

Frequently Asked Questions & Answers Concerning Discipline & Dismissal in the State of West Virginia

First Things First

1. *Q:* What is the first information needed to make a determination with respect to the discipline provisions contained in the *Administrative Rule* of the West Virginia Division of Personnel?

A: Determine the status of the employee at issue, i.e.:

- Is the employee in a temporary or permanent appointment
- Is the employee in a classified or exempt position
- Has the employee completed his or her probationary period and been certified permanent

2. *Q:* In addition to the status of the employee, what else should be considered?

A: Ascertain exactly what happened and if the employee has a history of similar problems or other disciplinary issues. If it is determined that the problem with the employee is unacceptable performance or conduct, review what disciplinary action, if any, has been taken against other employees for the same or similar conduct or performance. Section 12.5 - *Like Penalties for Like Offenses*, of the Division of Personnel *Administrative Rule* states: "In dismissals for cause and other punishments, appointing authorities shall impose like penalties for like offenses."

3. *Q:* What factors should be considered when disciplining for unsatisfactory job performance?

A: In determining whether an employee's performance is unsatisfactory job performance, a supervisor should consider all applicable factors such as:

- The quality of work
- The quantity of work
- Work habits
- Promptness
- The timely performance of work
- Related analysis, decisions, or judgment
- The accuracy of work
- The performance or work plan and the appraisal
- Absenteeism
- Ability to follow instructions, directions, or procedures
- The appropriateness of work performed

4. *Q:* When an employee has violated policy or exhibited unacceptable performance/behavior, what factors should be considered when deciding the appropriate disciplinary action?

A: When it has been determined that an employee has violated policy or other reasonable expectations, the supervisor should examine a number of factors to decide the appropriate type of disciplinary action. Among those factors are:

- Whether more investigation is needed to gather information and supporting documentation in order to make an informed and defensible recommendation
- The employee's work history
- The disciplinary action received by other employees within the agency/work unit for comparable performance or behaviors

5. *Q:* What is a predetermination conference?

A: A predetermination conference is a meeting held with an employee by his or her supervisor prior to his or her suspension or dismissal. The purpose of this meeting is to provide the employee with information about the disciplinary action being considered and the reasons for the action. This meeting also provides the employee with an opportunity to respond to the allegations made against him or her.

6. *Q:* What is the procedure for conducting a predetermination conference?

A: Before suspension or dismissal of an employee, a supervisor must conduct a predetermination conference. The individuals who should be present at the predetermination conference are:

- The supervisor or other person chosen by agency management to conduct the conference
- The employee
- If the person conducting the conference chooses, security may be present

During the predetermination conference, the person conducting the conference must:

- Advise the employee of contemplated disciplinary action and the reasons that such action is being considered. The employee should be provided specific reasons for the proposed disciplinary action and a summary of the facts supporting the recommendation
- Give the employee an opportunity to respond with information against the recommended disciplinary action, offer facts different from those offered by management that support his or her belief that the performance and/or behavior in question is acceptable, or acknowledge his or her unacceptable performance and/or behavior

7. Q: What happens after the predetermination conference for a dismissal?

A: After the predetermination conference, management shall review and consider the response of the employee and all other relevant facts to make a decision. Options at this point would be to continue with the dismissal, pursue a less severe disciplinary action, or not discipline at all.

If management decides to dismiss, the employee shall receive a written letter of dismissal. The letter must include:

- The effective date, including appropriate notice, and/or severance information
- The specific reason(s) for the dismissal
- The opportunity to respond
- The employee's right to appeal
- Continuance of insurance coverage information

Progressive Discipline

1. Q: What are the types of disciplinary actions?

A: There are five types of disciplinary actions: (1) verbal warnings/reprimands; (2) written warnings/reprimands; (3) suspensions; (4) demotions; and (5) dismissals.

2. Q: What are the recommended actions to be taken before a disciplinary action for unsatisfactory job performance may be implemented?

A: Before a disciplinary action for unsatisfactory job performance may be taken, the following should occur:

- Counseling - A meeting should be held with the employee to inform him or her that the work performance is unsatisfactory and to let him or her know what is expected in terms of improvement. A written plan of improvement may also be provided as part of this counseling session
- Warning/reprimand - The employee must have a current incident of unsatisfactory job performance
- Suspension Without Pay - There should be:
 1. A current incident of unsatisfactory job performance;
 2. At least one prior active written warning/reprimand or other disciplinary action, and
 3. A predetermination conference.

· Demotion - There should be:

1. A current incident of unsatisfactory job performance;
2. At least one prior active written warning/reprimand or other disciplinary action, and
3. A predetermination conference.

· Dismissal - There should be:

1. A current incident of unsatisfactory job performance;
2. At least two prior active written warnings/reprimands including a suspension, and
3. A predetermination (dismissal) conference.

Note: Recommended steps in the progressive discipline process may be omitted based upon the seriousness of the offense.

3. *Q:* What steps should be taken prior to a disciplinary action for grossly inefficient job performance or unacceptable personal conduct?

A: Before a disciplinary action is taken, there must be a current incident of grossly inefficient job performance or unacceptable personal conduct and a predetermination conference must be held with the employee.

4. *Q:* When can an employee be suspended without pay?

A: It is recommended that an employee be suspended without pay for disciplinary reasons for a current incident of unsatisfactory job performance or behavior after the receipt of at least one prior disciplinary action. An employee may be suspended without prior warning/reprimand or disciplinary action for any form of unacceptable personal conduct or grossly inefficient job performance based upon the severity of the offense. Before the decision is made to suspend an employee, there must be a predetermination conference.

5. *Q:* What is the recommended procedure for a suspension?

A: Before an employee is placed on suspension without pay, a supervisor must:

- Provide counseling, verbal warning/reprimand(s), and a written warning/reprimand as appropriate
- Conduct a predetermination conference
- Give the employee a written statement providing a notice period and detailing the acts, or failures to act, that are the reason(s) for the suspension and informing the employee of applicable appeal rights

Note: An immediate verbal suspension may be necessary based upon the seriousness of the offense.

6. Q: When can an employee receive a demotion?
- A: Any employee may be demoted as a disciplinary measure for a current incident of unsatisfactory job performance after appropriate counseling, warning/reprimand(s), and suspension, or without prior warning/reprimand or disciplinary action for any form of unacceptable personal conduct or grossly inefficient job performance. Before the decision is made to demote an employee for disciplinary reasons, a management representative must conduct a predetermination conference with the employee.
7. Q: When can an employee be dismissed?
- A: An employee may be dismissed for good cause when unacceptable performance and/or behavior continue after the employee has had adequate opportunity for correction or when the employee commits a singular offense that warrants immediate dismissal.
8. Q: Must every step in the progressive disciplinary continuum be taken before an employee may be dismissed?
- A: No. Each individual offense must be evaluated and the appropriate disciplinary action implemented based upon the seriousness of the unacceptable activity. In fact, there are many situations in which dismissal of an employee who has had no prior disciplinary action taken against him or her is warranted due to the severity of the offense.

Cause

1. Q: What is cause?
- A: Cause is the basis for the discipline of an employee. “*W. Va. Code* ... requires that the dismissal of a civil service employee be for good cause, which means misconduct of a substantial nature directly affecting the rights and interest of the public, rather than upon trivial or inconsequential matters, or mere technical violation of statute or official duty without wrongful intention.” *Oakes v. West Virginia Department of Finance and Administration*, 164 W. Va. 384, 264 S.E.2d 151 (1980).

Most often, there are two basic causes for discipline of an employee:

- Unsatisfactory job performance
- Unacceptable personal conduct

Other general causes include job abandonment, insubordination, tardiness, and negligence.

Note: No disciplinary action shall be invalid solely because it is labeled incorrectly.

2. Q: What constitutes cause for unsatisfactory job performance?

A: Any work-related performance problem may establish good cause to discipline an employee for unsatisfactory job performance. Cause occurs when an employee fails to satisfactorily meet job requirements or reasonable behavior expectations.

Note: The determination of unsatisfactory performance is generally made by the supervisor. This determination should be reasonable, proper, and factually supported.

3. Q: What constitutes cause regarding inefficient job performance?

A: Good cause to warn or take other disciplinary action is also created when job performance is so unsatisfactory that it causes or results in a serious loss of or damage to state property or funds adversely impacting the state, agency, and/or the work unit. Failure to obtain legally required certificates, licenses, bonds, or other credentials is treated like grossly inefficient job performance. Cause to warn or take other disciplinary action for inefficient job performance exists when job performance is so unsatisfactory that it causes or results in death or serious injury to employees, members of the public or persons for whom the employees have responsibility. Thus, an employee may receive a warning/reprimand or any other disciplinary action, up to and including dismissal.

4. Q: What constitutes cause regarding unacceptable personal conduct?

A: Cause to warn/reprimand or take disciplinary action for unacceptable personal conduct may be the result of intentional or unintentional acts. The conduct may be job related or off duty so long as there is a sufficient connection between the conduct and the employee's job. Insubordination is an example of unacceptable personal conduct.

Miscellaneous

1. Q: Who can be disciplined?

A: Any employee may be disciplined when cause exists regardless of occupation, position, or profession. Employee is defined in the *Administrative Rule* as, "Any person who lawfully occupies a position in an agency and who is paid a wage or salary and who has not severed the employee-employer relationship."

2. Q: What is the supervisor's role in written warnings/reprimands?

A: In cases of unsatisfactory job performance or behavior, a written warning/reprimand is the first type of disciplinary action that an employee may receive from a supervisor after counseling and verbal warning/reprimand(s). After the first unsatisfactory job performance warning/reprimand, a supervisor may give additional written warnings/reprimands or a higher level of disciplinary

action. The supervisor may also give a written warning/reprimand for inefficient job performance or unacceptable personal conduct; however, a written warning/reprimand may not be needed before management takes more severe disciplinary action in these types of cases.

3. *Q:* What should be included in a written warning/reprimand?

A: A written warning/reprimand must:

- Be in writing and state that it is a warning/reprimand
- State the specific conduct or performance that is the reason for the warning/reprimand
- State the time within which the employee must show improved performance or conduct. The time frame is typically 60 days for unsatisfactory job performance and immediately for inefficient job performance or unacceptable personal conduct
- State the consequences of failing to make the required improvements/corrections

4. *Q:* How long can an employee be suspended without pay?

A: As stated in Section 12.3. - *Suspension*, of the Division of Personnel *Administrative Rule*: “The suspension shall be for a specific period of scheduled work time, except where an employee is the subject of an indictment or other criminal proceeding.”

5. *Q:* What are the methods for implementing a demotion?

A: There are two types of demotion, with prejudice and without prejudice. A demotion with prejudice is a reduction in pay and/or a change in classification to a lower classification due to the inability of an employee to perform the duties of a classification or for improper conduct. A demotion without prejudice is a change in classification of an employee to a lower classification, a transfer of an employee to a lower classification, or a reduction in pay due to business necessity. The employee must receive a written statement providing notice, explaining the reason for the demotion, and detailing appeal rights.

6. *Q:* If credentials are required to work in a State government position, what is the appropriate discipline when these credentials are not current?

A: Not all positions in State government have duties that require a license, registration, or certification. However, by statute, regulation, and administrative rule, some duties assigned to positions may be performed only by persons who are duly licensed, registered, or certified. All such requirements and restrictions are specified in the “Minimum Requirements” section of West Virginia Division of Personnel classification specifications. Employees in such classifications are responsible for obtaining and maintaining current, valid credentials. Failure to obtain or maintain the legally-required credentials constitutes a basis for either suspension without pay until the credential(s) is restored or dismissal without prior warning/reprimand.

7. *Q:* What is the appropriate disciplinary action when falsification of credentials has been discovered?

A: Falsification of employment credentials or other documentation in connection with securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with the State, disciplinary action shall be administered as follows:

- If an employee was determined to be qualified and was selected for a position based on falsified work experience, education, registration, licensure, or certification information that was a requirement of the position, the employee must be dismissed
- In all other cases of post-hiring discovery of false or misleading information such as fictitious employment history, disciplinary action will be taken, but the severity of the disciplinary action shall be at the discretion of the agency head

Note: When credential or work history falsification is discovered before employment with the State, the applicant **shall** be disqualified from consideration for the position in question, **may** be removed from all competitive registers on which he or she is active, and **may** become permanently ineligible for placement on competitive registers.