



DISCIPLINARY PROCESS FOR CIVILIANS

Directive 5 - 103

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I. PURPOSE

The purpose of this Directive is to establish a written disciplinary process for civilian employees.

II. POLICY

The Department of General Services, Maryland Capitol Police (MCP) will utilize a continuum of progressive supervision and discipline which provides a graduated range of responses to performance or conduct-related problems. Discipline will be administered in a just and fair manner according to established procedures and applicable Maryland Law.

III. DEFINITIONS

- A. Appointing Authority: an individual or a unit of government that has the power to make appointments and terminate employment; in the MCP, the appointing authority is the Chief of Police and his authority may be delegated to others in the agency,
- B. Employee: a permanent, non-contractual civilian employee.
- C. Management Service: civilian positions that primarily involve direct responsibility for the oversight and management of personnel and financial resources, require the exercise of discretion and independent judgment and are not in the executive service.
- D. Professional Service: civilian positions that require advanced knowledge in a field of science or learning customarily acquired by a course of specialized instruction and study and that normally require a professional license, advanced degree or both.
- E. Skilled Service: civilian positions that are not in the executive, management or professional services.

IV. PROCEDURES

A. OVERVIEW

- 1. All disciplinary actions against civilian employees must be imposed by an Appointing Authority.
- 2. In the MCP, the appointing authorities registered with the Department of Budget and Management (DBM) are the:
 - a. The Chief of Police;

- b. The Deputy Chief of Police;
 - c. Operations Commander; and
 - d. Detachment/Division Commanders have limited Appointing Authority.
3. Civilian employees may be disciplined for:
- a. unsatisfactory performance of duties and responsibilities; and
 - b. misconduct as enumerated in Directive 5-101.
4. Disciplinary actions that may be taken include:
- a. a written reprimand;
 - b. forfeiture of up to 15 work days of accrued annual leave;
 - c. suspension without pay;
 - d. denial of an annual pay increase;
 - e. demotion to a lower pay grade; and
 - f. termination of employment.

B. PRELIMINARY PROCEDURES

Upon learning of an incident that could lead to disciplinary action, the employee's commander will:

1. Contact the Chief of Police or his designee to:
 - a. review the case;
 - b. obtain delegation of authority to investigate the matter; and
 - c. obtain the employees disciplinary record which should be reviewed in its entirety.
2. Review the employee's personnel record to identify prior counseling or issues of poor performance documented within the last 12 months.

C. MISCELLANEOUS DISCIPLINARY PROVISIONS

1. Limits on Additional Disciplinary Action

After taking a disciplinary action against an employee, the MCP may not impose an additional disciplinary action against that employee for the same offense, unless additional information is made known to the MCP after the disciplinary action was taken.

2. Burden of Proof

When imposing a disciplinary action against a member of the skilled or professional service, the MCP has the burden of proof, by a preponderance of evidence.

D. REPRESENTATION

1. An employee shall have the right to Union representation if requested by the employee, only as provided below:

- a. In any investigatory interview or discussion, conference or meeting with an employee who is the subject of an investigation which may lead to disciplinary action.
 - b. At any disciplinary hearing, discussion, conference or meeting (including settlement discussions) with the employee who is the subject of the disciplinary hearing.
 - c. There will be no exceptions to this rule.
2. Management shall allow reasonable time for the Union Representative to attend said meeting(s) but in no case less than one (1) hour if there is a representative on duty at the worksite.
 3. If there is no Union representative on duty at the worksite, the employee shall be allowed at least four (4) hours to obtain a Union representative; however, the employee must sign a waiver extending the time limits for imposition of any disciplinary action by no more than one (1) workday, excluding weekends and holidays.
 4. The role of the Union Representative during an initial investigation interview conducted by Management is to assist in the clarification of questions and otherwise advise the employee of his/her rights. However, it is the employee who must answer the questions posed to him/her as best as possible, and under no circumstances may the Union Representative answer for the employee, dominate the meeting, or interfere with the Employer's investigating process.
 4. An employee may choose any person to assist or represent him during an appeal of a disciplinary action and will notify the MCP of that choice.

E. NON-DISCIPLINARY PROCEDURES

1. Formal Counseling

- a. Issuing a counseling memorandum is an instructional communication, not a disciplinary action.
- b. Counseling sessions will be documented on a Form 165, Personnel Counseling Record, which lists the actions:
 - (1) of the employee; and
 - (2) actions taken by the supervisor to modify the behavior or performance.
- c. A counseling session should occur as soon as possible following the incident, so the employee's behavior or performance can be discussed and corrected while the incident is fresh in the minds of the employee and supervisor.
- d. The supervisor may also refer to any job observation material (Form 164) that has been previously presented to and signed by the employee.
- e. The supervisor and the employee will discuss the incident, so that the reasons that the behavior or performance that are considered inappropriate are clear to both.
- f. The employee will be given the opportunity to state his views and suggest corrective action.

- g. At the conclusion of the counseling session, the supervisor will recommend a course of action designed to help the employee improve his behavior or performance.
- h. The Form 165 will be prepared in triplicate.
 - (1) If the employee refuses to sign the form, "refused to sign" will be recorded in the appropriate space.
 - (2) Copies will be distributed as follows:
 - (a) the original will be sent to Headquarters and placed in the employee's master personnel file;
 - (b) a copy is placed in the employee's auxiliary file; and
 - (c) a copy is given to an employee.
- i. An employee may submit a written response to a counseling memorandum within five days of receiving it.
 - (1) The response will be placed in the employee's file and attached to any record of the memorandum.
 - (2) The employee may not take any other action in response to a counseling memorandum.

2. Leave Without Pay

- a. Placing an employee on leave without pay, when the employee is absent without approval, is not a disciplinary action.
- b. An employee who is placed on leave without pay when the employee is absent without approval may also be subject to disciplinary action for the unapproved absence.

3. Restitution

- a. Requiring an employee to make restitution to the State for loss or damage to State property due to the employee's negligence is not a disciplinary action.
- b. An employee is not required to pay restitution exceeding 3% of the employee's annual base salary.
- c. An employee who is ordered to make restitution may also be subject to civil or criminal prosecution for wanton destruction of property under State law.

4. Training

- a. An employee may be required by his commander or director to attend training to improve his performance.
- b. Requiring an employee to attend training to improve performance is not a disciplinary action.

F. DISCIPLINARY PROCEDURES RELATED TO EMPLOYEE MISCONDUCT

- 1. Before taking any disciplinary action related to employee misconduct, the Appointing Authority will:
 - a. investigate the alleged misconduct;
 - b. meet with the employee;

- c. provide the employee with a written notice of the allegations prior to the initial interview of the employee;
 - d. consider any mitigating circumstances; and
 - e. determine the appropriate disciplinary action, if any, to be imposed.
2. The Appointing Authority will then give the employee a written notice of the:
 - a. disciplinary action to be taken;
 - b. employee's appeal rights; and
 - c. effective date of the disciplinary action.
3. The written notice will be provided using an MS-4A, Notice of Disciplinary Action, or MS-507, Notice of Termination, as appropriate.

G. TIME LIMITS ON DISCIPLINARY ACTIONS RELATED TO EMPLOYEE MISCONDUCT

1. Suspension without Pay
 - a. The Appointing Authority may suspend an employee without pay **no later than five workdays** following the close of the employee's next shift after the Appointing Authority acquires knowledge of the misconduct for which the suspension is imposed.
 - b. Weekends, legal holidays and employee leave days are excluded in calculating the five workday period.
2. The Appointing Authority may impose any other disciplinary action **no later than 30 calendar days** after acquiring knowledge of the misconduct for which the disciplinary action is imposed.

H. DISCIPLINARY ACTIONS RELATED TO EMPLOYEE PERFORMANCE

1. The Appointing Authority may impose performance-related discipline on an employee in the skilled or professional services.
2. Examples of performance-related disciplinary issues include:
 - a. employee incompetence or inefficiency in the performance of the employee's duty;
 - b. an employee who has a disability who, with a reasonable accommodation, cannot perform the essential functions of the position; and
 - c. an employee who is currently not qualified for the position.

I. DISCIPLINARY PROCEDURES RELATED TO EMPLOYEE PERFORMANCE

Prior to taking any disciplinary action related to employee performance:

1. the Appointing Authority will:
 1. investigate the employee's performance, including the employee's most recent performance appraisals;
 2. notify the employee of the deficiency and provide an explanation of the Appointing Authority's position;

3. meet with the employee to hear the employee's explanation, unless the employee is unavailable or unwilling to meet; and
4. after determining the appropriate discipline, give the employee written notice of the:
 - (1) disciplinary action to be taken;
 - (2) employee's appeal rights; and
 - (3) effective date of the disciplinary action.

J. TIME LIMITS ON DISCIPLINARY ACTIONS RELATED TO EMPLOYEE PERFORMANCE

1. The Appointing Authority will take each of the actions required in subsection HI, above, within 30 calendar days after acquiring knowledge of performance-related reasons for which disciplinary action may be imposed.
2. The time period may be extended for any time that the employee is unavailable.
3. In the case of annual performance appraisal, the Appointing Authority will impose discipline within 30 calendar days after the time period specified in subsection K, below.

K. PROCEDURES RELATED TO EMPLOYEE PERFORMANCE APPRAISALS

1. Overall Rating of Unsatisfactory
 - a. The supervisor of an employee who receives an overall rating of "unsatisfactory" on an annual performance rating will inform the employee that the employee has 180 calendar days from issuance of the rating to improve to the level of "satisfactory."
 - b. Midway through the 180 day period, the employee and the supervisor will meet to evaluate the employee's progress towards a rating of "satisfactory."
 - c. Failure to achieve a rating of satisfactory at the end of the 180 day period will result in the employee's termination.
2. An employee may not be denied a pay increase unless substantial reasons of performance were cited on the employee's mid-year or final performance appraisal forms.

L. NEGOTIATION AND BARGAINING

The MCP and an employee may agree to:

1. delay the implementation of a disciplinary action for a period not to exceed 18 months in order to permit the employee to improve conduct or performance;
2. impose a lesser disciplinary action as a final and binding action, not subject to any further appeal; and
3. waive or extend any time limits stated in this chapter.

M. APPEALS BY EMPLOYEES IN SKILLED OR PROFESSIONAL SERVICE

1. Appeal to the Secretary of DGS:

- a. An employee or an employee's representative may file a written appeal of a disciplinary action with the Secretary of DGS that states, to the extent possible, the issues of fact and law that the employee believes would warrant rescinding the disciplinary action.
 - b. An appeal must be filed within 15 calendar days after the employee receives notice of the disciplinary action.
2. Conference with the Secretary of DGS:
The Secretary of DGS or his designee may confer with the employee before making a decision.
3. Disposition:
- a. The Secretary of DGS may:
 - (1) uphold the disciplinary action; or
 - (2) rescind or modify the disciplinary action and restore to the employee any lost time, compensation, status or benefits.
 - b. The Secretary of DGS will issue a written decision to the employee that addresses each point raised in the appeal, within 15 calendar days of receiving an appeal.

N. APPEAL TO THE SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT (DBM):

An employee in the skilled or professional service may appeal a decision of the Secretary of DGS to the Secretary, DBM, in accordance with MD. CODE ANN., STATE PERS. & PENS. §11-110 and COMAR 17.04.05.01.

O. FAILURE TO APPEAL

If an employee fails to appeal a decision within the time limits specified in this directive, the employee is to have accepted the decision.

P. FAILURE TO DECIDE AN APPEAL

Failure of the DGS to decide an appeal within the time limits specified in this directive is considered a denial, from which the employee may appeal.

Q. RESOLUTION OF APPEAL

The employee and the DGS will make every effort to resolve an appeal at the lowest level possible

R. TERMINATION OF INITIAL PROBATIONARY EMPLOYEES

1. Employees serving an initial probationary period may be terminated in accordance with MD. CODE ANN., STATE PERS. & PENS. § 11-303 and COMAR 17.04.03.17(F)(1).
2. An appointing authority will provide notice at least 10 days before the effective date of the termination that states the reasons for the termination, the effective date and the appropriate appeal route.

S. APPEALS BY INITIAL PROBATIONARY EMPLOYEES

1. An employee in the skilled or professional service, serving an initial probationary period, may appeal a disciplinary action only on the grounds that the action was illegal or unconstitutional.
2. The employee has the burden of proof in an appeal under this section.

T. DEMOTION OR REMOVAL OF PROBATIONARY EMPLOYEES

If, in the Appointing Authority's judgment, an employee in the skilled or professional service on probation following a promotion or reinstatement is unable or unwilling to satisfactorily perform the duties or responsibilities of the position, the Appointing Authority will:

1. return the employee to his former position, if it is vacant; or
2. demote the employee to a position comparable to his position within the Appointing Authority's jurisdiction; a probationary employee may appeal such a demotion.

U. EMPLOYEES IN THE MANAGEMENT OR EXECUTIVE SERVICE AND SPECIAL APPOINTMENTS

An employee in the management service, the executive service or under special appointment:

1. serves at the pleasure of the Appointing Authority;
2. is subject to the disciplinary actions specified in this directive;
3. may be terminated or disciplined for any reason that is not illegal or unconstitutional;
4. may appeal a disciplinary action only to the Secretary DGS, whose decision is final;
5. has the burden of proof in an appeal; and
6. may only appeal on the grounds that the disciplinary action is illegal or unconstitutional.

V. FORFEITED ANNUAL LEAVE

1. For disciplinary actions in which an employee forfeits annual leave, the forfeited annual leave will be transferred to the State Employees' Leave Bank.
2. The employee whose annual leave is forfeited and transferred to the State Employees' Leave Bank as a disciplinary action does not become a member of the State Employees' Leave Bank.