



PROGRESSIVE DISCIPLINE SUPERVISOR MANUAL

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PREFACE

This guide describes the basic elements of a sound progressive disciplinary system. It is intended as a guide to assist supervisors in determining when disciplinary action is necessary, what level of discipline is appropriate, and how to administer discipline.

We recognize that most employees only need to be properly trained and be informed of the rules to be positive and productive employees. There are, however, times when the supervisor must use the discipline process to get the employee's attention and attain the desired result. Supervisors are encouraged to make sure that the employee has been properly trained and informed prior to resorting to the discipline process.

The principles of progressive discipline, equitable treatment, past practice, and just cause are set forth in this guide. This guide details how to evaluate a situation prior to taking any disciplinary action, including the investigation process. The guide also outlines the employee's right to appeal disciplinary action. A checklist of questions is provided to help guide the supervisor through the disciplinary process. We have included the form required for documenting disciplinary action as well as sample disciplinary letters, they can be used to supplement the disciplinary form.

Two important issues need to be emphasized. First, although the bulk of the guide addresses cases which stem from a series of events leading to discipline, such as poor work performance or poor attendance, there are times when more serious infractions occur which require moving immediately to a suspension or termination of employment. There are also times when a step may be repeated or skipped. Second, the level of responsibility or type of position within the University is a critical criterion in applying the concepts of progressive discipline in any given case.

Employee Relations is responsible for assisting the supervisor in administering the disciplinary process in conformity with collective bargaining agreements, employee handbooks, and University policies and procedures. When considering any disciplinary action, Employee Relations is available to provide the supervisor with assistance. At the more advanced disciplinary steps of suspension and termination of employment, the University requires that the supervisor work with the Employee Relations office.



I. INTRODUCTION

A. Purpose of Discipline

Discipline in its literal sense is training that corrects, molds, or improves job-related performance or behavior. Discipline should be progressive in nature so that the University imposes the least severe action necessary to correct undesirable behavior and moves to increasingly severe measures only if the problem is not corrected. Except for termination of employment, the primary objective of discipline is to correct, not punish, the employee. When properly administered, progressive discipline benefits management and employees and satisfies the scrutiny of third parties (e.g. Unions, EEOC, Arbitrators).

For MANAGEMENT, progressive discipline maintains order and enforces University rules. It affects employee morale and productivity positively, when correctly administered. It helps rehabilitate employees who choose to correct their behavior; and it helps to justify termination of employment of those who do not. Discipline which is not properly administered and thereafter is reversed or rescinded, has the negative effect of discrediting the rule, policy, procedure, and supervisor.

For SUPERVISORS, the administration of discipline is a responsibility as important as planning, organizing, leading, and controlling the work unit. This disciplinary responsibility requires the supervisor to establish, understand, communicate, and enforce rules, policies, procedures, and the provisions of the collective bargaining agreements and employee handbooks. The effectiveness of the disciplinary action depends upon the supervisor's exercise of good judgment, fairness, tact, and common sense in administration. Supervisors must not allow inappropriate behavior to be ignored. It is their obligation to take appropriate action promptly. It is disruptive and divisive when disciplinary actions are reduced or set aside by an impartial third party. It is important for the maintenance of the work environment that disciplinary action is not reversed. Supervisors should carefully follow the principles of discipline to avoid this.

For EMPLOYEES, progressive discipline sets clear standards and warns of consequences for noncompliance. It assures predictable, progressive, and equitable treatment. It promotes fair decisions, and it provides a process to appeal disciplinary decisions.

For THIRD PARTIES, properly administered discipline meets the test of just cause and satisfies the requirements for progressive, nondiscriminatory, fair, corrective, and consistent decisions.

B. Progressive Nature of Discipline

For discipline to be effective and correct employee behavior, it must have certain fundamental characteristics. Discipline must:

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- 1) be progressive
- 2) consider past practice and equitable treatment, and
- 3) meet the test of just cause.

The principle of "progressive" discipline involves informing the employee of the problem and the need to correct it, and then using increasingly stronger disciplinary measures if the employee fails to correct the problem.

In most situations, the problem will first be brought to the employee's attention with a counseling session. This initial counseling is not considered part of the formal disciplinary system. During counseling, the supervisor should make sure the employee is aware of the problem and impress upon the employee the importance and necessity of correcting the problem. Most employees will correct the problem through such counseling. If the problem continues, disciplinary action may be initiated. Although counseling is not recognized as a formal disciplinary step, it is strongly recommended to retain a written record of counseling including dates. It is expected that in most cases, counseling will precede the formal disciplinary process.

The formal disciplinary process may include a verbal reprimand, a written reprimand, suspension, and termination of employment. For most problems, each step in the complete process is necessary. For more serious problems the earlier steps may be eliminated. The degree of discipline must correlate to the seriousness of the offense and the employee's record. Discipline should be taken at the minimum level necessary to bring about correction of the problem. If the problem is not corrected, more severe action will be taken, up to and including termination of employment. Other factors to consider when determining the appropriate discipline are the level of the employee's position and the type of position. For example, managers and supervisors are held to higher standards of performance and behavior. Discipline can progress to the final step which is termination of employment.

Steps for Managing Performance

- Counseling
- Progressive Discipline
 - o Verbal Reprimand
 - o Written Reprimand
 - o Suspension Without Pay
 - o Termination of Employment

The progressive disciplinary process for salaried Professional and Administrative employees differs from the process outlined above. See Section II. G entitled Disciplinary Process for Salaried Employees.



C. Establishing the Ground Rules

Supervisors have an inherent responsibility to promote positive employee morale and to maintain a productive work force. Vital to meeting these responsibilities is the effective handling of discipline. These responsibilities begin long before any disciplinary measures are necessary. They begin by establishing the "ground rules" by which employees are expected to conduct themselves.

Not all work environments are identical and, therefore, one set of rules will not apply to all employees. Supervisors must know the rules that apply to their work group as well as any unwritten practices that have become commonplace. Both long-standing and newly created work rules should be clear, reasonable, and understandable. Employees are more apt to conform to rules that are understood and reasonable, than to those that are not. All rules and practices should be reviewed regularly and updated if necessary.

Supervisors should not assume employees will learn rules by word of mouth. Initially, work rules may be communicated orally, but it is necessary to reinforce this communication in writing. Announcements in newsletters and notices on bulletin boards are the most common forms of communication and may be reinforced by inclusion in policy manuals, collective bargaining agreements and employee handbooks. Once published and posted, copies of rules and policies should always be accessible to management and employees to encourage an atmosphere of open communication.

Supervisors who enforce work rules consistently and without discrimination gain the respect and cooperation of their employees. This respect can be quickly lost if some employees are given preferential treatment. Being overly lenient or overlooking rules altogether invites disrespect and over time the rules become dormant and unenforceable. To enforce a dormant work rule, the rule and the consequence of infraction must be communicated to employees again, in a clear and direct manner.

By establishing clear, reasonable, and understandable work rules, communicating the rules to employees, and applying the rules consistently, the supervisor is setting the standards for employee performance and behavior. As one might expect, not every employee will measure up to performance standards or comply with established work rules. When this occurs, the supervisor's responsibility is to take the necessary progressive disciplinary action.

D. The Importance of the Probationary Period

The University has established a probationary period for all newly appointed employees. This probationary period is an important element in any successful employer/employee relationship.

The purpose of the probationary period is to assure the supervisor that the employee can satisfactorily fulfill the demands of the position. The employee's work performance should be monitored



throughout this period and measured against the department's policies, procedures, work rules, and performance standards. If the supervisor sees or anticipates a problem developing, it should be dealt with immediately: Inform the employee there is a problem, give the employee reasonable time to correct the problem, and tell the employee the consequences of not correcting the problem.

The importance of the probationary period is to serve as a "trial period." Disciplining an employee during this period is a shortened process. Conversely, disciplining an employee who has completed the probationary period is a much longer and more complex process.

If, after this, the employee still is not "measuring up", the supervisor may request an extension of the probationary period or termination of employment. For a probationary employee, it is not necessary to take the full sequence of disciplinary steps before making either of these decisions. The supervisor must, however, evaluate the employee's performance accurately. The supervisor needs to make sure the employee has been informed of the performance problems and given the opportunity to improve.

As a supervisor, you are not required to follow all the steps of progressive discipline as set forth in this guide to terminate the employment of a probationary employee. Considering an increasing amount of "wrongful discharge" litigation nationwide, the supervisor should, however, consider using the principles and processes as a checklist to assure fair and equitable treatment of probationary employees. Additionally, following this guide will afford probationary employees "due process" prior to termination of employment.

Supervisors must contact Employee Relations to request the extension of a probationary period or to terminate the employment of a probationary employee. This must be done prior to the end of the probationary period. The employee and the Union (if applicable) must be notified in writing that the probationary period has been extended.

If the employee completes the time requirement for the probationary period, but questions remain in the supervisor's mind, the employee may be "conditionally" released from probation. The supervisor should consult with Employee Relations whenever concern exists when ending a probationary period.

If the probationary period is satisfactorily completed, notify the employee. An employee should be given positive feedback relating to the probationary period performance. If the supervisor decides to take the employee off probation, any concerns or disciplinary actions that occurred during the probation period should be noted.

II. THE STEPS OF PROGRESSIVE DISCIPLINE

There are no formulas or set rules that apply to all situations and give the "answer" to the proper disciplinary step to take. Each disciplinary action will depend upon the nature of the offense and the related circumstances.



A. Essential Elements of Each Step

Working with Employee Relations, Supervisors must ensure the following things occur during the progressive discipline process:

- Meet with the employee privately.
- Provide opportunity for representation for the employee during the investigative meeting as well as in any follow up meeting.
- Clearly identify the problem and attempt to ensure the employee understands.
- Allow the employee the opportunity to explain their actions.
- Conduct a thorough investigation of the potential misconduct.
- Determine if there is just cause to engage disciplinary action.
- Clearly explain to the employee the expected behavior.
- Inform the employee of the consequences if the problem is not resolved.
- Document the disciplinary action.

B. Verbal Reprimand

This is the initial step of progressive discipline. Whether "spur-of-the-moment" or "after-the-fact", the verbal reprimand is given in a private setting; and the discussion is conducted in a friendly, but firm, manner. A verbal reprimand is generally used when a problem persists after the supervisor has brought it to the employee's attention through counseling. The purpose of this step is to alleviate any misunderstanding and to clarify the direction for necessary and successful correction of the problem.

Most performance problems are resolved at this stage. If the problem continues, the supervisor may want to repeat this step before proceeding to a written reprimand.

The verbal reprimand is used to bring a problem to the attention of the employee before it becomes so serious that it jeopardizes the employment status of the employee. The verbal reprimand must be documented in the appropriate form. (See Appendix E)

C. Written Reprimand

When the employee has not satisfactorily corrected the problem as outlined during the verbal reprimand, proceed to the next step -- a formal written reprimand. A written reprimand may also be the initial disciplinary action in cases of a more serious nature.

The process is essentially the same as in the verbal reprimand step. The written reprimand includes a review of any prior related disciplinary action taken, a thorough statement of the circumstances causing



the current disciplinary action, and a clear picture of future expectations. Documentation is critical; the supervisor must complete the appropriate form (See Appendix G). If the supervisor wants to explain the problem in greater detail or clarify the expectations, a letter can be attached to the discipline form. Make sure to keep the letter clear and simple. A sample letter is included in Appendix H. If the supervisor would like assistance, Employee Relations should be contacted.

D. Suspension Without Pay

Suspension is the last corrective step in the disciplinary process and is normally preceded by a verbal reprimand and a written reprimand. In a few extremely serious cases, suspension may be warranted as the initial step in the disciplinary process. Contact Employee Relations if considering the suspension of any employee.

A suspension involves the temporary removal of the employee from the workplace for a specified period. The employee may not accrue vacation and sick leave benefits during this non-working, non-paid period. Again, the purpose of this disciplinary step is to correct the identified problem. A suspension is the strongest warning to the employee that the problem is, indeed, extremely serious, and it is the "last chance" for the employee to correct the problem.

The length of the suspension is determined by the supervisor and Employee Relations and generally ranges from one (1) to five (5) working days. Most suspensions average three (3) working days. A suspension longer than five (5) working days may be imposed in certain cases.

As in previous steps, complete the appropriate form. (See Appendix I) The disciplinary form includes the specific days of the suspension as well as the date and time the employee is to return to work.

E. Termination of Employment

If all the previous steps are unsuccessful, the employee may be terminated from employment. Termination of employment is the final step in the progressive disciplinary process and obviously is not corrective.

As in the previous steps, it is critical that the employee be given an opportunity to hear the charges, understand the evidence, and offer an explanation.

Again, after this discussion and upon completion of the investigation, document the action by using the appropriate form (See Appendix K).

In any situation serious enough to justify termination of employment, University policy requires the supervisor to contact Employee Relations prior to taking any action. Employee Relations will review



the case to verify that there is just cause for termination of employment and that the employee has been afforded due process.

F. Suspension Pending Investigation

There are situations where the employee must be removed from the workplace immediately before an investigation can be conducted. Examples of these situations might be suspected theft, potential sabotage, disorderly conduct, or where the employee presents a threat to other employees. In these instances, the employee can be suspended pending the results of the investigation. The supervisor must contact Employee Relations immediately. This should be done before sending the employee home unless there is a need to remove the employee immediately because the employee presents a clear and imminent danger if left in the workplace. The suspension pending investigation is imposed with the understanding that a final decision, relative to the appropriate disciplinary action, will be made after the investigation. If there is no cause for disciplinary action, the employee will receive pay for regular earnings lost during the suspension, if the suspension is designated as unpaid. Suspension pending investigation may also be with pay.

G. Disciplinary Process for Salaried Employees

The purpose of the disciplinary process is to correct or improve job-related performance. Disciplinary problems and violations of rules will be dealt with according to the situation and the work record of the employee in compliance with applicable laws. Non-probationary employees will not be disciplined or discharged without cause. If a salaried employee fails to correct the problem after being "counselled", the formal disciplinary process begins with a written notice that the employee is being placed on a "Performance Improvement Plan" during which time the problem must be corrected. (This notice is preceded by a meeting where all the items addressed in Section II.A. "Essential Elements of Each Step" are covered.)

Generally, the Performance Improvement Plan is for ninety (90) days, although it may be shorter or longer depending upon the nature of the problem. During the Performance Improvement Plan, regular feedback must be given to the employee. At the end of the Performance Improvement Plan, the employee is returned to regular status if the problem is resolved. The employee must continue to meet the expectations required or this process is reinitiated with a significantly shortened Performance Improvement Plan. If the problem is not resolved, the trial may be extended or employment may be terminated. Generally, Performance Improvement Plans do not last longer than one (1) year and ninety (90) days is the standard period. As is the case with hourly employees, there are situations so severe that employment may be terminated without going through the process outlined above.



III. PRINCIPLES OF DISCIPLINE

A. Just Cause

Perhaps one of the most crucial principles necessary for a sound disciplinary process is that of just cause. Disciplinary action taken with even one (1) of the elements of just cause missing may lead to questionable disciplinary action and possible reversal of decisions.

Most collective bargaining agreements and employee handbooks do not attempt to define just cause; however, a "common law" has developed over the years which consists of a set of seven (7) guidelines or questions to be applied to each case. The acceptance and use of these guidelines have set the standard of just cause. In general, if any of the seven (7) items are not present the supervisor needs to review the entire situation before proceeding with disciplinary action.

Components of Just Cause:

ADEQUATE WARNING. Did the employee know, or should the employee have known, that the behavior could result in disciplinary action? Work rules must be communicated by Supervisors to employees and indicate that failure to comply may result in disciplinary action. The lack of this explicit communication will not always lead to a "no" response to this question. In some cases, it is the employee's responsibility to know that certain actions are unacceptable and will result in disciplinary action. Insubordination, fighting on the job, coming to work intoxicated, drinking on the job, and theft of University property are examples of certain offenses we consider, as a society, to be unacceptable and expect severe disciplinary action to be taken.

REASONABLE RULES. Was the rule or order reasonable, safe, and related to University needs? Was the rule or order related to the conduct that the University might properly expect of the employee? Written rules usually pass this test. It is the on-the-spot order that most often creates a problem. Even so, except in cases of immediate danger to one's health and safety, an employee generally must follow the "work now and grieve later" approach. Disobeying even an unreasonable rule may be considered insubordination which is cause for disciplinary action.

VIOLATION OF RULE. Prior to administering the disciplinary action, did the University, try to discover whether the employee did, in fact, violate the rule or order? Employees have the right to know the offense with which they are being charged and to defend that behavior. Therefore, the supervisor should advise the employee as specifically as possible of the offense charged and verify that the employee engaged in the misconduct warranting discipline.

FAIR INVESTIGATION. Did the supervisor conduct a thorough investigation of the facts and circumstances, including the employee's explanation, prior to administering disciplinary action? This requires the supervisor to actively seek information in a fair, objective, and nondiscriminatory manner,



not just passively wait for people to come forward and volunteer information. In addition, the investigation should be documented in writing.

This is one of the most critical elements at each step of the discipline process. It makes sense to provide the employee with an opportunity to hear the charges, understand the evidence, and offer an explanation before the disciplinary action occurs. In other words, the employee should be given an opportunity to present "the other side of the story." It is essential to extend this opportunity at all levels of discipline.

Representation/Witness: When the supervisor schedules a meeting to discuss the problem, tell the employee it is part of your investigation and may lead to disciplinary action. Tell the employee arrangements will be made to have a representative/witness present unless the employee does not want anyone else present. For unionized employees, there are individuals designated by the union to act as representatives. For non-unionized employees, the University will generally allow a representative of council to serve as a witness for the employee. If the employee refuses representation, make sure to make a note that the employee refused representation. If the employee raises no objection to having a representative present, contact the supervisor of the appropriate representative and arrange for the representative to be present.

The representative's role is to assist the employee in understanding the basis for the disciplinary action and to assist in presenting the employee's response. Since this is not a full or formal hearing, the representative's role does not include questioning witnesses.

The role of the witness is much different from that of the union representative. The witness is present to verify what was said and may take notes for the employee. The witness does not serve an advisory role.

Whether it involves a general job performance problem or a specific policy violation, the structure of the investigatory meeting is the same. Inform the employee of the problem and the evidence that currently exists and ask the employee for an explanation or response. At the conclusion of the meeting, inform the employee that disciplinary action may result if a complete investigation shows it is warranted. It is recommended that a final decision not be announced in the meeting. As facts are gathered, witnesses are questioned and evidence reviewed, you need to document the investigation, including dates, times, names of the persons questioned and the information they provided. Take time to reflect on all available information and to discuss the matter with departmental management and Employee Relations. This will assist the supervisor in making a sound disciplinary decision (all of this must be done in a timely manner).

SUBSTANTIAL PROOF. Is there substantial proof for the case? Substantial evidence or proof of guilt must exist to clearly establish that the employee did, in fact, violate the work standard or rule. The best evidence is that which is documented or witnessed and is not rumor, unsupported



accusations, or superficial allegations. Hearsay evidence will often be admitted in arbitration proceedings, but generally will be accorded little weight and is usually not accepted as truth. Hearsay consists of information given by a person who states not what he/she knows of their own knowledge, but what he/she has heard from others. It is unlikely that a decision will be supported by hearsay evidence alone.

EQUITABLE TREATMENT. Have the rules, orders, and penalties been consistently enforced? Employees in similar situations should be treated in a similar manner. Each disciplinary problem is unique and requires that the disciplinary process be flexible to select the most appropriate course of action. However, it is important not to overlook the principle of equity or fairness. This principle requires that employees in similar circumstances should be treated in a similar manner. Equity does not mean the supervisor should always impose the identical disciplinary action for the same offense. In other words, disciplinary action does not have to be identical to be "fair". At times it is necessary to treat employees differently to be fair. This may be based upon differences in the length of employment, discipline history, level of responsibility, type of position within the University, or other circumstances. All these factors affect the level of discipline. For example, two (2) employees who commit the same offense should not receive the identical disciplinary action if they are at different steps of the progressive disciplinary process. Judgment and discretion are critical in applying disciplinary action equitably.

Another component of equitable treatment is the principle of Past Practice. By definition, "past practice" is a reasonably uniform response to a recurring situation over a substantial period which has been recognized, implicitly or explicitly, and in situations where the contract language is ambiguous. It is significant to note that a past practice may be established on a University-wide basis, confined to a division or department, or limited to an operation or small group of employees. A review of the following components will determine if a past practice exists. If all components are present, a past practice probably exists; if not, a past practice does not necessarily exist.

Uniform Response and Acknowledgment are components of past practice. Are employees in similar circumstances being treated in a similar manner? If so, then a uniform response exists. Note that the word "similar", not identical, is used. There may be differences in employees' levels of responsibility and types of positions or in their records, e.g., length of employment, performance record, and disciplinary record, which justify a different response. If there have been varied responses to similar situations, no past practice exists.

Have the employees come to expect a particular response? This recognition does not have to exist in writing, but there should be general knowledge of the situation.

Recurring Situations are also factors in establishing past practice. Does a same or similar situation arise repeatedly? If so, a recurring situation exists. If the situation varies over time, it is not a recurring situation. Has the situation occurred before? Once or even twice does not necessarily create a past



practice. However, there is no well-defined rule as to how many times a situation must repeat itself to become a past practice. If, for example, a similar situation and set of circumstances existed only once previously, the University's response at that time may be considered "past practice".

Always consider past practice when disciplining an employee. The supervisor must keep in mind, however, that past practice is not a substitute for clear and unambiguous language in collective bargaining agreements or employee handbooks. A third party will generally rely on the specific language of the collective bargaining agreement or employee handbook instead of the past practice, even if the practice meets the above criteria.

Past practice can sometimes be changed depending on the language of the collective bargaining agreement, employee handbook, policy manual, or work rules. If the practice is not a matter generally reserved for collective bargaining, it may be changed. Advance written notice must be given to employees that the practice will be changed. For assistance in determining if a past practice exists or if you want to change past practice, contact Employee Relations. An adjustment period may be advisable following the change of a past practice. Without sufficient warning to employees that new standards will be enforced, a disciplinary action may very well be overturned.

APPROPRIATE DISCIPLINE. Was the disciplinary action related to the seriousness of the offense, to the employee's record, and to the employee's level of responsibility within the University? Generally, minor offenses and first occurrences should result in less severe disciplinary action. Major offenses and repeated occurrences should result in more severe disciplinary action.

Together, these seven (7) elements constitute the principles of just cause. They also incorporate the other basic principles of a sound disciplinary system, namely, progressive discipline, equitable treatment, and past practice. A determination that all seven (7) components are present will lead to the conclusion that just cause for disciplinary action does exist.

B. Time Frames

Timing is critical in three (3) different areas within the disciplinary process -- timeliness of the disciplinary action, time between disciplinary actions, and the time given to the employee to correct the problem.

TIMELINESS OF THE DISCIPLINARY ACTION. There is no universally accepted rule on this point; however, there is an expectation that the University will administer disciplinary action as soon as possible after the problem occurs or is discovered. As a rule of thumb, investigations should be handled in an expeditious manner and conform to the time periods outlined in collective bargaining agreements, university policies, or employee handbooks. If more time is needed, the employee should be informed that an investigation is still underway and provide a date by which a decision will be made.



Initiation of investigations may be delayed in instances where the employee subject to investigation is unavailable (e.g. workplace injury resulting in absence, criminal detention, etc.).

TIME BETWEEN DISCIPLINARY ACTIONS. Under University policy, progressive discipline is considered successful if no further disciplinary action is necessary for at least three (3) years. There is no minimum time between disciplinary steps. The supervisor needs to allow enough time for the employee to correct the problem. This may be immediately, a week, a month, or several months, depending upon the nature of the problem. However, the last step taken may have to be repeated if more than a year has passed since the last disciplinary action.

TIME LIMITS FOR CORRECTING THE PROBLEM. In situations where the employee can resolve the problem promptly, such as attendance problems or sloppy work, communicate the expectations that the employee must immediately achieve and maintain acceptable performance standards to avoid further disciplinary action. While it is appropriate to give positive as well as negative feedback to the employee, refrain from going overboard in praising the employee as you address the problem. It is important for employees to know, although they have done well, the problem is still a concern and the potential for further disciplinary action still exists. If the supervisor sets a target date by which the employee must display the required behavior, it may inadvertently hamper flexibility and commitment to start over or repeat a disciplinary step if the problem recurs after the target date. For example, if the supervisor tells an employee that if they report late for work again within the next ninety (90) days their employment will be terminated, then they are late for work four (4) months later, employment could not be terminated. In situations where the employee needs to develop a skill, learn a procedure, or improve the level of performance, it may be appropriate to set a date when the situation will be reviewed. Document the employees performance throughout this period. Once the skill has been learned or a certain level of proficiency attained, it is essential to communicate the expectation that the acceptable performance level must be maintained.

C. Documenting the Discipline

The supervisor is required to confirm all disciplinary actions in writing by completing the appropriate form. More information can be included by attaching a letter to the form. The written documentation represents an official record that the problem exists and is written after discussion with the employee and following the conclusion of the investigation. If a disciplinary form and letter are written prior to meeting with the employee, the discussion may be slanted to fit the contents of the form or letter. A disciplinary form prepared in advance does not allow for unknown circumstances or explanations to be presented by the employee.

Documentation of disciplinary action must be kept in the employee's personnel file; the employee must receive a copy and in many cases the union must also be copied. All documentation of disciplinary action should be included in the employee's personnel file in the Human Resources/Staff office as well as in the supervisor's file.



What should a disciplinary record include? The record has three parts: the present, the past, and the future.

1. **The Present.** This section states the purpose of the disciplinary action and cites the specific incident or nature of the problem. In recounting the incident or problem, include what occurred and when, how it affected the work activity, the results of the investigation, and the employee's explanation. State only the facts that can be proven. This section also cites specific rules, policies, or standards violated, and disciplinary action being taken as a result of the employee's actions. Stress the significance of the offense and the reason for the disciplinary action.
2. **The Past.** This section reviews the employee's work record, gives the history of related offenses (if any), and reminds the employee of previous disciplinary actions taken. This summary of past events demonstrates the progressiveness of the disciplinary action.
3. **The Future.** Finally, the employee must have a clear understanding of the expected standard of behavior or performance, how this standard can be achieved, and the consequences of continued failure to meet these expected standards.

Write in an easily understood language, emphasize the "do" rather than the "don't", and focus on the future rather than the past. In other words, use a tone of correction not punishment.

It is strongly recommended that you keep a record of any relevant situations that occur once you have initiated the progressive disciplinary process. These notes should give all the necessary pertinent information (including when it was brought to the employee's attention). The notes should be dated and signed and kept in the supervisor's file.

D. Informing the Employee

Inform the employee of the disciplinary action, both verbally and in writing, as soon as possible after the disciplinary decision has been reached. The purpose is to outline what is wrong, what disciplinary action is being taken, and what is expected in the future. Representation should also be provided at this meeting as well.

This may be the most crucial element of the entire disciplinary process. As a supervisor, keep close control of your emotions, avoid sarcasm, threats, nagging, getting into an argument with the employee, or loss of temper. With the obvious exception of a termination of employment, the purpose of the disciplinary action is to correct a problem. The employee needs to leave this meeting knowing better conduct is expected.



Give a copy of the disciplinary form and any attachments to the employee and inform the employee that a copy will also be included in their personnel record.

E. Double Jeopardy

It is important to thoroughly investigate and consider all factors before determining what disciplinary action will take place. An employee cannot receive one (1) level of discipline and then later be given a more severe discipline for the same instance of misconduct. This is considered double jeopardy. An example of this would be where the first line supervisor imposes a written reprimand, and later after discussing with the Department Director, they determine that suspension was warranted. The supervisor cannot go back and suspend the employee after the employee thought they were getting a written reprimand. Make sure it is done right the first time!

IV. THE EMPLOYEE'S RIGHT TO APPEAL DISCIPLINARY ACTIONS

A. The Grievance/Appeal Procedure

Most employees have a grievance/appeal procedure through which the employee may appeal disciplinary actions. Do not be deterred from taking disciplinary action because of a threat or fear of a grievance. The filing of a grievance over a disciplinary action does not mean the decision was wrong, it simply means the employee disagrees. However, we suggest you implement all disciplinary action with the expectation the action will be reviewed and be prepared to defend actions.

The grievance/appeal procedure allows for the employee's (and/or the union's) views to be considered in an orderly way without interrupting work operations. For the process to work effectively, the employee must feel the grievance/appeal procedure will permit a fair hearing. The procedure's effectiveness depends largely upon the success of resolving complaints at the lowest level possible. Grievances/appeals become more difficult to settle as they progress through the steps because attitudes tend to become fixed and fear of loss of prestige prevents settlement. However, to assure fair consideration, there is a definite route of appeal, without fear of prejudice, to higher levels of authority. Handling complaints promptly increases the employee's confidence that the supervisor is dealing in good faith. Stay within the time frame provided in the grievance/appeal procedure if at all possible.

The grievance/appeal procedure is contained in each of the collective bargaining agreements and employee handbooks. Please work with Employee Relations if you have any questions on grievance/appeal procedures.



B. Management's Burden of Proof

Management has the primary responsibility to prove the disciplinary action was warranted and the level of disciplinary action was appropriate. Obviously, the employee does not remain passive in this process but will also be trying to persuade whoever is hearing the grievance/appeal that the disciplinary action was not warranted or was too severe.

In an evidentiary hearing such as arbitration, the formal rules of evidence of the legal system are not strictly applied. For example, while testimony of a witness to an incident carries more weight, a written statement may be accepted and considered in reaching a decision. Original documents are better than copies. Hearsay evidence (information provided by someone other than the primary source) and circumstantial evidence (information which causes one to deduce a certain fact) may sometimes be permitted in reviewing grievances. Hearsay and circumstantial evidence will receive less weight unless they are corroborated by direct evidence. Witness statements, physical evidence, and documentation should be reviewed by Employee Relations to assure the best possible record. In summary, the quality of evidence is judged by four (4) criteria:

1. **Relevance.** *Is the information related to the issue?*
2. **Materiality.** *If relevant, how relevant is it? Does it alone constitute proof?*
3. **Competence.** *Is the information believable and is the person testifying in a position to know?*
4. **Best Evidence.** *Is the best available evidence used and if not, why?*

C. Handling A Grievance/Appeal

The following are some of the do's and don'ts for you to observe in handling grievances/appeals.

DO

1. Do investigate and handle each case as though it may eventually result in arbitration or review by an objective third party.
2. Do give the employee adequate opportunity to discuss concerns when the grievance/appeal is at your level.
3. Do enforce and comply with the time limits set forth in the grievance/appeal procedure.
4. Do visit the work area of the employee.
5. Do determine if there were any witnesses.
6. Do examine relevant policies and procedures.
7. Do determine if there has been equitable treatment of employees.
8. Do determine how similar cases have been handled in the past.
9. Do examine the pertinent personnel record.
10. Do fully examine similar grievances/appeals.
11. Do produce all available evidence.
12. Do identify the resolution the employee is seeking.



13. Do provide representation for the employee, unless waived by the employee.
14. Do hold grievance/appeal discussions privately.
15. Do recognize the burden of proof in disciplinary cases resides with the University.
16. Do use the grievance/appeal meeting as another avenue of communication.
17. Do control emotions, remarks, and behavior.
17. Do maintain records relevant to disciplinary actions.
18. Do admit errors and take corrective actions.
19. Do fully inform and discuss disciplinary action and grievance/appeal matters with your supervisor and Employee Relations.
20. Do advise the employee of the decision in writing.

DON'T

1. Don't settle a grievance/appeal while in doubt; get a time extension. Extensions should be requested through Employee Relations and put in writing.
2. Don't give long written grievance/appeal responses; get to the point. But don't leave out important information for the sake of brevity.
3. Above all else, don't be afraid of the grievance/appeal procedure. Use it as another management tool.

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Appendices

Appendix A: GLOSSARY OF TERMS

COUNSELING: A discussion between the supervisor and the employee in which the supervisor makes the employee aware of a performance problem and impresses upon the employee the importance and necessity of correcting the problem.

DISCIPLINE: Training that corrects, molds, or improves job-related performance or behavior. Discipline is progressive in nature, i.e. it becomes increasingly stronger if the problem is not corrected.

DOUBLE JEOPARDY: The imposition of a second, usually greater, discipline for an offense for which discipline has already been imposed.

DUE PROCESS: Due process requires the employee to be given notice of the alleged wrongdoing and an opportunity to respond to the allegation. It may include notice of names and the nature of testimony of witnesses against the employee, a hearing before a neutral tribunal and a review of the correctness of the reason for disciplinary action -- check with Employee Relations before releasing information to anyone.

JUST CAUSE: Proper or sufficient reasons for disciplinary measures imposed on employees by management. The just cause standard is necessary to safeguard employees from disciplinary action which is unjust, arbitrary, capricious, or which lacks some reasonable foundation for its support.

PAST PRACTICE: A reasonable uniform response to a recurring situation over a substantial period of time which has been recognized, implicitly or explicitly. Past practice may be confined to a division or department, an operation, or small work group of employees.

PROBATIONARY: A trial period of employment in which the employee's work performance is monitored and measured against department policies, procedures, work rules, and standards. 18

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Appendix B: UNIVERSITY PROHIBITIONS

The list below shows examples of behaviors prohibited by University policy. The list is illustrative, not exhaustive. This list is intended to describe the types of behaviors the University will not tolerate and which merit disciplinary action. This list is to be used for reference only.

- Insubordination or refusal to comply with employer's instructions unless such instructions are injurious to the employee's safety and health.
- Sexual Harassment
- Immoral or indecent conduct on University property.
- Violation of a safety rule or safety practice.
- Conduct endangering the safety of self or other employees.
- Abusive, threatening, or coercive treatment of another individual while on duty or on University property, including provoking or instigating a fight during working hours or on University property.
- Tardiness
- Absenteeism
- Job Abandonment, including:
 - Neglect of duty,
 - Sleeping while on duty,
 - Inattentiveness to work,
 - Failure to start work at the designated time,
 - Quitting work before proper time,
 - Leaving assigned work area without authorization
 - Failure to report for work without giving the employee's supervisor or department head notice of absence.
- Knowingly admitting an unauthorized person or persons into any locked or restricted building or area of the campus.
- Knowingly punching the clock card of another, having one's clock card punched by another, or unauthorized altering of a clock card or time record.
- Falsification of personnel records, payroll reports, or other University records.
- Theft, destruction, or defacing of the University's, another employee's or student's property.
- Gambling on the employer's premises during working hours.
- Smoking in prohibited areas.
- Posting unauthorized materials on walls or bulletin boards, defacing, or removing authorized material from bulletin boards.
- Vending, soliciting, or collecting contributions on the University's time or premises without prior appropriate authorization from the University
- Violation of any University policy. The following websites contain policies, procedures, and guidelines that are in effect at the University.
 - https://www.cmich.edu/bot/about/Pages/policy_manual.aspx



- o https://www.cmich.edu/office_president/general_counsel/Pages/policies.aspx

While the University will generally take disciplinary action in a progressive manner, it reserves the right, in its sole discretion, to decide whether and what disciplinary action will be taken in a given situation. Steps in progressive discipline include counseling, verbal reprimand, written reprimand, suspension without pay, and termination of employment. The University reserves the right to combine or skip steps in this process based upon facts surrounding each circumstance, taking into account factors such as, but not limited to:

- severity, duration and frequency of the behavior at issue;
- consequences or possible consequences (to the University and its members) of the behavior at issue,
- past employment history
- record of prior disciplinary actions
- length of employment
- the employee's role in the act
- discipline issued in similar circumstances to similarly situated employees

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Appendix C: SUPERVISOR'S CHECKLIST

This checklist should be helpful in analyzing an employee problem and determining what disciplinary action might be appropriate. It is intended to help the supervisor remain objective in analyzing and administering progressive disciplinary action. "No" answers may indicate that more information, further analysis, or non-disciplinary action may be required. You should answer all the questions before deciding on a plan of action. Then consult your supervisor and/or Employee Relations.

I. Work Performance Problem - <i>If the employee is not adequately performing the work assigned</i>	YES	NO
1. Does the employee understand your expectations: <ul style="list-style-type: none"> • What to do? • How to do it? • Why do it? • When to do it? 		
2. Does the employee have access to and know where to find written instructions/procedures?		
3. Has the employee ever demonstrated the skill?		
4. Is it a skill the employee can be taught?		
5. Based on experience/education, is it a skill the employee should possess?		
6. Could the employee perform the skill if he/she wanted to?		
7. Is the work expected reasonable?		
8. Has the job changed?		
II. Behavior Problem - <i>If the employee's behavior is inappropriate/unacceptable</i>		
1. Does the employee understand acceptable behavior?		
2. Has the behavior been acceptable in the past?		
III. Supervisor's Responsibility - <i>The University depends on supervisors to communicate University policies and practices. Since the supervisor determines job tasks/duties, job performance expectations and departmental work rules must be communicated.</i>		
1. Has the supervisor provided adequate training?		
2. Can the employee function within the work group without using the deficient skill?		
3. Does the supervisor reinforce acceptable behavior?		
4. Has acceptable behavior been clearly communicated to the employee?		
5. Has the supervisor discussed this problem with the employee to get an explanation?		
6. Does the supervisor understand the employee's explanation?		
7. Has the supervisor conducted an objective investigation by approaching the problem from all angles?		
8. Has the supervisor questioned the people involved including those mentioned by the employee?		



9. Has the supervisor examined the physical evidence (e.g., time cards, vouchers, daily logs, equipment, location)?		
10. Does the supervisor know the basic facts (e.g., dates, times, places, people involved)?		
11. Has the supervisor separated the disputed facts from the undisputed facts?		
12. Has the supervisor considered any mitigating or aggravating circumstances which may affect the level of disciplinary action?		
13. Has the supervisor checked University and Departmental policy?		
14. Is there a past history of enforcing disciplinary action for the same/similar offense?		
15. Has the employee been employed a long time?		
16. Is the employee's work record below the rest of the work group?		
17. Did the employee know or should he/she have known the rule or policy?		
18. Is the rule that has been violated a reasonable one?		
19. Did the inappropriate performance/behavior result in cost to others?		
20. Did the inappropriate performance/behavior result in danger to other?		
21. Has the supervisor set a date to follow up with the employee?		
22. Have you determined the appropriate disciplinary action?		
23. Have you consulted Employee Relations?		
24. Above all, have you documented your investigation in writing?		
<i>Before administering disciplinary steps, take into consideration answers to the following questions.</i>		
1. Should the employee have known the supervisor's work expectations?		
2. Is the employee guilty?		
3. Has the employee been warned previously for violation of this rule?		
4. If previously warned, did the supervisor communicate the consequences if the employee did not correct the problem?		
5. Has it been less than a year since the most recent disciplinary action?		

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Appendix D: NOTICE OF DISCIPLINARY ACTION

Central Michigan University Notice of Disciplinary Action

Employee Information:			
Name:		ID#:	
Title:		PC#:	
Department:		Hire Date:	

Progressive Discipline Action Being Taken:			
<input type="checkbox"/>	Written Record of Verbal Reprimand	Effective:	
<input type="checkbox"/>	Written Reprimand	Effective:	
<input type="checkbox"/>	Suspension Without Pay	Effective:	End:
<input type="checkbox"/>	Termination	Effective:	

Disciplinary Action is being taken for the following reasons (include dates):

Performance History (include date and explanation of previous disciplines and relevant counseling):

The Following Corrective Action is Expected:

Future infraction(s) may result in further discipline up to and including discharge

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Employee Representative <i>(when required):</i>		Date:	
Employee's Signature <i>(receipt of, but not necessarily concurrence with, this notice):</i>		Date:	
Supervisor's Signature:		Date:	

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Appendix E: VERBAL REPRIMAND (EXAMPLE)

Central Michigan University Notice of Disciplinary Action

Employee Information:			
Name:	Johnny B. Goode	ID#:	12345
Title:	Instrument Technician	PC#:	678910
Department:	School of Music	Hire Date:	1/1/2020

Progressive Discipline Action Being Taken:			
<input checked="" type="checkbox"/>	Written Record of Verbal Reprimand	Effective: 1/1/2022	
<input type="checkbox"/>	Written Reprimand	Effective:	
<input type="checkbox"/>	Suspension Without Pay	Effective:	End:
<input type="checkbox"/>	Termination	Effective:	

Disciplinary Action is being taken for the following reasons (include dates):
 After informing Mr. Goode on several occasions, both verbally and in written follow up, that classrooms for each section of Rock & Roll 101 were to be outfitted with Fender Stratocaster rather than Gibson Les Paul guitars: Mr. Goode continued to outfit pertinent classrooms with Gibson Les Paul guitars.

Performance History (include date and explanation of previous disciplines and relevant counseling):
 Mr. Goode has no previous disciplinary record.

The Following Corrective Action is Expected:
 Mr. Goode is expected to outfit assigned music classrooms with the appropriate musical instruments as directed. Mr. Goode must also clarify any questions regarding appropriate instruments with his supervisor prior to each scheduled class. Future instances where Mr. Goode fails to outfit classrooms with proper instruments may result in further, and potentially more serious disciplinary action, up to termination.

Future infraction(s) may result in further discipline up to and including discharge

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Employee Representative <i>(when required):</i>	<i>Peggy Sue</i>	Date:	1/1/2022
Employee's Signature <i>(receipt of, but not necessarily concurrence with, this notice):</i>	Johnny B. Goode	Date:	1/1/2022
Supervisor's Signature:	<i>Jimi Hendrix</i>	Date:	1/1/2022

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Appendix F: Verbal Reprimand Memo (Example)

Verbal Reprimand - Optional memo which may be attached to disciplinary record.

DATE: January 1, 2022
TO: Johnny B. Goode, Instrument Technician
FROM: Jimi Hendrix, Director of Rock & Roll
RE: Verbal Reprimand – Johnny B. Goode for poor work performance

On multiple occasions, I directed you to outfit each classroom in which Rock & Roll 101 is scheduled with Fender Stratocaster guitars. I followed up each of these conversations with email documentation reiterating my expectations and invited you to ask any questions if you were unclear on my instructions. Despite my consistent communication, you outfitted Rock & Roll 101 classrooms with Les Paul guitars rather than the specified Fender Stratocaster guitars.

Following each instance of your failure to outfit Rock & Roll 101 classrooms with the appropriate musical equipment, I stressed to you the importance of outfitting classrooms with the required musical instruments. On December 25, 2021, you again failed to outfit Rock & Roll 101 with appropriate guitars. As such, this letter and the attached form shall serve as written documentation that you have received a verbal reprimand for failure to meet performance expectations in your role as Instrument Technician for the School of Music.

I regret this action is necessary, but you have not made the required improvement in outfitting classrooms with appropriate musical instruments as required. Further instances of improper classroom outfitting may result in further, and more serious disciplinary action, up to termination.

Sincerely,
Jimi Hendrix, Ph.D.
Director, Rock & Roll

CC:
• Personnel File
• Employee Relations
• Union Representative



Appendix G: WRITTEN REPRIMAND (EXAMPLE)

Central Michigan University Notice of Disciplinary Action			
Employee Information:			
Name:	Johnny B. Goode	ID#:	12345
Title:	Instrument Technician	PC#:	678910
Department:	School of Music	Hire Date:	1/1/2020
Progressive Discipline Action Being Taken:			
<input type="checkbox"/>	Written Record of Verbal Reprimand	Effective:	
<input checked="" type="checkbox"/>	Written Reprimand	Effective:	3/1/2022
<input type="checkbox"/>	Suspension Without Pay	Effective:	End:
<input type="checkbox"/>	Termination	Effective:	
Disciplinary Action is being taken for the following reasons (include dates):			
<p>On February 14, 2022, Mr. Goode again failed to outfit an assigned Rock & Roll 101 classroom with the appropriate Fender Stratocaster guitars. When I called Mr. Goode to the classroom to replace the Les Paul guitars with the appropriate Fender Stratocasters, Mr. Goode angrily shouted to me and the students in Rock & Roll 101 that "Fenders suck and anyone that would play one instead of a Les Paul wouldn't know music if it crowd surfed over their head!" Mr. Goode followed his angry outburst by playing a 5-minute solo on one of the Les Paul guitars despite my direction that he stop his unprofessional behavior and secure the appropriate guitars.</p>			
Performance History (include date and explanation of previous disciplines and relevant counseling):			
<p>Mr. Goode received a verbal reprimand for failing to meet work expectations on 1/1/2022.</p>			
The Following Corrective Action is Expected:			
<p>Mr. Goode is expected to outfit assigned music classrooms with the appropriate musical instruments as directed. Mr. Goode must also apologize to students enrolled in Rock & Roll 101 for his outburst. Future instances where Mr. Goode fails to outfit classrooms with proper instruments or fails to maintain appropriate levels of professionalism may result in further, and potentially more serious disciplinary action, up to termination.</p>			
Future infraction(s) may result in further discipline up to and including discharge			

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Employee Representative <i>(when required):</i>	<i>Peggy Sue</i>	Date:	3/1/2022
Employee's Signature <i>(receipt of, but not necessarily concurrence with, this notice):</i>	Johnny B. Goode	Date:	3/1/2022
Supervisor's Signature:	<i>Jimi Hendrix</i>	Date:	3/1/2022

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Appendix H: Written Reprimand Memo (Example)

Written Reprimand - Optional memo which may be attached to disciplinary record.

DATE: March 1, 2022

TO: Johnny B. Goode, Instrument Technician

FROM: Jimi Hendrix, Director of Rock & Roll

RE: Written Reprimand – Johnny B. Goode for poor work performance and failure to maintain professionalism

On multiple occasions, I directed you to outfit each classroom in which Rock & Roll 101 is scheduled with Fender Stratocaster guitars. I followed up each of these conversations with email documentation reiterating my expectations and invited you to ask any questions if you were unclear on my instructions. Despite my consistent communication, you outfitted Rock & Roll 101 classrooms with Les Paul guitars rather than the specified Fender Stratocaster guitars. On January 1, 2022, you were issued a verbal reprimand following repeated instances where you failed to provide the appropriate guitars for Rock & Roll 101.

On February 14, 2022, you again failed to outfit an assigned Rock & Roll 101 classroom with the appropriate Fender Stratocaster guitars. When I called you to the classroom to replace the Les Paul guitars with the appropriate Fender Stratocasters; you angrily shouted to me and the students in Rock & Roll 101 that “Fenders suck and anyone that would play one instead of a Les Paul wouldn’t know music if it crowd surfed over their head!” You followed your angry outburst by playing a 5-minute solo on one of the Les Paul guitars despite my direction that you stop such unprofessional behavior.

I regret this action is necessary, but you have continued inappropriate outfitting of Rock & Roll 101 classrooms and failed to maintain appropriate levels of professionalism in your interaction with me and Rock & Roll 101 students. Further failure to meet my expectations or maintain appropriate levels of professionalism may result in further, and more serious disciplinary action, up to termination.

Sincerely,
Jimi Hendrix, Ph.D.
Director, Rock & Roll

CC:

- Personnel File
- Employee Relations
- Union Representative



Appendix I: SUSPENSION WITHOUT PAY (EXAMPLE)

Central Michigan University Notice of Disciplinary Action			
Employee Information:			
Name:	Johnny B. Goode	ID#:	12345
Title:	Instrument Technician	PC#:	678910
Department:	School of Music	Hire Date:	1/1/2020
Progressive Discipline Action Being Taken:			
<input type="checkbox"/>	Written Record of Verbal Reprimand	Effective:	
<input type="checkbox"/>	Written Reprimand	Effective:	
<input checked="" type="checkbox"/>	Suspension Without Pay	Effective: 5/1/2022	End: 5/4/2022
<input type="checkbox"/>	Termination	Effective:	
Disciplinary Action is being taken for the following reasons (include dates):			
Following issuance of a written reprimand on March 1, 2022; the School of Music observed multiple instances of Fender Stratocaster guitars being sabotaged including having their strings removed, fishing line being used in place of guitar strings, and having stickers reading "I suck at guitar" placed on each instrument. After investigating the instances of sabotage, CMU discovered that Mr. Goode was the perpetrator of the misconduct. Mr. Goode offered no valid explanation of his actions other than "I stand by my opinion that Fenders are terrible, and you are an idiot if you use them."			
Performance History (include date and explanation of previous disciplines and relevant counseling):			
Mr. Goode received a verbal reprimand for failing to meet work expectations on 1/1/2022. Mr. Good received a written reprimand for failing to meet work expectations and failing to maintain appropriate levels of professionalism on 3/1/2022.			
The Following Corrective Action is Expected:			
As a result of Mr. Goode's continual failure to follow my directions, meet my expectations, and maintain appropriate levels of professionalism, including increasingly more severe instances of misconduct of a similar nature; I am suspending Mr. Goode without pay for a period of 3 days. Future instances of misconduct may result in a longer period of unpaid suspension or termination of employment.			
Future infraction(s) may result in further discipline up to and including discharge			



Employee Representative <i>(when required):</i>	<i>Peggy Sue</i>	Date:	5/1/2022
Employee's Signature <i>(receipt of, but not necessarily concurrence with, this notice):</i>	Johnny B. Goode	Date:	5/1/2022
Supervisor's Signature:	<i>Jimi Hendrix</i>	Date:	5/1/2022

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Appendix J: Suspension Without Pay Memo (Example)

Suspension Without Pay - Optional memo which may be attached to disciplinary record.

DATE: May 1, 2022

TO: Johnny B. Goode, Instrument Technician

FROM: Jimi Hendrix, Director of Rock & Roll

RE: Unpaid Suspension (3 days) – Johnny B. Goode for poor work performance, failure to maintain professionalism, and deliberate sabotage of School of Music equipment.

On multiple occasions, I directed you to outfit each classroom in which Rock & Roll 101 is scheduled with Fender Stratocaster guitars. Despite my consistent communication, you outfitted Rock & Roll 101 classrooms with Les Paul guitars rather than the specified Fender Stratocaster guitars. On January 1, 2022, you were issued a verbal reprimand following repeated instances where you failed to provide the appropriate guitars for Rock & Roll 101.

On February 14, 2022, you again failed to outfit an assigned Rock & Roll 101 classroom with the appropriate Fender Stratocaster guitars, which ultimately led to you having an unprofessional outburst in front of Rock & Roll 101 students. As a result, you were issued a written reprimand on March 1, 2022.

After conducting a thorough investigation, CMU determined that you engaged in a pattern of behavior in which you sabotaged School of Music equipment to deliberately undermine the instruction of Rock & Roll 101. As a result of your continued and escalating misconduct, I am suspending you without pay effective May 1, 2022. You will return to your regular work assignment on May 4, 2022. Future instances of misconduct may result in a longer period of unpaid suspension or termination of your employment.

Sincerely,
Jimi Hendrix, Ph.D.
Director, Rock & Roll

CC:

- Personnel File
- Employee Relations
- Union Representative



Appendix K: TERMINATION (EXAMPLE)

Central Michigan University Notice of Disciplinary Action			
Employee Information:			
Name:	Johnny B. Goode	ID#:	12345
Title:	Instrument Technician	PC#:	678910
Department:	School of Music	Hire Date:	1/1/2020
Progressive Discipline Action Being Taken:			
<input type="checkbox"/>	Written Record of Verbal Reprimand	Effective:	
<input type="checkbox"/>	Written Reprimand	Effective:	
<input type="checkbox"/>	Suspension Without Pay	Effective:	End:
<input checked="" type="checkbox"/>	Termination	Effective: 6/15/2022	
Disciplinary Action is being taken for the following reasons (include dates):			
<p>On May 4, 2022, after Mr. Goode returned from unpaid suspension; he positioned several Marshall amplifiers in an adjoining classroom to a section of Rock & Roll 101. After directing these amplifiers at the Rock & Roll 101 classroom and turning them up to 11; Mr. Goode proceeded to Led Zepplin’s “Whole Lotta Love,” including an improvised 10-minute guitar solo. After Mr. Goode was confronted by the Rock & Roll 101 instructor, Mr. Goode screamed at the instructor and the students in Rock & Roll 101. Mr. Goode then grabbed one of the student’s assigned Fender Stratocasters and threw it into the trash can before making an obscene gesture and storming out of the classroom.</p>			
Performance History (include date and explanation of previous disciplines and relevant counseling):			
<p>Mr. Goode was previously disciplined for similar misconduct to the present instance on the following occasions:</p> <p>1/1/2022 - Verbal Reprimand 3/1/2022 – Written Reprimand 5/1/2022 – 3-Day Unpaid Suspension</p>			
The Following Corrective Action is Expected:			
<p>As a result of Mr. Goode’s continuing and escalating misconduct, his employment is terminated effective June 15, 2022.</p>			
Future infraction(s) may result in further discipline up to and including discharge			

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Employee Representative <i>(when required):</i>	<i>Peggy Sue</i>	Date:	6/15/2022
Employee's Signature <i>(receipt of, but not necessarily concurrence with, this notice):</i>	Johnny B. Goode	Date:	6/15/2022
Supervisor's Signature:	<i>Jimi Hendrix</i>	Date:	3/1/2022

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Appendix L: Termination Letter (Example)

June 15, 2022

Johnny B. Goode, Instrument Technician
1234 Abbey Rd.
London, UK 56789

RE: Termination of Employment

You were hired as Instrument Technician for the School of Music on January 1, 2020. Throughout the end of 2021 through June of 2022, you engaged in a repeated and escalating pattern of misconduct. Your behavior resulted in a verbal reprimand, written reprimand, and 3-day unpaid suspension. However, you continued to engage in misconduct.

CMU provided you Notice of Investigation on May 7, 2022, in relation to potential misconduct on May 4, 2022. After a thorough investigation including review of video footage, multiple witness interviews, and discussion with you, CMU has determined you engaged in serious misconduct. As a result, CMU is terminating your employment effective June 15, 2022.

Your participation in CMU benefits programs, including health care programs, will end June 15, 2022, at midnight. You may be eligible through COBRA to continue participation in the various CMU group health care insurance programs in which you are currently enrolled. The Benefits and Wellness Office will mail a letter to your home address with details of your rights and obligations under COBRA and will include appropriate enrollment materials. On your June 17, 2022, pay date, you will be paid through June 15, 2022, plus any unused Paid Personal Leave and up to 160 hours of accrued but unused vacation.

Based on this employment action, you may or may not be eligible for unemployment benefits through the State of Michigan. It is your choice to file or not file an unemployment claim. The decision about eligibility for unemployment benefits is made by the Michigan Unemployment Insurance Agency, not by Central Michigan University. Information about the process is available on the Michigan Unemployment Insurance Agency website (<http://www.mi.gov/uia>). I wish you well in your future endeavors.

Sincerely,
Jimi Hendrix, Ph.D.
Director, Rock & Roll

CC:

- Personnel File
- Employee Relations
- Union Representative



Appendix M: Suspension Pending Investigation Memo (Example)

Suspension Pending Investigation Memo

DATE: May 7, 2022
TO: Johnny B. Goode, Instrument Technician
FROM: Jimi Hendrix, Director of Rock & Roll
RE: Notice of Paid Suspension Pending Investigation.

Attached, you will find a Notice of Investigation informing you that CMU is opening an investigation relating to your behavior in the workplace on or about May 4, 2022. Due to the nature of your potential misconduct and the need to preserve the integrity of the workplace, learning environment, and investigation process, you are being placed on paid suspension pending investigation effective May 7, 2022.

You are directed to remain away from the workplace during this time, except for purposes of meetings with your union representatives or with CMU officials for purposes of this investigation. You are directed to maintain availability for attendance at investigation meetings during the time periods during which you would ordinarily be working.

Please be advised that Central Michigan University has not decided the truth of the alleged misconduct. The pending investigation will enable CMU to determine the relevant facts and conclude whether any purported actions constitute misconduct for which discipline may be warranted. Your full participation in this investigation is an important part of the University's process of determining the facts and making reasonable conclusions.

A member of Human Resources will assist with the investigation. If you have any questions about this notice, please address those questions to me or David Bowie, Director of Employee & Labor Relations.

Sincerely,
Jimi Hendrix, Ph.D.
Director, Rock & Roll

CC:

- Personnel File
- Employee Relations
- Union Representative



Appendix N: Disciplinary Investigation Checklist

Conducting the Investigation

Immediate Actions:

- ___ Secure any evidence in danger of being lost or erased.
- ___ Take actions to suspend employee if appropriate.

Preparing for the Investigation:

- ___ Plan investigation to determine what took place, when the event occurred, where the event took place, how the event occurred, who saw or heard the event and who was told about it, and why the event occurred.

Interviewing Witnesses:

Preparation:

- ___ Arrange a site for interview with privacy and minimum distractions.
- ___ Visit work site and sketch out if necessary.
- ___ Sketch out your plan for the interview.

Conducting the Interview:

Non-suspects:

- ___ Establish rapport; make the interviewee feel at ease.
- ___ Explain general nature of incident to the interviewee.
- ___ Explain your note-taking.
- ___ Use open-ended questions regarding incident to begin the interview.
- ___ Use direct, probing question for follow-up
- ___ Check the ability of the witness to accurately see or hear what happened. How far were they from the incident? How much could they hear?
- ___ Take notes about important points during the interview.
- ___ Get the facts from the interviewee; avoid opinions.
- ___ Close the interview on a positive note.

Suspects:

- ___ Establish rapport try to the make the interviewee feel at ease.
- ___ Explain your note-taking.
- ___ Begin interview with open-ended questions and use direct, probing questions to follow up on responses.
- ___ Explore knowledge and understanding of the rules with the employee.
- ___ Check to determine whether mitigating or aggravating circumstances exist.
- ___ Attempt to determine why the incident took place.
- ___ Take notes about important points.
- ___ Close the interview on a positive note and explain what will happen next.

HUMAN RESOURCES – EMPLOYEE RELATIONS

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Citizen or customer witnesses:

- ___ Obtain statements from any citizens or customer witnesses.
- ___ Explore willingness to testify in arbitration if necessary.
- ___ Consider any special problems with witness competence to testify, availability, etc.

Interview Checklist (All Interviews):

- ___ Is the interview complete? Has the interviewee told everything he/she knows? Are there gaps in his/her knowledge that must be filled in from other sources?
- ___ Is the witness sincere? Does he/she appear to believe what you were told?
- ___ Does the witness statement appear to you to be true? You can never be sure of this, but each succeeding interview should help you decide.
- ___ Will the statements of the witness stand up in front of an arbitrator?

Interview Report/Statements:

- ___ Obtain signed statements, if appropriate, as quickly as possible after the interview.
- ___ Arrange your report or statement in a logical order but with as much of the wording and style of the witness or suspect as possible.
- ___ If the witness is signing the statement, have him/her read the statement and make any corrections in ink. You and the witness should then initial the corrections. The top and bottom of each page should then be initialed by the witness and he/she should sign at the end of the statement.

Statement Contents:

- ___ Date and place where the statement was taken.
- ___ Full name, work location (or name and address if non-employee) of person interviewed.
- ___ Full name and official capacity of the person conducting the interview.

Securing Physical Evidence:

- ___ Limit the number of individuals handling physical evidence.
- ___ Check the condition of the evidence each time it is handled.

When evidence leaves your possession:

- ___ Record name of person taking evidence along with date and time.
- ___ Have each person handling evidence sign for it.
- ___ When the evidence is returned, inspect it to ensure that it is the same, and in the same condition, as when it left.

Evaluating Evidence

Evaluating "Facts":

- ___ Is there a strong likelihood that the "fact" is what it is said to be?
- ___ Is the "fact" a product of first-hand knowledge?



- _____ Do all witnesses to the "fact" report the same thing?
- _____ Are all parts of the statements by the witness consistent with each other?

Witness Credibility - Assess the Following for Impact Upon Credibility:

- _____ Demeanor.
- _____ Bias or interest on the part of the witness.
- _____ Competence to testify.
- _____ Clarity of memory.
- _____ Consistency of facts.
- _____ Support of facts by other evidence.
- _____ Accuracy of perceptions.

The Investigation Report or Summary

Assess Your Report Against the Following:

- _____ The report contains an outline of facts and pertinent information.
- _____ The format of the report is narrative.
- _____ The tone of the report is neutral and opinions are avoided.
- _____ The report is limited to the issue under investigation.
- _____ The report was prepared promptly after the completion of the investigation.

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Appendix O: SUPERVISORS GUIDE TO COMMON DISCIPLINARY ISSUES

SUPERVISORS GUIDE TO COMMON DISCIPLINARY ISSUES

Poor Performance

Where an employee is to be disciplined or discharged for poor performance, arbitrators will usually support management's action if:

1. The employee received adequate training;
2. The employee received adequate supervision and has suitable equipment;
3. The employee's performance was judged against reasonable job standards;
4. The employee was made aware of these standards;
5. The employee was warned of his or her sub-standard performance before more serious disciplinary action was administered;
6. If management discharges or demotes, the employee was warned specifically that such actions would result unless performance improves; and
7. Other employees with the same or similar work records were treated in the same manner.

These are the operational questions that managers should ask themselves if corrective action for poor performance is contemplated. Furthermore, they are the proactive steps that managers should take to prevent the need for disciplinary actions.

Conduct Away From the Job

Arbitrators usually find no basis to justify a discipline for misconduct away from the place of work unless:

1. The behavior harms the organization's reputation;
2. The behavior renders the employee unable to perform his or her duties or appear at work, in which case the discipline would be based upon inefficiency or excessive absenteeism; or
3. The behavior leads to refusal, reluctance, or inability of other employees to work with the employee. The effect of the employee's outside activity on the employer's organization must be reasonably discernible; mere speculation as to adverse effect upon the organization will not suffice.

Insubordination

1. Insubordination includes: · Refusal of a direct order · Intentional act of disrespect
2. The normal procedure for an employee to follow when he or she questions a supervisor's directive is to carry out the order, then file a grievance.
3. An employee may legitimately refuse to carry out an order if he or she reasonably believes the order would require the employee to engage in illegal or immoral behavior.
4. If an employee contends that the carrying out of an order would be dangerous or unsafe, the supervisor must investigate the allegation. If the supervisor determines that the operation can be conducted safely, the employee must comply with the order.



5. If insubordination arises, you must deal with it immediately: · Repeat the order clearly, using the word "order" · Get another supervisor as a witness · Repeat the order · Warn of the consequences of non-compliance · Contact the Employee Relations office.

Attendance and Punctuality

1. **Excessive Absences** - The right to terminate employees for excessive absences, even where they are due to illness, is generally recognized by arbitrators. Arbitrator Edwin R. Teple explained: "At some point the employer must be able to terminate the services of an employee who is unable to work more than part-time, for whatever reason. Efficiency and the ability to compete can hardly be maintained if employees cannot be depended upon to report to work with reasonable regularity. Other arbitrators have so found . . . and upheld terminations in several appropriate cases involving frequent and extended absences due to illness."

However, an examination of the cases provides no clear standards as to what constitutes "excessiveness".

Additional factors that a manager should consider include:

- Intermittent nature of absences as opposed to extended absence (long-term illnesses should be looked at on a case-by-case basis with real consideration being given);
 - Some consideration to seniority in the case of long-service employees; and
 - An opportunity for good attendance to improve an employee's record.
2. **Failure to Call In.** - Arbitrators consistently uphold management's actions in disciplinary actions involving an employee who fails to follow an organization's policy regarding notification to the employer when absences will be necessary. Nevertheless, as always, before disciplinary action is taken an investigation must take place in which the employee receives an opportunity to provide his or her explanation as well as any mitigating circumstances.
 3. **Misuse of Contractually Provided Time Off.** Should an employee intentionally use inappropriately contractually justified absences (e.g., by claiming jury duty when one was not called), disciplinary action would be warranted and normally supported.
 4. **Tardiness.** One of the most troublesome disciplinary areas for employers is tardiness. It is an infraction perceived as minor in some cases (e.g., payroll clerk) and major in others (e.g., corrections officer). It is often, therefore, inconsistently enforced. Arbitrators recognize the reasonableness of an employer exception that its workers will report for work on time. As always, clear communication, consistent enforcement, thorough investigation, and penalties consistent with the offense and the past disciplinary record of the employee are critical.



5. Steps for Handling Attendance and Punctuality Problems

Maintain an attendance record for each employee and record each occurrence of absence or tardiness.

Discuss with the employee after each absence or tardiness:

- If good attender, give positive feedback about good attendance and express concern about absence or tardiness
- If poor attender, discuss the importance of good attendance and your concern with his or her poor attendance record
- In either case, find out the reason for the absence or tardiness and make note of it

If a problem arises:

Conduct Investigation

If counseling is warranted, proceed with formal or informal counseling as appropriate.

If discipline is warranted, proceed with notice of a disciplinary conference; impose penalty if appropriate.

In either case, if your organization provides for the services of an employee assistance program (EAP), make sure that the employee is aware of the services available.