

Administrative Order



Administrative Order No.: 7-3

Title: Disciplinary Action

Ordered: 6/2/1981

Effective: 6/2/1981

AUTHORITY:

Section 4.02 of the Metropolitan Dade County Charter.

SUPERSEDES:

This administrative order supersedes previous Administrative Order No. 7-3 dated June 6, 1978.

POLICY:

It is the responsibility of all supervisors to maintain standards of employee conduct in accordance with the Personnel Rules of Metropolitan Dade County, and any stated rules of a department, division or other established work unit. Copies of policies and work rules should be made available to employees and employees should know where to locate them. Supervisors should review these policies and rules with employees on a continuing basis.

Supervisors should be thoroughly familiar with personnel rules and procedures and with labor contract articles concerning performance and disciplinary action. When disciplinary actions are challenged management is required to justify its actions. Fair and reasonable discipline will receive firm support, and can be expected to be upheld. However, discipline which is not supported by facts, or imposed arbitrarily, is unacceptable and must be avoided.

Any employee may be reprimanded, suspended, reduced in grade or dismissed by the head of his department, or designee as approved in Administrative Order 7-16, for any good and sufficient reason which will promote the efficiency of the County service. Negligence, dishonesty, insubordination, or conduct unbecoming a public employee are among such good and sufficient reasons. The aforementioned reasons should not be considered exclusive.

DEFINITION OF PART-TIME:

Regular part-time employees are those who have worked twenty (20) hours or more per week for at least six (6) months continuously. All other part-time employees are hereby defined as non-regular.

APPLICABILITY OF THIS ORDER:

This order shall be applicable only to permanent and regular part-time employees, and to Conditional and C.E.T.A. employees (as authorized by Administrative Order) who have completed calendar periods of continuous employment equivalent to the probationary periods required for their respective classification. However, the EMPLOYEE APPEALS section of this order shall not be applicable to regular part-time employees.

COUNSELING:

Informal Counseling:

It is the responsibility of the appropriate supervisor to counsel employees when necessary to improve performance and attempt to avoid the need for disciplinary measures. Supervisors will normally recognize employee situations which could evolve into disciplinary cases and should attempt by friendly, informal counseling, to provide a satisfactory remedy. Informal counseling is not recorded on the PERSONNEL RECORD SUMMARY.

Formal Counseling:

When the employee fails to respond to informal counseling, formal counseling should be conducted by the supervisor. In the formal counseling session the applicable standards and policies should be discussed. Actions which may be expected if performance does not improve should be explained, and a reasonable time period for correction and review should be set. A narrative description of this counseling should be prepared in triplicate, a copy given to the employee, one forwarded to the Personnel Division, and a copy kept in the department files.

Neither formal nor informal counseling is considered to be disciplinary action. Both should be viewed as preventive efforts to improve performance and thereby avoid the necessity of discipline. Although informal counseling may ordinarily precede formal counseling, the appropriate choice is that of the supervisor. When it is evident, by continued unacceptable behavior, that the employee has not responded to counseling, disciplinary action is appropriate.

During both informal and formal counseling, the supervisor should indicate conduct which is required of the employee. Formal counseling, however, requires that you record and convey to the employee the type of conduct required, the deviations that are the cause of the counseling session, what you expect of the employee and a timetable where appropriate. This is the appropriate time to caution the employee that disciplinary action will be necessary if conduct does not improve. A RECORD OF COUNSELING form shall be removed from an employee's file after two 2 years of good performance during which the employees have not been the subject of disciplinary action or further formal counseling.

DISCIPLINARY ACTION:

While counseling should normally precede disciplinary action, an employee who commits a sufficiently serious offense should receive immediate discipline. It is the supervisor's responsibility to know when he/she may be permitted to take immediate disciplinary action and to consult immediately in such cases with his/her supervisor.

INVESTIGATION:

Disciplinary action **must** be supported by complete and accurate investigation. Assistance by your Departmental Personnel Office, the Personnel Division and Labor Relations Division is available as needed. Should the disciplined employee appeal, the accuracy and thoroughness of the investigation is essential to enable the County to sustain the action.

Obtain pertinent facts by assembling information and relevant documents, which should include statements of witnesses and/or the statement of the employee involved in the incident or performance shortcoming. Every effort must be made to verify information obtained. Interviews may be conducted privately to avoid possible embarrassment to employees or other witnesses. Witnesses' statements should always be signed. While identity may be protected as required, the witnesses should be asked whether they will testify if the employee appeals or whether they object to having their names revealed. Assistance in discussions with witnesses will be provided upon your request.

PRELIMINARY DETERMINATION:

After full investigation, review policies and rules and determine the specific charges, if any, which should be made against the employee arising out of the investigation. Supervisors may avail themselves of the advice and counsel of their Department Personnel Office, the Personnel Division and Labor Relations Division. When the specific charges have been determined, each charge and a brief supporting summary of the facts upon which it is based should be entered on the DISCIPLINARY ACTION REPORT. If the investigation reveals the absence of a basis for charges, this form should be destroyed. No entry should be made on the PERSONNEL RECORD SUMMARY unless disciplinary action is approved.

REVIEW OF THE EMPLOYEE'S RECORD:

Review the employee's PERSONNEL RECORD SUMMARY and personnel file (if necessary) to determine the past record. Observe what impact previous discipline, if any, has had on the employee performance and response to supervision. The PERSONNEL RECORD SUMMARY contains favorable as well as unfavorable reports including brief summaries of evaluations and dates of merit increases. (Supervisors must be prepared to explain a poor evaluation or disciplinary action followed by a merit increase. Denial of a merit increase is not a proper substitute for disciplinary action; however, the imposition of discipline may have a bearing on the

granting of subsequent merit increases.) Except in cases of emergency action, no discipline should be recommended without review of the PERSONNEL RECORD SUMMARY. A pattern of behavior may be observable from this form and should be considered as should entries on any RECORD OF COUNSELING form. When necessary, the full personnel file may be consulted. The objectives are to prepare the supervisor to meet with the employee and to make a recommendation regarding final action.

INTERVIEW WITH EMPLOYEE AND REPRESENTATIVE, IF ANY:

As soon as possible after completion of the investigation and preparation of the DISCIPLINARY ACTION REPORT the employee shall be scheduled for a private disciplinary session at which he has the right to the presence of a labor organization or other representative. Conduct of these sessions is at the discretion of the division director and may be delegated to an appropriate supervisor, however, the supervisor making the specific charges should be present. When the employee is represented by an agent of the Union or an attorney the division should consider contacting the Labor Relations Division and/or the County Attorney's Office.

The session is intended to provide the employee with an explanation of the charges and notice that disciplinary action is being considered. Any questions which the employee may have should be answered. The response of the employee, including his own explanation of the incident if not previously obtained, or mitigating circumstances, should be noted. If new witness names are introduced they should be contacted after the interview. Suggestions or statements of the employee's representative should be courteously received and noted. The employee must be given the right to respond, orally or in writing, to the charges made and his response must become a part of the DISCIPLINARY ACTION REPORT and taken into consideration **prior** to a final determination being made.

It is County policy to maintain a courteous relationship with employee representatives for the mutual exchange of relevant information. However, these interviews are not hearings, and protracted or argumentative sessions are to be avoided.

EMPLOYEE ASKED TO SIGN AND GIVEN A COPY:

At the close of the interview the employee should be asked to sign the DISCIPLINARY ACTION REPORT and given a copy. Since this is a new policy and a new format, a patient explanation of the procedure should be offered where needed. If the employee, for any reason, refuses to sign the supervisor should write "Employee refused to sign" and sign his own name with the date. A witness signature should be obtained under this circumstance.

FINAL RECOMMENDATION AND APPROVAL:

As soon as possible after the employee interview, a final determination should be made as to the disciplinary action to be taken, if any. If, as a result of further investigation, employee response, or other considerations, discipline is decided against, the employee should be notified, the DISCIPLINARY ACTION REPORT form destroyed, and no entry should be made on the PERSONNEL RECORD SUMMARY. If disciplinary action is to be carried out, the penalty should be determined by a balanced judgment based upon:

- The seriousness of the violation;
- Mitigating circumstances, if any;
- The length of service and previous record of the employee;
- Reasonable consistency in applying similar penalties to similar offenses;
- The prospect that disciplinary action may play a rehabilitative role;
- The attitude and conduct of the employee throughout investigation and personal interview;
- Other relevant factors arising out of County or department practice or the peculiarities of the particular incident under consideration.

Ordinarily, discipline may be applied in a progressive fashion, with more severe penalties following successive violations. This is particularly true where a relatively minor offense is repeated. However, serious offenses may call for appropriately severe penalties. When the final recommendation is completed the form should be sent to the appropriate person with authority to take disciplinary action in accordance with Administrative Order 7-16 . The form should indicate the specific dates of any changes in the employee pay status such as the dates of a suspension or the date of termination.

If the recommended disciplinary action calls for dismissal, the employee must be given the opportunity to respond orally to the charges before the departmental official charged with the final authority to take dismissal action. The employee, again, has the right to the presence of the labor organization or other representative of the employee's choosing for this oral response before the authorized departmental official.

RESIGNATION IN LIEU OF DISCIPLINARY ACTION:

Where a decision is made, subsequent to Final Approval, to permit an employee to resign in lieu of dismissal the employee must submit the resignation in writing. This resignation shall be held for 24 hours after which it shall become final unless retracted during the 24 hour period. **This rule applies only when a resignation is accepted in lieu of dismissal** and the employee **must** have been told that he/she will be terminated in the absence of the resignation. Resignations may be accepted in lieu of termination at the discretion of the department, which should first consult with the Personnel Division.

NOTICE:

Formal notification to the employee of disciplinary action (except reprimands) shall be in the form of a letter spelling out charges and specifications and advising the employee of his right to appeal. The employee should sign for his copy of this letter, if presented personally, or the letter should be sent to the employee by certified mail. Copies shall be provided to the Personnel Director and Labor Relations Director.

EMERGENCY ACTION:

Actions in accordance with County Code: Nothing in these policies shall prevent the imposition of emergency disciplinary suspension and/or removal from the premises in cases where such action is warranted. Such actions shall be followed by immediate consultation with the Personnel Director or Labor Relations Director. As soon as practicable, the procedures described herein shall be undertaken and completed. These procedures shall, if possible, include an interview with the employee and/or his representative. Non-emergency disciplinary action, actions in the nature of preliminary suspension pending disposition of criminal charges, or any other action required by law shall be carried out with appropriate adjustments, if any, in these procedures. Personnel files and PERSONNEL RECORD SUMMARY should identify such actions and the reasons therefore.

EMPLOYEE APPEALS:

Except for employees suspended under the automatic suspension policy (or employees not entitled to appeal), employees may appeal disciplinary action (except reprimands) to a Hearing Examiner within fourteen (14) days by requesting same in writing of the Personnel Director in accordance with Section 2.47 of the Metropolitan Dade County Code. The Hearing Examiner shall conduct a hearing after notice upon the charges and shall transmit his findings-of-fact, conclusions, and any recommendations together with a transcript of all evidence taken before him and all exhibits received by him, to the County Manager.

The County Manager, upon review of the advisory findings of the Hearing Examiner, may sustain, reverse, or modify the suspension, reduction in grade, or the dismissal, and shall transmit notification of his action to the employee by certified mail.

REPRIMANDS:

Any employee who receives a written reprimand may discuss it with the Department Director or his designee in accordance with Administrative Order 7-16.

INCIDENT OR INFORMATION:

Any employee indicted by a Grand Jury or against whom an information has been filed by a prosecuting official will be automatically suspended from the County service. Such suspension shall remain in effect until the indictment has been fully disposed of by trial, quashing or dismissal.

An employee suspended under the automatic suspension provision who has been tried and convicted and his conviction is not reversed shall automatically forfeit his position in the County service. An employee whose indictment is quashed or dismissed, or who is acquitted following trial, may be reinstated by the County Manager.

EXCLUSIONS:

Temporary, provisional, probationary, emergency, non-regular part-time, seasonal, trainee and exempt personnel are excluded from the provisions of this order unless otherwise provided by law, by a duly ratified collective bargaining agreement, or by action of the County Manager for any reason which will promote the efficiency and good of the service.

CONFORMITY WITH THE LAW

In issuing these policies and procedures it is the intent of the County to state appropriate guidelines for carrying out counseling and disciplinary action in accordance with the Dade County Code, collective bargaining agreements and County Personnel Rules.

Department directors and supervisors are reminded that the County Code and Personnel Rules remain the sources of direction on disciplinary matters not covered in these amended policies and procedures. They should be reviewed and consulted as needed. All policies and procedures not affected by these changes remain in effect.

This administrative Order is hereby submitted to the Board of County Commissioners of Dade County, Florida.

Merrett R. Stierheim
County Manager