

Chapter 18 Discipline, Including Dismissal

18.01 Corrective Progressive Discipline

Policy

It is expected that managers and supervisors will use multiple strategies to establish a climate in which employees willingly follow established policies and procedures. Such strategies may include clear communication, feedback and leading by example. When such actions are not successful, additional strategies may be necessary. One such strategy is corrective progressive discipline. Corrective discipline principles, described below, apply to all permanent classified employees.

Definition

Progressive discipline is a formal process to give employees opportunities to correct unacceptable behavior that violates the University of Wisconsin Classified Employees Work Rules (see [Appendix 18-A](#)). Progressive discipline is the application of increasingly serious consequences for repeated failure to change behavior that violates one of the work rules.

Classified employees may be disciplined for violation of Work Rules for Classified Employees if there is just cause (see section titled **Just Cause Checklist**). Contact your employing unit personnel representative to find out who is authorized in your work unit to conduct investigations, pre-disciplinary meetings and make the final decision to discipline. The rest of this section describes the steps of the procedure.

Investigation

When the employer becomes aware that a work rule or policy/procedure related to a work rule may have been violated, it is necessary to gather information. Pertinent written information, such as applicable policies, records and/or written communications, should be collected. Who was involved, when, where, and any extenuating circumstances, as well as any witnesses, should be identified. It may be necessary to conduct investigatory meetings with witnesses and the employee(s) who allegedly violated the rules to obtain information.

Classified employees may have a representative of their own choosing present at an investigatory meeting. If the representative is a campus employee, they may attend the investigatory meeting without loss of pay if the meeting occurs during the representative's normally scheduled work hours. The representative must follow leave scheduling protocol for the scheduling of absences for this purpose. Investigatory meetings will be scheduled to accommodate the attendance of the personal representative, however, this will not involve the unreasonable delay of the meeting. Prior to the meeting, campus employees will be provided with a reasonable amount of time to meet with the representative in order to prepare for the meeting.

Notes should be taken by management to record the information learned at any interviews and kept with other factual records that are being considered while management decides whether or not a work rule infraction occurred. It is recommended that any witnesses date and sign any pertinent statements attesting that the written information accurately reflects the information they have provided.

If, after review of the record which resulted from the investigation, it is tentatively determined that there is just cause for discipline (see section titled **Just Cause Checklist**), a pre-disciplinary meeting is scheduled to give the employee an opportunity to respond (refer to [Appendix 18-B](#) for sample pre-disciplinary meeting letter). Classified employees may have a representative of their own choosing present at the pre-disciplinary meeting. If the representative is a campus employee, they may attend the pre-disciplinary meeting without loss of pay if the meeting occurs during the representative's normally scheduled work hours. The representative must follow leave scheduling protocol for the scheduling of absences for this purpose. Pre-disciplinary meetings will be scheduled to accommodate the attendance of the personal representative, however, this will not involve the unreasonable delay of the meeting. Prior to the meeting, campus employees will be provided with a reasonable amount of time to meet with the representative in order to prepare for the meeting.

Typically, at the pre-disciplinary meeting, management gives a verbal summary of the reasons management has tentatively decided to take disciplinary action. The employee and representative may then present additional information, refute the facts, explain mitigating circumstances, etc. Further investigation may be necessary before a final decision is made if new information is obtained. If no new information is obtained, management proceeds to self-check to see if there is just cause for the discipline. If the answer is yes, a letter of discipline is issued (see section D. below and [Appendix 18-C](#)).

Prior to using these steps the employee must have received notice of possible consequences for improper conduct. This could be accomplished verbally, in writing or by receiving a copy of the Classified Employee work rules.

Non-exempt Employees - Typically the progression is: written reprimand, progressively increasing suspensions without pay (one-day, three-day, five-day), discharge.

FLSA exempt employees - Due to a court ruling, employees who are subject to disciplinary suspensions without pay for periods of less than a full workweek (that is, five work days) must be considered to be "non-exempt" employees under the Fair Labor Standards Act (FLSA) and therefore must be paid premium pay (time and one-half) for overtime hours worked. Because of this ruling, classified employees who are "exempt" should not be docked pay for less than five days. Five-day suspensions must be in consecutive five-day blocks and must coincide with the employee's work week. If a one- or three-day suspension is merited, the letter should state something similar to: "Although we believe your conduct would merit a [one- or three-day] suspension without pay, this [second or third] letter of reprimand is being issued instead of a [one- or three-day] suspension in order to maintain the FLSA exempt status of your position. However, you are advised that any future violations of the work rules may result in a full work-week suspension without pay or other discipline up to and including discharge."

After the decision is made to take disciplinary action, the employee must be notified in writing. The letter of discipline must include the following: The type of action to be taken (e.g. *This is a letter of reprimand* or *This is a letter of suspension.*) and, if a suspension is identified, state the date(s) the employee is suspended and the date s/he is expected to return to work.

Just Cause Checklist

Just cause is a standard of fairness which is established when the employer can answer "yes" to all of the following questions. These are the standards against which the disciplinary action will be measured upon appeal. A "no" to any one question will likely result in the action being overturned upon appeal.

1. Did the employer give the employee warning about the possible discipline?

The employee must have been forewarned that the particular behavior would result in discipline. This may have occurred verbally, or by means of a policy which stated the consequences of noncompliance or the Work Rules for Classified Employees.

2. Was the employer's order or rule related to the safe and efficient operation of the work unit or institution?

The broken rule or disobeyed directive must be reasonably related to the University's mission or business.

3. Did an investigation take place to find out if the employee actually violated the order or rule, and if so, the reasons for it?

Refer to **Investigation** above.

4. Was the employer's investigation fair and objective?

The employer should interview all witnesses and consider all available information not just information that supports the discipline. In case of conflicting accounts, the employer may have to make credibility determinations.

5. Was substantial evidence present to establish that a violation took place?

The evidence cannot be mere rumor or unsupported accusations.

6. Did the employer apply its rules equally?

If it appears that other similarly situated employees have been treated differently, the employer must be able to provide reasonable explanations for what appears to be unequal treatment.

7. Was the penalty reasonable?

The degree of discipline must be related to the seriousness of the offense and to the employee's record of progressive discipline. Typically, the employer's failure to take corrective discipline earlier will not be viewed by an arbitrator as justification for skipping a disciplinary step and taking more severe discipline.

Grievances /Appeals

Contact your personnel representative to find out who is authorized to conduct grievance meetings.

Employees may file grievances through the grievance process outlined in Classified Personnel Policies and Procedures Chapter 17 (reference Wisconsin Administrative Code ER 46 and HR Handbook Chapter 430). This is a four-step process. The first step is in the employing unit. The second step is Classified Human Resources. The third step is at the Office of State Employment Relations. The final step is at the Wisconsin Employment Relations Commission.

Common Errors

Some common reasons for losing on appeal are as follows:

- Lack of documented evidence of misconduct.
- Failure to be specific in describing reasons for the disciplinary action.
 - Sometimes in an attempt to make the discipline more palatable, an employer will gloss over the specific reasons or indicate only a portion or a representative sample of misconduct or unsatisfactory performance.
- Failure to indicate supporting facts to substantiate the action.
 - If the disciplinary action results from a culmination of a number of incidents and attempts have been made to counsel the employee, or if the employee has been disciplined previously for similar behavior and this action results from the employee's failure to improve, say so in the disciplinary letter. Unless supporting evidence is mentioned in the letter, it may not be admitted at a hearing later.

Because disciplinary actions are extremely important, we request that you initially contact your personnel manager or Classified Human Resources for assistance when you anticipate taking disciplinary action.