

Supervisor's Guide to  
Corrective Discipline  
Including Attendance Expectations

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Human Resource Management

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## TO CORRECTIVE DISCIPLINE AND ATTENDANCE EXPECTATIONS

### INTRODUCTION

Problems requiring corrective supervisory intervention and disciplinary action are expected during the course of a supervisor's and manager's career. When this does occur, the supervisor or manager needs to address the problems promptly and effectively to ensure proper performance and conduct of all supervisees and to avoid the inevitable morale problems that ensue among the staff when problems are ignored. Handled constructively, supervisory interventions are often extremely effective in avoiding the need for discipline and will lead to a healthier work environment for all. Mishandled or ignored, the effect is cumulative until the supervisory role is entirely undermined and all staff in the unit is negatively impacted. The purpose of this guide is to provide information on the appropriate implementation of supervisory interventions and corrective discipline. Given that attendance concerns are the most common issue requiring correction, information on attendance monitoring and excessive absenteeism is also included in this guide.

### I. PRINCIPLES OF DISCIPLINE

#### A. Corrective Discipline

The underlying principle of all discipline of employees is correction, as opposed to punishment. Discipline should be administered in such a way as to assist the employee in correcting the behaviors that cause the problem and to help him/her continue with proper performance as a DCF employee.

Reprimands, the lowest level and most common form of discipline, are used primarily to inform an employee that a problem exists and to set out what needs to be done to correct it. This may either cite a one-time incident, or follow a series of supervisory interventions including counseling, formal counseling and/or memorandums of expectation dealing with an ongoing problem. Suspensions are used for a more serious or recurring problems when it is determined that the seriousness of the matter requires this level of discipline.

Termination of employment should be viewed as a last resort, when the good of the state requires it; when lesser degrees of discipline have been imposed but have not yielded significant improvement or the incident leading to the disciplinary action has irreparably damaged the employee/employer relationship. In some cases when the issue requires serious intervention a disciplinary demotion may be an alternative to termination of employment.

#### B. Progressive Discipline

When a problem persists despite supervisory interventions, as noted above, the proper course is to begin the disciplinary process in hopes of bringing about a correction. An offense that by itself would justify no more than a written reprimand may call for suspension or even termination of employment if the employee has a history of similar offenses and has not responded to lesser discipline.

A discipline letter should list previous similar offenses and any discipline that resulted in order to demonstrate to the employee the progressive nature of the discipline.

In order for discipline to be effective and appropriate, supervisors must intervene as soon as an employee begins displaying poor performance or improper conduct. Bringing concerns to the employee's attention through supervisory sessions, providing information on how an employee can and must improve on those issues, documenting corrective counselings and efforts to assist the employee to improve performance or conduct are critical in managing employee performance and laying a foundation for any necessary disciplinary actions in the future should performance not improve. For example, if an employee is terminated for excessive absenteeism, and that action is challenged through grievance or in other forums, successful defense of the termination will depend upon the ability to show through written documentation that the employee was advised of the problem, told of the need to improve, given oral and written directions through counselings and/or memorandums of expectation, provided information on the Employee's Assistance Program and/or placed on medical certificate requirement, and still failed to improve.

Section II and Section III of this Guide discuss expected supervisory interventions when an employee begins to display poor performance or improper conduct in an effort to correct a problem without the need to resort to the disciplinary process.

There are many variables to consider when determining whether the issues being addressed are appropriate for supervisory intervention or if they should be referred to Human Resources for consideration of discipline. Supervisors should always consult with their Human Resource Office when employee performance or conduct is of concern to determine a plan of action that will address the concerns at the lowest appropriate level and correct the problem without discipline whenever possible.

## **II. TYPES OF ACTION PRIOR TO FORMAL DISCIPLINE**

The goal of good supervision is effective development of each employee's potential to succeed in his or her job. Engaging in supervisory interventions followed by progressive discipline when required is consistent with this goal. The types of actions used to address employee performance and conduct are described in the following pages and are listed in order of severity.

*Note: Supervisory interventions as noted below are not discipline and do not require union representation. Although under some conditions the supervisor may agree to the presence of a union representative during these meetings, the general premise is that these are informal, routine supervisor/supervisee interactions. If the supervisee insists upon having a union representative present, the supervisor should consult with his/her Human Resource office to discuss the situation. Should it be decided that union representation will be allowed, the supervisor should have a manager or Human Resource representative present as well. This pushes supervisory interactions to a level that is not generally productive or appropriate, however, there are situations where given specific circumstances surrounding the employee or the supervisory relationship where it may be acceptable. It should be done only after careful consideration of the ramifications of involving the union and/or human resources in routine supervision and only under extremely rare circumstances.*

### **A. Supervisory Intervention-Counseling**

The main purpose of counseling is to inform the employee of the concerns, discuss steps needed to be taken by the employee to address those concerns and to provide support and guidance to the employee to correct his/her performance or conduct without the need for further supervisory

interventions or discipline. Frequently, a problem, when recognized early, can be solved by this means. Privacy and sufficient time are essential. After talking with the employee, the supervisor should document the counseling in a supervisory note detailing the issue that lead to the need for counseling, the employee's response and the plan that was developed to ensure future improvement. A copy of this note or a summary of the counseling should be provided to the employee for the sole purpose of ensuring that the supervisor and the employee both have the same understanding of the issue and the means by which to improve. If the employee has questions about the issue or the resolution as documented by the supervisor, additional discussion should occur to ensure that both parties have the same understanding of what has led to the issue being raised and the means by which improvement can be obtained. The employee should then be given sufficient time to improve his/her performance. During this time, the supervisor should continue to monitor the area of concern to track improvement. Should the Issue continue a follow up session should be held with the employee to discuss what is impeding the necessary improvement and to make adjustments to the correction plan if appropriate. If the situation is improving the supervisor should document the improvement and meet with the employee to inform him/her that improvement has been noted, that it is anticipated the issue will not recur and to encourage the employee to sustain improved performance or conduct. The supervisor should always remind the employee that should the situation begin to become problematic in the future that the employee should identify that to the supervisor and seek his/her assistance in developing a plan to avoid it becoming an issue.

#### B. Memorandum of Expectation

If following counseling an employee's performance or conduct does not show significant and sustained improvement it is generally appropriate to issue a memorandum of expectation. The memorandum of expectation lists the issues with as much specificity as possible, points out the areas of concern and gives specific instruction on what the employee must do to correct these concerns, much as a work plan does. It references previous attempts to work with the employee to correct the issue and gives time frames for follow up. Following the issuance of a memorandum of expectation *it is critical that the supervisor monitor the issues of concern and immediately address any failures to comply with the requirements set forth in the memorandum.* Supervisors should always work with their Human Resource Office in the preparation of the Memorandum of Expectation.

*NOTE: Not all issues require a Memorandum of Expectation prior to progressing to a Formal Counseling. This is an issue you should discuss with your HR representative.*

#### C. Supervisory Intervention- Formal Counseling

Formal Counseling is used when counseling and a Memo of Expectation (when issued) has failed to solve the problem. If after a reasonable time following counseling or upon failure to meet timelines set forth in a Memorandum of Expectation the employee has failed to show significant and sustained improvement, the supervisor should meet with the employee, provide details on the ongoing problem following the counseling session and the Memorandum of Expectation when issued, and advise the employee that a formal counseling will be issued. The formal counseling is conducted in the same manner as the counseling. The difference is that instead of a supervision note to the file, a formal counseling memorandum is issued by the supervisor to the employee. The counseling memorandum should detail the Issue of concern, the steps already taken to address the problem, the steps needed for the employee to correct the issue and avoid discipline and an indication that should there not be significant and sustained improvement, a referral for disciplinary action may be made. The intent of the formal counseling memorandum is not to threaten or intimidate the employee.

The intent is to demonstrate the seriousness of the situation, the need for the employee to address the issue through improvement to his/her conduct or performance and the means by which this can be done. A formal counseling memorandum should be given to the employee in private. The employee should sign the counseling memorandum to verify receipt; however, if he/she refuses to sign, the supervisor can sign indicating that a copy was provided to the employee but he/she refused to sign. A copy provided to the employee via email sent with a read receipt will suffice to document delivery. The memorandum should be given to the employee with a copy placed in the supervisory file. If send via email with a read receipt due to the employee refusing to sign the copy when presented to him/her a copy of that email and receipt should be printed and placed in the supervisory file as well.

### Points to Remember

Corrective action must be taken promptly or employees may begin to perceive that their conduct or performance is acceptable. When it is necessary to address employee performance or conduct supervisors should:

#### 1. Speak with the employee in private.

Correction should never occur publicly. If an employee is engaging in improper behavior in front of others, intervention must be immediate, but must also be private. In such a situation the supervisor should go to the employee and tell him/her that he wants to speak with him/her immediately. The supervisor should meet with the employee in a private area, preferably in an office where they will not be overheard by others. In situations where the issue is less obvious and immediate, counseling should be conducted following the guidance contained in DCF Policy 2-3-2, "Supervision".

#### 2. Have specific examples of the poor performance or misconduct to present to the employee

The manner in which the supervisor approaches the employee with these issues will set the tone for future interactions. After presenting the concerns, allow the employee to respond. It is not unusual for an employee to be embarrassed or defensive in these situations. In order to achieve the goal of correction, it is important that the supervisor not present in an angry or judgmental manner. The presentation should be factual and objective. The employee's explanation, defense or disputes to the conclusions drawn by the supervisor should be heard in an impassive manner. Although the employee may become upset or deny that a problem exists, the supervisor's job is to make the employee aware that there is a problem, it requires correction and that the supervisor is prepared to assist and support the employee in achieving that correction. In most situations, employees want to improve and with the correct approach from a supervisor who is offering constructive criticism of work performance or behavior along with the offer of support and assistance, counselings can be effective in making the necessary adjustments to employee concerns.

#### 3. Be flexible.

If the employee offers information that impacts the need for counseling, be willing to accept those and change course. For example, if an employee is being counseled for excessive absenteeism and when the dates and occasions of absence are presented for discussion the employee indicates that three of the five occasions are miscoded and were in fact absences covered by approved FMLA, that information should be noted and the supervisor should indicate that he/she will follow up to confirm the information and get back to the employee. If In fact, the facts upon which the counseling are based are proved to be Inaccurate, the supervisor should acknowledge that to the employee,

indicate that the record will be corrected and no further action will be needed.

4. *Be firm but fair.*

Absent information that changes the need for counseling to occur, the supervisor must maintain a firm approach for correction. The employee may disclose personal issues that have been impacting his/her performance at work. Although the supervisor may find the disclosure sympathetic, it does not change the fact that the employee's work requires improvement. Supervisors should not engage in gathering or encouraging disclosure of details of the personal issue; on the other hand, the supervisor should not appear disinterested or unmoved. The means by which DCF supports its employees who are experiencing personal problems that are impacting their work performance is through the EAP program. In these situations, the supervisor should offer compassion and support and provide the employee with information on the EAP program, as well as direct the employee to Human Resources to discuss leave alternatives if warranted but then immediately redirect the conversation to the need to improve performance. The presence of a personal situation that is creating work related problems is handled through supervisory intervention to identify and address the performance/behavior issues and the additional support of EAP and other alternatives available through the employee's discussion with HR are the avenues available to discuss assistance with personal problems. Problems in an employee's personal life cannot be the basis upon which employees are allowed to perform poorly or to conduct themselves inappropriately in the workplace. The urge to forget about the work issues and begin "therapy" with the employee may be great, but must be resisted. Supervisors must maintain a professional business relationship with their subordinate staff and cannot engage in personal/therapeutic relationships in an attempt to help them through personal crisis. That is the reason for the EAP and providing information on that resource and encouraging the employee to avail him/herself of that benefit is the appropriate way for a supervisor to show support in these situations. In cases where an employee is presenting in a manner that is clearly too distressed to engage in corrective counseling at that moment. The supervisor should contact Human Resources immediately for guidance. Generally the guidance will be to advise the employee that he/she is clearly not able to move forward discussing his/her work concerns and given their current emotional state the employee should be encouraged to leave work for the day utilizing sick time. In situations where employees appear so distressed that there are concerns about their ability to drive, the supervisor should assist the employee in contacting a friend or family member to pick them up. The use of other staff or the supervisor to perform this function is seriously discouraged. If allowing the employee a private place to pull him/herself together and calm down is sufficient to relieve his/her emotional state enough to make it reasonable for him/her to drive home, that would be an appropriate intervention as well.

In some cases an employee may dispute that the problems being presented are in fact problems. It is not unusual for an employee to attempt to defend him/herself by raising the shortcomings of other employees. When this occurs, the supervisor should redirect the employee to his/her situation by stating that this discussion is about them and their work; if they have information about other employees that they would like to share they should do that later, but the concern in this meeting is them and the discussion is about how to address the issues that have led to this meeting.

Unless the employee has presented information that negates the need for a counseling to continue or if he/she is too distressed for counseling to be effective at that time, all counseling sessions should end with a clear direction for the employee to improve. The expectation for improvement should be communicated clearly. There should be no question in the employee's mind that improvement is required, what the employee needs to do in order to show and sustain improvement and that the supervisor is willing to support and assist the employee in his/her efforts. There should be clear

timeframes in place during which time the supervisor will be monitoring for improvement and a follow up meeting must be scheduled where the employee's progress will be reviewed.

5. Show confidence in the employee's ability to learn.

The fear of counseling can be lessened by a supervisor showing he/she has confidence in the ability of the employee to change his/her behavior or meet performance standards. Showing confidence in the employee is a strong, positive way to conclude the session.

6. Follow up.

- a. Review the employee's performance before the target date set for the follow up meeting.
  - If the employee has made the necessary corrections, that should be acknowledged and the employee should be encouraged to sustain his/her improved performance/behavior. The supervisor should continue to monitor the performance/conduct to ensure that the employee has sustained improvement. If performance/conduct begins to decline or if improvement was not significant following the initial counseling, the supervisor should hold another counseling session and issue a memorandum of expectation. It is important that any decline or failure to improve be identified and addressed immediately to avoid the employee feeling that the issue is not that serious.
  - If the employee fails to meet the objectives after a memorandum of expectation is issued a formal counseling should be conducted in a final effort to achieve correction and avoid disciplinary action.

Supervisors must remember that not only are supervisory sessions to occur privately and in a way that avoids embarrassment to the employee, but the information communicated and obtained is equally as private. Supervisors should **never** discuss one employee's business with other employees. If employees raise concerns regarding an issue that the supervisor is already handling with the employee, the only appropriate response is to thank the employee for his/her concern and state that supervisory issues are private and just as you would not discuss that employee's issues with co-workers, you will not be discussing the other employee's issues with him/her.

This is not to say that seeking advice, support and consultation from supervisory level staff, managers and Human Resources is not appropriate. Seeking advice from supervisory peers who may have experienced similar situations, who have supervised the employee in the past or who have more experience in supervision is encouraged. It is important that any such discussions are held privately, are maintained in confidence and are for the purpose of finding the best way to deal with the issue at hand. Talking to other supervisors for the purpose of "gossip" is no more appropriate than to engage in that type of discussion with subordinate staff. Oftentimes simply discussing the situation and the issues suffices and disclosure of the employee's name is irrelevant.

Managers within a supervisor's chain of command, and when significant enough to warrant it, Human Resources, should always be made aware of employee problems and the supervisor's approach to intervention. These staff are expected to support the supervisor's actions and to provide guidance and consultation through the process. Maintenance of a healthy work environment through addressing performance and issues is most effective when everyone in the employee's chain of command and Human Resources are aware, involved and in agreement with the approach being taken.



### III. DISCIPLINARY ACTION

Discipline is defined in statute and contract progresses as follows: written reprimand, suspension, disciplinary demotion or termination of employment. The authority to impose discipline lies with the Commissioner who delegates that authority to Human Resources. Supervisors play a critical role in the disciplinary process and should work closely with their Human Resource Office to identify issues that have not responded to supervisory interventions or that are so serious that supervisory interventions are not the appropriate response.

A referral for consideration of disciplinary action should be made to Human Resources with specific information about the misconduct/performance that warrants HR review. The supervisor should provide any back up information regarding supervisory interventions including any supervisory notes and/or session agendas regarding counseling or formal memorandums addressing the concerns.

Any time an employee is at risk of discipline he/she is entitled to union representation (if a member of a collective bargaining unit) when being questioned about the issue. It is very important that supervisors or managers **not** question the employee about situations that will be referred for disciplinary consideration as this may interfere with the ability to proceed with discipline. If a situation exists where the supervisor/manager needs information from an employee due to immediate safety concerns that cannot be addressed without obtaining the information from the employee, efforts should be made to provide union representation to the employee during such questioning and the questioning should be limited only to those areas that must be addressed to ensure the safety of clients, staff or members of the public. All other questions should be deferred to HR which will obtain that information during a formal investigatory interview at which the employee will be afforded their right to representation.

In general, issues referred to HR for investigation will be handled as follows:

- The employee will receive written notice that an allegation of misconduct has been raised against him/her and an investigation is commencing.
- Interview staff and others with direct knowledge of the situation, as determined by the report of misconduct, advising employees that the investigation is confidential and they are not to discuss it with anyone else.
- HR will collect documents and other evidence relevant to the allegations.
- HR will interview the accused employee to obtain his/her responses to the allegations. (Depending on the circumstances, this may occur prior to interview of others.)
- HR will interview any witnesses put forth by the employee under investigation as persons who have direct knowledge of the situation under investigation.
- Upon conclusion of the investigation a report will be compiled and submitted to the Director and/or Assistant Director of Human Resources with recommendations for action.
- Prior to the imposition of discipline at or above the level of suspension a pre-disciplinary meeting ("Loudermil") will be held by HR. with the employee and his/her union representative to present the findings of the investigation, the evidence that supports those findings and the level of discipline under consideration.
- The employee will have the opportunity to respond to the findings, the evidence and the level of discipline prior to a final disciplinary decision being made.
- After reviewing the findings of the investigation and hearing the response from the employee and/or his/her union representative a decision about the level of discipline to be imposed will

be made and communicated to the employee and/or the employee's representative.

- A copy of any disciplinary notice will be provided to the manager of the employee and should be provided by the manager to the employee's supervisor for inclusion in the supervisory file and incorporation into the performance appraisal as appropriate.
- Copies of all disciplinary notices or stipulated agreements serving as disciplinary notices will be maintained in the employee's personnel file unless otherwise stipulated at the time of imposition of discipline.
- All poor performance/misconduct that is serious enough to result in discipline is serious enough to mention in the annual performance evaluation and to be weighed appropriately when determining the rating categories.
- If it is determined that the appropriate level of discipline is a written reprimand that discipline will be imposed without the need for the pre-disciplinary process detailed above.

The type of disciplinary action taken in a specific case depends upon a number of variables. Factors that are considered include:

1. The employee's work history.
2. The effect of the offense on the efficient operation of the Agency.
3. The seriousness of the offense in terms of the employee's duties and responsibilities; level in the organization; and possible impact on co-workers.
4. The circumstances surrounding the offense.
5. Supervisory interventions taken to correct the misconduct, if repeated.
6. Prior disciplinary action.
7. Similar action taken against other employees for similar misconduct.

#### A. Written Reprimand

A written reprimand is used if a first offense is serious enough to warrant some form of disciplinary action but does not warrant loss of pay. Reprimands will be written by Human Resources and will be issued by the employee's manager to the employee in a private setting. The reprimand will be retained in the official personnel file and a copy should be maintained in the supervisory file for the purpose of incorporation into the next performance appraisal. Removal of reprimands from the personnel file is governed by the employee's collective bargaining agreement.

#### B. Suspension

A suspension is the most serious action that can be taken prior to the demotion or termination of an employee. The length of the suspension will be determined after a consideration of the variables listed for determining disciplinary action to take. Suspension imposes a penalty on the employee by depriving him/her of "property rights", that is, pay, during the period of suspension.

In general suspensions will be 1, 3, 5, 10, 15, 20 or 30 days. The statutory limit for disciplinary suspension is 60 days, however, a suspension of that length is rarely imposed. Suspensions are to be served in consecutive days. The dates of suspension will be determined in consultation with the employee's manager and done in a manner to minimize impact on the operation. Suspensions are served based on workdays, not calendar days. Suspension notices are written and issued by Human Resource Management.

#### C. Demotion.

A demotion may be used when an employee cannot carry out the duties of the assigned

job, yet has potential to succeed in a less demanding assignment, e.g. a person may be unable to function as a supervisor but has shown potential or has a proven record at a lower level job. Demotion is considered when an employee has significant performance problems that have not responded to supervisory interventions and/or lower levels of discipline or for a single incident of misconduct that demonstrates an inability to perform at the higher level. Notices of disciplinary demotion are written and issued by Human Resource Management.

#### D. Termination of Employment.

Termination of employment is the most serious action that can be taken and is reserved for egregious acts of misconduct that have irreparably damaged the employer/employee relationship or after all other reasonable remedial measures have been exhausted. Termination notices are written and issued by Human Resources.

### IV. EMPLOYEE ATTENDANCE PROBLEMS

The effective handling of absenteeism requires a supervisor to intervene at the earliest possible point. In order to do this, supervisors must monitor employee attendance. This should be done at least quarterly for all employees and more frequently once a problem has been identified. Absenteeism includes **full** or partial day absences as well as tardiness at the start of the workday and/or after breaks or meal periods

#### A. Definition of "Absenteeism"

If employees are not on the job as scheduled to work, they are considered absent, regardless of cause. Absenteeism is therefore defined as:

- Failure to report for work or to remain at work as scheduled, regardless of reason.
- The use of the term "as scheduled" is significant to this definition because it automatically excludes vacation, personal leave, compensatory time or other pre-approved scheduled time off (such as **pre-scheduled** doctor's appointments, **pre-scheduled** sick or family sick leave) scheduled with the supervisor's permission.

*Absences authorized under the FMLA, workers compensation or other statutorily authorized leaves such as military leave, jury duty or emergency relief leaves are also not considered when reviewing for absenteeism.*

The employee's attendance record in and of itself is the starting point for identifying problems with absenteeism; however, supervisors should consider other factors as well. Patterns of absences, the employee's prior attendance history and supporting documentation for unscheduled absences should also be considered. An important point to remember is: absences for whatever reason will have a bearing upon the employee's ability to carry out the mission of the Agency. When weighing that impact against the evaluation of all factors leading to absenteeism. It is important that supervisors be consistent in dealing with attendance issues of their assigned staff.

*Be aware that employees are expected to limit absences to those for which they have sufficient leave balances of the appropriate type to remain in pay status during their absence. Supervisors are not authorized to approve any absences that will result in the employee being in an unpaid status. Requests for unpaid leave that is not covered by FMLA, worker's compensation or any of the statutory leaves referenced above must be reviewed and approved*

*by Human Resource Management in advance. Any unscheduled absence for which the employee does not have accruals and is not covered as an authorized absence under the FMLA, worker's compensation or other statutory leave must be coded as unauthorized leave and referred to Human Resources for review and determination immediately. Unauthorized leave is grounds for disciplinary action.*

#### B. Steps in Dealing with Employee Attendance Problems

1. The supervisor must review the attendance records of employees within his/her unit on a regular basis (at least quarterly).
2. Prior to determining absences that will be considered in attendance monitoring supervisory staff should verify any types of absences that are excluded by the employee's collective bargaining agreement, statute or policy.
3. Communicate the following to all staff
  - a. All attendance records will be reviewed on a regular basis.
  - b. Absenteeism, for whatever reason, creates hardships for other staff and limits the overall ability of the Agency to function properly.
  - c. Any absences for which the employee does not have statutory entitlement as approved by HR (FMLA, etc.) and for which the employee does not have sufficient leave accruals to cover will be unauthorized and referred to Human Resources for review and consideration of disciplinary action.
  - d. Excessive absenteeism, for whatever reason, will have a bearing on the individual employee's work record, and following corrective counseling, progressive disciplinary action up to and including termination could occur.
4. Identify those employees whose attendance records fall below standards.
5. Conduct counseling sessions, and develop a program of expected improvement for each individual employee. Document and keep supervisory notes of each session. Be sure to include all expectations for improvement.
6. Follow up with employees whose attendance has resulted in counseling and conduct a formal counseling session should improvement not be noted
7. Consult with Human Resources regarding the issuance of a memorandum of expectation should improvement not occur following formal counseling.
8. Advise Human Resources if the memorandum of expectation has been violated In order to initiate the disciplinary process.

Absences should not only be viewed in terms of the number of days/hours, but also in terms of the frequency of occasions and patterns of days taken.

1. An absence of one day is recorded as one occasion.
2. An absence of any part of a day will be recorded as one occasion.
3. An absence of any number of **consecutive days** will be recorded as one occasion or one period of absence.

Once absences due to FMLA qualifying conditions, worker's compensation, pre-scheduled sick time not covered under the FMLA, prescheduled non-sick days are excluded, as well as any time specifically excluded under the employee's collective bargaining agreement, the number of absences for other reasons is expected to be within the limits of an employee's accrued time and within the expectation of the Department that employees report to work as scheduled. Absences that are subject to attendance monitoring as set forth above should be reviewed with the employee. If the employee identifies reasons that are indicative of an FMLA qualifying condition that should be brought to the

attention of Human Resources to ensure proper application of FMLA benefits. It is the responsibility of the employer, not the employee, to designate absences under the FMLA. As a supervisor it is imperative that you are alert for potential FMLA qualifying absences and that you notify HR who can follow up with the employee.

Another area of concern is a pattern of absences that occur in tandem with other scheduled days off. For example: The number of times that the employee has been absent immediately preceding or following holidays, weekends, or his/her scheduled days off.

In reviewing all of the above, the supervisor must be cognizant of the work histories of all employees within his/her span of supervision. A final judgment on excessive absenteeism should not be rendered until all the above information has been carefully weighed and evaluated. The employee's collective bargaining agreement should be reviewed to determine if there are any special considerations to be given based upon language in the contract.

*PLEASE NOTE: It is absolutely imperative that all employees are considered on an equal basis. Be consistent at all times.*

### C. How to Take Corrective Steps

1. Ideally any procedure established will provide for direct supervisor/employee contact when the employee calls in to report his/her absence. Messages should not be left by third parties, such as relatives or friends, or be left with secretarial staff, the receptionist, or co-workers. It is much more difficult to call out directly to your supervisor than to send an email or leave a voice message. Supervisors should not solicit details about the reason for the absence beyond that needed to ensure that the proper leave balances are being used. An employee who calls out "sick" should never be asked details of the illness. The supervisor may and should inquire as to anticipated length of absence in order to plan the workflow of the unit. Regardless of the employee's stated anticipated length of absence, the employee should be advised that he/she must call in each day he/she will be absent unless and until he/she submits a medical certificate form to Human Resources indicating a medical need to be absent from work for a specific period of time. Employees who are calling out due to an authorized FMLA qualifying condition must identify that they are absent for that reason. The supervisor must track absences under the FMLA to ensure they are in compliance with the authorization for such leave. Should absences exceed those authorized under the employee's FMLA approval the supervisor should immediately inform Human Resources who will follow up with the employee.
2. Require that employees who are going to be late contact their supervisor prior to the start of their shift and report to their supervisor upon arrival to work to explain their tardiness. Tardiness of less than 8 minutes should be noted for consideration when evaluating absenteeism, but should not result in any loss of pay. Tardiness of 8 minutes or more should be documented for consideration when evaluating absenteeism and if appropriate to the situation, should result in the time being considered unauthorized leave as follows:
  - a. 8-22 minutes late = 15 minutes ULU
  - b. 23-37 minutes late = 30 minutes ULU
  - c. 38-52 minutes late = 45 minutes ULU
  - d. 53-87 minutes late = 60 minutes ULU

Any tardiness resulting in the docking of time (ULU) must be referred to Human Resources for review of the circumstances surrounding the tardiness and whether the employee will be allowed to charge time in lieu of ULU and if disciplinary action is warranted. Supervisors should not authorize use of time to cover ongoing tardiness without obtaining authorization from Human Resources to do so. Tardiness is **unplanned** late arrival to work.

3. In general, an employee should not have more than nine (9) occasions or 72 hours of absence in a 12-month period. If an employee has accrued three (3) occasions or 24 hours of absence prior to the third quarter of the review period, the supervisor and employee should meet to discuss these occasions, any contributing problems, and corrective remedies. Each absence thereafter should be monitored closely by the supervisor.
4. On the fifth occasion or after 40 hours a formal counseling session should take place between the supervisor and the employee.
5. On the seventh occasion (49 hours), a memorandum of expectation should be issued to the employee, in addition to another discussion of the attendance record with the employee by the supervisor. This memo should point out the fact that referral for disciplinary action will be necessitated if Improvement is not forthcoming.
6. On the ninth occasion of absence (72 hours) in a 12-month period, the supervisor should consult with Human Resources to determine if the employee should be placed on a medical certificate requirement and if disciplinary action should be considered.
7. On and beyond the ninth occasion of absence, and depending upon the circumstances and contractual requirements, referral for disciplinary action will be made to Human Resource Management.
8. If despite attempts to remediate the employee's attendance improvement is not made and sustained, suspension and termination may ensue.
9. All information and steps taken relative to attendance must be incorporated into the annual performance evaluation and an appropriate rating given.

Although attendance for the 12 month period covered by the performance appraisal should be documented in the annual performance evaluation, absenteeism and remediation/disciplinary response does not reset at the end of the evaluation period. Employees who are engaged in a remediation/disciplinary process for attendance continue in that process even after the performance appraisal has been finalized. For example, an employee who has received a memorandum of expectation due to seven occasions of absence in a 12 month period at the end of the appraisal period and then has two more occasions of absence in the 3 weeks following issuance of the appraisal may now have 9 occasions of absence in a 12-month period, depending upon how the absences have fallen. Supervisors should look back over 12 months, regardless of the performance appraisal cycle to determine the level of absenteeism. The issuance of the appraisal does not mean that the two occasions following the appraisal automatically start a new period of evaluation and do not warrant any action.

Supervisors should always remind employees of the availability of the Employee's Assistance Program when dealing with attendance problems. Frequently employee attendance problems are indicative of personal medical issues that may benefit from involvement with EAP. The supervisor should not assume the role of therapist when dealing with employee absenteeism, but should be cognizant that employees may be in need of EAP to assist them in addressing their attendance problem.

In order to prove effective, programs to control absenteeism must be consistently applied, standards of work performance must be reasonable, and employees must be aware that they are responsible for meeting those standards.

Failure to properly request time off, failure to call out or calling out on a day that the employee has been refused time off present additional issues that may result in discipline and should be referred to Human Resources immediately for consideration of disciplinary action.

*'Given the fact that the attendance and staffing needs of the Albert J. Solnit Center are unique within the Agency, the guidelines contained in this guide for number of occasions and that may result in supervisory action do not replace the established intervention standards at that location should those standards be different.*

## V. STANDARDS FOR DISCIPLINE - "JUST CAUSE"

In addition to the general benefits of good supervisory oversight, sustaining disciplinary actions are largely dependent upon effective supervision. If discipline is to be effective, it must be imposed in such a way as to stand up if it is challenged in a grievance and eventually appealed to arbitration,

Following are the criteria generally used by arbitrators in deciding disciplinary cases. Taken as a whole, they can be viewed as a definition of "just cause"- the standard by which the acceptability of discipline is judged.

### A. Forewarning

Before employees may be disciplined they must have had forewarning or foreknowledge of the consequences of certain aspects of their on-the-job behavior. There must have been an actual oral or written communication of the rules and responsibilities to the employee. There are, of course, certain offenses that are obvious and that they need not be covered by personnel policy and, therefore, a forewarning is not necessary. These include such offenses as theft and coming to work intoxicated.

### B. Reasonableness of policy or rules

Management's rule must be reasonably related to the orderly, efficient, and safe conduct of the organization. If for any reason the employee believes that some rule or order is unreasonable he must obey that rule and file a grievance later. The only exception to this would be if the implementation of the rule or order to the employee is unlawful or jeopardizes his/her immediate safety or the safety of others.

### C. Investigation of disciplinary offense

The allegations of misconduct must be investigated prior to a determination of discipline and the investigation must be fair and without bias. The investigation must be thorough and the conclusions drawn must be supported by a preponderance of the evidence. This is a lower standard than "beyond a reasonable doubt" as required in criminal cases.

### D. Uniform Applications

Before an arbitrator will rule to uphold the discipline imposed he/she must first find that management has applied its rules, orders, and penalties in an even-handed way to all employees.

### E. Due Process

A key component to sustaining discipline is to ensure that the employee has been afforded all due process rights throughout the investigatory and disciplinary processes. This includes the employee's right to representation (if a bargaining unit employee) and the employee's right to a pre-disciplinary meeting prior to the imposition of discipline that involves loss of a property right (pay).

There will be times when the matter under investigation is so serious that having the employee remain at work pending the determination of the facts places the employee's coworkers, clients, the public or state property at risk. In this case, and if the allegations if substantiated will likely result in termination, the employee may be placed on administrative leave with pay. Administrative leave with pay can only be authorized by the Director of Human Resources or his/her designee and is limited in duration by statute and contract.

## Conclusion

The role of the supervisor in mentoring and nurturing the staff under his/her supervision includes the need to promptly identify and address performance and conduct problems. Such issues left unaddressed lead the offending employee to believe that such poor performance or inappropriate conduct is acceptable and inevitably the situation only becomes worse over time. These situations do not generally take care of themselves and the negative impact on the workplace in terms of morale and incentive for other staff to strive to achieve performance goals can be devastating. It is critical for the supervisor to not only model the standards expected of all staff, but to ensure that staff under his/her command are held accountable for their work and conduct.

Bringing issues of poor performance or misconduct to the attention of a supervisee can be difficult and can be met with resistance by the employee. This does not lessen the supervisor's responsibility to engage in such conversations. The approach should always be one of constructive criticism, clarification of expectations and supportive planning to achieve improvement. Supervisors should listen to employee responses about the issues being raised, but must resist the urge to excuse poor performance or misconduct due to personal issues disclosed by employees. Supervisors must remain in a professional, business relationship with their subordinate staff providing them with information on EAP services available to assist them with personal issues and focusing their attention on work issues.

Supervisors should review the work, attendance and conduct of all staff on a regular basis and should be cognizant of the need to hold all employees equally accountable to avoid the perception of favoritism or discriminatory conduct.

Although the supervisor is the front line of defense for maintaining morale and a professional work environment, they are not expected to carry this responsibility alone. The creation and maintenance of a professional and healthy workplace is a team effort. Although the supervisor is positioned to be the one to initially identify emerging problems with staff, managers and Human Resources play a key role in assisting the supervisor in handling those problems and working with them to achieve their goals. Consistent and supportive relationships between supervisors, managers and Human Resources should be fostered to support the health and professionalism of all work units in order to effectively carry out the work of the Agency.



**Other Resources:**

- Human Resource Policy 2-3
- Human Resource Policy 2-3-1 Employee Code of Conduct
- Human Resource Policy 2-3-2 Supervision
- “Supervision” Best Practice Guide {Companion to Policy 2-3-2}
- ESI- Employee Assistance Program, 1-800-252-4555 or 1-800-255-2527, [www.theEAP.com](http://www.theEAP.com)