

STEPHEN F. AUSTIN
STATE UNIVERSITY

Office of the General Counsel

POLICY SUMMARY FORM

Policy Name: Discipline and Discharge

Policy Number: 11.4

Is this policy new, being reviewed/revised, or deleted? Review/Revise

Date of last revision, if applicable: 7/24/2018

Unit(s) Responsible for Policy Implementation: Vice President for Finance and Administration

Purpose of Policy (what does it do): The policy outlines the requirements for disciplining and discharging staff employees

Reason for the addition, revision, or deletion (check all that apply):

Scheduled Review Change in law Response to audit finding

Internal Review Other, please explain: Update required to reflect requirements of SB 18.

Please complete the appropriate section:

Specific rationale for new policy:

Specific rationale for each substantive revision: Language was added to prohibit unduly interfering with expressive activities of others on campus as required by SB 18. Language was also added to include legislative updates under Title IX regarding mandatory reporting.

Specific rationale for deletion of policy:

Additional Comments:

Reviewers:

Loretta Doty, Director of Human Resources

Danny Gallant, Vice President for Finance and Administration

Damon Derrick, General Counsel

Discipline and Discharge

Original Implementation: December 6, 1983
Last Revision: July 24, 2018 *October 28, 2019*

Purpose

This policy establishes the requirements for disciplining and discharging staff employees.

Definitions

Minor Rule Violations may have little or no effect on the continuity, efficiency, and safety of university work, but will not be tolerated. The following are examples of minor rule violations, which may result in either oral or written warnings for entry into an employee's record. Continual violations may result in stronger disciplinary action up to and including discharge. Minor rule violations include but are not limited to:

1. Unauthorized, unexplained, or inexcusable absence or tardiness.
2. Failure to notify supervisor of absence at the earliest practical time.
3. Failure to observe assigned work schedules (starting time, quitting time, rest and meal periods).
4. Soliciting or collecting contributions for any purpose, or selling or offering for sale any goods or service, on university premises in violation of university policy.
5. Unsatisfactory work performance.
6. Loafing or other abuse of time during assigned working hours.
7. Interfering with any employee's work performance or duties by talking or by other distractions.
8. Circulating or distributing written or printed matter on university premises in violation of the university policy on petitions and handbills.
9. Leaving regularly assigned work location without notifying immediate supervisor.
10. Performing unauthorized personal work on university time.
11. Defacing bulletin boards or notices posted thereon.
12. Minor violations of safety rules.
13. Failure to use the time clock system as instructed.
14. Discourteous treatment of the public or of other employees.
15. Improper political activity of a minor nature.
16. Minor violation of an internal department work rule or university policy or procedure.
17. Engaging in excessive visiting, personal conversations, or use of the telephone for personal use.
18. Failure to follow any reasonable instructions issued by supervisor related to performing job tasks and/or job duties.
19. Abusive or unruly conduct of a minor nature.

Major Rule Violations are any act or omissions in violation of university policies or rules to such a degree that further employment of the offending individual may not be desirable for the university. The following are examples of some offenses which subject an employee to a written warning, suspension, or discharge. Major rule violations include but are not limited to:

1. Any act which might endanger the safety or lives of others.
 2. Refusal to properly perform work assigned by a supervisor.
 3. Violation of university safety rules.
 4. Falsifying any university records.
 5. Clocking in or out for another employee or allowing one's time to be entered by another employee.
 6. Leaving university premises during working hours without permission from the supervisor.
 7. Abusing, destroying, damaging, or defacing university property, tools, equipment, or the property of others on university premises.
 8. Gambling on university premises.
 9. Delaying or restricting work, or inciting others to delay or restrict work.
 10. Fighting on university premises.
 11. Carrying firearms or other dangerous weapons on university premises in violation of law or university policy.
 12. Failure to return to work on expiration of vacation or leave of absence, or when called back after a layoff.
 13. Disclosure of confidential university information to unauthorized persons.
 14. Theft, misappropriation or unauthorized use of university funds or property, or other dishonest actions.
 15. Continued unsatisfactory work performance.
 16. Unauthorized, unexplained, or inexcusable leave for three or more days.
 17. Excessive absences or tardiness.
 18. Physical, mental or emotional inability to perform the job satisfactorily.
 19. Major violation of an internal department work rule or university policy or procedure.
 20. Insubordination.
 21. Abusive or unruly conduct.
 22. Unprofessional conduct; that is, behavior that a reasonable person in a professional office setting would find inappropriate, rude, disorderly, or offensive, and that is persistent, destructive and/or intimidating.
 23. Indecent or obscene conduct.
 24. Conviction of a felony or of a misdemeanor involving moral turpitude by a trial court.
 25. Flagrant or repeated minor rule violations.
 26. Sexual misconduct or sexual harassment of any person by an employee.
 27. Unlawful discrimination.
 28. Bringing or consuming any liquor, marijuana, or narcotics on university premises (this rule applies to any habit-forming or disabling substance not prescribed by a physician).
 29. Reporting for duty under the influence of liquor, marijuana, or narcotics (applies to any habit forming or disabling substance not prescribed by a physician).
 30. Accepting any gifts or favors, which influence or tend to influence the performance of duties or the granting of service or favors to other university personnel, applicants, clients, or other persons.
 31. Refusal to attend state and university mandated trainings within the appropriate timeframe including but not limited to EEO training and Performance Management Plan training.
 32. *Any act that would unduly interfere with the expressive activities of others on campus.*
 33. *Failure to report information that the employee witnesses or receives regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence or stalking that is alleged to have been committed by a student or an employee.*
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General

This policy shall apply to all regular non-academic employees including both exempt and non-exempt staff. The non-renewal of non-academic employees with contracts, temporary employees, at-will employees, or dismissal during the probationary period are not covered by this policy. The probationary period of an employee is one hundred eighty (180) calendar days.

Supervisory efforts should be concentrated on preventing serious personnel concerns rather than on disciplining employees for misconduct. However, supervisors have the right to discipline or summarily discharge an employee for cause. It is essential that each concern be investigated so that the facts of the situation are known before the discipline measures have been determined.

An employee being disciplined should be told what they have done wrong and should be clearly instructed on what is expected of them. Any discharge must first be reviewed by the director of human resources.

Except in cases of discharge, the employee should be given a reasonable period of time to improve their performance or correct their actions or attitude. An employee may be discharged when reasonably corrective or rehabilitative methods have failed or when the serious nature of a violation or the accumulation of violations warrants separation.

Corrective Disciplinary Actions

For repeated but relatively minor incidents of substandard performance, misconduct, or rule violations, discipline should be progressive. The normal sequence of action is: (1) Oral Warning; (2) Written Reprimand; (3) Disciplinary probation (4) Suspension; (5) Demotion; (6) Discharge. Depending on the severity of the case, the action may begin at any of these steps. Any action involving suspension, demotion, or discharge must have prior review from the director of human resources.

Any corrective disciplinary action should be recorded on the Employee Counseling/Discipline Record form (available in Human Resources). The corrective action should include a section which documents specific, job related, and measurable actions identified to increase job knowledge, improve skills, or correct performance difficulties. Timetables shall be established for follow-ups and improvement or non-improvement and will be documented on all Employee Counseling/Discipline Record forms.

Oral Warning: Normally, initial disciplinary action should be in the form of an oral discussion and warning, especially for minor rule violations. If it appears that an employee has failed to perform their work or conduct themselves according to job requirements, the supervisor should first talk to the employee about the matter and informally inquire further into the situation. If facts indicate that the employee may have been at fault, the supervisor should discuss the matter with him/her. The supervisor may call on another person (preferably another supervisor) to be present as a witness. The employee should clearly be instructed of the gravity of the action and should be told that the warning is disciplinary in nature. Supervisors should maintain a complete and accurate written notation of the warning on an Employee Counseling/Discipline Record form.

Written Reprimand: Reprimand involves both a formal interview with the employee and an official memorandum emphasizing the negative effect of the employee's conduct or work performance on their record and opportunities for advancement. If the immediate supervisor does not have the authority to discharge the employee, then the interview should be conducted by the department official who does have discharge authority. A written reprimand should include: the names of everyone involved, dates, a description of the incident or unsatisfactory performance, witnesses (if any), and the action taken. Use the Employee Counseling/Discipline Record for this purpose.

Reference should also be made to the dates and results of prior oral warning(s), or other written reprimand(s). It should also bear the employee's comments, if any, and the employee's signature. The employee should be informed that their signature indicates they have received a copy of the reprimand, but not necessarily that they agree with its contents. If the employee refuses to sign the reprimand, a witness, preferably another supervisor, should verify that the employee has read the reprimand and refused to sign an acknowledgement. A copy of the reprimand should be sent to the director of human resources to be filed in the employee's permanent file.

Disciplinary Probation: This disciplinary action places an employee on a probation period, up to six months, in 30-day increments, to improve inadequate performance and/or conduct before additional disciplinary action is taken. Disciplinary probation may also be used in conjunction with other disciplinary actions. During the probationary period, the employee will receive a specific performance improvement plan and/or instructions to improve his or her behavior and/or performance. To place an employee on disciplinary probation, the supervisor should:

- present the employee with a completed Employee Counseling/Discipline Record indicating disciplinary probation, the period of disciplinary probation, the reasons for the disciplinary probation and attach a performance improvement plan and/or instructions to improve their behavior and/or performance, and;
- forward a copy of the Employee Counseling/Discipline Record to Human Resources for inclusion in the employee's permanent file.

Suspension: Suspension is a disciplinary action or an interruption (with or without pay) of the active employment of an employee pending an investigation and decision by the director of human resources, with advice and counsel from the general counsel, as appropriate. Suspension for a period of longer than three (3) days must be approved by the appropriate vice president. To suspend an employee from the payroll, the supervisor should:

- present the employee with a completed Employee Counseling/Discipline Record indicating suspension, the period of suspension, and the reasons for the suspension;
- forward a copy of the Employee Counseling/Discipline Record to Human Resources for inclusion in the employee's permanent file. The department will then complete a Leave Without Pay form, removing the employee from the payroll if the suspension is for any period of time that the employee is to be without pay.

The supervisory official will conduct a conference with the employee at the beginning of the shift on the day the employee is to return to work. A discussion should occur with the employee recapping the reason for suspension, what is expected of the employee and the next step to be taken if improvement

does not occur.

Demotion: The supervisory official with the authority to discharge an employee also has the authority to demote an employee. An employee who cannot or will not carry out efficiently and effectively the duties of the job for which they are hired or promoted, may be demoted to a job more commensurate with their abilities, skills, and experience or job performance. The immediate supervisor recommending demotion will first review the demotion with the director of human resources. The director of human resources will ensure that the employee has received proper counseling and an adequate trial period for improvement of performance prior to the approval of any recommendation for demotion. Demotion should be considered a last alternative in lieu of termination and may only be considered when a lower job assignment is available in the department in which the employee works.

Discharge: In cases other than serious offenses, discharge from employment should be used as a last resort. The supervisor who has authority to employ a person also has the authority to discharge a person. Prior to the action, the discharging supervisor must review the situation with his immediate superior, the director of human resources, and, in unusual circumstances, the general counsel. This review will assure that the case for dismissal has been objectively investigated and is both justified and properly documented. The appropriate vice president must approve each discharge. If the discharge is in order, an employee should be presented with a completed Employee Counseling/Discipline Record indicating discharge, the reasons for the discharge, and the date of the discharge. Since discharge requires prior consultation and approval, it should not be done "on-the-spot". However, if the supervisor believes it is improper to leave the employee on duty until such approval can be obtained, the supervisor should, with review from the director of human resources, immediately place the employee on suspension for a period not to exceed three (3) days. This action also allows time for any investigation which may be necessary.

Other Actions: In extremely serious cases involving unruly behavior, violence or imminent threat to personal safety or property, the supervisor and/or University Police Department may determine the need for immediate arrest or removal from university property of an employee. This action should be considered an immediate suspension and may warrant proceeding with the discharge process. Also, an interim suspension with pay may be used as a non-disciplinary action for situations that warrant investigation while the employee does not return to duty. The director of human resources must approve an interim suspension with pay.

Alternative Disciplinary Actions: Other forms of disciplinary action may be appropriate in some cases. These may include making up lost time, docking, withholding salary increases, transfer to more suitable work, or compensating the university for damage. With the exception of making up lost time, these alternative disciplinary actions require the prior review of the director of human resources.

Involuntary Terminations Other Than Discharge: It is not the intent of this policy to prohibit, or in any way restrict, the university and its administrative officials from the right to terminate any employee for any non-disciplinary reason if it is in the best interest of the university to do so. An employee so terminated shall not have recourse through this policy or the Grievance and Appeals procedure. Examples of termination for non-disciplinary reasons include, but are not limited to, terminations due to lack of work or funds (reduction in force), the redesigning of jobs, the termination of grant funding which eliminates positions, termination of a temporary position, and changes in the organizational structure in compliance with university policies and rules, i.e., retirement, nepotism, etc.

Employees who are terminated for non-disciplinary reasons may appeal through the supervisory chain up to the vice president for the area involved only on grounds of alleged constitutional violations or other legal rights which may have been abridged.

Cross Reference: Performance Management Plan; U.S. Const. amend. V, XIV; Tex. Const. art. I, § 19.

Responsible for Implementation: Vice President for Finance and Administration

Contact for Revision: Director of Human Resources

Forms: Employee counseling/discipline form (available in Human Resources); Notice of Suspension (available in Human Resources); Notice of Discharge (available in Human Resources); Leave Without Pay form (available on-line)

Board Committee Assignment: Academic and Student Affairs