

MONTANA UNIVERSITY SYSTEM — MPEA PROGRESSIVE DISCIPLINE POLICY

Section 1. General Provisions

1.1 Coverage. This policy applies to employees covered by the MPEA collective bargaining agreement who have completed a probationary period as set forth in the collective bargaining agreement. It does not cover employees in positions defined as temporary or fixed term.

1.2 Role of Human Resource Services/Personnel and Payroll Services. The appropriate office of personnel and payroll or human resources services (department titles differ at the various university units) is responsible for assisting supervisors in administering discipline in accordance with collective bargaining agreements, applicable state and federal law, and university policies and procedures. This office must be consulted prior to imposing formal disciplinary action and is available to provide supervisors with assistance in dealing with employee problems prior to the commencement of formal disciplinary action. If the appropriate human resources or personnel office is not consulted, the disciplinary action may be declared invalid. However, failure to consult with the personnel office shall not be sufficient grounds in itself for a grievance committee or arbitrator to overturn a disciplinary action.

1.3 Reasons Employees May Be Subject to Discipline and Discharge. The Montana University System through its agents has an obligation to maintain a safe and efficient operation. Employees are subject to discipline and discharge for reasons including but not limited to 1) failure to perform job duties in a satisfactory manner; 2) violation of work rules, policies, laws, labor contract provisions, supervisory orders or directives or other forms of misconduct; 3) failure to meet applicable professional standards; or 4) any behavior that interferes with or disrupts the efficient operation of the university system including certain off-duty conduct when it is harmful to the university's operation or reputation.

1.4 Progressive Discipline Endorsed. Management shall, when appropriate, use progressive discipline. However, the appropriateness of using progressive discipline in each case lies with the discretion of the employer. Progressive discipline involves applying disciplinary actions which may progress from less serious to more serious actions based upon the initial severity, an employee's overall work history, and the repeated nature or pattern of misconduct or unsatisfactory performance. Progressive discipline may range from corrective counseling to discharge from employment. The number of steps may vary and steps may be repeated or skipped. The specific disciplinary actions taken and the order in which disciplinary actions are taken depend on the nature and severity of the performance deficiency or behavior and the employee's work history. Discharge should not be an initial disciplinary action except in severe cases of unsatisfactory performance or behavior.

Section 2. Informal Discipline

Corrective counseling and oral warnings are informal disciplinary actions which may be used at the option of management prior to or in addition to formal discipline to deal with performance deficiencies or misconduct. They are not part of formal discipline and are not grievable. Documentation is encouraged, but is not required.

Section 3. Formal Disciplinary Actions

3.1 Types of Formal Discipline. Formal disciplinary actions include but are not limited to written warnings, suspension without pay and discharge. Formal disciplinary actions may be combined or include other disciplinary measures such as a requirement to seek counseling, job transfer or reassignment, demotion, cancellation of leave, last chance agreement, requirement to provide a doctor's verification of illnesses, etc.

3.2 Notification of Discipline. Each formal disciplinary action shall include written notification to the employee which includes, at a minimum, the following:

- a) a detailed, specific description of the problem or incident such as places, times, and examples;
- b) a summary of any prior discussions and formal or informal disciplinary actions over similar or related matters;
- c) the disciplinary action to be taken including dates and duration where applicable;
- d) the improvement or correction expected, if applicable; and
- e) the consequences of the employee's failure to make required improvements or correction.

The employee shall typically be offered an opportunity to review, sign and date any notice of formal disciplinary action (except discharge) and shall have the opportunity for verbal and/or written response. The employee's signature indicates that the employee has had the opportunity for review but not necessarily that the employee agrees with the action. If the employee refuses to sign, a witness to such refusal may sign and date the notice. Where notices cannot be issued in person, they should be delivered by certified mail.

Section 4. Steps of Progressive Discipline and Examples of Infractions and Penalties

It is difficult to list specific infractions and prescribe the appropriate penalty because each situation needs to be analyzed and a determination of the appropriate penalty made on a case-by-case basis in consultation with the appropriate human resources or personnel office. The context in which an infraction occurs needs to be examined in addition to a number of other variables such as the length and quality of the employee's service. For example, recurring tardiness is an offense that would more quickly lead to the discharge of an employee with receptionist duties than of someone working in a more flexible work environment. The following examples serve

only as a general point of reference. It is understood that individual circumstances may result in a more or less severe penalty.

4.1 Performance Counseling/Oral Warning. Behaviors that may result in performance counseling and/or oral warnings include but are not limited to: routine performance errors; tardiness; mild cases of inappropriate use of work time; rudeness to coworkers; and wearing dirty or inappropriate work attire.

4.2 Written Warning

4.2.1 Uses of Written Warnings. Written warnings are issued when an employee fails to correct a problem after receiving performance counseling and/or an oral warning. It may also be appropriate as the first step of progressive discipline for more serious misconduct including but not limited to: violation of safety rules; displays of anger or disrespect including cursing; leaving work early without prior authorization; horseplay not resulting in significant harm or damage of property; or sleeping on the job.

4.2.2 Limitations on Duration. Employees have the right to have a warning letter removed from their personnel file if after a reasonable period of time the reason for the warning letter has been corrected. The first warning letter that an employee receives will not remain in the personnel file for longer than one (1) year unless there are repeated offenses or insufficient progress. Warning letters may be removed earlier than one (1) year by agreement of the appropriate personnel/human resources director and the bargaining agent. If the first warning letter is to remain longer than six (6) months, the employee will be provided an interim written progress report by the supervisor within six (6) months from the issuance of the warning letter.

4.3 Suspensions.

4.3.1 Suspensions Without Pay. Suspensions without pay are used when an employee fails to correct the problem after receiving a letter of warning. They may also be appropriate as the first step of progressive discipline for very serious misconduct or when there are mitigating factors in circumstances that might otherwise be cause for immediate discharge. Examples of situations where a suspension may be appropriate include but are not limited to: deliberate refusal to follow the reasonable directives of a supervisor; disclosing confidential information; or fighting with a coworker. The length of the suspension should be considered in light of any prior disciplinary action and the seriousness and type of offense. Suspensions normally do not exceed ten (10) days.

4.3.2 Suspensions With Pay – Exception. A paid leave of absence may be imposed when it is determined an employee must be immediately removed from the workplace during an investigation of the facts. Suspension with pay is not a disciplinary measure. If during the investigation the employee is exonerated, the

employee will be reinstated without discipline. If misconduct is verified, the employee shall be subject to formal discipline including discharge.

4.4 Discharge. Discharge is the ultimate form of progressive discipline and is used in situations when other forms of disciplinary action fail to remove or correct the problem or it may be used as the first and only step of discipline in response to the most serious types of offenses. Discharge may be appropriate in situations including but not limited to the following:

- endangering or threatening the health or safety of others
- using alcohol or illegal drugs on university property or during work hours or reporting for duty under the influence thereof
- falsifying official records
- unauthorized absence from work in excess of five days
- using or authorizing another to use any state owned or leased vehicle or other property for other than official purposes
- physical violence or fighting on the employer's premises
- brandishing any firearm or weapon on the employer's premises
- immoral or indecent conduct on the employer's premises
- serious or pervasive sexual harassment
- theft
- willful destruction or abuse of the employer's or another employee's property or materials
- failure to maintain a valid and current MT driver's license or other professional license when required to perform job duties

The collective bargaining agreement states that employees may be discharged for "just cause." A guideline for determining if a discharge meets the standard of "just cause" is included as Addendum A.

The appropriate personnel/human resources office must be consulted prior to any discharge to insure the requirements for a pre-termination hearing are met. Employees must be given an opportunity to respond to the charges against them in front of an administrator (other than the supervisor who is recommending discharge) prior to imposing discharge.

Section 5. Right to Representation

Under certain circumstances, an employee may have a legal right to union representation at an "investigatory" meeting between the supervisor and employee, if such meeting may result in formal disciplinary action. It is the employee's responsibility to request a union representative. Non-union employees may request a co-worker to be present during an investigatory meeting.

Section 6. Training and Accountability of Supervisors

Supervisors must recognize that failure to discipline employees properly in accordance with this policy and applicable collective bargaining agreements may result in the disciplinary action being overturned. Improper terminations may also have financial consequences. Supervisors are accountable for compliance with this policy and may be subject to disciplinary action for repeated violations.

The need to discipline employees is often reduced when supervisors fulfill their responsibilities in the following areas: orienting and training employees; establishing, communicating and enforcing rules, policies and procedures; identifying and solving problems; providing ongoing feedback; and coaching and counseling employees. Training shall be provided supervisors who need additional assistance fulfilling their supervisory responsibilities. Training on discipline handling is also available for supervisors.

ADDENDUM A

JUST CAUSE – THE SEVEN STEP TEST

1. Did the employee have forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?
2. Was the University's rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the department's business, and (b) the performance that the supervisor might properly expect of the employee?
3. Did the supervisor, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
4. Was the University's investigation conducted fairly and objectively?
5. Did the investigation produce sufficient evidence or proof that the employee was guilty as charged?
6. Has the department applied its rules, orders and penalties even-handedly and without discrimination?
7. Was the degree of discipline administered by the supervisor in a particular case reasonable related to (a) the seriousness of the employee's proven offense, and (b) the employee's records of service?

If the answer to one or more of the above questions is "no," it may signify that just cause for discharge does not exist.