

# **A Labor Relations Guide For Supervisors**

## **Administering Employee Discipline**



Multnomah County  
Central Human Resources/Labor Relations  
*2005 Edition, See Footers for Section Updates*

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# I.

## **Introduction**

This 2005 reference manual is written with the goal of providing exempt (non-represented) supervisors a tool box style manual that provides direction and examples on how to deal with sub-par employee job performance.

Many performance issues can be addressed at the earliest stages and avoided by communicating expectations, identifying and monitoring performance issues and building on strengths. The hope is that performance issues can be corrected by counseling. But, if counseling fails, then a supervisor needs to evaluate the situation and determine what appropriate steps should be taken. The general rule should be to use the lowest action step. First step could be a work improvement plan. If a work improvement plan fails to bring up expectations, then the appropriate next step would be corrective disciplinary step. In anticipation that disciplinary steps at some future date may be challenged by an employee, it's important that when drafting disciplinary letters that such letters identify any prior actions that were made to improve employee performance.

It's important that supervisors know Multnomah County personnel rules and appeal procedures before instituting disciplinary action against an employee. One pitfall that many new supervisors to the County fall into is relying on rules and practices that they learned with another organization that are not in line with Multnomah County rules and practices.

Most Multnomah County employees have appeal rights either through one of the ten (10) collective bargaining units or through the Merit Council. It's important that supervisors be familiar with the appropriate collective bargaining agreement that governs employees under their supervision. Department HR staff and Central LR staff are excellent sources in providing assistance in dealing with difficult disciplinary situations.

Before a supervisor considers disciplinary action, it is very important that they review the steps outlined in this manual to see if they have been followed. If the answer is "no" to any one step, the actions taken by a supervisor maybe overturned.

## **II.** **Expectations**

The prevention of performance problems requires an investment of time and self-discipline on the part of the supervisor. The most important tools for preventing performance problems are setting clear expectations of performance and conduct.

### **Setting expectations and performance conduct standards**

**1. New Hires:** It's important that new hires (probationary employees) become familiar with County work rules, Department administrative rules and any other policies and/or procedures that govern the County's expectation of employee performance and conduct. It is important to take time with new employees and make sure they have read appropriate rules and regulations. Once an employee has completed a review of appropriate material, it's very important that they sign a document that confirms that they have read and understand the rules and regulations. Be sure the employee's written confirmation becomes a part of their personnel file. Worst case situation, is for a supervisor to take disciplinary action against an employee, claiming violation of work rules and the employee claims they were not familiar with the rule and the supervisor has no proof that the employee read the rule that was violated. A new hire check off list is a valuable tool in insuring that you have not missed any important items that all new hire employees are expected to know.

**2. How often do you require employees review rules?** Depending on the type of work your employees perform, there may be cause to have employees review certain work rules and sign off annually that they have read and agree to comply with the work rule(s). This comes into play most often when there are certain rules that are cause for immediate discharge.

**3. Clear vs. Vague.** Be specific regarding behavior expectations. If you expect employees to be at work, at their desk, when the clock strikes 8:00 a.m., be clear, not vague in your expectations. Don't say be punctual. Be specific. Advise the employee that they need to be at their desk ready to answer phones at 8:00 a.m.

**4. Past Practice vs. Performance Expectations (When they don't match)** An employee's practice of coming to work late, taking long breaks, or other practices that are not acceptable, can and should be addressed.

Management has a right to change employment work practices that don't meet department performance expectations.

When making changes, things to consider prior to making the change:

1. Have you communicated what you plan to change to your supervisor? Does your supervisor support your planned changes and timetable for making the changes?

Have you discussed your plans with someone from HR.? Do your plan changes, violate any collective bargaining changes? How about federal or state laws? Sometimes what may appear as a simple change may have hidden problems that were not anticipated?

2. If you're planning on making a change that has been a past practice, learn as much as possible as to why the past practice existed. Don't make assumptions, talk with employees.

3. Have you discussed your plans with the Union Steward or Union Representative? The Union may be helpful in giving you hints on expected problem areas and how to avoid unnecessary conflict.

4. It cannot be emphasized enough that any time a supervisor is implementing change; communicate with all stakeholders who may be impacted by the change, that is, employees, other supervisors, upper management. Get employee buy-in whenever possible. Be patient. Long standing practices may be met with strong resistance.

### **III.**

## **The Legal Environment**

A supervisor should have sufficient knowledge of the labor laws that impact the employees under their supervision. Examples:

Fair Labor Standards Act (FLSA): What constitutes, “suffered or permitted to work”, what constitutes “preparatory and concluding activities”, what constitutes time worked?

Civil Rights Act of 1964:

Americans with Disabilities Act (ADA)

Age Discrimination in Employment Act (ADEA)

Family and Medical Leave Act (FMLA)

### **Oregon Revised Statutes**

Most supervisors get in trouble with the Oregon Employees Collective Bargaining Act when they take disciplinary action against Union Stewards and/or Union Officers that are viewed as discriminatory by the steward and/or officer. Union Stewards and Officers have employment protection rights covered by ORS 243.672?

ORS 243.672 Unfair labor practices;

(c) Discrimination in regards to hiring, tenure or any terms or conditions of employment for the purpose of encouraging or discouraging membership in an employee organization.

(d) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under ORS 2443.650 to 2434.782.

## **Weingarten Rights**

The Weingarten case states that represented employees have a right to have a Union Representative present during an investigatory interview that the employee reasonably believes may result in discipline. *NLRB v. J. Weingarten*, 420 US 276, 88 LRRM 2689 (1975). The Oregon Employment Relations Board adopted this rule in the case of *AFSCME, Local 328 v. Oregon Health Sciences University*, Case No. UP-119-89, 10 PECBR 922 (1988)

Employers are often confused as to when an employee can exercise his or her Weingarten rights. Oregon Employment Relations Board stated in the above referenced case:

The right to union representation, however, does not arise in conversations between a manager and an employee in which the latter is only given instructions, training, or needed corrections of his or her work techniques. Nor does it apply to non-investigatory counseling sessions or meetings in which an employee is simply informed of disciplinary action. The Weingarten rule applies only to the investigatory interviews where: 1) the employee reasonably believes that disciplinary action is being contemplated or may result; 2) the employer insists on the interview; and 3) the employee requests representation.

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

### **Weingarten Rules:**

1. The employee must make a clear request for union representation before or during the interview. The employee cannot be punished for making this request.
2. After the employee makes the request, the supervisor must choose from among three options. The supervisor must either:
  - a. Grant the request and delay questioning until the Union Representative arrives and has a chance to consult privately with the employee; or
  - b. Deny the request and end the interview immediately; or

- c. Give the employee a choice of: (1) having the interview without representation or (2) ending the interview.

**Weingarten rights do not arise:**

- Does not arise in conversations between a manager and an employee in which the employee is only given instructions, training, or needed corrections of his or her work techniques.
- Does not arise when a supervisor calls a worker to the office to announce a warning or other discipline.

**Penalty:**

If a supervisor denies an employee's request for union representation and continues to ask questions, demanding that the employee answer the questions, the supervisor commits an unfair labor practice and any disciplinary action taken against the employee may be overturned by the State of Oregon Employment Relations Board.

**Rights of Stewards during an Investigatory Interview**

- Steward and employee have a right to know the subject matter of the interview.
- Steward can take the employee aside for a private pre-interview conference before questioning begins.
- Steward can request that a supervisor clarify a question, so that an employee can understand what is being asked.
- When the questioning ends, the steward can provide information to justify the employee's conduct.

## IV. **Probationary Period**

### **1. Personnel Rules:**

#### 2-15-010 PROBATION PURPOSE

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 Director 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.

#### 2-15-020 DURATION

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

- (1) Eighteen months for deputy sheriffs.
- (2) One year for other law enforcement and corrections personnel.
- (3) Length is subject to the applicable collective bargaining agreement for other represented classified.
- (4) Confidential employees are treated the same as members of AFSCME Local 88 under all sections of this rule.
- (5) One year for employees or applicants upon initial appointment as management employees.
- (6) Six months trial service for employees promoted within management service.
- (7) An authorized leave of 30 days or more during the probationary period will extend the probationary period so that the employee serves the entire probationary period.

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

period will be the difference between one year and the incumbent's accrued service in a classified position.

#### 2-15-030 PROBATIONARY PERIODS FOR EMPLOYEES IN TRAINING PROGRAMS UNDER MCPR 5-30-030

(A) Trainees will be promoted non-competitively as authorized by MCC 9.150 (A) to the budgeted position's classification when they have completed the training program and meet the qualifications and performance requirements of the program.

(B) Trainees not meeting the position qualifications and performance requirements by the end of probation, trial service, or the training program, will be terminated or returned to their previous classification as required by the collective bargaining agreement or 2-15-050. Trainees will be notified of the length of the probationary period when they are appointed.

(C) The length of the training program may be added to the regular probationary period for an employee appointed to the program.

#### 2-15-040 FAILURE TO COMPLETE PROBATION

(A) A probationary employee may be removed during probation at any time if, in the opinion of the Director, continuing probation is not in the best interests of the County. Employees removed during probation have no right to appeal such actions.

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

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

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

#### 2-15-050 COMPLETION OF PROBATION

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

## **2. Probationary Review:**

One should be aware that probationary employees, as well as temporary and on-call employees, have the same legal rights as other citizens except for the grievance process. This should not discourage a supervisor from a vigorous use of the probationary period, but should be a warning of the need for a systematic care in the treatment of these employees. To assist you, each County organization should have a probationary review process in place which will assist in a systematic and fair review of each employee. The probationary period should be a positive experience in which the expectation of success is conveyed to the employee and every assistance is offered. However, if the employee does not meet reasonable requirements, he or she should not be allowed to pass the probationary period. Many, if not most, performance problems among regular employees were identifiable during the probationary period.

The following is a sample probationary employee termination letter. You will note that this includes nothing regarding the reason for termination. This is a purposeful effort to avoid issues of defamation. This is not to say that the reasons for termination should not be discussed with the employee, documented in the supervisor's log, and, if appropriate, become part of the probationary review evaluation form. No positive purpose is seen, however, in reciting the reasons for termination in the letter terminating a probationary employee.

**Sample**  
**Probationary Employee Termination Letter**

DATE

NAME

Dear NAME:

Multnomah County uses the new hire probationary period as a time to evaluate a person's performance on the job. You were hired as a/an \_\_\_\_\_ on \_\_\_\_\_. Based on our evaluation of your performance during your initial probationary period, it has been determined that your continued employment with the Department of \_\_\_\_\_ is no longer in the County's best interest.

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

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

Sincerely,

NAME

Copy:

## **V.**

### **Performance Expectations**

A supervisor notifies an employee that their job performance is below expectation. The employee notifies their Union Representative. The Union Representative demands to see employee Job Classification. What do you do?

The reason the Union Representative may ask for a copy of the employee's job classification, is that the Union Representative want to see if the duties required of the employee fall within employee's job classification. It's is therefore important that supervisor make sure their employee's are properly classified. Yes, give the Union Representative a copy of the employee's job classification.

#### **Definition - Job Classification**

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

All job classifications contain a definition; supervision received and exercised; examples of duties; and qualifications.

In setting job performance expectations, job classifications may not by themselves be sufficient in describing individual position duties and responsibilities. It is therefore important that every position also have a job description.

All County employees have a Job Classification, but not all employees have a Job Description.

Job Descriptions are important when there is more than one employee in a Job Classification and their duties vary, such as Office Assistant 2's. In such cases, an employee whose performance is not meeting expectations may contest that they are doing their job per their Job Description. It is therefore important that if you have Job Descriptions for your employees that they be reviewed on an annual basis. It is important that Job Descriptions be reviewed whenever there is an organizational change that will change 'employees' duties; or when an employee leaves the position and a new employee fills the position.

### **Definition - Job Description**

A description of an individual position that contains the duties, responsibilities, skill and ability requirements of the individual position.

In setting job performance expectations, job descriptions are a very important tool for supervisors in defining:

1. The purpose of the position the employee holds.
2. The important and essential functions expected of the employee.
3. Who the employee regularly comes in contact with.
4. The kinds of decisions the employee is expected to make.
5. If the employee supervises and the number of positions they supervise.
6. Physical requirements of the position.
7. Working conditions the employee is expected to work in/under.
8. Additional job related conditions such as special knowledge, skills and abilities (KSA's). Example: Bilingual.

### **Job Performance Expectations**

A detailed description which outlines performance expectations. Example: Job duty: Answer phones. Performance Expectation: Answer incoming phone calls by the 3<sup>rd</sup> ring 80% of the time.

Normally, job performance expectations documents are not necessary unless an employee's performance is not meeting expectations and supervisor wants to address the performance problems at the lowest level possible. Job performance expectations documents are not discipline, but they may be the first step in the pre-disciplinary process.

## **VI.**

### **Work Improvement Plans**

A time sensitive document with a beginning date, end date, job tasks that are below standard, performance expectations and action plan.

Work improvement plans are very helpful documents in addressing employee sub-par work performance. Warning: Do not use work improvement plans if you don't have time to follow through. Work improvement plans require time and energy

If an employee fails to meet performance expectations as outlined in the work improvement plan and there is no follow up action, your action could be viewed by an outside party as accepting the employee's work performance.

#### **When is Work Improvement Plan appropriate?**

Work improvement plans are very helpful tools when you want to establish what is expected of an employee and the time lines for the employee meeting those expectations. The previous section dealt with Job Descriptions and in more detail, Job Performance Expectations. Both of these documents outline all the duties expected of an employee.

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

#### **Are Work Improvement Plans considered Discipline?**

Work improvement plans are not considered discipline. Employees may view them as discipline as they reflect that an employee is not meeting expectations. According to the County collective bargaining agreements, work improvement plans are not listed as one of the disciplinary steps contained in the disciplinary articles.

#### **What is the appropriate time frame for a Work Improvement Plan?**

A work improvement plan should be of a sufficient period of time that the intended work improvement is not a temporary fix. It is important that the employee has demonstrated that the job tasks that they needed to improve on have improved and there have been no reoccurrences. Normally work improvement plans are at three (3) to six (6) months.

#### **Can Work Improvement Plans be Extended?**

Yes, but be clear on time period and why the extension.

## **VII.**

### **Pre-Disciplinary Situations**

#### **Paid Administrative Leave**

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

In case of a serious infraction and the Department does not wish to have an employee come to work until the County determines appropriate action, an employee can be put on administrative leave. Depending on the severity of the infraction, an employee may be excluded from a specific work site or numerous work sites.

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

When placing an employee on administrative leave, it's important that the written letter contain:

1. Employee must be available by phone during normal work hours.
2. While on administrative leave with pay, an employee may wish to leave the area such as go on vacation to the coast. It's important that you tell the employee that if they wish to leave the area during work hours that they need to contact their supervisor and request vacation approval.
3. Its also important that while on administrative leave with pay that you tell the employee that they are restricted from the work site unless pre-arrangements have been made.
4. Prior to placing someone on paid administrative leave it may be important to collect County property from the employee such as cell phone, badge, etc that an employee could use to gain access to County property while on leave.

## Sample Administrative Leave Letter

Date

Employee name

Address

Dear \_\_\_\_\_:

This letter is to notify you that you are being placed on administrative leave effective \_\_\_\_\_, due to \_\_\_\_\_. You will remain in this status until notified otherwise. You will be on paid status 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 \_\_\_\_\_ informed of your current home telephone number and/or cellular phone. Phone number(s) we currently show for you is/are \_\_\_\_\_.

During this time if you wish to take vacation leave for your own purposes or to participate in activities which would require you to use accrued leave or take approved leave without pay, you should request such leave by calling \_\_\_\_\_. It is not our intent that you cannot go outside in your yard, to the mailbox, etc.

In addition, you are restricted from \_\_\_\_\_ during this period unless you are coming to \_\_\_\_\_ to pick up your paycheck or to Human Resources for any meetings which may have been arranged with you. Even then your visit should be restricted only to those areas.

If you have any questions in the interim, please contact \_\_\_\_\_.

Sincerely,

Supervisor

## **Notice to Move Employee from Administrative Leave with Pay Status to Unpaid Status, Pending Completion of a Pre-dismissal Process**

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

Suspension without pay pending the completion of a pre-dismissal process normally occurs when a potential criminal activity occurred and an extended period of time will lapse until an investigation is completed. In such cases it is not in the County's interest to return an employee to employment nor is it in the County's interest to keep an employee in paid administrative leave status for an extended period of time.

Before placing an employee in suspension without pay status pending completion of a pre-dismissal process, it's important that the employee have an opportunity to respond to why you are placing them in unpaid status. The format for placing an employee on suspension without pay status pending completion of a pre-dismissal process is covered by County personnel rule: 3-60-060.

### **Procedure:**

#### **1. Notification letter to the employee:**

Proposed action:	Suspension without pay pending completion of the pre-dismissal process.
Grounds:	List personnel rule, work rule and/or Union contract Article that was violated.
Background:	List any background that supports the action.
Facts Supporting Proposed Action:	Need to be specific as to dates, location, people, action.
Pre-decision Meeting:	Date, time, location, right to bring representative to hearing and right to submit written response prior to meeting.

**Sample Letter:  
Proposed Suspension without Pay  
Pending Completion of Pre-dismissal Process.**

Date \_\_\_\_\_

Employee name \_\_\_\_\_  
Address \_\_\_\_\_

Dear \_\_\_\_\_:

As an employee of the \_\_\_\_\_ Department assigned to \_\_\_\_\_ in the classification of \_\_\_\_\_, you are hereby notified of the following proposed personnel action:

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

**GROUND:** Article \_\_\_\_ - Discipline and Discharge of the \_\_\_\_\_ collective bargaining agreement.

**BACKGROUND:**

You were originally hired as a \_\_\_\_\_ in August 1995 and became a \_\_\_\_\_ in February \_\_\_\_\_. You assist \_\_\_\_\_ in providing services to a population who are typically unable to care for their basic living needs.

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

Staff are expected to be watchful for the safety of the residents of \_\_\_\_\_. The expectation is that staff will display \_\_\_\_\_.

Under rules of the \_\_\_\_\_ individuals convicted of certain felonies and misdemeanors are disqualified and denied employment.

You have attended training sessions while employed at \_\_\_\_\_ including but not limited to:

**FACTS SUPPORTING PROPOSED ACTION:**

1. On \_\_\_\_\_ you were arrested and charged with \_\_\_\_\_ by the \_\_\_\_\_ District Attorney's office.

2. You were charged in connection with the \_\_\_\_\_.

**PREDECISION MEETING:**

A hearing will be held on \_\_\_\_\_, at \_\_\_\_\_ in the personnel conference room in the \_\_\_\_\_ building for you to present mitigating circumstances as to why you should not be suspended without pay pending completion of the pre-dismissal process. You have been a no show since \_\_\_\_\_, and been placed on administrative leave with pay. You may bring a representative to this hearing if you wish. In lieu of this hearing, you have the option to submit to me in Human Resources by the same date a written response to these charges.

**PENDING CRIMINAL CHARGES:**

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

It is your choice to provide any information or make statements during the meeting scheduled for \_\_\_\_\_.

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

Sincerely,

Personnel Manager

**Sample Letter:  
Suspension without Pay  
Pending Completion of the Pre-Dismissal Process**

Date \_\_\_\_\_

Employee name \_\_\_\_\_  
Address \_\_\_\_\_

Dear \_\_\_\_\_:

As an employee of the \_\_\_\_\_ Department assigned to \_\_\_\_\_ in the classification of \_\_\_\_\_, you are hereby notified of the following personnel action:

**ACTION:** Change in status to suspension without pay pending completion of the pre-dismissal process.

**GROUND:** Article \_\_\_\_ - Discipline and Discharge of the \_\_\_\_\_ collective bargaining agreement.

**EFFECTIVE DATE:** \_\_\_\_\_

**BACKGROUND:**

You were originally hired as a \_\_\_\_\_ in August 1995 and became a \_\_\_\_\_ in February \_\_\_\_\_. You assist \_\_\_\_\_ in providing services to a population who are typically unable to care for their basic living needs.

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

Staff are expected to be watchful for the safety of the residents of \_\_\_\_\_. The expectation is that staff will display \_\_\_\_\_.

Under rules of the \_\_\_\_\_ individuals convicted of certain felonies and misdemeanors are disqualified and denied employment.

You have attended training sessions while employed at \_\_\_\_\_ including but not limited to:

On \_\_\_\_\_ you were placed on administrative leave with pay. You were placed in this status after having been \_\_\_\_\_. A meeting was held on \_\_\_\_\_, at \_\_\_\_\_

in the personnel conference room in the \_\_\_\_ building, to give you an opportunity to present information as to whether your administrative leave should be with or without pay pending completion of the pre-dismissal process. At this meeting, you would not comment on the facts of the case based on the advice of your attorney. You stated that you're next court date was \_\_\_\_\_.

**FACTS SUPPORTING ACTION:**

1. On \_\_\_\_\_ you were arrested and charged with \_\_\_\_\_ by the \_\_\_\_ District Attorney's office.
2. You were charged in connection with the \_\_\_\_\_.
3. At the meeting on \_\_\_\_\_, you were present along with your Union Representative. You did not provide any information that would \_\_\_\_\_.

**CONCLUSION:**

Based on the above, you are placed on suspension without pay effective \_\_\_\_\_. You will continue in this status pending completion of the pre-dismissal process.

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

Sincerely,

Personnel Manager

## **VIII**

### **Insubordination**

#### **I. Definition**

For purposes of Multnomah County Personnel Rule 3-10-020(J) 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.

#### **II. Key Factors**

There are six (6) distinct key points in determining if insubordination occurred:

Direct Order:	Was the employee given a direct order?
Clarity/Awareness:	Was the employee given a clear and unambiguous order? Was the employee aware that this was not merely instruction or advice, but was indeed an order?
Compliance:	Did the employee disregard and fail to follow the order intentionally and willfully?
Consequences:	Was the employee aware of the consequences of non-compliance?
Reasonable:	Was the supervisor or order reasonable?
Fairness:	Was the order unfair, unjust, illegal, inequitable, inconsistent, arbitrary or capricious? Can the employee reasonably argue that compliance with the order would have endangered him/herself or others?

Examples of Insubordination Cases

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

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

### **III. Obey Now-Grieve Later Rule**

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

### **IV. Exceptions to the “Obey Now-Grieve Later” Rule**

#### **A. Safety/Health**

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

#### **B. Illegal/Constitutional Rights**

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

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

## **IX. Documentation**

When detailing an event that could lead to discipline, there are 3 keys items to consider.

**1. Timing.** Do not delay in documenting an event, the longer the delay in documenting an event the greater the probability that your memory of the incident will be challenged.

**2. Accuracy.** Get the story straight in writing. Follow the five W's:

A. What happen? (What happened or failed to happen.)

B. When did it occur? (Give day, time, date(s)).

C. Who was involved? (Give names and titles.)

D. Where did it occur? (Specific Locations.)

E. Why is there an issue? (Violation of a work rule and/or regulation, ordinances or law.)

Signature

Date

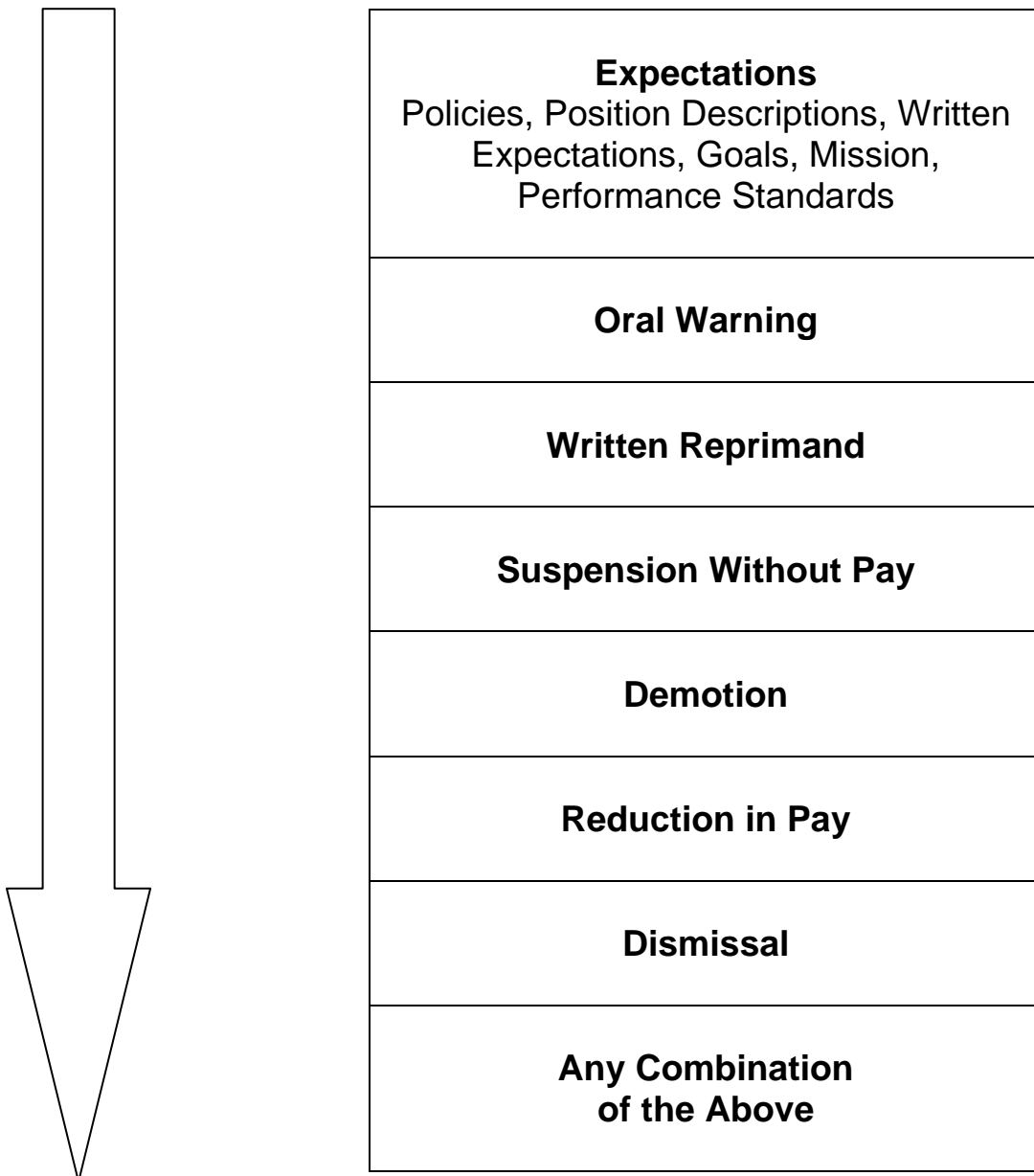
**3. Desired Result.** Desire to change an employee's behavior?

## **X.**

### **Just Cause- Seven Test Application**

#### **JUST CAUSE — Setting the stage for Progressive Discipline**

- Communication is the Key – Set Expectations
- Know the County Culture Regarding Discipline
- Be Consistent



## **SEVEN TEST APPLICABLE FOR LEARNING WHETHER EMPLOYER HAS JUST AND PROPER CAUSE FOR DISCIPLINING AN EMPLOYEE**

The meaning of the terms “cause,” “just cause,” or “in good faith for cause,” as they are used regarding discipline has evolved over the years to now imply a fully justified basis for discipline. One particular important arbitration case that is used by employers and unions, to test whether a fully justified basis for discipline has been met or not met, was by Professor Carroll R. Daugherty, whose incisive codification of seven, “Test Applicable For Learning Whether Employer Had Just and Proper Cause for Disciplining An Employee”, set the standard for exploring the relationship between disciplining due process and just cause.

A “no” answer to any one, or more of the following questions normally signifies that just and proper cause did not exist. In other words, “no” means that the employer’s disciplinary decision contained one or more elements of arbitrary, capricious, unreasonable, or discriminatory action to such an extent that said decision constituted an abuse of managerial discretion warranting an arbitrator to substitute his or her judgment for that of the employer.

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

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

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

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

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

To effectively meet this “due process” test, the supervisor must investigate and document the facts supporting allegations of misconduct.

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

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

**5. At the investigation, did the “supervisor” obtain substantial evidence or proof that the employee was guilty as charged?**

Proving misconduct requires that you:

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

The standard of proof which a supervisor is expected to meet in a disciplinary case varies depending on the nature of the charge and the severity of the penalty imposed. The general standard is preponderance of the evidence.

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

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

It must be pointed out that this standard does not chain the organization to the past. At any time, the supervisor may issue and post a letter of intent to change the approach taken in the past to a rule. For example:

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

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

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

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

Counseling Session  
Work Improvement Plan  
Oral Reprimand  
Written Reprimand  
Suspension Without Pay  
Discharge

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

There is no doubt that sustaining consistent, progressive discipline is a difficult job. There is an understandable tendency to follow such a pattern for a few steps, neglect the employee for many months, and then suddenly impose severe discipline. The key is to keep the corrective program within a manageable time frame. If an employee does not respond within the time

frame specified at one step of the process, the next step should be taken. What must be done at each step, however, is to measure the length and severity of the disciplinary “chain” relative to the severity of the employee’s behavior. Because of the great variety of misconduct, there is no single “right” answer to disciplinary measurers, but rather a range of reasonable actions.

Turning to the issue of work history, you should be aware that a long-service employee whose misconduct or poor performance has been tolerated for years, and this implicitly condoned, cannot be dealt with in the same manner as a new employee.

## **CHECKLIST FOR DETERMINING WHETHER EMPLOYER HAD JUST CAUSE FOR DISCIPLINING AN EMPLOYEE**

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

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

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

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

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

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

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

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

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## **XI.**

### **INVESTIGATORY INTERVIEW**

In determining just cause, an investigation may include investigatory interviews of the employee and witnesses. If it does, you should notify the employee of the allegations and set a time and place to meet to verify the substance of the alleged violation. Tell the employee that the investigation might result in discipline and he/she may have a Union Representative present.

Take complete notes or tape record the interview.

During the interview, emphasize you are fact-finding and are interested only in the facts, not conjecture about the allegation. Try not to use leading questions and do not suggest answers to your questions.

The State Employment Relations Board (ERB) has recently established guidelines regarding the role of a Union Representative in pre-disciplinary investigative interviews.

1. The employer may determine the time and place of an interview, as long as the Union Representative's schedule is reasonably accommodated.
2. The Union Representative may ask at the outset of the interview, regarding its purpose and the general subject matter of the questioning to follow.
3. The employer has the right initially to hear "the employee's own account of the matter under investigation."
4. During the questioning of the employee by the employer, the Union Representative may participate only to the extent of seeking clarification of questions.
5. The Union Representative has a right to counsel an employee before the interview starts, but does not have the right to "counsel" the employee during the questioning. For example, to consult with the employee about how to answer the question or to advise the employee on the wisdom of whether or not to answer.
6. After the employer has completed the questioning of the employee, the Union Representative may ask the employee questions designed to clarify previous answers or to elicit further relevant information.
7. Before the end of the meeting, the Union Representative may suggest to the employer other witnesses to interview and may describe relevant practices,

prior situations, or mitigating factors that could have some bearing on the employer's deliberations concerning discipline.

8. The interview should not be turned into a quasi-hearing. A closing argument or dispute concerning facts is not appropriate.
9. The employer has no duty to bargain with the representative concerning disciplinary measures at this interview.

If the representative tries to engage you in conversation or adversarial discussion, decline. If the problem persists, call a temporary recess to let tempers cool.

As a practical matter, the involvement of an employee representative in investigatory questioning of an employee can have some positive results. The Union Representative may be better at articulating the facts and evidence in the employee's favor. This can help you evaluate the strengths and weaknesses of evidence in support of disciplinary action. It also may help inform the representative of evidence unfavorable to the employee, information the employee might not have shared with the representative. While not likely to occur in your presence, the representative may privately counsel the employee that action is warranted. This may help eliminate or narrow the scope of disciplinary grievances. However, a representative will sometimes test you even when his/her client's case is weak.

## **XII.**

### **DETERMINING APPROPRIATE DISCIPLINE**

#### **A. Factors to Weigh In Determining the Appropriate Discipline**

1. Fault. Includes intent, potential harm to others or to agency, seriousness of performance deficiencies, etc.
2. Prior Warnings. 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. All recent discipline is relevant.
4. Longevity. Many years of service may require special consideration – 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.

The difference between “appropriate discipline” and “progressive discipline” is that appropriate discipline takes into account the fault or deficiency of the employee, the employee's employment history and mitigating factors, while progressive discipline is the imposition of progressively more severe disciplines for a continuing problem.

#### **B. Tips in Picking 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 of treatment of employees in comparable situations.
5. Do not proceed to dismissal, unless no other form of discipline makes sense.

### **XIII.**

## **PRE-DISCIPLINE NOTICES**

Pre-discipline notices are not technically disciplines; they are notices of the initiation of the process. They are however, crucial disciplinary documents. Proper drafting of these notices is as important as the discipline letter because the content of these notices become the content of the discipline notices.

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

1. Accurate and adequate drafting of the pre-discipline notice is more difficult and crucial, and requires more thought than the drafting of the discipline document, which is, in pertinent part, a duplicate of the pre-discipline notice.
2. A supervisor cannot add charges to a discipline letter that were not alleged in the pre-discipline notice. That means, if new charges develop at the pre-discipline meeting, the supervisor cannot just add these new charges as additional new charges in the discipline letter. If you find yourself adding new charges to a discipline letter, STOP and consult with your Department Human Resources Manager.
3. If new charges develop at a pre-discipline meeting, the supervisor must give a second pre-discipline notice of the new charges and schedule a second pre-discipline meeting.
4. A supervisor can drop charges in a discipline letter if he or she decides a particular charge is not shown to support discipline (is not proven as serious for some reason) and the remaining charges do support the action. The supervisor simply drops that charge (e.g., charge no. 3) and renumbers the remaining charges.

In the summary section, the supervisor may, if he/she wants, simply and succinctly give a reason why he/she dropped a charge. (For example, "I re-contacted Ms. Alan as you requested. Ms. Alan told me that she mistakenly confused you with Mr. Long and no longer can state, with certainty that you yelled at her.

The supervisor, if he/she learned about Ms. Spring charges after the issuance of the pre-discipline notice or at the pre-discipline meeting simply cannot add this new information to the discipline letter. A supervisor cannot state: "Ms. Spring attended the pre-discipline meeting and told us, for the first time, that you became angry with her and physically threaten her and we are firing you for that too."

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

1. The employee being disciplined.
2. That employee's representative (the Union if the employee is represented).
3. The agency imposing discipline.
4. The forum, whether it's arbitration, the Employment Relations Board, or perhaps a jury or a judge.

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

## XIV.

### **DISCIPLINARY PATH POTHOLES** **AND THEIR AVOIDANCE**

#### **A. Supervisor Not Aware of What Employees Are Doing**

1. Examples: Supervisor, whose office is away from employees' work stations, does not know employees are using County vehicles for personal errands.
2. If supervisor could have discovered the activity by reasonably diligent monitoring of the employees, failure to put a stop to the activity will be tantamount to condoning. County cannot suddenly discipline an employee for conduct it has been condoning. If Union raises unfair treatment defense at arbitration, showing that other employees have been engaging in the same conduct for a long time without being disciplined, the supervisor's, "I-didn't-know-it-was-going-on" defense is not good.
3. Pothole avoidance: Supervisors need to use diligence in knowing what employees are doing.

#### **B. Supervisor does little, or nothing, to address problem employee conduct or performance of which supervisor is aware.** Worst case: Supervisor gives all employees excellent performance evaluations despite their shortcomings.

1. Down home condoning. Requires starting disciplinary process from square one, no matter how long the problem has continued.
2. Pothole avoidance:
  - a. Supervisors need to address problem conduct or performance and keep addressing it until the problem is corrected.
  - b. Supervisors are responsible for disciplining employees who do not maintain acceptable standards of performance or conduct.

#### **C. Employee is continually warned** of need to correct problem conduct or performance, but never warned of eventual dismissal, and discipline is never imposed. Related Pothole: Supervisor imposes repeated reprimands, instead of moving the situation to more severe discipline.

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

2. Pothole avoidance:

- a. Do not get stuck on one level of discipline. Move up the severity scale if the problem continues or, at least, warn more emphatically of ultimate dismissal.
- b. Break through the employee's denial syndrome instead of fostering it. It's easy for employee to believe, supervisor is not too serious about the problem, if no strong discipline is imposed.

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

1. Backing off discipline out of compassion for employee (with family troubles, etc.) usually backfires on the supervisor.
2. Pothole avoidance: Keep compassion out of the disciplinary process. Feelings of compassion are fine, but discipline that is reasonable should be imposed.

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

1. This can mislead the employee and can make supervisor look dishonest if supervisor later imposes discipline for the performance problem.
2. Pothole avoidance: Use positive reinforcement without minimizing seriousness of problems to be corrected.

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

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

2. Pothole avoidance:
  - a. Recognize negative feelings, then discount them and put them completely to one side.
  - b. Pretend to be employee's representative and figure out every possible way the County's case against the employee could be questioned. Decide what the evidence really proves.

**G. Supervisor, with knowledge of facts showing cause for discipline, lets months go by before taking disciplinary action.**

1. Discipline should be expeditiously imposed. Long delay shows lack of serious County concern about the cause for discipline and makes arbitrators suspicious of supervisors' motives.
2. Pothole avoidance: Begin investigating a potential disciplinary situation soon after learning about it. Do not rush the investigation but, by all means, do not let it lag

**H. Supervisor, over time, imposes inconsistent disciplines for like cause.**

1. Unions relish cases of inconsistent discipline.
2. Pothole avoidance:
  - a. Check with your HR unit to see if there if proposed disciplinary action is consistent with how other employees have been treated.
  - b. If dismissal would be logical but the employee is, instead, given one more chance, explain carefully in the disciplinary notice why dismissal is not imposed.
  - c. Make sure no "good-old-boy" favoritism, or resentment against an employee who is an irritant to management, has any part in the recommended discipline.
  - d. If lighter disciplines in the past pose a risk that current reasonable discipline may be nullified at arbitration, put out a

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

**I. Supervisor overreaction to misconduct.**

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

## **XV.**

### **Personnel Policies**

#### **Discipline and Dismissal**

##### **Purpose and Policy**

##### **§ 3-60-010 Purpose**

This rule provides supervisors with an orderly administrative procedure for actions imposing discipline and dismissal that incorporates the requirements of collective bargaining agreements, MCC Chapter 9 and other applicable law. This rule does not amend or supersede the disciplinary or grievance procedures set out in MCC Chapter 9 or the collective bargaining agreements. This rule applies only to classified employees except as otherwise specified. Confidential employees will be considered management employees for purposes of this rule.

##### **§ 3-60-020 Policy**

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.

## **Discipline and Dismissal** **Authority For Disciplinary Action**

### **§ 3-60-030 Authority for Disciplinary Action**

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.

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

\* \* \* \* \*

See attached form that Directors should use in delegating who has authority to impose discipline

## Sample: Delegation of Disciplinary Authority

[ON LETTERHEAD]

### MEMORANDUM

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TO: All Exempt Employees - Department of Ecological Services

FROM: Jane Doe, Director  
Ecological Services

DATE: June 30, 20\_\_

SUBJECT: Delegation of Authority

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

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

cc: Central Human Resources/Labor Relations

## **Discipline and Dismissal** **Causes For Disciplinary Action**

### § 3-60-040 Causes for Disciplinary Action

County employees are subject to disciplinary action for cause and any violation of County rules.

\* \* \* \*

County Rules include:

Rule 3-10	Employee Responsibility
Rule 3-20	Political Activity
Rule 3-30	Code of Ethics
Rule 3-35	Use of Information Technology
Rule 3-40	Harassment-Free Workplace
Rule 3-45	Violence-Free Workplace
Rule 3-50	Outside Employment

## **Discipline and Dismissal** **Forms Of Disciplinary Action**

### § 3-60-050    Forms of Disciplinary Action

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

- (A)    Oral reprimand
- (B)    Written reprimand
- (C)    Suspension without pay
- (D)    Demotion
- (E)    Reduction in pay
- (F)    Dismissal
- (G)    Any combination of the above.

## **Discipline and Dismissal** **Notification Procedures**

### § 3-60-060 Notification Procedures

#### (A) Notice of Proposed Discipline

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

#### (B) Discipline

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

## **Discipline and Dismissal**

### **Format and Procedures for Disciplinary Action**

§ 3-60-070 Format and Procedures for Disciplinary Action:

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

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

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

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

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

(5) Supporting Facts, 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 supervisor 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) Central HR/LR manager

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

(C) Appeals

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

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

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

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

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

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

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

## XVI.

### **PRE-DISCIPLINE MEETINGS**

1. Except in the instance of oral and written reprimands, pre-disciplinary meetings are required as part of the process mandated by courts and County personnel rules to ensure that an employee is not deprived of his or her property (employment) right without due process of law (adequate procedures). It 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 can be reviewed and the employee can provide information both as to the specific charges and any other matters that may mitigate the proposed discipline.
2. As a practical matter, the meeting is very important for the employer for several reasons. This meeting is the one time during which the employee's specific responses to the allegations can be requested.
3. Although employees are interviewed with respect to allegations during an investigation, this meeting is the only opportunity to review with the employee the specific charges upon which the supervisor will rely in making the personnel decision. Thus, it is the one time for there to be interaction between the supervisor and employee on the grounds that will go to hearing if a discipline is taken and then contested. The meeting also provides an opportunity to find out the employee's position on whether the elements of fair treatment have been met.
4. It is therefore, important for the supervisor to have an established procedure for these meetings. The supervisor representative must maintain control of the meeting so that specific responses are elicited and that follow-up questions are asked, as necessary, to clarify contentions raised by the supervisor during the meeting.
5. The **first phase of the meeting** should involve a methodical review of the letter. It would be helpful for the supervisor to have a clean copy of the letter so it can be marked as admissions and denials are elicited from the employee.
6. The **second phase of the meeting** is to permit the employee to make any comments and bring forward information he/she wants to be considered. There can be a full range of issues, and the supervisor should be careful not to let matters slip through the cracks. Typically, during this phase of the meeting, individuals may be identified who the employee thinks have relevant information that the supervisor should consider.

7. Providing notice and an opportunity to meet are always required. This is even true if the employee is being dismissed because he or she is medically unable to return to work. The employee has the right to choose not to appear at the meeting or to present information in writing.
8. Union represented employees are entitled to have a Union Representative present. If the employee does, there should be another management person present to avoid a “two on one” situation.
9. Inform the Union Representative that he/she is free to consult with the employee, present his or her views and ask questions of the employee, but the employee, not the representative must respond to the charges.
10. The supervisor should take thorough notes during the pre-disciplinary meeting. Supervisor may wish to read the notes back to the employee to be sure the employee agrees that his/her side of the story is presented accurately. Let the employee know that these notes will be considered before making the final decision. Keep these notes. As an alternative, supervisors may choose to tape record the meeting, however they must let employee know the meeting is being taped.
11. After receiving the employee’s response (oral or written) tell the employee when he/she may expect a decision. Supervisor may need time to check elements of the employee’s story, consult other managers and arrive at a final decision.
12. Do not confuse the investigatory interview of the employee with the pre-discipline meeting. The investigatory interview provides the supervisor a chance to gather facts about what happened from the employee. After the investigation has concluded, the supervisor reviews all the factual information, determines the charges, issues the pre-discipline letter and schedules the pre-discipline meeting. Once the pre-discipline meeting occurs, the supervisor can make a final decision. Do not use the pre-discipline meeting as a method of investigation.

## **XVII.**

### **Sample Letters**

#### **Example A**

#### **Discharge example.**

#### **Charges justify discharge. Progressive discipline applied.**

Name: Jane Doe

Classification: Office Assistant 2.

Hired: July 1, 1998

Represented: Yes, Local 88

The specification of the charge against Jane is that on July 1, 2002 at 10:30 a.m. Jane was ordered by her supervisor, Mary Thomas, to deliver the mail to the East County Office and that she directly disobeyed that order. Specifically, Jane stated, "I won't do it. Get someone else to do the scum work." Jane's supervisor advised her that the consequences of another insubordinate act would be dismissal and advised Jane to take a few minutes to think the matter over. Fifteen minutes later she repeated the order and Jane stated, "I don't care what happens. I won't be demeaned by such work again." Following her second refusal, her supervisor put Jane on administrative leave with pay.

Following is a summary of prior efforts to correct Jane's 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.

What is the appropriate level of discipline?

## Example A: Pre-Dismissal Letter

[ON LETTERHEAD]

Date: July 10, 2002

Employee's Name  
Address

Dear (Employee's Name)

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 hereby notified of the following proposed personnel action.

ACTION: Notice of Proposed Dismissal

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

### BACKGROUND:

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

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

### SUPPORTING FACTS: (Detailed Specifications of the Charge)

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

If true, these charges constitute insubordination and a violation of County Work Rule 3-10-020 (J).

**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 first floor conference room in the Ford Building at 9:00 a.m. on July 17, 2002 to respond to the above charges. If you wish to respond in writing, please ensure that I am in receipt of such response the day prior to the scheduled meeting.

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

Sincerely,

(Name)

(Title)

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

---

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

## Example A: Dismissal Letter

[ON LETTERHEAD]

Date: July 17, 2002

Employee's Name  
Address

Dear (Employee's Name)

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

ACTION: Dismissal

EFFECTIVE DATE: July 17, 2002

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

### BACKGROUND:

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

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

### SUPPORTING FACTS: (Detailed Specifications of the Charge)

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

#### PRE-DISMISSAL MEETING:

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

#### CONCLUSION:

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

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

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

Sincerely,

(Name)

(Title)

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

---

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

## **Example B**

### **Proposed discharge reduced to suspension.**

Name: Susan Uptown

Classification: Office Assistant 2

Hired: July 1, 1997

Represented: Yes, Local 88

On August 26, 2002 at 9:30 p.m., Susan was given a Step 1 grievance response by her supervisor, Sara Sky. The Step 1 response was given to Susan in a sealed envelope. Upon opening the envelope, Susan accused Sara of being a shortsighted, no heart, anti-employee supervisor. Susan continued with additional comments that accused Sara of being unfit to supervise. These comments were made in an angry tone, in front of co-workers. Sara directed Susan to go to her office, Susan refused, saying that she would not go to her office without her Union Representative. Sara repeated the order as Susan was loud and causing a disruption in the work place. One co-worker asked Susan to cool it and Susan yelled at him, telling him to shut up. Susan told Sara that she would not come to her office and wanted to call Sara's superior. Staying in the same work area Susan called Operations Manager, Tim Uphill, who informed Susan to follow Sara's directive. Upon hanging up, Susan told Sara, that she was unqualified to do her job. Sara again informed Susan that she did not want to discuss this further on the shop floor and directed Susan to come to her office. Susan refused, saying she wanted her Union Representative. Sara then directed Susan to leave and go home. Sara then contacted security and Susan was escorted from the building.

On February 1, 2002, Susan was given a Work Plan dealing with team issues and anger management.

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

On September 5<sup>th</sup>, 2002, Sara, along with her Union Steward, was directed to come to the Department Human Resources Managers office on September 10, 2002 at 9:30 a.m.

What is the appropriate level of discipline?

## **Example B. Pre-Dismissal Letter**

[ON LETTERHEAD]

Date: September 10, 2002

Employee's Name  
Address

Dear (Employee's Name)

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: Notice of Proposed Dismissal

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

BACKGROUND:

You were hired by the County as an Office Assistant 2 on July 1, 1998. Since your employment the following is a summary of efforts to correct behavior issues that you have had with co-workers and your supervisor:

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

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

SUPPORTING FACTS: (Detailed Specifications of the Charge)

The specification of the charge against you is that on August 26, 2002 at 9:30 p.m. you were given a Step 1 grievance response by your supervisor, Sara Sky. This response was given to you in a sealed envelope. Upon opening the envelope, you accused Sara of being a shortsighted, no heart, and anti-employee supervisor. You continued with additional comments that accused Sara of being unfit to supervise. These comments were made in an angry tone, in front of co-workers. When Sara directed you to go to her office, you refused, saying that you would not go to her office without your Union Representative. Your supervisor repeated the order as you were loud and causing a disruption in

the work place. One co-worker asked you to cool it and you yelled at him, telling him to shut up. You told Sara that you would not come to her office and wanted to call her superior. Staying in the same work area you called Operations Manager, Tim Uphill, who informed you to follow Sara's directive. Upon hanging up, you told Sara that she was unqualified to do her job. Sara 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. Sara then directed you to leave and go home. Sara then contacted security and you were escorted from the building.

If true, these charges constitute insubordination and a violation of County Work Rule 3-10-020.

**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 7<sup>th</sup> floor conference room in the McCoy Building at 9:00 a.m. on September 17, 2002 to respond to the above charges. If you wish to respond in writing, please ensure that I am in receipt of such response the day prior to the scheduled meeting.

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

Sincerely,

(Name)  
(Title)

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

---

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

## **Example B. Suspension Letter**

[ON LETTERHEAD]

Date: September 24, 2002

Employee's Name  
Address

Dear (Employee's 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:** Five (5) Working Day Suspension Without Pay

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

**GROUND:** In Good Faith for Cause – Insubordination  
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, 1998. 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 given a Work Plan dealing with team issues, anger management and responsibilities pertaining to mail delivery.

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 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, 2002 at 9:30 p.m., you were given a Step 1 grievance response by your supervisor, Sara Sky. This response was given to you in a sealed envelope. Upon opening the envelope, you accused Sara of being a shortsighted, no heart, and anti-employee supervisor. You continued with additional comments that accused Sara of being unfit to supervise. These comments were made in an angry tone,

in front of co-workers. When Sara directed you to go to her office, you refused, saying that you would not go to her office without your Union Representative. Your supervisor repeated the order as you were loud and causing a disruption in the work place. One co-worker asked you to cool it and you yelled at him, telling him to shut up. You told Sara that you would not come to her office and wanted to call her superior. Staying in the same work area, you called Operations Manager, Tim Uphill who informed you to follow Sara's directive. Upon hanging up, you told Sara, that she was unqualified to do her job. Sara 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. Sara then directed you to leave and go home. Sara then contacted security and you were escorted from the building.

#### PRE-DISMISSAL MEETING:

A pre-dismissal meeting was held on September 17, 2002, wherein, you were given the opportunity to respond to the charges that you violated a direct order and were insubordinate on August 26, 2002.

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

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, 2002.

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

#### CONCLUSION:

In lieu of terminating you, you are being placed on five day suspension, effective Wednesday, September 25 through Tuesday, October 1, 2002, to report back to work on Wednesday, October 2, 2002. The County had seriously considered dismissing you, but felt suspension without pay and a clear expectation was warranted prior to a 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 with your supervisor and co-workers.

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

Any further refusals to follow a directive, 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  
Collective Bargaining Representative  
Department HR Manager  
Central HR/LR Manager

---

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

### **Example C. Suspension example.**

Name: Rick River

Classification: Equipment Mechanic

Hired: July 1, 1989

Represented: Yes, Local 88

Rick failed to report a defect on the brake lining of Truck AB-40 on August 23, 2002 in accordance with Directive 100-12. As a result, Operator, Tim McCoy was in a minor accident on the same date.

Rick filled out none of the repair reports for August 1-August 25, 2002 as required by shop procedure.

Ten of the twenty repair reviews undertaken on Rick's work in the months of July and August, 2002, evidenced major deficiencies. Copies of each of these documents are available in the supervisor's office.

#### **SUPPORTING FACTS:**

Four counseling sessions on: April 15, March 2, March 15, and May 17, 2002.

Oral reprimand on June 1, 2002.

Letter of reprimand on July 28, 2002.

## Example C. Pre-Suspension Letter

[ON LETTERHEAD]

Date: September 2, 2002

Employee's Name  
Address

Dear (Employee's Name)

As an employee of Multnomah County in the classification of Equipment Mechanic since July 1, 1989, you are hereby notified of the following proposed personnel action.

ACTION: Notice of Proposed Five (5) Day Suspension Without Pay.

GROUND: In Good Faith for Cause – Unsatisfactory Performance of Duties.

### BACKGROUND:

You were hired as an Equipment Mechanic on July 1, 1989. Since your employment, the following is a summary of efforts to correct unsatisfactory work performance:

Four counseling sessions; April 15, March 2, March 15, and May 17, 2002.

Oral reprimand on June 1, 2002.

Letter of reprimand on July 28, 2002.

### SUPPORTING FACTS: (Detailed Specifications of the Charge)

The charge that is the basis for the proposed suspension is unsatisfactory performance of the duties of your job. Specifically:

You failed to report a defect on the brake lining of Truck AB-40 on August 23, 2002 in accordance with Directive 100-12. As a result, Operator, Tim McCoy was in a minor accident on the same date.

You filled out none of the repair reports for August 1-August 25, 2002 as required by shop procedure.

Ten of the twenty repair reviews undertaken on your work in the months of July and August 2002, evidenced major deficiencies. Copies of each of these documents are available in my office.

If true, these charges constitute Unsatisfactory Performance of Duties.

**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 upper conference room of the Yeon Shop at 3:00 p.m. on September 9, 2002 to respond to the above charges. If you wish to respond in writing, please ensure that I am in receipt of such response the day prior to the scheduled meeting.

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

Sincerely,

(Name)

(Title)

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

---

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

## Example C. Suspension Letter

[ON LETTERHEAD]

Date: September 9, 2002

Employee's Name  
Address

Dear (Employee's Name)

As an employee of Multnomah County in the classification of Equipment Mechanic since July 1, 1989, you are hereby notified of the following personnel action.

**ACTION:** Five (5) Day Suspension Without Pay.

**EFFECTIVE DATE:** Effective Tuesday, September 10, 2002 through Monday, September 16, 2002, to return to work on Tuesday, September 17, 2002.

**GROUND:** In Good Faith for Cause – Unsatisfactory Performance of Duties.

### BACKGROUND:

You were hired as an Equipment Mechanic on July 1, 1989. Since your employment, the following is a summary of efforts to correct unsatisfactory work performance:

Four counseling sessions; April 15, March 2, March 15, and May 17, 2002.

Oral reprimand on June 1, 2002.

Letter of reprimand on July 28, 2002.

### SUPPORTING FACTS: (Detailed Specifications of the Charge)

The charge that is the basis for the suspension is unsatisfactory performance of the duties of your job. Specifically:

You failed to report a defect on the brake lining of Truck AB-40 on August 23, 2002 in accordance with Directive 100-12. As a result, Operator, Tim McCoy was in a minor accident on the same date.

You filled out none of the repair reports for August 1-August 25, 2002 as required by shop procedure.

Ten of the twenty repair reviews undertaken on your work in the months of July and August 2002, evidenced major deficiencies. Copies of each of these documents are available in my office.

#### PRE-SUSPENSION MEETING:

A pre-disciplinary meeting was held on September 9, 2002, wherein you were given the opportunity to refute the charges or present mitigating circumstances. You were present along with your Union Representative (name), Equipment Operation Manager (name) and myself. At this meeting you did not refute the facts as outlined above. Your position was that you felt you had been doing your job satisfactorily.

#### CONCLUSION:

You have been employed by Multnomah County for approximately 13 years. You received counseling sessions on March 15, 2002, April 2, 2002, April 15, 2002, and May 17, 2002. On June 1, 2002, you received an oral warning and on July 28, 2002 you received a letter of reprimand. On August 23, 2002, your failure to report a defect in brake lining resulted in a minor accident of a County employee. Repair reports for August 1 – August 25, 2002 were not complete as required by shop procedures. Ten of twenty repair reviews undertaken on your work in the months of July and August, 2002 evidenced major deficiencies.

Based on the evidence, I must uphold a five (5) suspension without pay. Suspension to be effective Tuesday, September 10 through Monday, September 16, returning to work on Tuesday, September 17, 2002.

#### FUTURE BEHAVIORAL EXPECTATIONS:

(Insert Requirements) Note to Supervisors: Nature of requirement should be behavioral and time specified.)

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

Sincerely,

(Name)  
(Title)

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

---

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

**Note:** Same format would apply for reductions in pay and demotions.  
With respect to suspensions in pay, note restrictions which apply to certain exempt personnel.

## **XVIII.**

### **WRITTEN REPRIMAND**

A written reprimand has these characteristics:

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

A written reprimand is issued when:

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

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 on pages 11 and 12.
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 Letter of Reprimand
  - a. This is a written reprimand.

- b. The grounds against the employee: The grounds need to refer to the violation in County Personnel Rule and/or Department Work Rule.
- c. Background: Including such matters as length of service, prior warnings, other notice given to the employee of management's expectations or standards, training relevant to the charges, relevant policies or rules, and other pertinent information.
- d. Support facts: Specific statement of misconduct by the employee, including dates, times, locations, names and details of the unacceptable action or performance.
- e. A description of future behavioral expectations, including the consequences of further misconduct or non-performance.
- f. Conclusion: A statement of employee's appeal rights. If non-represented, a statement of the right to respond in writing within 10 days and to have that response placed in the employees personnel file.
- g. Signature block of the person authorized to impose the discipline.
- h. A notation of all copies furnished, specifically to include:
  - Employee's department personnel file.
  - Collective bargaining representative.
  - Department HR Manager.
  - Central HR/LR Manager
- i. Signature block of employee acknowledging receipt of letter.
- j. Discuss the reprimand with the employee. Arrange meeting time and private meeting place. If a Union contract applies, the employee is entitled to request the presence of a Union Representative during the discussion.
- k. Explore the problem with the employee, being constructive in your suggestions concerning how and why the employee can prevent a recurrence of the problem or correct the deficiency. In the cases of ongoing performance problems,

it is appropriate to work out a plan to help the employee in making the necessary improvements.

## Example: Written Reprimand

[ON LETTERHEAD]

Date: \_\_\_\_\_

Employee's Name  
Address

Dear (Employee's Name):

This is a written reprimand for tardiness. Violation of County rule 3-10-020.

On July 27 and 28, you were twenty minutes and fifteen minutes late, respectively. I counseled you, with respect to this matter, several times, and you were given an oral reprimand on July 1 for being twenty minutes late.

In the future, you are expected to meet the punctuality requirements of this Division. You are, furthermore, specifically notified that if you are tardy more than once in the thirty days, you will be subject to further disciplinary action.

Within the next ten (10) days you may respond in writing, and your response will be placed in your personnel file.

You are also advised that you may elect to grieve your reprimand in accordance with the terms of (insert title of collective bargaining agreement). [For non-represented employees: You are advised that you have the right to respond in writing within 10 days and to have that response placed in your personnel file.]

Sincerely,

(Name)  
(Title)

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

---

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

## **XIX.**

### **Oral Reprimands**

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

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

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

#### **Recommended Procedure for Disciplinary Oral Reprimands.**

1. Investigate: Investigate the incident or situation to be sure you have all the facts and that these facts are accurate. The investigation may include an investigative interview of the employee, if so, follow the investigative interview process outlined on pages 12 and 13.

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.

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

3. **Give the Oral Reprimand.**

- a. Arrange meeting time and private meeting place.
- b. Notify the employee of meeting time and place. If a Union contract applies and there is to be investigatory interview questions, then the employee is entitled to Union representation. If the purpose of the meeting is to give an oral reprimand, Union representation is not required. The presence of a steward can help. Representative may assist supervisor and also confirm to employee that oral reprimand is justified.

- c. Supervisor should work from notes.
- d. Acknowledge the positive aspects of the employee's performance.
- e. Clearly state the rule, policy or standard violated.
- f. Review the facts of the violation. Be specific and include names, dates, places, etc.
- g. Explain the problems caused by the violation or inappropriate act. This may include dollar loss, time loss, health or safety risks or damage to public perception.
- h. Mention any previous disciplinary actions for the same or similar offenses.
- i. Give the warning. Fit the warning to the individual and the circumstances. Do not use sarcasm or anger. State that you will not tolerate continued inappropriate behavior or inadequate performance.
- j. Ask for the employee's comments and listen.
- k. Offer constructive suggestions of how the employee can prevent further disciplinary action, but let the employee know the consequences if the problem recurs.
- l. Seek to get the employee's agreement to perform properly in the future.
- m. Advise the employee, that this is the first step of the disciplinary process. Express confidence the employee will solve the problem as a result of the discussion and will continue to maintain that standard in the future. Express that if his/her problem behavior continues, more serious disciplinary action will result.
- n. Advise the employee, that you will make a notation for your records only, it will not go into the employee personnel file, that you are recording the date, time and employee's performance that caused the oral reprimand.

## **XX.**

### **Grievance Handling**

#### **The Grievance**

Local 88, page 89

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

1. Name of the grievant(s).
2. The date of filing.
3. Relevant facts and explanation of the grievance.
4. A list of the articles of the contract allegedly violated.
5. A description of remedy sought.

# **CHECKLIST FOR MANAGEMENT HANDLING GRIEVANCE AT INITIAL STEP**

## **I. GET THE GRIEVANCE**

- ☐ Let the grievant tell his/her story (listen)
- ☐ Don't personalize the issues
- ☐ Take notes, keep a record
- ☐ Get names
- ☐ Get dates
- ☐ Get times
- ☐ Get the section of the contract allegedly violated
- ☐ Get the remedy desired
- ☐ Ask the grievant to repeat the story
- ☐ Repeat the essentials of the grievance to the employee in your own words

## **II. GET THE FACTS**

- ☐ Check the union contract
- ☐ Check the time limits
- ☐ Check the grievability of the complaint against the grievance covered by contract
- ☐ Check department policy and practices
- ☐ Check previous grievance settlements for precedent
- ☐ Check the experience of others in similar cases
- ☐ Seek advice if necessary (Dept. HR or Central Labor Relations)
- ☐ In deciding give the benefit of the doubt to \_\_\_\_\_
- ☐ Reach a preliminary decision and check it with your supervisor or a personnel representative

## **III. GIVE YOUR ANSWER**

- ☐ 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 appeal

## **IV. FOLLOW UP**

- ☐ Make sure any action you promised was carried out
- ☐ Be alert to situations that might bring 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

## Standardized Grievance Response Format

[LETTERHEAD]

### MEMORANDUM

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TO:

FROM:

DATE:

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

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

1. **Timeliness and Procedure**

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

2. **Contract**

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

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

3. **Facts**

Comments: This statement should generally be in chronological story form, beginning with setting the scene and citing the series of events leading up to and including the filing of the grievance. This section is the heart of a grievance response. Remember, this will be read by persons who have no knowledge of your operations or the personalities involved.

4. **Response**

Comments:

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

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

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

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

5. **Discussion**

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

6. **Appeal Procedure**

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

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

# Example: Step 1 Response

[LETTERHEAD]

## MEMORANDUM

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TO: (Grievance Name)

FROM: (Name)

DATE: September 10, 2002

SUBJECT: Local 88, Step 1 Grievance Response

I am in receipt of your grievance of September 3, 2002, concerning your suspension without pay for five (5) working days. See attached.

### 1. **Timeliness and Procedure**

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

### 2. **Contract**

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

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

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

### 3. **Facts**

Your suspension without pay for five (5) days was for cause, specifically, failure to fulfill responsibilities as an employee/substandard performance, insubordination and disobedience of a direct order. The details surrounding

these charges are discussed in the August 23, 2002 letter of suspension. See attached.

4. **Response**

The grievance is hereby denied.

5. **Discussion**

Article 17 of the contract states that an employee may be subject to disciplinary action in good faith. The August 13, 2002 letter of contemplated discipline, summarized the actions taken to improve your work performance. These actions were taken in good faith and the desired improvements were not met. The letter of August 13, 2002 states charges that meet the definition of cause under Article 17 of the contract.

6. **Appeal Procedure**

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

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

Sincerely,

Name  
Title

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

# **CHECKLIST FOR MANAGEMENT HANDLING GRIEVANCE APPEALS**

## **I. THE INITIAL APPEAL**

- ☐ Ask the employee to repeat their story
- ☐ Get the Union Representative's position
- ☐ Get important facts
- ☐ Take notes
- ☐ Repeat the grievance in your own words to grievant and their representative
- ☐ Get the remedy requested

## **II. GET THE FACTS**

- ☐ Check time limits
- ☐ Check grievability
- ☐ Check with immediate supervisor of employee
- ☐ Check facts of both sides
- ☐ Seek advice if necessary
- ☐ Reach a preliminary decision
- ☐ Check your preliminary decision with your supervisor or personnel representative

## **III. GIVE YOUR ANSWER**

- ☐ Answer as soon as possible
- ☐ In deciding give the benefit of doubt to \_\_\_\_\_
- ☐ Explain the employee's right to appeal

## **IV. FOLLOW UP**

- ☐ Make sure any action you promised was carried out
- ☐ Train your supervisory employees to reduce grievances

## Example: Step 2 Response

[LETTERHEAD]

Date:

Name

Address

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

Dear:

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

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

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

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

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

The grievance is hereby denied.

Sincerely,

Department Director (Name)

Title

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

# CHECKLIST FOR MANAGEMENT PREPARATION FOR ARBITRATION

## I. STUDY THE CASE OBJECTIVELY

- \_\_\_\_\_ Is the matter grievable?
- \_\_\_\_\_ Have the procedures been followed?
- \_\_\_\_\_ Are you dealing with the party specified in the contract (e.g. business representative, employee Union committee, etc.)?
- \_\_\_\_\_ Identify the contract clauses that apply to each issue.
- \_\_\_\_\_ Check old contracts and bargaining history:
  - \_\_\_\_\_ How did the provision get into the contract?
  - \_\_\_\_\_ Who proposed the provision?
  - \_\_\_\_\_ Who wrote the provision?
  - \_\_\_\_\_ What changes were sought by either party?
- \_\_\_\_\_ Identify the facts that go with each issue.
- \_\_\_\_\_ Identify the witnesses that support the facts.
- \_\_\_\_\_ Look for other supportive evidence.
- \_\_\_\_\_ Look for other arbitrations on the same issue.
- \_\_\_\_\_ Estimate your chances of winning:
  - \_\_\_\_\_ What evidence is available to support management's position?
  - \_\_\_\_\_ How effective are the available witnesses?
  - \_\_\_\_\_ Who will present the case for the grievant?
  - \_\_\_\_\_ What evidence is available for the grievant?
  - \_\_\_\_\_ How effective are the grievance witnesses?
  - \_\_\_\_\_ Who has the most emotionally persuasive case?
  - \_\_\_\_\_ Who will the arbitrator be?
- \_\_\_\_\_ Is the issue important to management?
  - \_\_\_\_\_ What management purpose will be served by a favorable arbitrator's decision?
  - \_\_\_\_\_ Will a favorable decision establish a needed guideline?
  - \_\_\_\_\_ Will a decision settle a continuing dispute?
  - \_\_\_\_\_ What will be the result of an unfavorable decision?
  - \_\_\_\_\_ What will it cost to get a decision?
- \_\_\_\_\_ Consider possible settlements

## II. PREPARING YOUR CASE

- \_\_\_\_\_ Identify your main argument.
- \_\_\_\_\_ Interview each witness:
  - \_\_\_\_\_ Determine what he or she knows about the case.
  - \_\_\_\_\_ Make sure he or she understands the relationship of their testimony to your argument.

- \_\_\_\_\_ Cross-examine him or her to determine his/her testimony and to get him or her use to cross-examination.
- \_\_\_\_\_ Make a written summary of the important points of his/her testimony.
- \_\_\_\_\_ Outline the questions you will ask him or her.
  
- \_\_\_\_\_ Try to talk to grievance witnesses.
- \_\_\_\_\_ Decide the order you will call the witnesses.
- \_\_\_\_\_ Decide what the weak spots in your case are and how you will plug them.
- \_\_\_\_\_ Organize your supportive evidence:
  - \_\_\_\_\_ Consider graphs, charts, records, pictures, video tapes, moving pictures, etc.
  - \_\_\_\_\_ Decide which witnesses will introduce evidence.
  - \_\_\_\_\_ Make duplicate copies for arbitrator and grievant.
  - \_\_\_\_\_ If other party has documents ask for them and if refused, ask arbitrator to get them for you.