

SECTION 33. DISCIPLINARY ACTIONS

(As amended December 11, 2007, October 21, 2008, November 3, 2009, and June 30, 2015)

33-1. Definition.

Disciplinary action: One of the following adverse personnel actions taken by a supervisor against an employee:

- (a) oral admonishment;
- (b) written reprimand;
- (c) forfeiture of annual leave or compensatory time;
- (d) within-grade salary reduction;
- (e) suspension;
- (f) demotion; or
- (g) dismissal.

33-2. Policy on disciplinary actions.

- (a) ***Purpose of disciplinary actions.*** A department director may take a disciplinary action against an employee to maintain order, productivity, or safety in the workplace.
- (b) ***Prompt discipline.***
 - (1) A department director should start the disciplinary process promptly and issue a statement of charges within 30 calendar days of the date on which the supervisor became aware of the employee's conduct, performance, or attendance problem.
 - (2) A department director may wait for more than 30 calendar days to issue a statement of charges if an investigation of the employee's conduct or other circumstances justify a delay.
- (c) ***Progressive discipline.***
 - (1) A department director must apply discipline progressively by increasing the severity of the disciplinary action proposed against the employee in response to:

- (A) the severity of the employee's misconduct and its actual or possible consequences; or
 - (B) the employee's continuing misconduct or attendance violations over time.
- (2) Progressive discipline does not require a department director to apply discipline in a particular order or to always begin with the least severe penalty. In some cases involving serious misconduct or a serious violation of policy or procedure, a department director may bypass progressive discipline and dismiss the employee or take another more severe disciplinary action.
- (d) **Consideration of other factors.** A department director should also consider the following factors when deciding if discipline is appropriate or how severe the disciplinary action should be:
- (1) the relationship of the misconduct to the employee's assigned duties and responsibilities;
 - (2) the employee's work record;
 - (3) the discipline given to other employees in comparable positions in the department for similar behavior;
 - (4) if the employee was aware or should have been aware of the rule, procedure, or regulation that the employee is charged with violating; and
 - (5) any other relevant factors.

33-3. Types of disciplinary actions.

- (a) **Oral admonishment.** An oral admonishment is:
- (1) the least severe disciplinary action;
 - (2) a spoken warning or indication of disapproval about a specific act of misconduct or violation of a policy or procedure; and
 - (3) usually given by the immediate supervisor.
- (b) **Written reprimand.** A written reprimand is:
- (1) the second least severe disciplinary action;
 - (2) a written statement about a specific act of misconduct or violation of a policy or procedure; and

- (3) included in the employee's official personnel record.
- (c) ***Forfeiture of annual leave or compensatory time.***
 - (1) A forfeiture of annual leave or compensatory time:
 - (A) is the removal of a specified number of hours from the annual leave or compensatory time balance of an employee;
 - (B) must be at least one day but not more than 10 days.
 - (2) The FLSA prohibits a department director from taking compensatory time from a non-exempt employee for disciplinary purposes.
- (d) ***Within-grade salary reduction.***
 - (1) A within-grade salary reduction:
 - (A) is the reduction of an employee's base salary by a specified amount for a specified period of time; and
 - (B) must not exceed one year.
 - (2) A department director must not impose a within-grade salary reduction on an exempt employee because it is inconsistent with the employee's FLSA-exempt status.
- (e) ***Suspension.***
 - (1) A suspension is an action that places an employee in a LWOP status for a specified period for a violation of a policy or procedure or other specific act of misconduct.
 - (2) A department director may not:
 - (A) suspend an employee for more than 10 days without the approval of the CAO; or
 - (B) suspend an employee for more than 30 days, unless:
 - (i) a longer suspension is imposed by a court or quasi-judicial body; or
 - (ii) the employee agrees to the longer suspension as part of a settlement agreement.
- (f) ***Suspension pending investigation of charges or trial.***

- (1) ***Purpose of suspension pending investigation of charges or trial.*** A department director may place an employee in LWOP status for an indefinite period while the employee is:
 - (A) being investigated by the County or a law enforcement agency for an offense that has a nexus with (is reasonably related to) County employment; or
 - (B) waiting to be tried for an offense that is job-related or has a nexus with County employment.
- (2) ***Employee's return to work after suspension.***
 - (A) The CAO must allow the employee to return to work unless the County dismisses or terminates the employee or the employee is convicted by a court.
 - (B) The CAO must give the employee back pay and benefits, subject to subparagraph (C) below, except as provided in a separate disciplinary action imposed by the County.
 - (C) The CAO's approval of back pay is subject to the following:
 - (i) the employee must provide documentation of other earnings or income during the period of suspension and must obey all County regulations on secondary employment; and
 - (ii) back pay must equal the amount the employee would have earned during all or part of the period of suspension less the amount the employee earned in other employment during the period.
- (g) ***Demotion.*** A disciplinary demotion is an action in which a department director places an employee in a merit system position with a lower pay grade and reduces the employee's salary under Section 10-5(d)(2) of these Regulations.
- (h) ***Dismissal.*** Dismissal is the removal of an employee from County employment for cause.

33-4. Authority to take disciplinary action.

- (a) An immediate supervisor may give an employee an oral admonishment.
- (b) A department director may take any disciplinary action under these Regulations.

- (c) A department director may delegate the authority to take any type of disciplinary action to a lower level supervisor. The delegation must be in writing.

33-5. Causes for disciplinary action. The following, while not all-inclusive, may be cause for a disciplinary action by a department director against an employee who:

- (a) materially falsifies information provided on an application or on a document associated with an application for employment, promotion, transfer, or County benefits, which includes a document associated with any type of health insurance, life insurance, disability insurance, Workers' Compensation benefits, or disability retirement;
- (b) refuses to take a medical examination or to provide medical records as directed;
- (c) violates any established policy or procedure;
- (d) violates any provision of the County Charter, County statutes, ordinances, regulations, State or Federal laws, or is convicted of a criminal offense, if such violation is related to, or has a nexus with, County employment;
- (e) fails to perform duties in a competent or acceptable manner;
- (f) behaves insubordinately or fails to obey a lawful direction from a supervisor;
- (g) knowingly makes a false statement or report in the course of employment;
- (h) is negligent or careless in performing duties;
- (i) abuses sick leave or disability leave;
- (j) is AWOL or late repeatedly;
- (k) is impaired or under the influence of alcohol or an unprescribed controlled substance while at work or when reporting to work;
- (l) uses, possesses, sells, or transfers alcohol or an illegal drug to another person while on duty, on County government property, or in a County vehicle unless the employee's County employment requires such conduct;
- (m) fails to observe a safety practice, which includes wearing a seat belt, protective eyewear, and protective hearing devices;
- (n) damages or destroys County property or damages or destroys private property of another while on duty or in a County vehicle;

- (o) takes, steals, misuses, or misappropriates County funds or property or the property of a client, patient, citizen, or other person with whom the employee deals while on duty;
- (p) possesses an unauthorized dangerous weapon while on duty, on County government property, or in a County vehicle;
- (q) engages in discriminatory, retaliatory, or harassing behavior;
- (r) interferes with or disrupts the work of another County employee;
- (s) threatens another with bodily harm while on duty, on County government property, or in a County vehicle;
- (t) engages in a physical altercation or assaults another while on duty, on County government property, or in a County vehicle;
- (u) fails to disclose a private interest or to disqualify himself or herself from participation in a decision or other action in which there is a conflict between the employee's official duties and a private interest in violation of Section 19A, "Ethics", of the Montgomery County Code;
- (v) directs an employee to perform service or work outside of the employee's official duties;
- (w) engages in a private business, trade, or occupation during official working hours in violation of County statutes, regulations, or administrative procedures;
- (x) accepts, offers, gives, or promises to give money or a valuable thing, threatens to use force or to disclose another's personal affairs, or blackmails or extorts to influence a person in the performance of the person's official duties;
- (y) solicits an endorsement for employment or promotion from an individual who is or may be engaged in doing business with the County Government;
- (z) fails to cooperate or provide information when questioned as a witness during an investigation;
- (aa) fails to cooperate or provide information when the employee is the subject of an investigation, unless the employee invokes the Fifth Amendment right against self-incrimination or refuses to give information that the employee is ethically or legally prohibited from revealing, such as attorney-client privileged material or mental health records; or
- (bb) violates the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

33-6. Disciplinary process.

- (a) ***Prior to taking disciplinary action.*** A supervisor who is considering taking a disciplinary action should:
 - (1) document the incident or employee's behavior that caused concern;
 - (2) conduct an investigation, if appropriate and necessary; and
 - (3) interview the employee and others who may have witnessed the conduct or have information about it.

- (b) ***Statement of charges.***
 - (1) Before taking a disciplinary action other than an oral admonishment, a department director must give the employee a statement of charges that tells the employee:
 - (A) the disciplinary action proposed;
 - (B) the specific reasons for the proposed disciplinary action including the dates, times, and places of events and names of others involved, as appropriate;
 - (C) that the employee may respond orally, in writing, or both;
 - (D) who to direct the response to;
 - (E) the deadline for submitting a response; and
 - (F) that the employee may be represented by another when responding to the statement of charges.
 - (2) The department director must allow the employee at least 10 working days to respond to the statement of charges.
 - (3) If the employee responds to the statement of charges, the department director must carefully consider the response and decide:
 - (A) if the proposed disciplinary action should be taken;
 - (B) if no disciplinary action should be taken; or
 - (C) if a different disciplinary action should be taken.

- (4) The department director must issue a new statement of charges if the department director decides that a more severe disciplinary action is appropriate.
- (c) *Notice of disciplinary action.*
 - (1) A notice of disciplinary action must contain the following information:
 - (A) the type of disciplinary action that will be taken;
 - (B) the date on which the disciplinary action will take effect;
 - (C) the specific reasons for the disciplinary action including dates, times, places, and names of others involved, as appropriate;
 - (D) whether the employee responded to the statement of charges and if the response influenced the decision on the disciplinary action; and
 - (E) whether the employee may appeal the action by filing a grievance or an appeal to the MSPB; and
 - (F) the deadline for filing a grievance or an appeal.
 - (2) A department director must issue a notice of disciplinary action at least 5 working days before the effective date of the proposed action.

33-7. Immediate removal of an employee from duty.

- (a) An immediate or higher level supervisor may immediately relieve an employee from duty for serious misconduct or if the presence of the employee will cause or continue a disruption in the workplace.
- (b) The supervisor who took the action must submit a recommendation for appropriate disciplinary action to the department director by the end of the workday following the day the employee is relieved from duty.
- (c) A supervisor must ensure that an employee removed from duty is either on administrative leave or on another appropriate type of leave until the department director takes disciplinary action against the employee or allows the employee to return to work. An employee who is ill or otherwise medically unfit for duty during the period of time before a disciplinary action is taken may be required to use sick or annual leave or LWOP.

33-8. Employee resignation after disciplinary action is initiated. If an employee voluntarily resigns after a department director initiates formal disciplinary action against the employee, the department director may indicate on the employee's separation papers that:

- (a) disciplinary action is pending against the employee; and
- (b) the employee is not eligible for rehire.

33-9. Right of an employee to appeal a disciplinary action.

- (a) ***Grievance rights.***
 - (1) With the exception of an oral admonishment, an unrepresented (non-bargaining unit) employee may file a grievance under Section 34 of these Regulations over any disciplinary action and the penalty associated with the disciplinary action, such as the length of the suspension, the amount of leave or compensatory time taken from the employee, or the salary reduction associated with a demotion or within-grade salary reduction.
 - (2) A bargaining unit employee may file a grievance over a disciplinary action by using the grievance procedure in the appropriate collective bargaining agreement.
- (b) ***Right to appeal a disciplinary action to the MSPB.***
 - (1) ***Right to file a direct appeal to the MSPB.*** An employee with merit system status may appeal a demotion, suspension, or dismissal by filing an appeal directly with the MSPB under Section 35 of these Regulations. An employee who files a direct appeal must not also file a grievance on the same disciplinary action.
 - (2) ***Right to appeal a grievance decision to the MSPB.*** An employee, other than a probationary employee or temporary employee, may appeal a decision on a grievance over a disciplinary action to the MSPB.

33-10. Right of a Volunteer Firefighter or Rescuer to appeal a disciplinary action to the MSPB. A volunteer firefighter or rescuer aggrieved by an adverse final action of the Fire Chief or a local fire and rescue department involving any disciplinary action applied specifically to that individual, including a restriction or prohibition from participating in fire and rescue activities, may file a direct appeal with the MSPB under Section 35 of these Regulations, as if the individual were a County merit system employee.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to disciplinary actions
Firefighter/Rescuer	5, Management Rights 23, Hours of Work 30, Discipline 38, Contract Grievance Procedure 40, Employee Status 48, Job Sharing Program
OPT/SLT	2, Management Rights 5, Wages, Salary and Employee Compensation 6, Service Increments 10, Grievances 13, Work Schedules; Attendance; Hours of Work 16, Leave Without Pay 24, Demotion 28, Disciplinary Actions 30, Notices to Employees 34, Safety and Health Appendix IV, Dept. of Corrections and Rehabilitation
Police	4, Prevention of Substance Abuse/Employee Rehabilitation 15, Hours and Working Conditions 28, Service Increments 43, Discipline 53, Performance Evaluation 54, Demotion 55, Job Sharing Program