

Chapter 11 Employee Discipline

- Section 1 Policy Statement: The purpose of this chapter is to provide supervisors with guidelines to correct job performance problems and inappropriate employee conduct in a consistent, fair, and objective manner. All employees are considered at will. An employee may be dismissed at any time at the option of the County. An employee may quit employment with Marathon County at any time.
- Section 2 Investigating Performance Problems and Alleged Misconduct: A prompt and thorough investigation is to be conducted when an employee performs below acceptable standards or violates a work rule. This requires that the supervisor:
- A. Seek counsel from the Employee Resources Director and obtain the facts of the situation (when and how was the work quality/quantity inadequate, what rule was violated, what exactly occurred, where and when the events happened, who was involved, etc.) Notes should be taken since it is essential to have the facts correct.
 - B. Review the employee's personnel file (particularly prior performance evaluations and any disciplinary record) plus other relevant documents (timesheets, labor contract, department procedures, etc.).
 - C. Assess if situation is caused by operational problems (failure to communicate expected standard or work rule, unreasonably high standards, inadequate employee training, insufficient materials or equipment, etc.).
 - D. If evidence is identified which seems to point to the possibility that a personal problem may be contributing to the problems on the job, disciplinary action should be combined with a referral to the Employee Assistance Program.
 - E. Research how similar incidents in the past were handled in the department and/or County-wide.
 - F. Determine the corrective action to be taken. This action should be fair, equitable, and no more severe than required to correct the performance of the employee.
- Section 3 Weingarten Rights: Both union and non-union employees have the right to have a co-worker/representative present during an interview with a supervisor that the employee reasonably believes could result in disciplinary action. The supervisor is not required to inform the employee of any right to representation before

beginning the interview. However, if the employee invokes the right to representation, the supervisor must allow the employee a reasonable opportunity to speak with a coworker/representative prior to the interview.

When an employee has been advised by a supervisor that disciplinary action will not be taken prior to the interview/meeting, Weingarten rights will not apply. Likewise, day-to-day, work-related discussions will generally not invoke Weingarten rights, unless an employee has reason to expect disciplinary action will result.

The co-worker/representative may speak during the interview, but the co-worker/representative is not entitled to be hostile or adversarial. The co-worker/representative may not speak *for* the employee being interviewed. A supervisor is not required to unduly delay an investigatory interview if the employee's chosen representative is unavailable. However, the employee must have a reasonable opportunity to obtain an alternative representative if requested. Full, make-whole remedies, including reinstatement and back pay, can be imposed if an employee's Weingarten rights have been violated.

Predetermination Meeting: When imposing discipline on an employee it is important to provide procedural and due process protections. This requires that the employee be notified of the nature of the alleged offense and be given a formal opportunity to defend his/her behavior. A predetermination meeting conducted by the department head is the recommended procedure for providing due process. During this meeting, the department head should verbally review the allegations with the employee and provide the employee the opportunity to respond to both the allegations and evidence available. The department head is encouraged to consult with the Employee Resources Director regarding the predetermination meeting and any subsequent disciplinary or other action, if any.

Section 4 Alternatives To Formal Disciplinary Action: Depending upon the facts of an investigation and analysis of an employee's inadequate performance or behavior, alternative corrective action might be taken before formal discipline is implemented. This could include:

- A. Support: For short-term problems of a situational nature, like a serious family illness, support from a supervisor is often the most effective corrective action.
- B. Reassignment: The reassignment of an employee with performance or behavior problems is usually not effective corrective action. However, if an employee lacks the ability to perform the present job, reassignment can be appropriate.

- C. Retraining: Additional training can also be effective for resolving some employee problems caused by an inability to perform the required duties rather than the employee not being willing to perform up to established performance standards. Once the specific learning need is identified, it can be addressed through various training methods such as additional on-the-job training with the supervisor or fellow employee, formal classroom training, reading manuals or procedures, viewing films or videotapes, etc.
- D. Coaching/Counseling: An informal discussion or counseling/coaching session is held with the employee to:
1. Identify the problems causing or contributing to inadequate performance or improper conduct on the job;
 2. Assist the employee to search for potential solutions for the identified problems;
 3. Develop a performance plan with the employee to determine what will be done, when, and by whom in order to improve job performance or behavior. If a personal problem is identified or suspected, this plan might include a referral to the Employee Assistance Program;
 4. Set up a series of follow-up conferences to review progress toward improvement.

Section 5 Progressive discipline

- A. Purpose: Progressive discipline allows an employee the opportunity to improve job performance and comply to established rules of conduct in order to avoid further consequences. In some cases, but not all cases, discipline is applied progressively, moving from a light penalty to a more severe one. Where progressive disciplinary action does not result in satisfactory job performance or acceptable employee conduct, discharge may be necessitated.
- B. Four-Step Procedure: Progressive discipline, if utilized, will usually involve the following four-step procedure:
1. A verbal warning to the employee involves identifying and discussing problem areas and the actions that must be taken to improve job performance and/or employee behavior within a specific period of time. Written documentation of the verbal warning should be given to the employee and a copy forwarded to

the Employee Resources Department to be included in the employee's official personnel file.

2. A written reprimand to the employee is implemented if the employee fails to take action to resolve the problem previously discussed or fails to correct it within the specified time. The written reprimand should again clearly identify the problem, relate what standards need to be met or rules observed within a specific period of time, and include a written statement such as "future problems of a similar nature will result in more serious disciplinary action". A copy should be provided to the employee, and also placed in the employee's personnel file.
 3. A disciplinary suspension of the employee is issued for a repeated breach of rules or job performance standards or serious misconduct. A suspension without pay should be discussed with the Employee Resources Director before such action is taken. In the event it is required to immediately release the employee of his/her duties and the Employee Resources Director cannot be reached, authorization may be sought from the County Administrator. The employee may be suspended with pay pending the completion of an investigation. It is essential that the written suspension notice include a provision such as "future problems of a similar nature will result in more serious disciplinary action including discharge". A copy of the written suspension notice should be provided to the employee, the Employee Resources Director, and also placed in the employee's personnel file.
 4. A discharge of the employee would usually occur for the fourth breach of rules or job performance standards or such serious misconduct that termination must occur. A dismissal should be discussed with the Employee Resources Director before such action is taken in order to insure that adequate documentation and grounds exist. A full and complete investigation of the matter or incident must be completed before a final decision to discharge is made. A written copy of the discharge should be provided to the employee, the Employee Resources Director, and also placed in the employee's personnel file.
- C. Progressive Discipline: Progressive discipline is sometimes appropriate. It is not required to be used in every situation for employees. Employees may be subject to discipline for many reasons, including among others, performance failure, failure to comply with County policies, and other serious offenses such as endangering other employees or the public, damaging County property due to gross negligence, theft, insubordination,

etc. The County reserves the right to determine the particular level of discipline to be imposed in any given case, including but not limited to disciplinary actions such as verbal warning, written warning, suspension, or immediate termination of employment.

D. Documentation of Progressive Discipline: Written documentation of the progressive discipline process is essential. An important element of disciplinary documentation is factually describing what happened and why it matters (see Sections 3 and 4). Letters of deficiency/discipline should contain:

1. What the discipline is (i.e., written reprimand, suspension, etc.)
2. Reasons for discipline, rules, or standards violated.
3. Factual events and time frame. Explain who, what, when, where, and why. Be factual and specific in describing the incident/situation.
4. Any previous efforts to make the employee aware of the need to change or improve work performance or conduct.
5. Corrective action required.
6. Referral to EAP if appropriate.
7. Consequence of lack of improvement.

Effective disciplinary documentation typically has these elements: History, facts, expectations, consequences. See Appendix A of this chapter for a sample disciplinary letter.

E. Central factors to consider as part of the investigation and discipline determination process:

1. Employee's length of employment.
2. Employee's personnel file. The arbitrator will most likely assume that if there is no previous negative records of performance, the employee has performed satisfactorily in the past. If significant time has passed since the last negative record of performance, the arbitrator will most likely assume the behavior has been corrected.
3. The seriousness of the offense.

Section 6 Appeal Procedures: Refer to Chapter 13.

Section 7 Minimizing The Need For Discipline

Setting a good example, reasonable and fair rules, and good communication with subordinates promotes employee self discipline, and minimizes the need for supervisory discipline. Another key factor in preventing some situations that lead to discipline is the ability of the supervisor to develop trusting superior/subordinate relationships. The following guidelines can help build more trustful relationships with subordinates:

1. Solicit and provide honest feedback on a regular basis.
2. Accept subordinates as human beings who will make and can learn from their mistakes.
3. Praise subordinates when appropriate to reinforce positive performance and promote motivation.

The fundamental goal of every supervisor should be building a work group that functions effectively with minimum supervision. To achieve this goal, employee performance must be based on self discipline (the desire to perform). To develop self discipline, the supervisor must be able to understand his/her employees' motivation to work, link department goals to their personal goals, and provide a working environment that facilitates the attainment of these goals.

APPENDIX A
SAMPLE DISCIPLINARY LETTER

M E M O R A N D U M

TO: Dora Disagreeable

FROM: Sandy Supervisor

RE: February 4, 200-

As you know, I have talked to you several times (list dates) about the importance of getting along with your co-workers. I am writing this written reprimand now because you were involved in another disagreement with one of your co-workers yesterday.

Yesterday, you had a disagreement with Bonnie Bystander after she told you that you needed to obtain the department head's signature on expense forms. You reacted angrily (slammed drawer, kicked chair), became upset (yelled) with Bonnie (although her comment was correct), and then came into my office and asked for the rest of the day off. When I asked you what was wrong, you explained what had happened. You also said:

- ▶ You don't have respect for anyone here;
- ▶ You don't want to ever speak to "that woman" (Bonnie) again;
- ▶ You won't accept anything "that woman" says, even if it's correct; and
- ▶ You want and will take direction only from your supervisor.

These comments and your interaction with Bonnie are unacceptable. This is a small office, with only two office support staff assisting 10 other employees. It is imperative that everyone in the office maintain a professional and cooperative working relationship. This include accepting constructive suggestions and comments from co-workers, communicating with co-workers, and treating co-workers professionally and respectfully. Continued problems in this area, or any other performance or discipline issues, will result in further discipline, up to and including termination.

c: Personnel file