

County Engineer's Association of Ohio

Superintendents and Mechanics Conference

Basics of Discipline

Investigation, Standards, Rules of Conduct

October 31, 2013

Presented by: Jonathan J. Downes
Phone: 614-224-4411
Cell: 614-565-2075
jjd@zrlaw.com

Zashin & Rich Co., L.P.A. ("Z&R") specializes in labor and employment law with offices in Cleveland and Columbus, representing both private and public sector employers. Members of Z&R have diverse backgrounds and experience which provides depth and understanding of the needs of its clients.

Z&R represents numerous cities, county agencies, and universities with broad experience in labor negotiations, personnel matters, civil service and discipline. Attorneys of Z&R have collectively negotiated over 1000 contracts in the public sector and have represented public employers in numerous arbitrations, impasse proceedings and in litigation.

Attorneys have extensive experience in labor negotiations, union relations, and human resource matters with universities and colleges, special districts and boards, cities, counties, townships, housing authorities, hospitals and others. They handle matters at arbitrations, the State Employment Relations Board as well as the State Personnel Board of Review, local civil service commissions and appeals.

Z&R offers a comprehensive employment and labor law representation including all federal and state discrimination laws, administrative and court proceedings, employee handbooks and manuals, contract administration, strike situations, grievances and arbitration, discipline matters, public pension systems and workers' compensation.

Attorneys in the firm with extensive knowledge and experience, both in litigation and providing advice, with various federal laws including FMLA, FLSA, ADA and Title VII. The firm has an extensive insurance defense practice representing several national insurance companies including Chubb, Travelers, and AIG among others. The firm represents clients in state and federal courts in all parts of Ohio in employment defense work.

Several of Z&R's attorneys are certified as "Specialists in Labor and Employment Law" by the Ohio State Bar Association and have been recognized by their peers as "Super Lawyers" and "Best Lawyers in Employment and Labor Law and Litigation."

Contact Information:
Jonathan J. Downes

jjd@zrlaw.com
614.224.4411
614.565.2075 Cell



About Jonathan Downes:

Jonathan Downes brings more than thirty years of experience and expertise in representing public and private employers in all aspects of labor and employment law and human resource management. In addition to negotiating over 500 labor contracts, Jonathan has represented employers in arbitrations, organizing campaigns, and administrative hearings including the State Employment Relations Board. Jonathan has also defended employers in state trial courts, state appellate courts, the Ohio Supreme Court, federal district courts and the United States Court of Appeals for the Sixth Circuit.

When not in negotiations, at court, or teaching a seminar, Jonathan edits Westlaw's Ohio Civil Service and Collective Bargaining Laws Annotated publication. He has also authored Civil Service Law in Ohio and contributed to numerous association and trade group publications.

Jonathan is certified by the Ohio State Bar Association as a Specialist in Labor and Employment Law, is AV-Preeminent rated by Martindale Hubbell and selected by peers for "Best Lawyers in America" in the practice area of "Employment Law – Management" and "Labor Law – Management."® While recognized many times over as a subject-matter expert, Jonathan is also recognized as a top attorney in Central Ohio Top Lawyers and every year since 2004 named an Ohio "Super Lawyer."

Table of Contents

	<u>Page</u>
• Sample Policy for Employee Conduct, Responsibilities, and Discipline	1
• Employee Request for Leave	9
• Manager’s Predissmissal Check List.....	10
• Checklist for Disciplinary Classified Employees	13
• Suggested Policy Issues Related to Discipline	14
• Flow Chart for Discipline	15
• Order Of Removal, Reduction, Suspension, Fine, Involuntary Disability Separation	16
• Important Instructions To The Appointing Authority	17
• Important Instructions To Employee	17

1. Employee Conduct, Responsibilities and Discipline

1.1. Employee Standards of Conduct and Responsibilities

As public employees everyone who works for the County is responsible to the public. As such public employees are held by the public to a higher standard of conduct, such as the ethics considerations. These rules will provide guidance for County employees, but are not intended to cover every situation. Common sense should also be considered.

The following standards apply to all employees and have been established to ensure:

- Employees conduct themselves in a mature, responsible and professional manner during work hours or while on County premises.
- Employees work in an efficient, conscientious and diligent manner.
- Employees work in a safe environment, without risk to their health or safety, or the health and safety of others.
- That the rights of all employees are protected and honored.

The following outlines the expectations of all employees with respect to appropriate behavior and conduct. In addition to these rules, employees are also required to follow any work rules, policies or procedures established by their respective departments or divisions. An employee in violation of any of these work rules may be subject to disciplinary action, including suspension or termination, dependent upon the seriousness of the offense, the employee's disciplinary history and any other relevant factors. These expectations include all other standards of conduct in this handbook, and all other policies and rules issued.

Commitment to Service

Employees are expected to act in a professional and courteous manner. Conduct that is abusive, discourteous, neglectful, purposefully performed incorrectly and against policy or standard procedure, or not performed when required will not be tolerated.

Activities Outside of Work

While the County recognizes that it cannot regulate, nor does it wish to regulate, the actions of employees while away from work, misconduct while not on duty that discredits the employee's or the County's reputation, interferes with the ability to provide services to the public, or otherwise violates any established policy, procedure or agreement will not be tolerated. An employee who is arrested of any criminal offense which arrest could affect their ability to do their job (e.g., OVI) must report such arrest immediately to his/her

supervisor. The County will evaluate the impact that the arrest and/or subsequent conviction has on its operations and consider any applicable employment decisions based on that impact.

1.2. Discipline Reasons

Employees in the classified civil service, upon completion of their probationary period, shall not be disciplined other than as set forth in civil service law provision Revised Code Section 124.34. Employees in the classified service may be disciplined for any of the following:

- incompetency.
- inefficiency.
- dishonesty.
- drunkenness.
- immoral conduct.
- insubordination.
- discourteous treatment of the public.
- neglect of duty.
- violation of work rules or policies of the County, or County official for whom the employee works.
- violation of chapter 124 of the Ohio Revised Code or County rules.
- any other failure of good behavior. or
- any other acts of misfeasance, malfeasance, or nonfeasance in his job or conviction of a felony.

Employees in the unclassified civil service serve at the pleasure of the Appointing Authority, are considered employees at-will, and may be disciplined without notice for any reason.

1.3. Discipline Procedure – Pre-disciplinary Conference

Discipline involving a reduction in pay, demotion, suspension or removal/termination of a classified civil service employee entitles the employee to a pre-disciplinary conference as set forth herein. All other discipline may be imposed without a pre-disciplinary conference.

Before imposing a reduction in pay, demotion, suspension or removal/termination to a classified civil service employee, the employer shall hold a pre-disciplinary conference with the employee. The pre-disciplinary conference will be conducted by a neutral supervisor who will be selected by the appointing authority. At the pre-disciplinary conference the appointing authority will explain the charges against the employee and permit the employee the opportunity to respond to the charges. The employee has the right to be accompanied at

the pre-disciplinary conference by a representative of his own choosing. The pre-disciplinary conference will be scheduled as promptly as possible by the appointing authority. The employer may impose reasonable rules on the length of the pre-disciplinary conference and the conduct of the participants. The employer may tape record the pre-disciplinary conference, as may the employee or his representative. If the employer determines that the employee's continued employment prior to the conference poses a danger to persons or property or a threat of disrupting operations, the employee may be placed on administrative leave with or without pay pending the pre-disciplinary conference to determine the final disciplinary action.

Prior to the pre-disciplinary conference, the employer shall provide to the employee a list of alleged improper conduct and a summary of the evidence concerning the disciplinary charges. Generally, this information will be provided to the employee at least twenty-four (24) hours before the pre-disciplinary conference.

The employee may waive the disciplinary conference. A failure to attend the pre-disciplinary conference constitutes a waiver of the pre-disciplinary conference.

At the pre-disciplinary conference, the employee will be given an opportunity to respond to the allegations. The employee does not have the right to call or cross-examine witnesses.

Upon completion of the pre-disciplinary conference the neutral supervisor shall prepare a written report within ten (10) working days and provide a copy to the employee. Thereafter, the appointing authority or his/her designee shall determine the appropriate discipline, if any. The employee will be notified of the disciplinary action taken.

When imposing a demotion, reduction in pay, suspension or fine of forty (40) or more work hours in the case of an employee exempt from the payment of overtime compensation, a suspension of twenty-four (24) or more work hours in the case of an employee required to be paid overtime compensation, demotion, or removal/termination of a classified employee, the appointing authority or her/his designee shall sign a written order of reduction, suspension or removal/termination. The order shall state the reasons for the disciplinary action. The appointing authority or her/his designee shall furnish a copy of the order to the employee.

These provisions on discipline and removal do not apply to employees in the unclassified service.

1.4. Administrative Leave

The appointing authority may, at his or her discretion, place any employee of the County on administrative leave, with or without pay, when the appointing authority has probable cause

to believe that a serious violation or offense has occurred, that could ultimately lead to termination, and pending any investigation into any alleged violation and/or resolution of any related court proceedings.

The length of any administrative leave, with or without pay, shall be determined by the appointing authority, who shall inform the employee of such leave in writing prior to any such leave taking effect.

Should an employee be placed on administrative leave without pay, and subsequently be found innocent of the alleged charges of misconduct and/or related court proceedings, the employee will be compensated as if he/she had worked for the time spent on administrative leave without pay. The County shall continue to pay the County's contribution toward health insurance coverage, as may be applicable, for the period of any administrative leave.

1.5. Discipline Action and Penalties

Types of Discipline

All decisions regarding disciplinary action will be at the sole discretion of the County. The types of discipline to which employees may be subject include but are not limited to: (1) oral warning; (2) written warning; (3) suspension (unpaid or paid); and (4) termination. While discipline may be progressive in nature, the County has the sole discretion to implement any type of discipline in accordance with factors such as the seriousness and frequency of the violation and previous discipline. Records of disciplinary action shall remain in the employee's personnel file and shall be considered in connection with subsequent disciplinary action.

The employer may consider an employee's entire employment and disciplinary history in determining the appropriate discipline to be imposed upon the employee.

1.6. Prohibited Behavior

Prohibited Behavior

It is the policy of the County that certain types of behavior are inappropriate and, therefore, are prohibited. Behaviors and conduct set forth in the following Groups are violations of County policy and subject an employee to discipline. Such behaviors and conduct may, in addition and independently, constitute additional grounds for disciplinary action under other rules and policies as well as standards of conduct expected of public employees.

Prohibited behaviors and conduct are grouped according to seriousness of the offense, with Group 3 being the most serious. The Group within which an offense falls provides a beginning point for determining disciplinary action. Discipline is progressive regardless of the Group in which a current or previous offense falls. Behaviors and conduct not listed in any Group may still constitute grounds for disciplinary action. Such behavior or conduct may be subject to discipline under one or more of the grounds. Alternatively, behaviors and conduct not specifically listed in any Group may be considered as being in the Group in which the most similar behavior or conduct is found.

Discipline for prohibited behaviors and conduct shall be imposed based upon the facts of the offense including, but not limited to, the type of offense, the nature of the offense, the duration or frequency of the offense, any harm to persons or damage to property or risk thereof resulting from the offense and the extent thereof, and the employee's disciplinary history.

In addition, other County policies and procedures, such as the Drug Free Workplace Policy, may contain specific discipline for violations. Employee behavior or conduct violating such policies shall be addressed in accordance with such policies and, generally, shall not be subject to this Section. However, violations of the other policies shall be considered an offense for the purposes of the progressive system of discipline.

Group 1 Offense

- Failure to timely "report off" work for any absence.
- Failure to commence duties at the beginning of the work period, or leaving work prior to the end of the work period.
- Leaving the job or work area during the regular working hours without authorization.
- Making preparations to leave work without specific prior authorization before the lunch period, or for any official break time, or before the specified quitting time.
- Leaving post of continuous operations prior to being relieved by employee of incoming shift.
- Failure, neglect or carelessness in signing in or out.
- Unauthorized absence from work.
- Creating or contributing to unsanitary or unsafe conditions, or poor housekeeping.
- Distracting the attention of others, unnecessary shouting, demonstration, or otherwise causing disruption on the job.
- Mischief, horseplay, wrestling, or other undesirable conduct, including use of profane or abusive language.
- Tardiness in reporting to work.

- Failure to cooperate with other employees as required by job duties.
- Failure to exercise reasonable care during the use of County property or equipment.
- Use or possession of another employee's working equipment without authorization.
- Neglect or carelessness in observance of safety rules, or disregard of common safety practices.
- Failure to observe department rules.
- Obliging the County for any expense, service, or performance without authorization.
- Failure to report accidents, injury or equipment damage.
- Disregarding job duties by neglect of work, or reading for pleasure during working hours.
- Unsatisfactory work or failure to maintain required standard of performance.
- Unauthorized use of telephone, computers, or other equipment for other than business purposes.

Group 2 Offenses

- Any Group I offense that results in harm to persons or damage to property, or risk thereof, or causes the Employer to incur additional costs.
- Discourteous treatment of the public.
- Reporting for work or working while unfit for duty.
- Violation of or failure to comply with any County rule, regulation or policy.
- Conduct violating morality or common decency.
- Unauthorized use of County property or equipment, or unsafe use or failure to use prescribed safety equipment, or failure to ensure proper use of prescribed safety equipment and/or adherence to safety practices and procedures.
- Performing private work on County time.
- Failure to sign in or out when required.
- Failure to make required reports.
- Failure to report for overtime work without good reason after being scheduled to work according to overtime policy.
- Solicitation on County premises without authorization.
- The making or publishing of false, vicious or malicious statements concerning employees, supervisors, the County, or its operations.
- Refusing to give testimony when accidents are being investigated.
- Unauthorized posting or removal of notices or signs from bulletin boards.
- Distributing or posting written or printed matter of any description on County premises unless authorized

- Unauthorized presence on County property.
- Willful disregard of department rules.
- Threatening, intimidating, coercing, or interfering with subordinates or other employees.
- Sleeping during hours of work
- Misfeasance, Nonfeasance.
- Failure to report safety hazards.

Group 3 Offenses

- Any Group I or Group II offense that results in serious harm to persons or serious damage to property, or risk thereof, or causes the Employer to incur additional costs.
- Wanton or willful neglect in the performance of assigned duties, or in the care, use, or custody of any County property or equipment. Abuse, deliberate, or negligent destruction in any manner of County property, tools, equipment, or the property of employees.
- Signing or altering other employees' time sheets/time cards, or unauthorized altering of own time sheet/time card.
- Unauthorized absence from work including regular and overtime work hours.
- Unauthorized absence from work for three (3) days or more.
- Falsifying testimony or withholding information when accidents are being investigated, falsifying or assisting in falsifying or destroying any County records, including work performance reports; or giving false information or withholding pertinent information called for in making application for employment.
- Making false claims or misrepresentation in an attempt to obtain any County benefit.
- Gambling during working hours.
- Stealing or similar conduct, including destruction or vandalism.
- The illegal use of narcotics/controlled substances or the sale of narcotics/controlled substances.
- Use of abusive or threatening language, gestures or behavior toward supervisors, coworkers or the public.
- Abusing, fighting, or attempting injury to other employees, supervisors, or persons, inclusive of sexual harassment.
- Carrying or possession of firearms, explosives, or weapons on County property at any time without proper authorization.
- Knowingly concealing a communicable disease, such as TB, which may endanger other employees.

- Misuse, removal or improper release of County records or information without prior authorization.
- Instigating, leading, or participating in any illegal walkout, strike, sit-down, stand-in, refusal to return to work at the scheduled time for the scheduled shift, or other concerted curtailment, restriction, or interference with work in or about the County's work stations.
- Dishonesty or any dishonest action.
- Insubordination by refusing to perform assigned work or to comply with written or verbal instruction of the supervisor.
- Giving false testimony or statements during a complaint, grievance, or internal investigation or hearing.
- Malfeasance.
- Failure to promptly report a traffic violation, traffic related violation, or chargeable accident.
- Failure to comply with/enforce safety practices and procedures resulting in a safety hazard to self, co-workers, and/or the general public.
- Being convicted of a "felony" within the meaning of R.C. 124.34, even if prior discipline has been issued for the underlying conduct.
- Failure to abide by or comply with any rule, regulation, policy, procedure, directive or instruction resulting in damage or injury to or risk of damage or injury to County property, other employees or the general public.
- Engaging in conduct towards other County employees or the general public constituting harassment based on sex, sexual orientation, race, color, creed, religion or national origin.

1.7. Classified Employee Appeals

Any classified non-bargaining unit employee who desires to appeal a disciplinary action resulting in discharge, suspension of more than three (3) days, fine of more than three (3) days' pay, a demotion, or layoff, shall appeal such discharge, suspension of more than three (3) days, fine of more than three (3) days' pay, demotion, or layoff (personnel actions) to the State Personnel Board of Review.

Any appeal filed by any classified employee of the County shall be brought within ten (10) days of the employee being served with the notice of such personnel action by filing a Notice of Appeal.

EMPLOYEE REQUEST FOR LEAVE

Name: _____

Date form completed: _____

Date(s) of Requested leave (**enter date(s) only – list hrs in correct category:**)

List of Hours Below For Each Leave Requested:

_____ Personal medical, dental, optical examination or treatment for employee
(Statement of Medical Practitioner below or other documentation required)
_____ Personal illness or injury
_____ Immediate family illness, injury or medical, dental or optical appointment
_____ Death in family, bereavement leave for immediate family
_____ Death in family, sick leave for extended family (relationship _____)
_____ Vacation
_____ Civil leave, jury duty, etc.
_____ Military
_____ Compensatory time
_____ Family medical leave
_____ Unpaid leave – describe: _____

SIGNATURE OF EMPLOYEE

DATE

By signing, the employee verifies the use of the leave requested and compliance with Department Leave Policies.

Statement of Medical Practitioner (Physician, Dentist, Optometrist, etc.) As duly qualified practitioner of medicine, I certify that the use of sick leave described above is justified, in my opinion. The person was under my professional care and is medically capable of returning to work.

Print Name

Signature

City

Date

Administrative Action:

The approval and/or recommendation signified does not prevent issuance of disciplinary action for abuse of leave or violation of the leave policy.

_____ Approved

_____ Disapproved

Hours Approved:

Admin. Approval

Date

Comp Time _____

Vacation _____

Sick Leave _____

Remarks: _____

Manager's Predissmissal Check List

(Employee Name) _____ (Department) _____

(Manager) _____ (Date) _____

	YES	NO
i) Do I have ALL the facts recorded accurately?	<input type="checkbox"/>	<input type="checkbox"/>
ii) Have I documented all facts and circumstances?	<input type="checkbox"/>	<input type="checkbox"/>
iii) Have I assembled the records?	<input type="checkbox"/>	<input type="checkbox"/>
➤ Performance (production) records. (Keep examples of unsatisfactory work products <u>that have been discussed</u> with the employee.)	<input type="checkbox"/>	<input type="checkbox"/>
➤ Attendance record.	<input type="checkbox"/>	<input type="checkbox"/>
➤ Performance review records, reflecting candid appraisals.	<input type="checkbox"/>	<input type="checkbox"/>
➤ Discipline and warning records.	<input type="checkbox"/>	<input type="checkbox"/>
➤ Special action record.	<input type="checkbox"/>	<input type="checkbox"/>
iv) Is my decision based on facts, not inference, suspicion or emotion?	<input type="checkbox"/>	<input type="checkbox"/>
v) Has the employee fully understood the job requirements and behavior standards?	<input type="checkbox"/>	<input type="checkbox"/>
vi) Does the employee know exactly where he/she has fallen short in job performance or behavior standards?	<input type="checkbox"/>	<input type="checkbox"/>
vii) Has the employee received at least one warning of possible dismissal?	<input type="checkbox"/>	<input type="checkbox"/>
Am I <u>sure</u> the employee understood the warning? Where serious misconduct is involved,	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>

immediate suspension pending investigation may be justified.
(Examples: drinking or drunkenness on duty, dishonesty, theft, immoral or indecent conduct, fighting, insubordination, violation of secrecy rules, sabotage.)

- | | | | |
|-------|--|-----|-----|
| viii) | Has the employee had sufficient time and opportunity to correct the behavior that led me to take this action? | [] | [] |
| ix) | Has the employee had a full hearing? | [] | [] |
| | Have I considered the employee's point of view? | [] | [] |
| | Have personal difficulties or special, mitigating circumstances been taken into account? | [] | [] |
| x) | Where the situation warrants, has consideration been given to transferring this employee? | [] | [] |
| xi) | Am I sure that discharge will come as no surprise to the employee? | [] | [] |
| xii) | Is dismissal in this case consistent with past practice? | [] | [] |
| xiii) | Would the company be able to justify treatment of this employee if he/she claims discrimination or unjust dismissal? | [] | [] |
| xiv) | Would a jury conclude that our treatment of this employee was unquestionably fair? | [] | [] |
| xv) | Has this decision been discussed with higher levels of management? | [] | [] |
| xvi) | Am I prepared to handle this dismissal tactfully and objectively? | [] | [] |
| xvii) | Have I scheduled the dismissal interview at a time that will eliminate or minimize the employee's personal contact with other employees before he/she leaves the premises? | [] | [] |

- | | | | |
|--------|--|--------------------------|--------------------------|
| xviii) | Have I made arrangements to notify the employee in private? | <input type="checkbox"/> | <input type="checkbox"/> |
| xix) | Have I arranged for the final paycheck and am I prepared to explain the amount? | <input type="checkbox"/> | <input type="checkbox"/> |
| xx) | Do I know what group insurance the employee has and am I able to explain what will happen to it after dismissal? | <input type="checkbox"/> | <input type="checkbox"/> |
| xxi) | Is the Personnel Department prepared to conduct a careful exit interview? | <input type="checkbox"/> | <input type="checkbox"/> |
| xxii) | Has the employee signed any non-competition or confidentiality agreements? | <input type="checkbox"/> | <input type="checkbox"/> |
| xxiii) | Have I made copies of any such agreements to be furnished to the employee as a reminder? | <input type="checkbox"/> | <input type="checkbox"/> |
| xxiv) | Have I decided what restricted statements will be made to other employees concerning this person's discharge? | <input type="checkbox"/> | <input type="checkbox"/> |

CHECKLIST FOR DISCIPLINE OF CLASSIFIED EMPLOYEES

Review Local Policies and Procedures. There are Sufficient Articulate Facts to Support a Disciplinary Action

- There has been an adequate investigation.
- There is documentation to support discipline.

The Employee was afforded a Pre-Disciplinary Conference Prior to the Disciplinary Decision

- The employee was given a notice of the charges and an opportunity to respond.
- The employee was afforded a right to have an attorney present at the conference.
- If applicable, the employee was afforded a right to a Union representative at the conference.

An O.R.C. 124.34 Order or Order of Discipline was Properly Served

- SPBR form ADM 4055 should be used: <http://pbr.ohio.gov/pdf/124-340orderFillin.pdf>.
- The discipline form must state the statutory reason (category) for the discipline: as contained in O.R.C. 124.34, information needed.
- The Notice of Discipline form must advise the employee of the right to appeal. The second page of the SPBR form advises the employee of the right to appeal.

Service Upon the Employee of Notice of Discipline

- One copy of the form containing the original signature of the appointing authority must be served upon the employee.
- The employee must be served on or before the effective date of the disciplinary action.
- The employee may be served by personal delivery, certified mail return receipt requested, or by leaving it at the employee's usual residence with an adult.
- If served by mail, the service is complete when the return receipt is signed by the employee.
- Where required by Union contract, copy to Union.

**SUGGESTED POLICY ISSUES PROVISIONS RELATED TO STANDARDS OF
CONDUCT AND DISCIPLINE PROCESS TO CONSIDER:**

1. Abuse of position
2. Abuse of time
3. Accepting bribes
4. Alcohol & tobacco use
5. Appearance - personal
6. Arrest, search & seizure
7. Attendance
8. Cell phone
9. Competence/Satisfactory work performance
10. Computer use: email, data, use, websites, etc.
11. Conduct of safety officers
12. Conduct toward fellow employees
13. Conduct toward the public
14. Conduct Unbecoming
15. Conformance to laws
16. Cooperation with judiciary/prosecution
17. Courtesy criminal conduct/background check
18. Ethics
19. Illegal drug use
20. Insubordination
21. Internet/email use
22. Knowledge of agency rules/policies
23. Language use/workplace conduct
24. Maintenance/use of department equipment and vehicles
25. Mission statement
26. Official communications
27. Outside employment
28. Physical fitness standards
29. Political activity
30. Polygraphs
31. Prohibited associations and establishments
32. Public statements/appearances
33. Sick leave abuse
34. Social media
35. Standards of conduct
36. Truthfulness/Dishonesty

FLOW CHART FOR DISCIPLINE OF NON-UNION PUBLIC EMPLOYEES

Receive information that misconduct has occurred



Conduct investigation into the truthfulness and accuracy of reports*

(Garrity, Piper)



Determine whether evidence exists that the misconduct actually occurred



Determine the charges that apply to the employee's misconduct – Keep in mind the employee's constitutional rights (e.g. Speech, Religion, Association)



Send notification of the charges to the employee and schedule a pre-disciplinary conference where the employee will have a meaningful opportunity to respond



Conduct the pre-disciplinary conference

(Loudermill, Garrity, Piper)



Make a determination of whether discipline is appropriate, and, if so, the amount of discipline that is appropriate.



Notify the employee of the sanction



File a § 124.34 Order

***Investigation may involve:**

- Examination of reports or documents
- Interview of Witnesses
- Interview of Employees
- Surveillance
- Review of applicable standard of conduct such as a policy
- Other

Probationary Employees

Some of these procedures may be unnecessary for probationary employees. R.C. § 124.27

State of Ohio
Department of Administrative Services

**Order of Removal, Reduction, Suspension,
Fine, Involuntary Disability Separation**

M _____

This will notify you that you are; ☐ removed; ☐ suspended; ☐ suspended (working); ☐ fined;
☐ involuntary disability separated; ☐ reduced in pay, from your position of

_____ and/or reduced to new position of _____
(if applicable)

effective _____
(date)

The reason for this action is that you have been guilty of (List relevant R.C. 124.34 disciplinary offense(s)).
(Section not applicable for involuntary disability separation.)

Specifically:

Notice of pre-disciplinary/separation hearing given to employee: _____
(date)

Pre-disciplinary/separation hearing held or waived: _____
(date)

Employee allowed to meet with employer: ☐ Yes ☐ No

Order hand-delivered to employee: _____
(date, if hand-delivered)

If employee is suspended, list dates of suspension: _____

Signed at _____ Ohio, _____
(city) (date)

Counter signature, if applicable

Signature of Appointing Authority

Counter signature, if applicable

Type Name and Title of Appointing Authority

Counter signature, if applicable

Type Department, Agency, or Institution

IMPORTANT INSTRUCTIONS TO THE APPOINTING AUTHORITY

Actual signature means that each order served on the employee must contain the actual signature of the Appointing Authority. Appointing Authority means the actual appointing officer of the department or agency as well as any approving officer or board required by law.

If the appointment of an employee requires the approval of a board or commission, then a certified copy of the resolution of such board or commission approving the action must accompany this Order unless the actual signatures of the members of the board or commission appear on the front of the Order served on the employee.

The Appointing Authority must set forth in detail the particular acts and circumstances constituting the offense(s) charged. Evidence presented on appeal must be limited to that which relates to the charge(s) made; hence the Appointing Authority must set forth the charges(s) broadly enough to encompass all the evidence the Appointing Authority intends to offer. It is equally important that the Appointing Authority fully state the ground(s) for the action.

The Appointing Authority **MUST** provide an original of the Order to the employee on or before the effective date. The date on which the Order is served is the date the Order is delivered to the employee by hand or to the employee's last known mailing address by certified United States mail, whichever occurs first.

IMPORTANT INSTRUCTIONS TO THE EMPLOYEE

If you wish to appeal this action, then you must file your written appeal with the State Personnel Board of Review (SPBR) at 65 East State Street, 11th Floor, Columbus, Ohio 43215-4213. **Your appeal must actually be received and time-stamped by SPBR by the tenth calendar day from the date this Order was served.** For the purposes of your appeal, the date on which this Order is served is the date the Order is delivered to you by hand or to your last known mailing address, as maintained by your Appointing Authority, by certified United States mail. Whichever occurs first. You may obtain SPBR's Administrative Rules by writing the above office or by telephoning SPBR at (614) 466-7046. You may also obtain the rules at SPBR's website at <http://pbr.ohio.gov>.

Example of deadline to file appeal:

An employee is given a 40-hour suspension. The suspension is to begin on October 11 and run five working days through October 15. The employee is served with the forthcoming suspension Order on October 8. The employee has until October 18 to file a written appeal (ten days from the date the employee was served with the Order).

Reminder: If you are employed by a municipality or township that has a civil service commission, your appeal lies with that commission and not SPBR.

You may contact SPBR at (614) 466-7046 regarding the above information or regarding SPBR's jurisdiction or you may visit our website at <http://pbr.ohio.gov>.