



# LABOR RELATIONS DIVISION

## **Front-Line Supervisory Training**

March 28, 2025

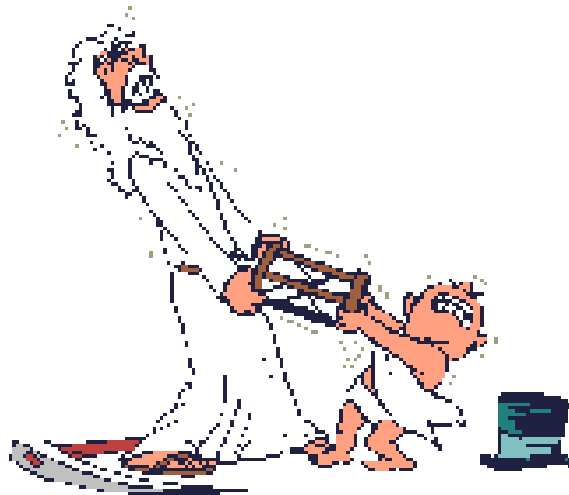
# Labor Relations Roles

- Negotiate Collective Bargaining Agreements (CBA)
- Interpret/Advise on CBAs
- Facilitate Labor Meetings
- Coordinate/Facilitate Mayor's Labor Summits
- Provide Guidance/Recommendations on County Policies & Procedures (i.e. Administrative Orders (AO) Implementing Orders (IO), Ordinances, Personnel Rules, Leave Manual, etc.)
- Chair/Coordinate eight (8) Employee Appeals:
  1. Discipline Appeals
  2. Performance Evaluation Appeals
  3. Job Abandonment Appeals
  4. Short-Term Disability Appeals
  5. Career Service Grievance Appeals
  6. Name Clearing Hearing Appeals
  7. Classification Appeals
  8. Employee Protection Ordinance (Section: 2-56.28.17)

# Topics Of Discussion

- Sexual Harassment
- Americans with Disabilities Act (ADA) - (Reasonable Accommodation)
- Family Medical Leave Act (FMLA)
- Paid Parental Leave
- Delegation of Authority for Disciplinary Action
- Failure of Probation
- Informal and Formal Counseling
- Record of Counseling Review
- Progressive Disciplinary Action
- Personnel Related Settlements/Memorandums of Understanding
- eDiscipline
- Performance Evaluations
- Employee Grievances
- Arrest Log Tracking
- Scheduling Physical Examinations and Drug/Alcohol Tests
- Fitness for Duty

# You Are A Supervisor



# SEXUAL HARASSMENT

March 28, 2025

# Sexual Harassment and the Law



## Title VII—1964: Civil Rights Act

Federal legislation prohibiting sexual discrimination in employment; file with Equal Employment Opportunity Commission (EEOC).  
Types of remedies: Monetary compensation for back pay, lost benefits, and damages; compensatory (e.g. emotional distress) and punitive damages; possible job reinstatement.

# Civil Rights Act 1972 Amendment

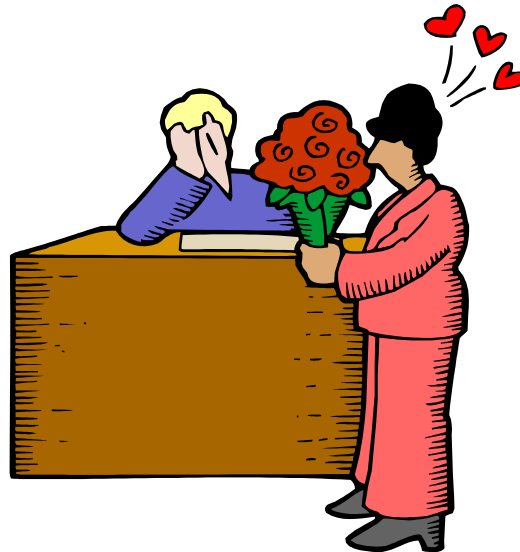
Sexual harassment is a:

- ✓ Form of sex discrimination
- ✓ Violation of federal law

# EEOC Guidelines

Sexual Harassment is defined as:

“unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.”





*"All the other women in the office are suing you for sexual harassment. Since you haven't sexually harassed me, I'm suing you for discrimination."*

# EEOC Criteria

## ✓ Criteria 1: Quid Pro Quo

Submission to such conduct is made (either explicitly or implicitly) a term or condition of an individual's employment or academic work, or rejection of such conduct is used as the basis for employment or academic decisions affecting the individual.



# Quid Pro Quo

- ✓ “Something for something”
- ✓ Harasser has position of power or authority over the person being harassed
- ✓ Refusal to submit will tangibly affect the individual’s term or conditions of employment



# EEOC Criteria

## ✓ **Criteria 2: – Hostile Work Environment**

Such conduct unreasonably interferes with an individual's work or academic performance or creates and intimidating, hostile, or offensive working or educational environment.

# June 1999

## New EEOC Guidance

Result of 2 Supreme Court decisions:

- ✓ *Burlington Industries, Inc. v. Ellerth* - 524 U.S. 742 (1998)
- ✓ *Faragher v. City of Boca Raton* - 524 U.S. 775 (1998)

Both addressed sexual harassment but also drew upon standards set forth in cases involving harassment on other protected basis.



# Examples of Sexual Harassment

- Direct or indirect threats or bribes for unwanted sexual activity
- Sexual innuendoes and comments
- Sexually suggestive sounds or gestures such as sucking noises, winks or pelvic thrusts
- Repeatedly asking a person out for dates
- Ogling or leering, staring at a woman's breasts or a man's derriere
- Rating a person's looks or sexuality

# Examples of Sexual Harassment (cont'd)

- Name-calling, such as “babe”
- Sexual ridicule
- Pervasive displays of pictures, calendars, cartoons, or other materials with sexually explicit or graphic content



# Examples of Sexual Harassment (cont'd)

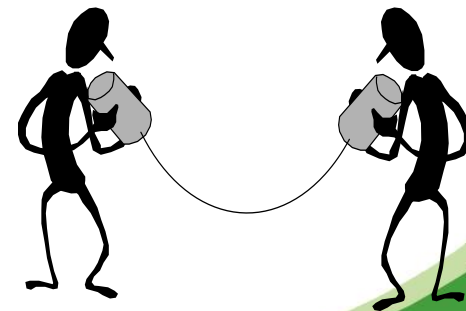
## **PHYSICAL**

- A neck / shoulder massage
- Impeding or blocking movements, touching, patting, pinching, or any other unnecessary or unwanted physical contact
- Touching an employee's hair, clothing or body
- Brushing up against a person

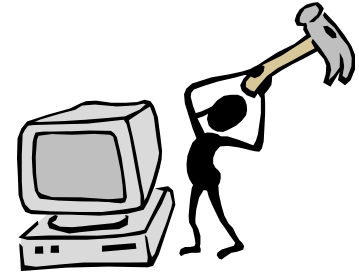


# Do's

- ✓ Be assertive
- ✓ Provide a clear and emphatic objection every time the unwelcome conduct happens
- ✓ Keep documentation
- ✓ If you choose, confront the harasser
- ✓ Continue to report to work
- ✓ Make an official complaint if the behavior does not stop



# Don'ts



- Don't attempt to retaliate
- Don't make yourself guilty of insubordination
- Don't socially or emotionally isolate yourself

# Intent vs. Impact



# Intent vs. Impact

- Is my intent the same as the impact?
- Is my behavior welcome?



# Handling the Sexual Harassment Complaint

- Take the report seriously.
- Listen, sympathize, but don't judge.
- Don't delay.
- Respond to concerns.
- Document.
- Follow up on the complaint.
- Avoid using "dangerous words."

# Handling Sexual Harassment

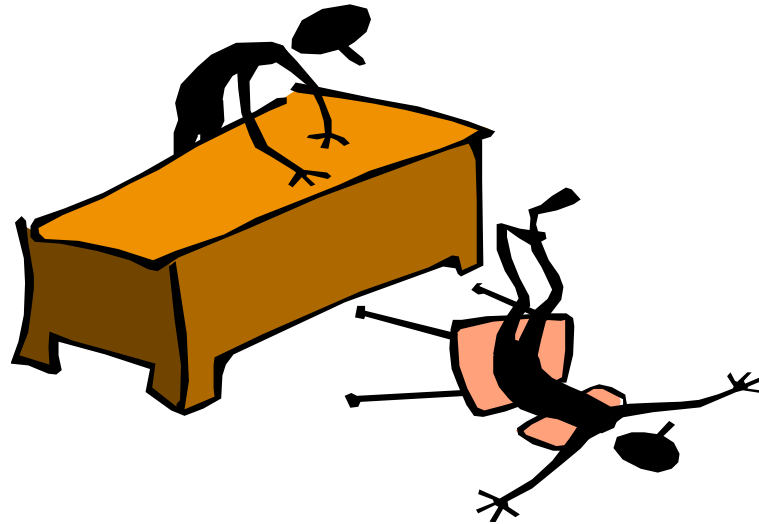
Telling someone that their behavior is unwanted or offensive is the most important first step in stopping sexual harassment.

## ➤ Why?

1. Puts the person on notice
2. Gives them the opportunity to change

# Employee Responsibilities

- ✓ Right to be free from harassing behavior
- ✓ Responsibility to complain about harassing behavior



# Supervisor Responsibilities



- ✓ Let your employees know you take this issue seriously & the institution will respond promptly.
- ✓ Take a proactive stance in preventing unlawful harassment.
- ✓ Take appropriate action in a timely manner, don't delay.
- ✓ Document. Write a detailed summary of the complaint.
- ✓ Follow up on the complaint. Check with the complainant the next day to ensure he or she is getting needed assistance.

# Dangerous Words

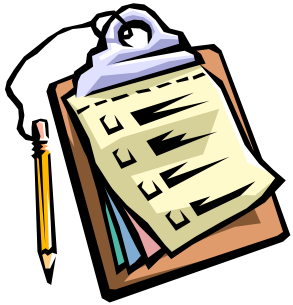
**When responding to a complaint, be careful that these words don't come out of your mouth:**

- ✓ It's just teasing—no big deal.
- ✓ I know he/she didn't mean anything like that.
- ✓ It's your fault for dressing so provocatively.
- ✓ You need to learn to handle these things.
- ✓ Just ignore it.
- ✓ He/she puts his/her arms around everyone.
- ✓ Why can't you learn to accept a compliment?
- ✓ You must have wanted it, otherwise you would have told him/her no.
- ✓ That's how they do things where he/she comes from.
- ✓ It's just a joke. Lighten up.

# CONSEQUENCES

- ❖ Employee productivity losses
- ❖ Increased absenteeism
- ❖ Court awards, settlements and fees
- ❖ Damage to institutional image
- ❖ Deterioration of staff morale
- ❖ Psychological distress, compromised wellness
- ❖ Compromised spiritual & moral integrity
- ❖ Termination

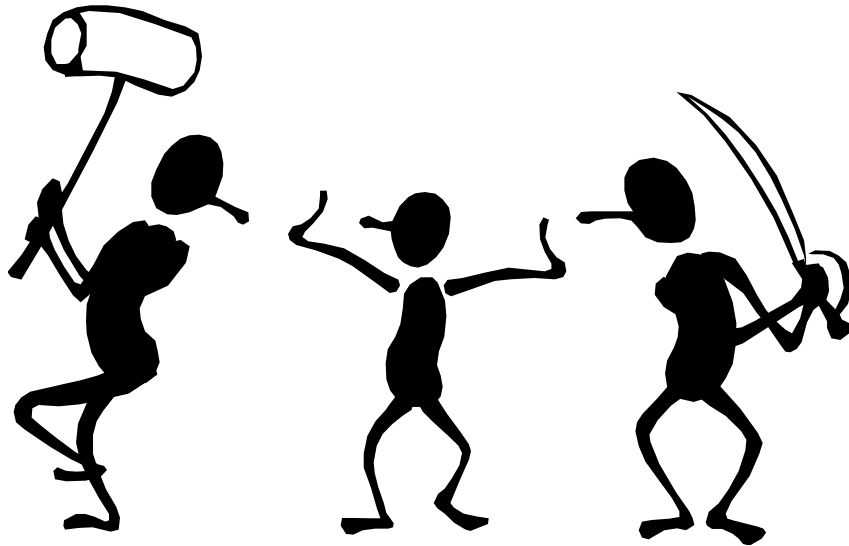
# Complaint Procedure



- ✓ Let your employees know you take this issue seriously
- ✓ Take a proactive stance in preventing unlawful harassment
- ✓ Take appropriate action in a timely manner
- ✓ Remember, you are liable if you **knew** or **should have known**
- ✓ The same standard applies to harassment by a non-employee third party

# Retaliation

You are protected against retaliation for exercising your right to complain or for testifying or assisting in an investigation or hearing.



# Confidentiality

- ✓ All complaints will be kept confidential
- ✓ Records established as a result of an investigation are **not** to be retained in employee personnel file

# Implementing Order No. 7-45 Equal Employment Opportunity Policy Prohibiting Unlawful Discrimination, Harassment or Retaliation

- Miami-Dade County will not tolerate adverse treatment of employees because they report harassment or provide information related to such complaints. The County, in exercising reasonable care to prevent and promptly correct harassment or retaliation for reporting harassment, will protect victims from further unlawful harassment and retaliation.

# Implementing Order No. 7-45

## Equal Employment Opportunity Policy Prohibiting Unlawful Discrimination, Harassment or Retaliation (cont'd)

### ► **DEFINITION:**

Unlawful harassment consists of unsolicited, offensive or retaliatory behavior based on race, sex, color, national origin, religion, age, disability, ancestry, marital status, pregnancy, sexual orientation, or an employee's exercise of their constitutional or statutory rights. It does not refer to occasional comments of a socially acceptable nature to a reasonable person; it refers to behavior that is not welcome, that is personally offensive, that lowers morale, and that, therefore, interferes with the work environment.

## Implementing Order No. 7-45

# Equal Employment Opportunity Policy Prohibiting Unlawful Discrimination, Harassment or Retaliation (cont'd)

- Offensive comments about an employee's race, sex, color, national origin, religion, age, disability, ancestry, marital status, pregnancy, sexual orientation, or the exercise of their constitutional or statutory rights constitutes unlawful harassment when:
  1. submission to such conduct is made either explicitly or implicitly a term of an individual's employment,
  2. submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual,
  3. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

# Implementing Order No. 7-45

## Equal Employment Opportunity Policy Prohibiting Unlawful Discrimination, Harassment or Retaliation (cont'd)

- Harassment may also take the form of adverse employment actions, such as termination, demotion, or other adverse employment decisions which effect an employee's working conditions, if such actions are taken on the basis of an employee's:

## Implementing Order No. 7-45

# Equal Employment Opportunity Policy Prohibiting Unlawful Discrimination, Harassment or Retaliation (cont'd)

- RACE
- SEX
- COLOR
- NATIONAL ORIGIN
- RELIGION
- AGE
- DISABILITY
- ANCESTRY
- MARITAL STATUS
- PREGNANCY
- SEXUAL ORIENTATION
- or an employee's exercise of their constitutional or statutory rights.

# Implementing Order No. 7-45

## Equal Employment Opportunity Policy Prohibiting Unlawful Discrimination, Harassment or Retaliation (cont'd)

- Employment actions that are based on an employee's performance or other legitimate reasons are not harassment.

# COMPLAINT PROCEDURE

- Employees who believe they have been the subject of harassment prohibited by this Administrative Order, must notify the County's Office of Fair Employment Practices or their Departmental Affirmative Action Officer and, if they choose, may file a formal complaint with the County's Office of Fair Employment Practices.
- Employees may, if they desire, also report such incidents of unlawful harassment to their supervisor but are under no obligation to do so.
- Employees are encouraged to report harassment before it becomes severe or pervasive. This will facilitate early mediation and effective resolution of potential unlawful harassment complaints.

# COMPLAINT PROCEDURE (cont'd)

- All complaints of harassment, subsequent investigations and corrective actions shall be handled on a confidential basis to the extent possible under the law. Protective measures will be instituted to protect the complainant. Miami-Dade County has established procedures for resolving, filing and processing complaints of unlawful harassment.
- If the investigation confirms the existence of unlawful harassment, the Fair Employment Practices Office will pursue prompt corrective action, including remedial relief for the victim, and appropriate disciplinary action against the offender.

# ETHICS ADMINISTRATIVE ORDER NUMBER 7- 42

- Sections 4.02 and 4.05(b) of the Miami-Dade County Home Rule Amendment and Charter

## **POLICY:**

- It is a guiding principle of Miami-Dade County to provide a government that is “honest, ethical and fair to all.”
- The purpose of this Administrative Order is to codify existing procedures relating to ethics awareness and training of County employees.

# ASK YOURSELF...



“Would I want what I say  
or do to appear in the local  
paper or on the TV news?”

# WHAT YOU NEED TO KNOW:

- Employer and Employee Rights
- Legal Standard
- How to Keep Your Position
- Common Employee Issues
- Don't Make Me Write You Up!



# Americans with Disabilities Act

## Reasonable Accommodation

The Americans with Disabilities Act of 1990 (ADA) prohibits an employer from discriminating against “qualified individuals with disabilities.” A qualified individual is an individual who satisfies the employer’s valid requirements for the job and is able to perform the essential functions of the job, with or without reasonable accommodation. To comply with these provisions, the employer must determine:

- The essential functions of the job;
- Whether a disabled person, with or without accommodation, is qualified to perform these duties;
- Whether a reasonable accommodation can be made for a qualified individual; and,
- If an accommodation is needed to allow the qualified employee to perform the duties of the job competitively, whether such an accommodation can be reasonable made.

# Reasonable Accommodations

- Making existing facilities used by employees readily accessible to an individual with a disability;
- Restructuring a job;
- Modifying work schedules;
- Acquiring or modifying equipment;
- Providing qualified readers or interpreters; or
- Adjusting or modifying examinations, training, or policies

# Reasonable Accommodation Procedures Employee Responsibility

1. Request the appropriate Reasonable Accommodation form from the DPR/Department Representative; form available on [miamidade.gov](https://miamidade.gov) in HR forms.
2. Complete the Reasonable Accommodation Request Form.
3. Submit Reasonable Accommodation Request Form to the DPR/Department Representative; to include, required supporting documentation (*i.e., medical documents*).

# Reasonable Accommodation Procedures

## Department Representative Responsibilities

- Keep clear and continuous communication with employee regarding reasonable accommodation process.
- Review the Essential Job Functions/job description of the employee's classification.
- Confirm the need for reasonable accommodation – Review medical documentation/supporting documents and maintain confidentiality of all medical records.
- Identify potential accommodations.
- If approved, make accommodation within a reasonable time – Consider accommodation most appropriate for both the employee and employer.
- *Note: By granting a reasonable accommodation, the Department does not take a position as to whether an individual is disabled under the ADA.*

# Reasonable Accommodation Procedures

## Department Representative Responsibilities (cont'd)

Consult FEP and Labor Relations for assistance for the following reasons:

- Review does not show a potential appropriate accommodation by the Department.
- Contact the Fair Employment Practices (FEP) if an undue financial hardship exists within the Department.
- For all other undue hardships and/or departmental denials, forward completed reasonable accommodation package to Labor Relations for review (*include all supporting documents, essential job functions, medical documentation, etc. via fax to maintain confidentiality*).
- Reasonable accommodation denials are subject to review by the Miami-Dade Disability Review Panel.

# Family Medical Leave Act (FMLA)

FMLA entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons under the same terms and conditions as if the employee had not taken leave. Eligible employees are entitled to:

- Twelve (12) unpaid workweeks in a 12-month period for:
  - the birth of a child and to care for the newborn child within one year of birth
  - the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement
  - to care for the employee's spouse, child, or parent who has a serious health condition
  - a serious health condition that makes the employee unable to perform the essential functions of his or her job
  - any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty," or
- Twenty-six (26) workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave)

# Family Medical Leave Act (FMLA) (cont'd)

A. An “eligible employee” is an employee of a covered employer who:

1. Has been employed by the employer for at least 12 months.
2. Has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave.
3. Is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite.

# FMLA (29 CFR 825.117 ) (cont'd)

- B. “The **Medical Necessity** for” employee seeking intermittent FMLA leave or leave on a reduced leave schedule:
1. Employees needing intermittent FMLA leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the employer’s operations.

In addition, an employer may assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee’s intermittent or reduced leave schedule.

# FMLA (cont'd.)

## C. Light Duty and FMLA Choice:

1. In the case of an occupationally injured employee who is returned to work with restrictions, **the employer may offer light or transitional duty.**

If the employee is eligible for FMLA, he or she **may choose between the light duty job and FMLA leave.**

However, **refusing** light duty may cause **forfeiture of worker's compensation wage loss benefits.**

# FMLA (cont'd.)

## C. Light Duty and FMLA Choice

2. Employees entitled to FMLA leave for their own serious health condition are not permanently disabled to qualify for the protections of the American with Disabilities Act (ADA).

However, if an employee does qualify for the protections of the ADA, there may be an obligation on the employer to provide reasonable accommodation upon expiration of an FMLA leave to provide additional leave.

**Note:** *The US Court of Appeals for the Eleventh Circuit has ruled that an indefinite leave is not a reasonable accommodation under the ADA.*

**Forms available on [miamidade.gov](https://miamidade.gov) in HR forms.**

# Paid Parental Leave

- Paid Parental Leave shall be authorized in accordance with Miami-Dade Ordinance No. 24-117 to care for a newborn, newly-adopted child, or newly-placed foster child or children.
- Eligible employees will be provided up to twelve (12) weeks of paid leave:
  - First six weeks - 100%
  - Remainder six weeks - 50%
- This provision is subject to any modifications or revocations by the Board of County Commissioners to Ordinance 24-117, in accordance with Article X of Chapter 11A.
- See Personnel Payroll Coding for eligibility and effective dates.
- <https://www.miamidade.gov/humanresources/library/paid-parental-leave-request.pdf>

# Delegation Of Authority For Disciplinary Action (AO 7-16)

- In accordance with Section 2-47 of the County Code, an employee may be suspended, reduced in grade or dismissed by a Department Director or the director's designee. Department Directors are specifically authorized to request approval of the delegation of discipline authority solely in accordance with Administrative Order 7-16: Administration and Delegation of Authority to Discipline, to provide an appropriate distribution of administrative authority and an affirmation of specific responsibilities to supervisors in order to increase their accountability for disciplinary action.
- In an effort to standardize and ensure the proper administration and delegation of authority to discipline, a delegation of authority for disciplinary action form should be completed by every department annually, in order to obtain the Mayor's approval for the following disciplinary actions:
  - Written Reprimands
  - Suspensions
  - Failure of promotional probations

*Note: The ability to dismiss or reduce in grade (demotion) applies to only the Director or "Acting Director" who has been officially designated in the absence of the Director.*

# Delegation Of Authority For Disciplinary Action (AO 7-16) (cont'd)

In order to streamline and expedite the discipline process, the following delegation of authority is recommended:

- Written Reprimand – Division Chief
- Suspension (10 Days or Less) – Deputy/Division Director
- Suspension (20 Days or more) – Director
- Demotion – Director
- Dismissal – Director

*Note: Department Directors must submit a Delegation of Authority for Disciplinary Action memorandum to the Mayor for approval, requesting delegation of authority to suspend, reprimand, or fail promotional employees' probations.*

# Delegation Of Authority For Disciplinary Action (AO 7-16) Form (cont'd)

## Memorandum



Date:

To: Daniella Levine Cava  
Mayor

Via: Raymond Hall, Director  
People and Internal Operations Department

From: Department Director Name and Title  
Department Name

Subject: Delegation of Authority for Disciplinary Action FY 2024-2025

Pursuant to Miami-Dade County Administrative Order (AO) 7-16, Administration and Delegation of Authority to Discipline and Chapter VIII of the Personnel Rules for the Classified Service, the following is respectfully requested for the delegation of authority.

• **Authority to dismiss (including failure of probation) or reduce in grade:**

The ability to dismiss or reduce in grade (demotion) applies to only the Director or "Acting Director" who has been officially designated in the absence of the Director.

• **Authority to suspend or reprimand or fail an employee's promotional probation:**

\_\_\_\_\_ Delegation not applicable

\_\_\_\_\_ Delegated to individuals listed below:

Name	Title	Indicate Yes / No		
		Suspend	Reprimand	Failure of Promotional Probation

Delegation of authority is limited to Deputy Director, Assistant Director, Division Director (or those classifications of supervisors listed above.) All of the classifications listed herein meet the requirements of Parts III and IV of the referenced Administrative Order.

c: Carladenise Edwards, Chief Administrative Officer, Office of the Mayor  
Tyrone W. Williams, Esq., Division Director, Labor Relations, PIOD

\_\_\_Approved

\_\_\_Disapproved

\_\_\_\_\_  
Daniella Levine Cava, Mayor

# Standardization of Disciplinary Action (AO 7-47)

- AO 7-47 applies to employees of the classified service and/or certified bargaining agents that expressly enter into a Memorandum of Understanding (MOU) to consent to the implementation of this policy for discipline administered after the MOU is executed. However, AO 7-47 is not applicable to bargaining unit members that are sworn personnel whose discipline is governed by Florida State Statutes and/or current departmental policies, or non-bargaining unit (Exempt) employees.
- In order for counseling or discipline to be effective in changing an employee's behavior, it must be presented in a timely manner. By establishing the following time frames, employees will be properly and timely placed on notice of their deficiencies to improve workforce performance and effectiveness.
  - Records of Counseling should be presented to an employee **within 30 calendar days** from the date when the supervisor or management becomes aware of the violation(s).
  - Disciplinary Action Reports should be presented to an employee **within 90 calendar days** from the date when the supervisor or management becomes aware of the violation(s). The 90 days shall be tolled for the following reasons:
    1. The employee is on approved leave;
    2. A state of emergency declared by the Mayor/Governor;
    3. The employee is incapacitated and/or otherwise unavailable;
    4. The employee's representative is unavailable;
    5. An ongoing criminal, Ethics and/or Office of the Inspector General investigation.
    6. Or different established time frames via the MOU between the Union and the Department.

# Failure Of Probation

## 1. Non-performance/Remedial measures/Plan of action:

- Entrance and promotional appointments serve a one (1) year probationary period
- Regular employee/supervisor meetings
- Are goals and objectives being met
- Discuss performance deficiencies and implement a Performance Improvement Plan (PIP)
- Allow a reasonable amount of time to show improvement
- Offer additional training as needed
- Document coaching & counseling sessions quarterly (*MDPD & MDCR conduct monthly performance evaluations*)

When the employee has been placed on notice of their non-performance, the Department proceeds as follows:

- The employee is to be informed in writing of the reason(s) for termination or demotion
- Failure of probation is final and binding and may not be appealed

# Failure Of Probation (cont'd)

## **2. Violation of County/Departmental rules and procedures that warrants a ROC and/or DAR such as the following, and any other applicable violations:**

- An arrest
- Positive drug/alcohol result
- Workplace Violence

*Note: Exempt and classified employees may be subject to termination and/or demoted to a prior classification, if applicable, in which the employee has gained classified service rights. However, an untimely failure of probation will result in an employee becoming permanent in the classification.*

# Personnel Authorized To Fail Probations

- Department Director
  - Probationary employee who does not have classified rights to another position; therefore, resulting in separation from Miami-Dade County
- Department Director and/or Director Designee
  - Promotional probationary employee who holds permanent status in a lower classification
  - Recommend that departments notify Recruitment, Testing and Career Development four (4) weeks prior to the failure of probation so they can identify when, where, and who the employee should contact when reporting to their former classification

# Informal And Formal Counseling

- **Informal Counseling – (Verbal Counseling)**
  - Note: The employee is to be informed that he/she is being verbally counseled and the counseling should be documented on a Personnel Record Summary
- **Formal Counseling – (Record of Counseling (ROC))**
  - Note: Recommended that the following referrals are noted on the ROC, if applicable: Employee Support Services (ESS), Family Medical Leave Act (FMLA), Paid Parental Leave, Americans with Disability Act (ADA)

*Note: Absent disciplinary action or further formal counseling, within a two (2) year period of the issuance of formal counseling the ROC can be marked “No Longer in Effect” upon request by the employee, and/or when automatically required by the employee’s collective bargaining agreement.*

# Record Of Counseling Review

To ensure that records of counseling are being administrated in accordance with Administrative Order 7-3: *Disciplinary Action*, employees may request in writing within seven (7) calendar days of the date the Record of Counseling (ROC) was issued, to have the ROC reviewed by the Department Director or his/her designee for appropriateness only. If the written review request is not submitted timely, employees forfeit the right to have the ROC reviewed and it will be finalized accordingly and placed in the employee's personnel file. The following applies to the ROC review process:

- Not to be considered an appeal
- Not a scheduled meeting
- Relevant facts/evidence presented by management and the reason(s) submitted by the employee will be reviewed
- The Director/designee will advise the employee in writing, within ten (10) calendar days of his/her decision
- The Director/designee's decision is final and not subject to further review or to the grievance process

*Note: If a department has an existing policy and/or procedure for reviewing/evaluating ROCs, they are to continue with the current practice and are not subject to comply with this review process.*

# Record Of Counseling Review Decision

## Memorandum



Date:

To: *[Insert Department Director and/or Designee's Name]*  
*[Insert Department Name]*

From: *[Insert Employee's Name]*, Classification  
*[Insert Employee's Work Location]*

Subject: Record of Counseling Review Decision

---

On *[Insert Date Written Request is Submitted to Director/Designee]*, I received your written request for an informal review of the Record of Counseling (ROC) that was presented to you on *[Insert Date ROC was Presented to Employee]*.

Upon careful review of the relevant facts/evidence presented by management to substantiate the action, and the reason(s) submitted by you in your written request for a review, it has been determined that the ROC will be [sustained / modified / rescinded].

This decision is final and is not subject to further review or the grievance process.

# PROGRESSIVE DISCIPLINE

DISCIPLINE:

Progressive  
and

**not** Punitive

# PROGRESSIVE DISCIPLINE (cont'd)

## DISCIPLINE:

When disciplining for changes in behavior, absenteeism, etc...

Remember ....

Document in the narrative you provided the employee with information regarding:

- ✓ FMLA
- ✓ ADA
- ✓ Miami-Dade County ESS

# Progressive Disciplinary Action

- Investigate
  - Gather evidence, information, and relevant documents
  - Arrest affidavit, if applicable
  - All violations must be corroborated by sufficient evidence
  - Incidents occurring outside the workplace require nexus to employment
- Witness interviews and written statements
- Employee interview and/or written statement
  - Weingarten Rights – (Employees right to have representation)
  - Collective Bargaining

# Steps In The Disciplinary Process

- Review Administrative Orders / Collective Bargaining Agreement / County Personnel Rules:
- Disciplinary action presentation meeting
- Employee response to Disciplinary Action Report (DAR)
- Recommended action based on the factors below:
  - Seriousness of the violation
  - Length of service and previous disciplinary record
  - Attitude and conduct of employee throughout the disciplinary process

<http://www.miamidade.gov/ao/home.asp>

<http://www.miamidade.gov/humanresources/labor-relations-collective-bargaining.asp>

# Department Director Discretion

- Each Department regulates the levels of discipline based on their operational needs.
- Department Directors have the ability to increase or decrease recommended discipline from lower management.
  - Mitigating factors
  - Aggravating factors
- All deviations from recommended discipline need to be justified in writing in order to show objectivity.

# Recommended Levels Of Progressive Disciplinary Action

- To alleviate costly arbitration hearings, the following progressive discipline levels are being proposed for performance and departmental/County violations
  - Verbal Counseling
  - Record of Counseling (ROC)
  - Written Reprimand (DAR)
  - Written Reprimand (DAR)
  - Ten (10) Day Suspension (DAR)
  - Twenty (20) Day Suspension (DAR)
  - Demotion (DAR)
  - Dismissal (DAR)
  - Forfeiture of Annual/Compensatory Time to be Doubled
  - Other final actions
  - Settlement Agreement
  - Resignation in lieu of Discipline

# Appealable Disciplines

Written reprimands are appealable only to the Department Director/Designee

- Suspension ~ Demotion ~ Dismissal are appealable through the following hearing forums:
  - Code of Miami-Dade County, Section 2-47 Hearing Examiner (Recommendation to the Mayor)
  - Provisions of applicable Collective Bargaining Agreement Arbitrator (Binding Arbitration)

# Settlement Agreements And Memorandums Of Understanding

In order to maintain orderly operations within Miami-Dade County, the following actions are to be routed through the People and Internal Operations Department for review and recommendation prior to being executed and/or implemented by any Department Director:

- Written settlements of any filed grievances arising from collective bargaining agreements, or matters that affect terms and conditions of employment
- Settlement of any arbitrations arising from grievances of collective bargaining agreements or matters that affect terms and conditions of employment
- Memorandums of Understanding between certified collective bargaining agents and Miami-Dade County

# Exempt/Non-Bargaining Unit Employees

- ▶ Exempt employees may be subject to termination and/or demotion to a prior classification, if applicable, in which the employee has gained classified service rights. Therefore, before a final action is taken departments must verify if employee has classified service rights, which would require a DAR to be issued.

# eDiscipline

eDiscipline is the electronic process in which all formal counselings and progressive disciplinary actions will be created and stored. eDiscipline will consist of the following standardized forms and correspondences:

- Disciplinary Action Reports
- Records of Counseling
- Discipline letters, memorandums and settlement agreements

# Managing And Coaching Performance

- Year-round process (Annually, Quarterly, Monthly)
- Regular employee/supervisor meetings
- Are goals and objectives being met
- Discuss performance deficiencies
- Allow opportunity to improve
- Offer training as needed
- Document coaching & counseling sessions
- Employee should not be surprised by ratings
- Every employee should be evaluated – Exempt, Permanent, Probationary, and Part-Time

# Writing The Evaluation

- The evaluation should be fair, accurate, objective, and timely
- Use behavioral feedback to support your ratings for performance factors
- Focus on observed behaviors not judgments
- Use specific facts
- Use specific examples
- Balance of positive and negative
- Ratings and examples supported by documentation
- Human Resources offers the following trainings for supervisors on documenting and performance evaluations
  - Proactive Performance Appraisals

# Overall Rating Of Unsatisfactory Or Needs Improvement

- Employee not eligible for a merit increase
- Unsatisfactory rating: merit deferred 6 months
- Needs Improvement rating: merit may be deferred for less than 6 months
- Performance Improvement Plan
  - Identify the behavior(s) to be corrected
  - Set clear expectations and include future goals
  - Identify support and resources available
  - Specify consequences for lack of improvement

# Special Circumstances

- Supervisor Transfer/Retirement – Prior to a supervisor transferring and/or retiring, they must complete a performance evaluation for each employee he/she supervised for the majority of the employee's evaluation period
- Employee Transfer – Prior to an employee transferring to another division and/or department, an employee must be evaluated if four or more months of their evaluation period has elapsed
- Rater and Reviewer Disagreement – In the event that the Rater or Reviewer disagrees with the comment(s) and/or overall rating of an employee's performance evaluation, the Division Director or Department Director will make the final decision to resolve the discrepancy. The only exceptions for a Reviewer to have the Rater change the evaluation are for objectivity and accuracy

# Career Service Grievances

- Available to permanent, probational, and regular part-time employees who are not covered by a Collective Bargaining Agreement
- Employees covered by a Collective Bargaining Agreement where the union has declined to process the grievance
- Employees covered by a union contract but elect this grievance procedure

# Grievance Procedures And Collective Bargaining Agreement Compliance

- Employees filing a collective bargaining grievance: the issue must be based on a provision of the Collective Bargaining Agreement (CBA)
- Departments should also refer to the respective CBA when generating responses to ensure compliance and prevent violations that may be grievable such as:
  - Refusal to process an application or appeal
  - Follow time limits
  - Permit an employee a right of representation (Weingarten Rights)
  - Denial of a right to receive a reply

# Grievance Exceptions

The grievance procedure is not applicable to the following:

- Formal and informal counseling – (Verbal counseling and ROC)
- Disciplinary action appeals - (DARs for Written Reprimands)
- Performance Evaluation appeals
- Classification and job description appeals
- Disability determinations
- Those matters for which an alternate appeal process is provided
  - Name Clearing
  - Reclassification
  - Job Abandonment
  - Short/Long Term Disability
  - Accident Review Committee

# When Was The Last Time You Read:

**The Collective Bargaining Agreements**

**AFSCME Contracts 2023-2026**

**GSAF Contracts 2023-2026**

**IAFF Contract 2023-2026**

**PBA Contracts 2023-2026**

**Do you have COPIES of all the  
Collective Bargaining Agreements  
(CBAs)?**

# MANAGEMENT RIGHTS



# MANAGEMENT AUTHORITY

- ❖ Establish
- ❖ Implement
- ❖ Revise
- ❖ Modify



## Policies and Procedures

### Rules and Regulations to include:

- Administrative Orders
- Personnel Rules
- Pay Plan
- Departmental Rules and Regulations



# MANAGEMENT AUTHORITY (cont'd)

Discipline or discharge employees for proper cause in accordance with applicable sections of:

- The Miami-Dade County Code,
- County Personnel Rules, and
- Department Rules and Regulations



# MANAGEMENT DETERMINES

- ✓ Mission and Objectives of the Departments
- ✓ The methods, means and number of personnel needed to carry out departmental responsibilities;
- ✓ Actions necessary to carry out services during a declared emergency by the County Mayor

# MANAGEMENT



- ❖ Determines the work of the employees
- ❖ Determines the amount of work needed
- ❖ Relieves employees from duty
- ❖ Reduces their hours of work
- ❖ Reasons as the County shall determine is essential in accordance with County Rules and Regulations

# MANAGEMENT CONTROLS

- Operations and Shifts
- Improvement in methods, operations or facilities
- Hire
- Promote
- Promotional criteria
- Transfers
- Assignments
- Overtime



# “Management and The Seven Dwarfs”



# “Management and The Seven Dwarfs”(cont’d)

Management of the Seven personalities.....

**Dopey:** the youngest, sweetest, and silliest of the seven. He is clumsy and he/she simply "never tries to speak".

**Grumpy:** the grouchiest and the leader of the group, even though he is supremely devoted to the beautiful Snow White Management.

**Doc:** the only one of the dwarfs to wear glasses and often mixes up his words; presumably the most intellectual.

**Happy:** the most joyous of the dwarfs...



# “Management and The Seven Dwarfs” (cont’d)

**Bashful:** evokes his bashful nature through a classic pose of shyness and is often embarrassed by the presence of any attention directed at him.

**Sneezy:** frequently shown with one finger underneath his nose, as if trying to stifle a sneeze; sickly....

**Sleepy:** always tired and appears laconic in most situations; wears a perpetually sleepy looking, heavily lidded expression on his face.

The dwarfs' occupation is working in the diamond mines Department under your supervision.



# SUPERVISOR DID YOU...

- NOTICE YOUR SUBORDINATES??
- TELL YOUR SUBORDINATES WHAT YOU EXPECT FROM THEM??
- IDENTIFY TO YOUR SUBORDINATES THEIR RESPONSIBILITIES??
- TRAIN YOUR SUBORDINATES AS TO THEIR RESPONSIBILITIES AND EXPECTATIONS??
- DOCUMENT??
- DID YOUR SUBORDINATES SIGN OFF ON YOUR WRITTEN EXPECTATIONS??



SO SUPERVISORS.....

IS IT FAIR.....

or can you now  
**DISCIPLINE** your  
subordinates?

# Arrest Log Tracking

The Arrest Log Application tracks the disposition of cases for County employees that have been arrested

- The Miami-Dade Police Department notifies HR, via a memo, when a county employee is arrested for both misdemeanors and felonies. The employee's department is also notified
- The arrest information will be entered by Labor HR personnel. If an employee is arrested, according to Administrative Order No.: 7-39, the employee must notify the Department Director or his/her designee
- The departments review the charges and determine the appropriate administrative action to be taken. Labor Management personnel must be contacted to determine the appropriate action. There are various actions that may be taken from "none" to "written reprimand" to "suspension" to "dismissal"

# Arrest Log Tracking

## (Continuation)

- Once the case has been to court, the final disposition of the case is recorded. At this point, the case may be closed. If the employee had been suspended and is acquitted of the charges, the employee may be reinstated and the employee may receive back pay. This entire process may be lengthy and each case must be reviewed and updated by the departments at least every 30 days. The application includes an aging and escalation process to monitor the status of pending cases. If a record has not been updated within 30 to 60 to 90 days, an email is generated by the arrest tracking system and sent to the designated recipients depending on “age” of the record
- Reports of open and closed cases may be printed. Departments will have permitted access only to employees within their department

# Medical Assessment Guidelines For Scheduling Physical Examinations And Drug/Alcohol Tests

- The Labor Relations and Employee Records Division, People and Internal Operations Department, coordinates all County sponsored physical examinations and/or drug/alcohol tests
- County department's authorized personnel are responsible for scheduling physical examinations appointments and tests for their applicants and employees using the **HR Medical Scheduler Program** <https://w85iap.miamidade.gov/Medical/main/home.jsp>
- Appointment schedules are sent to the County's medical services provider each business day at 12:00 p.m., for medical services for the following day, by the Labor Relations Unit

# Reasonable Suspicion Tests

Using established guidelines (Administrative Order 7-29), reasonable suspicion tests may be scheduled by the department with authorization by a designated Division Director or higher position. The Labor Relations Unit will approve personnel who have the authority to authorize reasonable suspicion tests.

# Fitness For Duty

Miami-Dade County is committed to providing a safe work environment for all employees. Generally speaking, a fitness-for-duty evaluation is a medical examination of a current employee to determine whether the employee is physically or psychologically able to perform the job.

To be fit for duty means that an individual is in a physical, mental, and emotional state which enables him/her to perform the essential task of his/her work in a safe and competent manner which does NOT pose a threat to the safety or health of self, co-workers, property, or the public at large.

# Reasons For Fitness For Duty Evaluation

- Observed behavior with objective evidence of a problem.
- Management has reasonable belief based on objective information, that an employee's ability to perform the essential functions of the job in a competent and safe manner is impaired by a medical/psychological condition; or that the employee poses a direct threat to self or others due to a medical/psychological condition.
- An employee expresses concern about his or her ability to perform their job duties or requests job accommodation(s).
- An employee is returning to work after taking time off for a serious illness or injury.

# Employee Participation

- Employee must cooperate with evaluation and treatment to avoid administrative action
- Failure to comply with the fitness for duty evaluation requirements (obey direct order) is insubordination, which could result in disciplinary action, up to and including termination
- Evaluation process requires employees to provide the County's examining physician, their medical records going back five (5) years

**BOSS**



**BUSINESS**

**LEADER**



**BUSINESS**

# The Two Wolves

*One evening an old Cherokee Indian told his grandchild about a war that goes on inside people. He said, 'My son, the war is between two 'wolves' inside us all...*

*One is Evil. It is anger, fear, envy, jealousy, sorrow, regret, greed, arrogance, self-pity, guilt, resentment, inferiority, lies, false pride, superiority, and ego.*

*The other is Good. It is joy, peace, love, hope, serenity, humility, kindness, benevolence, empathy, generosity, truth, compassion and faith.'*

*The grandchild thought about it for a minute and then asked his grandfather,  
'Which wolf wins?'*

*The old Cherokee Grandfather replied:  
The One You Feed!*



# Q & A

