not bind the organization to past practice. At any time, the manager may issue a letter of intent to change the approach taken in the past to a rule. For example:

> "I have reviewed this departmental management's responses to infractions of the access security rule. I have identified inconsistency in corrective measures and enforcement. Employees are advised that due to the extreme hazards associated with violations of this rule, future violations, whether due to negligence or intent, will be consistently dealt with through corrective action."

G. APPROPRIATE DISCIPLINE. 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?

The spirit of corrective action calls for specifying the behavior that is desired on the employee's part. Discipline is imposed 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 meet the expectations of the organization, in which case, discharge may be warranted. An example of such a progressive pattern is as follows:

1. Coaching and counseling (not discipline)

2. Letter of Expectation or Performance Improvement Plan (not discipline)

3. Oral Reprimand

4. Written Reprimand

5. Suspension Without Pay/Reduction in Pay/Demotion

6. 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 are occasions when the behavior of an employee is such a severe violation of written or implied duties that immediate discharge is appropriate.

There is no doubt that sustaining consistent, progressive discipline is a difficult job. Sometimes a supervisor may follow such a pattern for a few steps, not follow up with 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 measures, but rather a range of reasonable actions.

Managers should be aware that an employee with many 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 human resources when you have these kinds of situations.

XI. Investigations

Elements of just cause require a full and fair investigation, which includes investigative interviews of the employee and witnesses.

If the investigation is related to misconduct that is discriminatory or harassment due to a protected class, the matter should be referred to the Complaints Investigation Unit (CIU). If it is not related to a protected class, the manager should work with human resources on investigating the matter.

A. Investigation Basics

The employee should be notified of the allegations and notified of a time and place to meet to investigate the alleged violation. If the employee is a union member, they should be informed that they may have a union representative present.

During the interview, a manager should try to uncover the facts by asking both prepared specific and open ended questions, and then asking follow up questions as needed based upon the employee's answers. Try not to use leading questions and do not suggest answers to questions. Ask open-ended questions, using the "who," "what," "when," "why," and "where" method.

Document the employee's answers. It is encouraged that managers have a member of human resources or another manager in the room with them if the investigation could lead to discipline.

B.. Weingarten Rights

Employees have Weingarten rights, the right to union representation, during investigatory interviews. An investigatory interview occurs when a supervisor questions an employee to obtain information that could be used as a basis for discipline of the employee or asks an employee to defend their conduct. If an employee has a reasonable belief that discipline or other adverse consequences may result from what they say, the employee has a right to request union representation.

1. Right to union representation

The Weingarten rule applies to investigatory interviews where:

a. The employee reasonably believes that disciplinary action is being contemplated or may result;

b. The employer insists on the interview; and

c. The employee requests representation.

2. Workplace conversations

Weingarten rights do not apply in conversations between a manager and an employee in which the employee is only given instructions, training, or needed corrections of their 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 manager may talk to an employee about the proper way to do a job. Even if the manager 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.

3. 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 may:

a. Request a break for the employee to collect themselves or to speak privately with the employee.

b. Request clarification of a question or object to confusing or intimidating tactics.

c. Ask the employee questions for further relevant information.

d. Offer additional information and witnesses for management to consider.

The representative cannot tell the employee what to say,answer for them, or direct them not to answer.

If the representative tries to engage you in an adversarial manner, do not reciprocate. If the behavior continues, call a temporary recess to let tempers cool, or reschedule the interview.

As a practical matter, the involvement of a union 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 evaluate the strengths and weaknesses of evidence in support of disciplinary action. It also may help inform the union 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. Investigatory Interview vs. Pre-discipline Meetings

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

XII. Determining Appropriate Level of Discipline

Once a manager determines that there has been conduct that warrants discipline, a decision must be made regarding the appropriate level of discipline.

MCPR § 3-60-020 states: “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.”

The MCPR requires that managers “fairly” discipline employees, which includes administering discipline at the appropriate level and consistently across the County for employees who have the same or similar performance issues.

Appropriate discipline is applied in the individual situation and takes into account the fault or deficiency of the employee, the employee’s employment history, and mitigating or aggravating factors. Progressive discipline is the imposition of progressively more severe corrective actions for a continuing problem. It is designed to correct, rather than penalize, problem behavior. Managers should consult with human resources on the appropriate level of discipline to ensure that there is consistent practice across the County.

A. Factors to Weigh In Determining the Appropriate Discipline

1. **Fault -** Includes intent, potential or actual harm to others or to the County, and seriousness of performance deficiencies.

2. **Prior warnings and coaching -** Warnings for the same problem for which further discipline is now considered.

3. **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 may be a thread of similarity running through the different actions, (e.g. lack of judgment) .

4. **Longevity -** Many years of service may require special consideration, such as more time to correct unsatisfactory performance or demotion in lieu of dismissal.

5. **Quality of Work -** Good work in past years counts in the employee's favor.

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

1. Use the lowest level of discipline that is reasonable.

2. Try stronger discipline if milder discipline did not work before.

3. If the employee's fault is serious, do not impose only mild discipline.

4. Watch for uniformity in treatment of employees in comparable situations.

5. Do not proceed to dismissal unless no other form of discipline makes sense.

XIII. Disciplinary Path Pitfalls

There are several pitfalls that could jeopardize a discipline decision in a grievance and/or arbitration proceeding. It is also important that every reasonable effort be made to impose discipline in a manner that will not embarrass the employee before other employees or the public.

A. Manager Not Aware of What Employees Are Doing

Managers need to use diligence in monitoring what employees are doing. If a manager could have discovered the activity by reasonable diligent monitoring of the employees, failure to put a stop to the activity will be considered the same as condoning it.

The County cannot suddenly discipline an employee for conduct it has been condoning. If the union raises an unfair treatment defense at arbitration, showing that other employees have been engaging in the same conduct without being disciplined, the manager's "I-didn't-know-it-was-going-on" defense is not a good one.

B. Manager Does Not Address Known Conduct

Managers may not address conduct because they have compassion for the employee or do not want to upset the employee. If a manager does little or nothing to address problematic conduct or performance of which the manager is aware, they will be deemed as condoning the behavior. In a worst case scenario, the manager also gives the employee an excellent performance evaluation, despite their performance issues.

If a manager has been aware of the conduct and has not previously addressed it, normally the manager should coach the employee before starting the disciplinary process. Once the employee is put on notice that their behavior needs to change, the manager should keep monitoring performance to ensure expectations are met.

C. Sugar Coating Performance

Managers may emphasize the positive and downplay the negative in performance conversations and evaluations in order to encourage the employee to do well. This can mislead the employee and can make the manager look dishonest if the manager later imposes discipline for the

performance problem. Managers should use positive reinforcement without minimizing the seriousness of problems to be corrected.

D. Manager Bias Towards Employees

If a manager has exhibited strong negative feelings about an employee, this can be used as evidence that the manager disciplined the employee for reasons unrelated to performance or conduct. Managers may be upset with an employee who is an irritant, but they need to be cautious to ensure that their feelings are not creating unwarranted assumptions of fault and blindness to holes in the case. If there has been a lot of personal conflict between a manager and an employee, an analysis should be done from the union's perspective to determine if the evidence warrants a just cause finding.

E. Delay in Taking Disciplinary Action

Discipline should be promptly imposed. A long delay shows a lack of serious concern about the cause for discipline and makes arbitrators suspicious of a manager's motives. Managers should begin investigating a potential disciplinary situation soon after learning about it. Managers should not rush the investigation but, by all means, do not let it lag. If the investigation is delayed due to unavailability of witnesses or other factors, this should be documented.

F. Inconsistent Discipline for Similar Behavior

Managers need to be consistent in their treatment of employees for similar behavior. Absent extraordinary or relevant circumstances, one employee should not be disciplined and another one coached for the same behavior. If a manager is seen as showing favoritism or bias toward or against an employee that results in inconsistent discipline, the disciplinary action will likely be overturned by an arbitrator.

Prior to imposing disciplinary action, managers should consult with human resources to see if the proposed disciplinary action is consistent with how other employees have been treated.

In the grievance process, unions often make information requests for discipline across the County for employees who were disciplined for similar behavior. If the union can prove that an employee was not treated consistently with other employees, the discipline may be overturned.

If dismissal would be logical, but the employee is given one more chance, the manager should carefully explain in the disciplinary notice why dismissal is not imposed.

If lighter discipline actions in the past pose a risk that current reasonable discipline may be nullified at arbitration, managers should send out a notice to all department employees about the seriousness of the issue and the consequences they should expect in the future for the types of conduct at issue.

XIV. Commons Causes for Discipline

Employees can be disciplined for violating MCPRs, administrative procedures, department rules, or for failing to meet performance expectations. This document will only focus on insubordination and absenteeism as causes for discipline.Please consult Human Resources for additional information and support regarding employee discipline.

A. Insubordination

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.

1. Key Factors

There are six (6) distinct requirements for insubordination:

a. **Direct order** - Was the employee given a direct order?

b. **Clarity and 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?

c. **Compliance** - Did the employee disregard and fail to follow the order intentionally and willfully?

d. **Consequences** - Was the employee aware of the consequences of non-compliance?

e. **Reasonable** - Was the order reasonable?

f. **Fairness** - Was the order fair, just, legal, equitable, consistent, arbitrary or capricious? Can the employee reasonably argue that compliance with the order would have endangered themself or others?

2. “Obey Now-Grieve Later” Rule

If an employee disagrees with a direct order, the general rule is employees must not take matters into their own hands. Instead,

they (with a few exceptions),—must obey orders and carry out their assignments even when they believe those assignments are in violation of a collective bargaining agreement. This is referred to as the “obey now, grieve later” rule.

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

a. Safety/health risk

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.

Of note, under Oregon OSHA, an employee can not walk off the job in protest of a safety hazard. They must ask their employer to remedy the hazard and ask for other work to do.

b. Illegal/violation of constitutional rights

Exceptions to the “obey now,grieve later” doctrine may exist if a manager directs an employee to violate the law or a clear public policy, or if a manager violates the employee’s constitutional 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.

B. Attendance

1. Exclude protected absences

There are many types of absences that may be protected under federal, state and County laws or policies. Managers need to be careful that they do not discipline employees for any protected absences. When reviewing absences, managers should exclude any protected absences and then see if the employee’s absenteeism is still excessive. Managers should review the absences with human resources to ensure that all of the protected absences are identified.

Examples of protected absences include:

- **Family Medical Leave Act (FMLA)**
- **Washington Paid Family Medical Leave (WPFMLA)** *(Routine teleworkers in WA only)*
- **Washington Paid Sick Leave (Routine teleworkers in WA only)**
- **Oregon Family Leave Act (OFLA)**
- **Paid Leave Oregon (PLO)**
- **Oregon Paid Sick Leave Law**

For most employees who are considered localized Oregon employees (as opposed to County employees who live and telework in Washington), the first forty (40) hours of sick leave in a calendar year is considered protected leave under Oregon Sick Time law. However, if managers believe that there has been abuse of sick leave during this protected leave period, they should consult with human resources to see if there are options, such as requiring a medical certification for absences.

If an employee is absent from work due to the care of a sick child, and they are OFLA eligible, that absence is protected. Managers should ensure that employees are properly coding their time in Workday to reflect this protected leave.

Managers also need to adjust performance deadlines as needed if an employee is out on intermittent or continuous protected leave. They may not be able to meet pre-established deadlines if they are out on leave and cannot be penalized for taking protected leave.

2. Call-in procedures

Even if an employee is on a protected leave of absence, they still need to follow the normal call-in procedures. If an employee is not calling in as directed, consult with human resources on appropriate actions to take.

XV. Oral Reprimands

The oral reprimand is probably the most common type of discipline. An oral reprimand consists of the manager verbally warning the employee concerning their work performance and counseling the employee specifically on how to improve. The oral reprimand should be a prompt, calm, and constructive action. The manager should state they are issuing an oral reprimand and explain why the employee's performance or behavior is unacceptable and must be corrected. The manager'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 in a timely manner when they are appropriate. 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 serious corrective action.

Under most CBAs, oral reprimands can not be grieved.

A. Recommended Procedure for Disciplinary Oral Reprimands

1. 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 in this document.

2. 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.

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

4. Notify the employee of a private meeting time and place, and issue the oral reprimand.

5. 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

may help. A union representative may assist the manager and confirm to the employee that the oral reprimand is justified.

6. Take notes and document that an oral reprimand was issued. Keep the notes in your supervisor file.

7. Tell human resources that an oral reprimand was issued.

B. Best Practices for the Oral Reprimand Conversation

1. Acknowledge the positive aspects of the employee's performance.

2. Clearly state the rule, policy or standard violated.

3. Review the facts of the violation and be specific about how the behavior did not meet expectations.

4. Explain the problems caused by the violation or inappropriate act. This may include a financial loss, time loss, impact to co-workers and clients, health or safety risks, or damage to public perception.

5. Use the words "oral reprimand."

6. Ask for the employee's comments and listen. Make sure that they understand why the behavior is not acceptable.

7. Offer any needed support for the employee to be able to meet expectations.

8. Let the employee know that the consequences for the continued behavior could be further discipline.

9 Express confidence the employee will solve the problem as a result of the discussion and will continue to maintain that standard in the future.

XVI. Letters of Discipline

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. MCPR § 3-60-070 outlines what is required in letters of discipline.

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., written reprimand, suspension without pay, dismissal.

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. The grounds need to refer to the violation of a County or departmental rule or other policy or procedure.

4. **Background:** Includes such matters as length of service, prior warnings, prior discipline, other notice(s) 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:** Specific statement of misconduct or poor performance by the employee, including dates, times, locations, names and details of the unacceptable action or performance. e.g., "You were witnessed leaving the work site, etc."

6. **A description of future behavioral expectations, including the consequence of further misconduct or non-performance.**

7. **For pre-dismissal hearings, the pre-dismissal process.**

8. **Conclusion, including:**

    a. A description of future behavioral expectations, including the consequence of further misconduct or non-performance.

b. A statement of the employee's appeal rights.

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).

9. The signature of the manager with authorization to impose disciplinary action, or of the Director.

10. A notation of all copies furnished, including:

a. Employee’s department personnel file

b. Collective bargaining representative

c. Department HR Manager

d. Labor Relations Manager

XVII. Written Reprimand

A written reprimand is the first step in the progressive discipline process where an employee receives discipline in writing. Oftentimes, an employee has received an oral reprimand prior to the written reprimand, but many times managers go straight to a written reprimand without issuing an oral reprimand first, particularly if the conduct warrants going directly to a written reprimand. It is not required that a manager issue an oral reprimand first, but it is commonly done for low level offenses when trying to correct employee behavior.

Under most CBAs, oral reprimands can only be appealed up to the Department Director and are not arbitrable.

A. Recommended Procedure for Issuing Written Reprimands

1 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 in this document.

2. 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.

3. Prepare the written reprimand using the template below, which has the requirements listed in MCPR § 3-60.

B. Written Reprimand Template

[LETTERHEAD]

June 2, 202X

First Last Name
Title
Department

Dear Mr./Ms./Mx. Last Name:

As an employee of Multnomah County in the classification of Administrative Assistant since July 1, 202X, you are notified of the following personnel action:

ACTION: Written Reprimand

EFFECTIVE DATE: Immediately

GROUNDS: 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 be at their designated work area on time and ready to work.

AFSCME Local 88 CBA, Article 13.VIII.B.1
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, 202x. 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, 202X, you were given an oral reprimand by me for tardiness that occurred on Thursday, April 5, 202X.

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

This first occurred on May 15, 202X, 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, 202X, 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.VIII.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 collective bargaining agreement.

Sincerely,

Manager

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

XVIII. Suspensions, Demotions, Reductions in Pay, and Dismissal

As previously discussed, regular status public employees have a constitutional property right to their positions and due process must be followed in order to deprive them of their property rights. This means that extra steps, including a pre-discipline notice and a pre-disciplinary meeting, must be taken when a disciplinary action imposes a suspension, demotion, reduction in pay or dismissal.

Do not confuse the investigatory interview of the employee with the pre-discipline meeting. The investigatory interview provides the manager a chance to gather facts about what happened from the employee. After the investigation has concluded, the manager 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 manager can make a final decision. Managers should not use the pre-discipline meeting as a method of investigation.

Management staff who are salaried can only be suspended in one-week increments due to them being FLSA exempt.

A. Pre-discipline Notices

1. Pre-discipline notices to employees are not discipline. It is a notice of the initiation of the disciplinary process that is required for action. 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 crucial and requires more thought than the drafting of the discipline document, which is, in pertinent part, a duplicate of the pre-discipline notice.

3. Even if new charges develop at the pre-discipline meeting, the manager cannot simply 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 human resources.

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

4. A manager can drop charges in the discipline letter if they decide 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 manager may simply and succinctly give a reason why they dropped a charge.

   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 raised your voice at her."

5. 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 department imposing discipline.

   d. The forum, whether it is 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 they have 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.

B. Pre-disciplinary Meetings – "Loudermill Rights"

1. If a disciplinary action will take all, or part, of the employee's property right in their position, such as a suspension, demotion, reduction in pay or termination, pre-disciplinary meetings are required as part of an employee's due process rights provided by

the US Constitution, and as reflected in County personnel rules and collective bargaining agreements.

2. The pre-disciplinary 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.

3. Unlike Weingarten, Loudermill meetings are required even if an employee does not request a meeting.

4. Although employees are interviewed with respect to allegations during an investigation, this meeting is an opportunity to review with the employee the specific charges upon which the manager will rely in making the personnel decision. This meeting is helpful to identify issues in case the matter 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 just cause have been met.

5. It is important for the manager to have a plan and maintain control of the meeting so that specific responses are elicited and that follow-up questions are asked, as necessary.

6. The **first phase of the meeting** should involve a methodical review of the letter. It would be helpful for the manager to have a copy of the letter available to be marked as admissions and denials are elicited from the employee.

7. The **second phase of the meeting** is to permit the employee to make any comments and bring forward information they want to be considered. There can be a full range of issues, and the manager 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 manager should consider.

8. Providing notice and an opportunity to meet are always required. This is even true if the employee is being dismissed because they are 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.

9. Union-represented employees are entitled to have a union representative present. The manager should then have a second management person (or HR representative) to avoid a “two-on-one” situation.

10. Inform the union representative that they are free to consult with the employee, present their views, and ask questions of the employee. It is the employee, not the representative, who must respond to the charges.

11. The manager should take thorough notes during the pre-disciplinary meeting and may wish to read the notes back to the employee to be sure the employee agrees that their 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 in your supervisor file.

12. After receiving the employee’s response (oral or written), tell the employee when they may expect a decision. Managers may need time to check elements of the employee’s story, consult other managers, and arrive at a final decision.

C. Discipline Notices

After the pre-disciplinary meeting, managers should review what the employee said in the meeting and decide whether to move forward with the proposed disciplinary action, reduce it, or withdraw the action. Managers should make this decision in consultation with human resources since it is important that we treat employees fairly and consistently across the County.

1. Proposed discipline is imposed

   If the decision is made to move forward with discipline, a discipline notice must be issued using the pre-discipline letter as a basis for the new letter. Managers should include what the employee said at the pre-discipline meeting or what they provided in writing as a response. The manager should also include the reason for making the discipline decision and the reasons why. Managers should also include any behavior expectations for the employee.

2. Disciplined is reduced from what was proposed

If a manager decides to reduce the discipline from what was originally proposed, they should clearly state why the decision was made.

3. Withdrawal of charges

   Managers may withdraw or modify any of the 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. Labor Relations will retain a notated copy in case of litigation.

4. 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.

D. Discipline Letter Templates

1. **Proposed Pre-Suspension** [or Pre-reduction in Pay, Pre-demotion] – General Format

[LETTERHEAD]

[DATE]

First Last Name
Address

Re: Notice of Proposed Suspension

Dear First Last Name:

As an employee of Multnomah County in the classification of [Job Profile] since Date, you are hereby notified of the following proposed personnel action.

ACTION: Notice of Proposed 2-day Suspension

EFFECTIVE DATE: To be determined

GROUNDS: 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,"[1] 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 an 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:

[1]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 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.

[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 they were 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 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 [Union] in the matters concerning your employment relations.

Sincerely,

[Name]
[Title]

cc: Personnel File
Union Representative
Department HR Manager
Labor Relations Manager

2. **Pre-suspension letter sample**

[LETTERHEAD]

DATE

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

GROUNDS: 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 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 11:00 am 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

3. **Sample Suspension Letter**

[LETTERHEAD]

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, 2008, you are hereby notified of the following personnel action.

ACTION:	Five (5) Working Day Suspension Without Pay
EFFECTIVE DATE: through Wednesday,	Beginning Wednesday, September 25, 2002 Tuesday, October 1, 2012. Returning, October 2, 2012.
GROUNDS:	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 and in front of co-workers. 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 workplace. 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 into 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 termination, 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 workplace 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

4. **Suspension Letter**

[LETTERHEAD]

DATE

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

GROUNDS: 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 be 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 you 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 that occurred on Thursday April 2, 2009.

- August 11, 2009, Written Reprimand – for two (2) separate instances of late arrivals that 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 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. 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 well 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

5. **Pre-Dismissal Letter**

[ON LETTERHEAD]

DATE

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
GROUNDS:	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,"[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 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:
(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

[2] 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.

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. 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 workplace. 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 the 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
Union Representative
Department HR Manager
Central HR/LR Manager

6. **Dismissal Letter**

[ON 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

GROUNDS: [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,"[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 to the charges relevant policies or rules and other pertinent information. If the 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 the 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:

[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.

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 the 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 state if the employee did not refute charges. State why the mitigating information presented was not persuasive [if true] and does not change your decision to dismiss the employee.]

(Note: If the employee elects not to attend the 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
Union Representative

Department HR Manager
Labor Relations

7. **Sample Dismissal Letter**

[LETTERHEAD]

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

GROUNDS: 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:

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 Manager (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 you 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
Union Representative
Department HR Manager
Labor Relations

XIX. Administrative Leave

A. Definition of Administrative Leave

Paid administrative leave means employees are paid for their regularly scheduled hours whenever an employee is ready and willing to come to work and the County tells the employee to not come to work.

B. Uses of Administrative Leave with Pay

There are occasions when an employee has potentially 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. Typically, the misconduct would be a termination level offense.

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. Managers should not place an employee on administrative leave without consultation with human resources and authorization from the Department Director or their designee.

C. Notice of Administrative Leave

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, managers should follow up with the administrative leave letter as soon as possible. The letter outlines the terms and conditions of the paid administrative leave.

The notice of administrative leave letter should contain relevant instructions, such as the employee:

1. Must be available by phone during their regular work hours.

2. Must be available for meetings during their regular work hours that may be arranged by human resources.

3. Must check in with their manager by telephone each morning before 8:30 a.m. [usually not necessary].

4. Must have prior approval and utilize personal leave accruals if they seek to leave the area to go on a vacation.

5. Is restricted from the non-public areas of County buildings, unless they are directed to attend a meeting with human resources.

6. Should return County property in the employee's possession, such as access cards, badges, cell phones.

D. Administrative Leave Letter Template

[LETTERHEAD]

January 14, 202X

First Last Name
Address

Dear Mr./Ms./Mx. Last Name:

This letter is to notify you that you are being placed on paid administrative leave effective 8:00 a.m. tomorrow, January 15, 202X, 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 for your regularly scheduled work hours 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 Manager informed of your current phone. The number we currently show for you is XXX-XXX-XXXX.

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 contacting Manager in advance.

This afternoon you will need to turn over your badge, bus pass and any County property to your Manager. While you are on leave, you are restricted from the nonpublic areas of the building, unless you are directed to come onsite for a meeting.

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

Sincerely,

Manager

cc: HR Manager
Labor Relations Manager
Union Business Representative

XX. Grievance Handling

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

1. An employee represented by a Union has the right to appeal a disciplinary action by filing a grievance under the CBA.

   Each union contract contains provisions setting forth processes for the filing of grievances. For example, review 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. If a grievance is filed, confirm a copy has been provided to Human Resources and Labor Relations.

3. If the grievance form is not complete, consult with HR and/or LR on how to proceed with the Union.

Management Checklist for Disciplinary Step 1 and Step 2 Grievances

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1. Initial Review of Grievance

____ Consult with LR or HR to 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 and times

____ Review the section(s) of the collective bargaining agreement allegedly violated

____ Review the remedy desired

2. Review defenses

____ Ensure appropriate collective bargaining agreement provisions cited

____ Check the time limits and 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

3. 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 (be sure and consult the CBA; some Union contracts require a meeting and others do not).

4. 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

Management Checklist for Assisting with Arbitration of Grievance

---

1. 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 collective bargaining agreement clauses that apply to each issue.

____ Check old CBAs and bargaining history:

- ____ How did the provision get into the CBA?
- ____ 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

2. Assisting in preparation of the case

____ Identify the County's main argument.

____ Assist in identifying each witness

____ Determine what they know about the case.

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

____ Cross-examine them to determine their testimony and to get them familiar with cross-examination.

____ Make a written summary of the important points of their testimony.

____ Outline the questions you will ask them.

____ 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, videos, 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.

XXI. Grievance Templates

A. Standardized Grievance Response Format

[LETTERHEAD]

MEMORANDUM

TO:

FROM:

DATE:

SUBJECT: (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 timelines 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 and 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 claims 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
Labor Relations Manager

B. 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 collective bargaining agreement 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 proposed 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 their 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 their 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
Labor Relations Manager

C. Grievance Response, Step 2

[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 suspend (Name) for five working days.

(Name's) 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: Union Representative
Supervisor
Department Human Resources Manager
Labor Relations Manager

XII. Merit Council

Merit Council

The Merit Council process is outlined in MCPR 2-20.

The Merit System Civil Service Council is established by the County Home Rule Charter and consists of a board of three members who are appointed by the Multnomah County Board of Commissioners and conducts hearings on appeals from classified management and represented regular employees.

Appeals

A. Eligibility to Appeal to the Council

1. Classified management employees may appeal disciplinary actions more severe than a letter of reprimand if the disciplinary action violates Multnomah County Personnel Rules, County Code or the Charter. Appeals must be delivered to the Executive Secretary of the Council no later than ten (10) calendar days from the date of the letter imposing the discipline.

2. Represented regular employees may appeal personnel actions not covered by a grievance procedure if the personnel action violates Multnomah County Personnel Rules, County Code or the Charter. The appeal must be delivered to the Executive Secretary of the Council no later than ten (10) calendar days after the effective date of that personnel action or for appeals.

3. Executive, temporary, and on-call employees have no appeal rights pursuant to MCPR 4-70-030.

4. Trial service employees have no appeal rights pursuant to MCPR 2-15-040.

B. Appeals to the Council must:

1. Be in writing;
2. Be signed by the employee;
3. Be dated;
4. Be addressed to the Council;
5. Contain an explanation of the action being appealed;
6. Include an explanation of the violation or identify the rule alleged to have been violated;

7. State the date of the action taken or not taken which the employee believes violated the Multnomah County Personnel Rules, County Code or the Charter;
8. Contain a statement of the redress desired;
9. Include a description of the evidence to be used by appellant on appeal.

C. Failure to comply with the requirements of this section will result in dismissal of the appeal by the Executive Secretary.

Processing of Appeals

A. The Council or the Executive Secretary may appoint a Hearings Officer to conduct the Council's hearings functions. In order for a Hearings Officer to be considered for appointment an individual must either be:

1. A member of the Oregon State Bar actively engaged in the practice of law for at least five years, or

2. An individual with at least five (5) years experience hearing contested employment cases, who is not a current County employee nor an employee within the year immediately preceding appointment Personnel Rule # 2-20 Draft Revisions 9-21-2020 A11Y 2

B. Upon receipt of an appeal, the Executive Secretary shall:

1. Determine compliance with MCPR 2-20-010 (A-B). Upon a finding of failure to comply, the Executive Secretary will dismiss the appeal. The appellant may appeal this decision by filing an appeal with the Executive Secretary within ten (10) days of the decision. The County Attorney's Office will issue a decision on the dismissal within ten (10) days of receiving the appeal. This decision is final and may not be appealed.

2. Determine if the appeal contains issues of disputed fact.
    a. Upon a finding that an issue of disputed fact exists the Executive Secretary will refer the appeal to a Hearings Officer for hearing.
    b. Upon a finding that the appeal does not involve any issues of disputed fact the Executive Secretary will refer the appeal to the Merit Council.

3. Notify the appellant, counsel for the County, Department HR Manager, and Council members or Hearings Officer, if assigned, of the date, time and place of hearing not less than fifteen (15) days

before the hearing, unless the appellant requests the hearing to be through writing.

4. An appellant's failure or refusal to appear for a scheduled hearing may result in dismissal of the appeal. If the appeal is dismissed for failure or refusal to appear, an appellant may not re-file an appeal on that issue.

Hearings Administration

A. Hearings will be presided over by:

1. The Council Chair;
2. A designated member of the Council; or
3. A Hearings Officer appointed by the Council.

B. Hearings will be conducted in an impartial manner. Any member of the Council or an appointed Hearings Officer will withdraw if unable to impartially or fairly consider an appeal.

1. Any member of the Council or an appointed Hearings Officer will disclose any relationship, which might give the appearance of impropriety.

2. An affidavit of bias may be filed where a party believes hearing by a Hearings Officer or Council member will result in actual bias. The Council or its designee will consider the affidavit of bias prior to hearing and as a part of the record in the case. Upon a finding that a party will suffer actual bias from consideration by the Hearings Officer or Council member, a new presiding Council member or Hearings Officer will be appointed.

Presiding Powers

The Council member or Hearings Officer presiding over a hearing has authority to:

A. Administer oaths and affirmations;

B. Issue subpoenas on its own motion, or when requested in writing by a party on a showing of the general relevance and scope of evidence sought;

C. Rule upon objections to evidence and receive offers of proof subject to MCPR 2-20-070

D. Regulate the course of the hearing;

E. Hold conferences for the settlement or clarification of the issues;

F. Rule on procedural matters;

G. Recommend decisions in conformity with MCPR 2-20-080;

H. Call and examine or privately interview witnesses, and introduce into the record or use other measures necessary in obtaining documentary and other evidence;

1. Remote testimony or alternative methods may be used to ensure the process is trauma-informed and to maintain the integrity of the process. Remote testimony is live testimony given by a witness or party from a physical location outside of the location of the hearing.

2. Witnesses may “appear” including, but not limited to, through written questions, in person, by phone, through video, or via Skype or other similar programs.

3. Permit or require the parties to present oral or written arguments and submit proposed findings of fact and violations of County and/or department policies and procedures;

4. Take any other action authorized by Council consistent with MCC Chapter 9 and other applicable law; and 5. The Council may delegate its authority to issue subpoenas to its legal advisor.

Evidence

A. Every party has the right to present its case by oral or documentary evidence, to conduct cross-examination for disclosure of the facts, and to submit rebuttal evidence.

B. The presiding Council member or Hearings Officer need not observe the federal or Oregon rules of evidence, but will observe the rules of privilege recognized by Oregon law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The Hearings Officer or presiding Council member must exclude immaterial, irrelevant or unduly repetitious evidence. In the interest of the process being trauma-informed, the Hearings Officer may control the evidence presented by the parties.

C. Evidence objected to may be received by the presiding Council member or Hearings Officer and a ruling on its admissibility may be made at the time of the final decision.

Decision

Within thirty (30) days after the close of taking evidence, the Council or Hearings Officer will issue a decision in writing that includes the following:

A. Within thirty (30) days after the close of taking evidence, the Council or Hearings Officer will issue a decision in writing that includes the following:

1. Rulings on the admissibility of offered evidence not ruled on during the hearing.

2. Findings of fact; and

3. Rulings on the alleged violation of a Multnomah County personnel rule, County Code or Charter and appropriate remedy.

    a. Upon a ruling that the personnel action (in the case of a represented employee) or disciplinary action (in the case of a management employee) violated a personnel rule, County Code or Charter with respect to the appellant, the Council or Hearings Officer will identify the appropriate remedy.

    b. Upon a ruling that the personnel action (in the case of a represented employee) or disciplinary action (in the case of a management employee) was taken in accordance with the Personnel Rules, County Code or Charter with respect to the appellant, the Council or the Hearings Officer will dismiss the appeal.

    c. A copy of the decision must be delivered to the Executive Secretary. The Executive Secretary will deliver the decision to the appellant, or to the appellant's attorney, through U.S. certified mail, and email the decision to the counsel for the county, Department HR Manager, and Council members.

Appeal of Hearings Officer Decision

A. A Hearings Officer's decision can be appealed to the Council within ten (10) calendar days after the date listed on the certificate of service.

B. Prior to the final decision by the Council, the parties will be afforded a reasonable opportunity to present oral or written arguments, but not new evidence. The bases for appeal of the Hearings Officer's decision are limited to arguments that the Hearings Officer:

1. Exceeded jurisdiction;

2. Failed to follow the procedure required by the Multnomah County Personnel Rules, County Code or Charter;

3. Made a finding or ruling not supported by substantial evidence in the whole record; or

4. Improperly construed the law

C. The Council will issue its final decision within thirty (30) days after the close of the hearing on review, unless it gives notice to the parties, and extends the period for not more than sixty (60) days.

D. The Council's decision on appeal from the Hearings Officer's decision must be in writing and must include the appropriate ruling, order, sanction or relief.

E. The Council may not remand the case back to a Hearings Officer, nor may it hire another Hearings Officer for further consideration.

F. The Executive Secretary will deliver a copy of the Council's decision on appeal to the appellant, or the appellant's attorney, through U.S. certified mail, and email the decision to the counsel for the County, Department HR Manager, and Council members.

Appeal of a Merit Council Decision to the Board

A. There is no appeal if a quorum of the Council is unanimous. The Council has a quorum when two of the three members are present. A Council decision is unanimous if all Council members present affirm the decision.

B. An appeal may be made to the Board of County Commissioners if the Council's decision is not unanimous.

1. Appeals to the Board must be in writing and filed with the clerk of the Board within ten (10) days from the date of the Council's decision.
2. The basis for appeal of the Council's decision is limited to arguments that the Council:

    a. Exceeded jurisdiction;

    b. Failed to follow the procedure required by the Multnomah County Personnel Rules, County Code or Charter;

    c. Made a finding or ruling not supported by substantial evidence in the whole record; or d. Improperly construed the law.

3. Board review will be in the nature of an appeal based on the record of the proceedings and such legal argument as the Board requests.

4. The Board will make its decision within forty-five (45) days from date of receipt of notice of appeal, based upon those decision guidelines established for the Council by rule MCPR 2-20-080.

Record of Hearing

The record of each hearing must include:

A. All written materials;
B. Evidence and testimony received and considered;
C. Matters officially noticed;
D. Questions and offers of proof, objections and rulings;
E. The decision of the Hearings Officer or Merit Council;
F. Any other matter submitted to the Hearings Officer or the Council in connection with the hearing;
G. Any decision of the Council or the Board of Commissioners; and
H. The recording of the hearing.

Electronic Recording of Hearings

All proceedings will be electronically recorded. The record need not be transcribed. The Council may charge the party requesting transcription the cost of any transcription.

Ex Parte Contacts

Unless required for the disposition of ex parte matters authorized by law, members of the Council and the Hearings Officer must not communicate, directly or indirectly, in connection with a hearing with any person or party or their representative, except upon notice and opportunity for all parties to participate.

Disciplinary Action

A. If the Council finds that the disciplinary action was discriminatory, as defined in MCC 9.009; was an unlawful employment practice described by applicable state law; or was not for cause, the employee will be reinstated to the prior position and will not suffer any loss in pay.

B. The Council may modify an appealed disciplinary action if it finds that the action was taken in good faith for cause, upon a finding of mitigating circumstances. C. Any other personnel action appealed to the Council from a decision of a department or the Human Resources

manager must be affirmed unless the Council concluded the action violates MCC Chapter 9.

XXIII. Definitions

Definitions

MCPR § 1-10-040
*[Multnomah County Code definitions are italicized and marked with an asterisk]

***Cause:** Misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance or other unfitness to render effective service.*

***Classified employee:** An employee in County service not excepted from classified service, but does not include temporary employees or those who work on call or less than half time. Classified employees are subject to all of the provisions of the County Charter, ordinances, and these rules which set forth civil service requirements, including, but not limited to, those for appointment, seniority, tenure, discipline and discharge.*

***Council:** The Merit System Civil Service Council*

Demotion: The voluntary or involuntary movement of an employee from a position in one job profile to a position in another job profile having a lower maximum pay rate.

Disciplinary action: Action taken against an employee including but not limited to oral reprimand, written reprimand, suspension, reduction in pay, demotion, dismissal, or any combination.

Dismissal: Termination of an employee from County service.

***Executive employee:** Employee with a major role in the administration or formulation of policy that requires the exercise of independent judgment and includes all positions excepted from the classified service.*

***Grievance:** A complaint filed under the terms of an existing collective bargaining agreement.

***Management employee:** Employee with a role in the administration of the County, a manager, or a professional or paraprofessional employee who is not covered by a collective bargaining agreement. These positions are designated by the Chair and are classified but non-represented.*

Manager (includes supervisor job profiles): An employee delegated authority by a Director to assign work, evaluate employee performance, respond to grievances, approve leave and other employee requests, and impose or effectively recommend disciplinary action.

***Non-represented employee:** An employee in a position not covered by a collective bargaining agreement.*

***Personnel action:** Any employment action taken by the County with reference to an employee or position.*

***Probationary period/trial service period:** A working test period during which a classified employee is required to demonstrate fitness for the position to which the employee is appointed by actual performance of the duties of that position.*

Public record: Includes, but is not limited to: documents, books, papers, photographs, files, sound recordings, or machine readable electronic records, regardless of physical form or characteristics, made, received, filed, or recorded pursuant to law or in connection with the transaction of public business, whether or not confidential or restricted in use. Public records do not include extra copies of a record, preserved only for convenience of reference, or messages on voice mail or other telephone message storage and retrieval systems.

***Regular employee:** The status a classified employee acquires after successful completion of the probationary period for the particular position to which the employee was appointed.*

***Represented employee:** An employee in a position covered by a collective bargaining agreement.*

Supervisor: See Manager.

Suspension: Placing an employee on involuntary absence from County service.

***Trial service period:** See Probationary Period.*