

PROGRESSIVE DISCIPLINE

Positive actions to get the best from your employees.



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PREFACE

This guide describes the basic elements of a sound progressive disciplinary system. It is intended as a guide to assist supervisors in determining when disciplinary action is necessary, what level of discipline is appropriate, and how to administer discipline.

We recognize that most employees only need to be properly trained and be informed of the rules in order to be positive, productive employees. There are, however, times when the supervisor must use the discipline process in order to get the employee's attention and attain the desired result. Supervisors are encouraged to make sure that the employee has been properly trained and informed prior to resorting to the discipline process.

The principles of progressive discipline, equitable treatment, past practice, and just cause are set forth in this guide. This guide details how to evaluate a situation prior to taking any disciplinary action, including the investigation process. The guide also outlines the employee's right to appeal disciplinary action. A checklist of questions is provided to help guide the supervisor through the disciplinary process. We have included the form required for documenting disciplinary action as well as sample disciplinary letters, they can be used to supplement the disciplinary form.

Two important issues need to be emphasized. First, although the bulk of the guide addresses cases which stem from a series of events leading to discipline, such as poor work performance or poor attendance, there are times when more serious infractions occur which require moving immediately to a suspension or termination of employment. There are also times when a step may be repeated or skipped. Second, the level of responsibility or type of position within the University is a critical criterion in applying the concepts of progressive discipline in any given case.

Employee Relations is responsible for assisting the supervisor in administering the disciplinary process in conformity with collective bargaining agreements, employee handbooks, and University policies and procedures. When considering any disciplinary action, Employee Relations is available to provide the supervisor with assistance. At the more advanced disciplinary steps of suspension and termination of employment, the University requires that the supervisor work with the Employee Relations office.

I. INTRODUCTION

A. Purpose of Discipline

Discipline in its literal sense is training that corrects, molds, or improves. Its purpose in the work place is to correct, mold, or improve job-related performance or behavior. Discipline should be progressive in nature so that the University imposes the least severe action necessary to correct undesirable behavior and moves to increasingly severe measures only if the problem is not corrected. With the exception of termination of employment, the primary objective of discipline is to correct, not punish, the employee. When properly administered, progressive discipline benefits management and employees and satisfies the scrutiny of third parties (e.g. Unions, EEOC, Arbitrators).

For MANAGEMENT, progressive discipline maintains order and enforces University rules. It affects employee morale and productivity positively. It helps rehabilitate employees who choose to correct their behavior; and it helps to justify termination of employment of those who do not. Discipline which is not properly administered and thereafter is reversed or rescinded, has the negative effect of discrediting the rule, policy, procedure, and/or supervisor.

For SUPERVISORS, the administration of discipline is a responsibility as important as planning, organizing, leading, and controlling the work unit. This disciplinary responsibility requires the supervisor to establish, understand, communicate and enforce rules, policies, procedures, and the provisions of the collective bargaining agreements and employee handbooks. The effectiveness of the disciplinary action depends upon the supervisor's exercise of good judgment, fairness, tact and common sense in its administration. Supervisors must not allow inappropriate behavior to be ignored. It is their obligation to take appropriate action promptly. It is disruptive and divisive when disciplinary actions are reduced or set aside by an impartial third party. It is important for the maintenance of the work environment that disciplines not be reversed. Supervisors should carefully follow the principles of discipline to avoid this.

For EMPLOYEES, progressive discipline sets clear standards and warns of consequences for noncompliance. It assures predictable, progressive, and equitable treatment. It promotes fair decisions, and it provides a process to appeal disciplinary decisions.

For THIRD PARTIES, properly administered discipline meets the test of just cause and satisfies the requirements for progressive, nondiscriminatory, fair, corrective, and consistent decisions.

B. Progressive Nature of Discipline

In order for discipline to be effective and correct employee behavior, it must have certain fundamental characteristics.

Discipline must:

- 1) be progressive
- 2) consider past practice and equitable treatment, and
- 3) meet the test of just cause.

The principle of "progressive" discipline involves informing the employee of the problem and the need to correct it, and then using increasingly stronger disciplinary measures if the employee fails to correct the problem.

In most situations, the problem will first be brought to the employee's attention with a counseling session. This initial counseling is not considered part of the formal disciplinary system. During counseling, the supervisor should make sure the employee is aware of the problem and impress upon the employee the importance and necessity of correcting the problem. Most employees will correct the problem through such counseling. If the problem continues, disciplinary action may be initiated. Although counseling is not recognized as a formal disciplinary step, it is strongly recommended to retain a written record of counseling including dates. It is expected that in most cases, counseling will precede the formal disciplinary process.

The formal disciplinary process may include a verbal reprimand, a written reprimand, suspension, and termination of employment. For most problems, each step in the complete process is necessary. For more serious problems the earlier steps may be eliminated. The degree of discipline taken must correlate to the seriousness of the offense and the employee's record. Discipline should be taken at the minimum level necessary to bring about correction of the problem. If the problem is not corrected, more severe action will be taken, up to and including termination of employment. Other factors to consider when determining the appropriate discipline are the level of the employee's position and the type of position. For example, managers and supervisors are held to higher standards of performance and behavior. Discipline can progress to the final step which is termination of employment.

Steps for Managing Performance

- Counseling
- Progressive Discipline
 - Verbal Reprimand
 - Written Reprimand
 - Suspension Without Pay
 - Termination of Employment

The progressive disciplinary process for salaried Professional and Administrative employees differs from the process outlined above. See Section II. G entitled Disciplinary Process for Salaried Employees.

C. Establishing the Ground Rules

As a supervisor, there are inherent responsibilities to promote positive employee morale and to maintain a productive work force. Vital to meeting these responsibilities is the effective handling of discipline. These responsibilities begin long before any disciplinary measures are actually necessary. They begin by establishing the "ground rules" by which employees are expected to conduct themselves.

Not all work environments are identical and, therefore, one set of rules will not apply to all employees. Supervisors must know the rules that apply to their particular work group as well as any unwritten practices that have become commonplace. Both long-standing and newly created work rules should be clear, reasonable, and understandable. Employees are more apt to conform to rules that are understood and reasonable, than to those that are not. All rules and practices should be reviewed regularly and updated if necessary.

The supervisor should not assume employees will learn rules by word of mouth. Initially, work rules may be communicated orally, but it is necessary to reinforce this communication in writing. Announcements in newsletters and notices on bulletin boards are the most common forms of communication and may be reinforced by inclusion in policy manuals, collective bargaining agreements and employee handbooks. Once published and posted, copies of rules and policies should be accessible to management and employees at all times to encourage an atmosphere of open communication and prevent policies from becoming "sacred documents".

Supervisors who enforce work rules consistently and without discrimination gain the respect and cooperation of their employees. This respect can be quickly lost if some employees are allowed to "bend the rules". Being overly lenient or overlooking rules altogether invites disrespect and over a period of time the rules become dormant and unenforceable. To enforce a dormant work rule, the rule and the consequence of infraction must be communicated to employees again.

By establishing clear, reasonable, and understandable work rules, communicating the rules to employees and applying the rules consistently, the supervisor is setting the standards for employee performance and behavior. As one might expect, not every employee will measure up to performance standards or comply with established work rules. When this occurs, the supervisor's responsibility is to take the necessary progressive disciplinary action.

D. The Importance of the Probationary Period

The University has established a probationary period for all newly-appointed employees. This probationary period is an important element in any successful employer/employee relationship.

The purpose of the probationary period is to assure the supervisor that the employee can satisfactorily fulfill the demands of the position. The employee's work performance should be monitored throughout this period and measured against the department's policies, procedures, work rules, and performance standards. If the supervisor sees or anticipates a problem developing, it should be dealt with immediately: Inform the employee there is a problem, give the employee reasonable time to correct the problem, and tell the employee the consequences of not correcting the problem.

The importance of the probationary period is readily apparent. It is a "trial period", and disciplining an employee during this period is a shortened process. Conversely, disciplining an employee who has completed the probationary period is a much longer and more complex process.

If, after this, the employee still is not "measuring up", the supervisor may request an extension of the probationary period or termination of employment. For a probationary employee, it is not necessary to take the full sequence of disciplinary steps before making either of these decisions. The supervisor must, however, evaluate the employee's performance accurately. The supervisor needs to make sure the employee has been informed of the performance problems and given the opportunity to improve. As a supervisor, you are not required to follow all of the steps of progressive discipline as set forth in this guide to terminate the employment of a probationary employee. In light of an increasing amount of "wrongful discharge" litigation nationwide, the supervisor should, however, consider using the principles and processes as a checklist to assure fair and equitable treatment of probationary employees. Additionally, following this guide will afford probationary employees "due process" prior to termination of employment. The supervisor must contact Employee Relations to request the extension of a probationary period or to terminate the employment of a probationary employee. This must be done prior to the end of the probationary period. The employee and the Union (if applicable) must be notified in writing that the probationary period has been extended.

If the employee completes the time requirement for the probationary period, but questions remain in the supervisor's mind, the employee may be "conditionally" released from probation. The supervisor should consult with Employee Relations whenever concern exists when ending a probationary period.

If the probationary period is satisfactorily completed, notify the employee. An employee should be given positive feedback relating to his/her probationary period performance. If the supervisor decides to take the employee off probation, any concerns or disciplinary actions that occurred during the probation period should be noted.

II. The Steps of Progressive Discipline

There are no formulas or set rules that will apply to all situations and give the "answer" to the proper disciplinary step to take. Each disciplinary action will depend upon the nature of the offense and the related circumstances.

A. Essential Elements of Each Step

At each step of the discipline process, the supervisor must insure that certain things occur: · Meet with the employee privately. · Provide opportunity for representation for the employee during the investigative meeting as well as in any follow up meeting. · Clearly identify the problem and attempt to insure the employee understands · Allow the employee the opportunity to explain. Conduct a thorough investigation and make sure the employee has done (or not done) whatever you are considering disciplining for. · Verify just cause extras. Clearly explain to the employee the expected behavior. · Inform the employee of the consequences if the problem is not resolved. · Document the disciplinary action.

B. Verbal Reprimand

This is the initial step of progressive discipline. Whether "spur-of-the-moment" or "after-the-fact", the verbal reprimand is given in a private setting; and the discussion is conducted in a friendly, but firm, "low-key" manner. A verbal reprimand is generally used when a problem persists after the supervisor has brought it to the employee's attention through counseling. The purpose of this step is to alleviate any misunderstanding and to clarify the direction for necessary and successful correction of the problem.

Most performance problems are resolved at this stage. If the problem continues, the supervisor may want to repeat this step before proceeding to a written reprimand.

The verbal reprimand is used to bring a problem to the attention of the employee before it becomes so serious that it jeopardizes the employment status of the employee. The verbal reprimand must be documented on the appropriate form. (See Appendix E)

C. Written Reprimand

When the employee has not satisfactorily corrected the problem as outlined during the verbal reprimand, proceed to the next step -- a formal written reprimand. A written reprimand may also be the initial disciplinary action in cases of a more serious nature.

The process is essentially the same as in the verbal reprimand step. The written reprimand includes a review of any prior related disciplinary action taken, a thorough statement of the circumstances causing the current disciplinary action, and a clear picture of future expectations. Documentation is critical, the supervisor must complete the appropriate form. (See Appendix

G) If the supervisor wants to explain the problem in greater detail or clarify the expectations, a letter can be attached to the discipline form. Make sure to keep the letter clear and simple. A sample letter is included in Appendix H. If the supervisor would like assistance, Employee Relations should be contacted.

D. Suspension Without Pay

Suspension is the last corrective step in the disciplinary process and is normally preceded by a verbal reprimand and a written reprimand. In a few extremely serious cases, suspension may be warranted as the initial step in the disciplinary process. Contact Employee Relations if considering the suspension of any employee.

A suspension involves the temporary removal of the employee from the work place for a specified period of time. The employee may not accrue vacation and sick leave benefits during this non-working, non-paid period of time. Again, the purpose of this disciplinary step is to correct the identified problem. A suspension is the strongest warning to the employee that the problem is, indeed, extremely serious, and it is the "last chance" the employee has to correct the problem.

The length of the suspension is determined by the supervisor and Employee Relations and generally ranges from one (1) to five (5) working days. Most suspensions average three (3) working days. A suspension longer than five (5) working days may be imposed in certain cases.

As in previous steps, complete the appropriate form. (See Appendix I) The disciplinary form includes the specific days of the suspension as well as the date and time the employee is to return to work.

E. Termination of Employment

If all the previous steps have not been successful, the employee may be terminated from employment. Termination of employment is the final step in the progressive disciplinary process and obviously is not corrective.

As in the previous steps, it is critical that the employee be given an opportunity to hear the charges, understand the evidence, and offer an explanation.

Again, after this discussion and upon completion of the investigation, document the action by using the appropriate form. (See Appendix K).

In any situation serious enough to justify termination of employment, University policy requires the supervisor to contact Employee Relations prior to taking any action. Employee Relations will review the case to verify that there is just cause for termination of employment and that the employee has been afforded due process.

F. Suspension Pending Investigation

There are situations where the employee must be removed from the work place immediately before an investigation can be conducted. Examples of these situations might be suspected theft, potential sabotage, disorderly conduct, or where the employee presents a threat to other employees. In these instances, the employee can be suspended pending the results of the investigation. The supervisor must contact Employee Relations immediately. This should be done before sending the employee home, unless there is a need to remove the employee immediately because the employee presents a clear and imminent danger if left in the work place. The suspension pending investigation is imposed with the understanding that a final decision, relative to the appropriate disciplinary action, will be made after the investigation. If there is no cause for disciplinary action, the employee will receive pay for regular earnings lost during the suspension.

G. Disciplinary Process for Salaried Employees

The purpose of the disciplinary process is to correct or improve job-related performance. Disciplinary problems and violations of rules will be dealt with according to the situation and the work record of the employee in compliance with applicable laws. Non-probationary employees will not be disciplined or discharged without cause. If a salaried employee fails to correct the problem after being "counseled", the formal disciplinary process begins with a written notice that the employee is being placed on a "trial period" during which time the problem must be corrected. (This notice is preceded by a meeting where all of the items addressed in Section II.A. "Essential Elements of Each Step" are covered.)

Generally the trial period is for ninety (90) days, although it may be shorter or longer depending upon the nature of the problem. During the trial period, regular feedback must be given to the employee. At the end of the trial period, the employee is returned to regular status if the problem is resolved. The employee must continue to meet the expectations required or this process is reinitiated with a significantly shortened trial period. If the problem is not resolved, the trial may be extended or employment may be terminated. Generally, trial periods do not last longer than one (1) year. As is the case with hourly employees, there are situations so severe that employment may be terminated without going through the process outlined above.

III. PRINCIPLES OF DISCIPLINE

A. Just Cause

Perhaps one of the most crucial principles necessary for a sound disciplinary process is that of just cause. Disciplinary action taken with even one (1) of the elements of just cause missing may lead to questionable disciplinary action and possible reversal of decisions.

Most collective bargaining agreements and employee handbooks do not attempt to define just cause; however, a "common law" has developed over the years which consists of a set of seven (7) guidelines or questions to be applied to each case. The acceptance and use of these guidelines have set the standard of just cause. In general, if any of the seven (7) items are not present the supervisor needs to review the entire situation before proceeding with disciplinary action.

Components of Just Cause:

1. Adequate Warning. Did the employee know, or should the employee have known, that the behavior could result in disciplinary action? As mentioned previously, in the role as a supervisor, work rules must be communicated to employees, and indicate that failure to comply may result in disciplinary action. The lack of this explicit communication will not always lead to a "no" response to this question. In some cases, it is the employee's responsibility to know that certain actions are unacceptable and will result in disciplinary action. Insubordination, fighting on the job, coming to work intoxicated, drinking on the job, and theft of University property are examples of certain offenses we consider, as a society, to be unacceptable and expect severe disciplinary action to be taken.
2. Reasonable Rules. Was the rule or order reasonable, safe, and related to University needs? Was the rule or order related to the conduct that the University might properly expect of the employee? Written rules usually pass this test. It is the on-the-spot order that most often creates a problem. Even so, except in cases of immediate danger to one's health and safety, an employee generally must follow the "work now and grieve later" approach. Disobeying even an unreasonable rule may be considered insubordination which is cause for disciplinary action.
3. Violation of Rule. Prior to administering the disciplinary action, did the University, make an effort to discover whether the employee did, in fact, violate the rule or order? An employee has the right to know the offense with which he/she is being charged and to defend that behavior. Therefore, the supervisor should advise the employee as specifically as possible of the offense charged and verify that the employee did what they are about to be disciplined for.

4. Fair Investigation. Did the supervisor conduct a thorough investigation of the facts and circumstances, including the employee's explanation, prior to administering disciplinary action? This requires the supervisor to actively seek information in a fair, objective, and nondiscriminatory manner, not just passively wait for people to come forward and volunteer information. In addition, the investigation should be documented in writing.

This is one of the most critical elements at each step of the discipline process. It makes sense to provide the employee an opportunity to hear the charges, understand the evidence, and offer an explanation before the disciplinary action occurs. In other words, the employee should be given an opportunity to present "the other side of the story." It is essential to extend this opportunity at all levels of discipline.

- A. Representation/Witness: When the supervisor schedules a meeting to discuss the problem, tell the employee it is part of your investigation and may lead to disciplinary action. Tell the employee arrangements will be made to have a representative/witness present, unless the employee does not want anyone else present. For unionized employees, there are individuals designated by the union to act as representatives. For non-unionized employees, the University will generally allow a representative of council to serve as a witness for the employee. If the employee refuses representation, make sure to make a note the employee refused representation. If the employee raises no objection to having a representative present, contact the supervisor of the appropriate representative and arrange for the representative to be present.
 - i. Role of the Representative The representative's role is to assist the employee in understanding the basis for the disciplinary action and to assist in presenting the employee's response. Since this is not a full or formal hearing, the representative's role does not include questioning witnesses.
 - ii. Role of the Witness The role of the witness is much different from that of the union representative. The witness is present to verify what was said and may take notes for the employee. The witness does not serve an advisory role.
- B. Investigatory Meeting. Whether it involves a general job performance problem or a specific policy violation, the structure of the investigatory meeting is the same. Inform the employee of the problem and the evidence that currently exists and ask the employee for an explanation or response. At the conclusion of the meeting, inform the employee that disciplinary action may result if the complete investigation shows it is warranted. It is recommended that a final decision not be announced in the meeting. As facts are gathered, witnesses are questioned and evidence reviewed, you need to document the investigation, including dates, times, names of the persons questioned and the information they provided. Take time to reflect on all available information and to discuss the matter with departmental management

and Employee Relations. This will assist the supervisor in making a sound disciplinary decision (all of this must be done in a timely manner).

5. **Substantial Proof.** Is there substantial proof for the case? Substantial evidence or proof of guilt must exist to clearly establish that the employee did, in fact, violate the work standard or rule. The best evidence is that which is documented or witnessed and is not rumor, unsupported accusations, or superficial allegations. Hearsay evidence will often be admitted in arbitration proceedings, but generally will be accorded little weight and is usually not accepted as truth. Hearsay consists of information given by a person who states not what he/she knows of their own knowledge, but what he/she has heard from others. It is unlikely that a decision will be supported by hearsay evidence alone.
6. **Equitable Treatment.** Have the rules, orders, and penalties been consistently enforced? Employees in similar situations should be treated in a similar manner. Each disciplinary problem is unique and requires that the disciplinary process be flexible in order to select the most appropriate course of action. However, it is important not to overlook the principle of equity or fairness. This principle requires that employees in similar circumstances should be treated in a similar manner. Equity does not mean the supervisor should always impose the identical disciplinary action for the same offense. In other words, disciplinary action does not have to be identical to be "fair". At times it is necessary to treat employees differently to be fair. This may be based upon differences in the length of employment, discipline history, level of responsibility, type of position within the University, or other circumstances. All of these factors affect the level of discipline. For example, two (2) employees who commit the same offense should not receive the identical disciplinary action if they are at different steps of the progressive disciplinary process. Judgment and discretion are critical in applying disciplinary action equitably.

Another component of equitable treatment is the principle of Past Practice. By definition, "past practice" is a reasonably uniform response to a recurring situation over a substantial period of time which has been recognized, implicitly or explicitly, and in situations where the contract language is ambiguous. It is significant to note that a past practice may be established on a University-wide basis, confined to a division or department, or limited to an operation or small group of employees. A review of the following components will determine if a past practice exists. If all components are present, a past practice probably exists; if not, a past practice does not necessarily exist.

- A. **Uniform Response and Acknowledgment.** Are employees in similar circumstances being treated in a similar manner? If so, then a uniform response exists. Note that the word "similar", not identical, is used. There may be differences in employees' levels of responsibility and types of positions or in their records, e.g., length of employment, performance record, and disciplinary record, which justify a different response. If there have been varied responses to similar situations, no past practice exists.

Have the employees come to expect a particular response? This recognition does not have to exist in writing, but there should be general knowledge of the situation.

- B. Recurring Situation. Does a same or similar situation arise repeatedly? If so, a recurring situation exists. If the situation varies over time, it is not a recurring situation.

Has the situation occurred before? Once or even twice does not necessarily create a past practice. However, there is no well-defined rule as to how many times a situation must repeat itself to become a past practice. If, for example, a similar situation and set of circumstances existed only one time previously, the University's response at that time may be considered "past practice".

Always consider past practice when disciplining an employee. The supervisor must keep in mind, however, that a past practice is not a substitute for clear and unambiguous language in collective bargaining agreements or employee handbooks. A third party will generally rely on the specific language of the collective bargaining agreement or employee handbook instead of the past practice, even if the practice meets the above criteria.

Past practice can sometimes be changed depending on the language of the collective bargaining agreement, employee handbook, policy manual, or work rules. If the practice is not a matter generally reserved for collective bargaining, it may be changed. Advance written notice must be given to employees that the practice will be changed. For assistance in determining if a past practice exists or if you want to change past practice, contact Employee Relations. An adjustment period may be advisable following the change of a past practice. Without sufficient warning to employees that new standards will be enforced, a disciplinary action may very well be overturned.

- 7. Appropriate Discipline. Was the disciplinary action related to the seriousness of the offense, to the employee's record, and to the employee's level of responsibility within the University? Generally, minor offenses and first occurrences should result in less severe disciplinary action. Major offenses and repeated occurrences should result in more severe disciplinary action.

Together, these seven (7) elements constitute the principles of just cause. They also incorporate the other basic principles of a sound disciplinary system, namely, progressive discipline, equitable treatment, and past practice. A determination that all seven (7) components are present will lead to the conclusion that just cause for disciplinary action does exist.

B. Time Frames

Timing is critical in three (3) different areas within the disciplinary process -- timeliness of the disciplinary action, time between disciplinary actions, and the time given to the employee to correct the problem.

1. **Timeliness of the Disciplinary Action.** There is no universally accepted rule on this point; however, there is an expectation that will administer disciplinary action as soon as possible after the problem occurs or is discovered. As a rule of thumb, it should not take more than ten (10) working days to complete the investigation and administer any appropriate disciplinary action after the incident or after the supervisor learns about the incident. If more time is needed, the employee should be informed that an investigation is still underway and provide a date by which a decision will be made.
2. **Time Between Disciplinary Actions.** Under University policy, progressive discipline is considered successful if no further disciplinary action is necessary for at least three (3) years. There is no minimum time between disciplinary steps. The supervisor needs to allow enough time for the employee to correct the problem. This may be immediately, a week, a month, or several months, depending upon the nature of the problem. However, the last step taken may have to be repeated if more than a year has passed since the last disciplinary action.
3. **Time Limits for Correcting the Problem.** In situations where the employee can resolve the problem promptly, such as attendance problems or sloppy work, communicate the expectations that the employee must immediately achieve and maintain acceptable performance standards to avoid further disciplinary action. While it is appropriate to give positive as well as negative feedback to the employee, refrain from going overboard in praising the employee as you address the problem. It is important for the employee to know, although they have done well, the problem is still a concern and the potential for further disciplinary action still exists. If the supervisor sets a target date by which the employee must display the required behavior, it may inadvertently hamper flexibility and commitment to start over or repeat a disciplinary step if the problem recurs after the target date. For example, if the supervisor tells an employee that if they report late for work again within the next ninety (90) days their employment will be terminated, then they are late for work four (4) months later, employment could not be terminated. In situations where the employee needs to develop a skill, learn a procedure, or improve the level of performance, it may be appropriate to set a date when the situation will be reviewed. Document throughout this time period. But even here, once the skill has been learned or a certain level of proficiency attained, it is essential to communicate the expectation that the acceptable performance level must be maintained.

C. Documenting the Discipline

The supervisor is required to confirm all disciplinary actions in writing by completing the appropriate form. More information can be included by attaching a letter to the form. The written documentation represents an official record that the problem exists and is written after the discussion with the employee and following the conclusion of the investigation. A disciplinary form and letter are written prior to meeting with the employee, the discussion may be slanted to fit the contents of the form or letter. A disciplinary form prepared in advance does not allow for unknown circumstances or explanations presented by the employee.

Documentation of disciplinary action must be kept in the employee's personnel file, the employee must receive a copy and in many cases the union must also be copied. All documentation of disciplinary action should be included in the employee's personnel file in the Human Resources/Staff office as well as in the supervisor's file.

What should a disciplinary record include? The record has three parts: the present, the past, and the future.

1. **The Present.** This section states the purpose of the disciplinary action and cites the specific incident or nature of the problem. In recounting the incident or problem, include what occurred and when, how it affected the work activity, the results of the investigation, and the employee's explanation. State only the facts that can be proven. This section also cites the specific rule, policy, or standard violated, and disciplinary action being taken as a result of the employee's actions. Stress the significance of the offense and the reason for the disciplinary action.
2. **The Past.** This section reviews the employee's work record, gives the history of related offenses (if any), and reminds the employee of previous disciplinary actions taken. This summary of past events demonstrates the progressiveness of the disciplinary action.
3. **The Future.** Finally, the employee must have a clear understanding of the expected standard of behavior or performance, how this standard can be achieved, and the consequences of continued failure to meet these expected standards.

Write in easily understood language, emphasize the "do" rather than the "don't", and focus on the future rather than the past. In other words, use a tone of correction not punishment.

It is strongly recommended that you keep a record of any relevant situations that occur once you have initiated the progressive disciplinary process. These notes should give all the necessary pertinent information (including when it was brought to the employees attention). The notes should be dated and signed and kept in the supervisor's file.

D. Informing the Employee

Inform the employee of the disciplinary action, both verbally and in writing, as soon as possible after the disciplinary decision has been reached. The purpose is to outline what is wrong, what disciplinary action is being taken, and what is expected in the future. Representation should also be provided at this meeting as well.

This may be the most crucial element of the entire disciplinary process. As a supervisor, keep close control of your emotions, avoid sarcasm, threats, nagging, getting into an argument with the employee, or loss of temper. With the obvious exception of a termination of employment, the purpose of the disciplinary action is to correct a problem. The employee needs to leave this meeting knowing better conduct is expected.

Give a copy of the disciplinary form and any attachments to the employee, and inform the employee that a copy will also be included in their personnel record.

E. Double Jeopardy

It is important to thoroughly investigate and consider all factors before determining what disciplinary action will take place. An employee cannot receive one (1) level of discipline and then later be given a more severe discipline for the same problem. This is considered double jeopardy. An example of this would be where the first line supervisor imposes a written reprimand, and later after discussing with the Department Director, they determine that suspension was warranted. The supervisor cannot go back and suspend the employee after the employee thought they were getting a written reprimand. Make sure it is done right the first time!

IV. THE EMPLOYEE'S RIGHT TO APPEAL DISCIPLINARY ACTIONS

A. The Grievance/Appeal Procedure

Most employees have a grievance/appeal procedure through which the employee may appeal disciplinary actions. Do not be deterred from taking a disciplinary action because of a threat or fear of a grievance. The filing of a grievance over a disciplinary action does not mean the decision was wrong, it simply means the employee disagrees. However, we suggest you implement all disciplinary action with the expectation the action will be reviewed and be prepared to defend actions.

The grievance/appeal procedure allows for the employee's (and/or the union's) views to be considered in an orderly way without interrupting work operations. In order for the process to work effectively, the employee must feel the grievance/appeal procedure will permit a fair hearing. The procedure's effectiveness depends largely upon the success of resolving complaints at the lowest level possible. Grievances/appeals become more difficult to settle as they progress through the steps because attitudes tend to become fixed and fear of loss of prestige prevents settlement. However, to assure fair consideration, there is a definite route of appeal, without fear of prejudice, to higher levels of authority. Handling complaints promptly increases the employee's confidence that the supervisor is dealing in good faith. Stay within the time frame provided in the grievance/appeal procedure if at all possible.

The grievance/appeal procedure is contained in each of the collective bargaining agreements and employee handbooks.

B. Management's Burden of Proof

Management has the primary responsibility to prove the disciplinary action was warranted and the level of disciplinary action was appropriate. Obviously, the employee does not remain passive in this process but will also be trying to persuade whoever is hearing the grievance/appeal that the disciplinary action was not warranted or was too severe.

In an evidentiary hearing such as arbitration, the formal rules of evidence of the legal system are not strictly applied. For example, while testimony of a witness to an incident carries more weight, a written statement may be accepted and considered in reaching a decision. Original documents are better than copies, hearsay evidence (information provided by someone other than the primary source) and circumstantial evidence (information which causes one to deduce a certain fact) may sometimes be permitted in reviewing grievances. Neither may receive much weight, unless they are corroborated by direct evidence. The witnesses statements, physical evidence and documentation should be reviewed by Employee Relations to assure the best possible record is being built. In summary, the quality of evidence is judged by four (4) criteria:

1. **Relevance.** *Is the information related to the issue?*
2. **Materiality.** *If relevant, how relevant is it? Does it alone constitute proof?*

3. **Competence.** *Is the information believable and is the person testifying in a position to know?*
4. **Best Evidence.** *Is the best available evidence used and if not, why?*

C. Handling A Grievance/Appeal

The following are some of the do's and don'ts for you to observe in handling grievances/appeals.

DO

1. Do investigate and handle each case as though it may eventually result in arbitration or review by some outside third party.
2. Do give the employee adequate opportunity to discuss his or her concerns when the grievance/appeal is at your level.
3. Do enforce the time limits set forth in the grievance/appeal procedure and comply with them yourself.
4. Do visit the work area of the employee.
5. Do determine if there were any witnesses.
6. Do examine relevant policies and procedures.
7. Do determine if there has been equitable treatment of employees.
8. Do determine how similar cases have been handled in the past.
9. Do examine the employee's personnel record.
10. Do fully examine similar grievances/appeals.
11. Do produce all available evidence.
12. Do identify the resolution the employee is seeking.
13. Do provide representation for the employee, unless he/she objects.
14. Do hold grievance/appeal discussions privately.
15. Do recognize burden of proof in disciplinary cases.
16. Do use the grievance/appeal meeting as another avenue of communication.
17. Do control emotions, remarks, and behavior.
17. Do maintain records relevant to disciplinary actions.
18. Do admit errors and take corrective actions.
19. . Do fully inform and discuss disciplinary action and grievance/appeal matters with your supervisor and Employee Relations.
20. Do advise the employee of the decision in writing.

DON'T

1. Don't settle a grievance/appeal while in doubt; get a time extension. Extensions should be requested through Employee Relations and put in writing.
2. Don't give long written grievance/appeal responses; get to the point. But don't leave out important information for the sake of brevity.
3. Above all else, don't be afraid of the grievance/appeal procedure. Use it as another management tool.

Appendices

Appendix A: GLOSSARY OF TERMS

COUNSELING: A discussion between the supervisor and the employee in which the supervisor makes the employee aware of a performance problem, and impresses upon the employee the importance and necessity of correcting the problem.

DISCIPLINE: Training that corrects, molds, or improves job-related performance or behavior. Discipline is progressive in nature, i.e. it becomes increasingly stronger if the problem is not corrected.

DOUBLE JEOPARDY: The imposition of a second, usually greater, discipline for an offense for which discipline has already been imposed.

DUE PROCESS: Due process requires the employee be given notice of the alleged wrongdoing and an opportunity to respond to the allegation. It may include notice of names and the nature of testimony of witnesses against the employee, a hearing before a neutral tribunal and a review of the correctness of the reason for disciplinary action -- check with Employee Relations before releasing information to anyone.

JUST CAUSE: Proper or sufficient reasons for disciplinary measures imposed on employees by management. The just cause standard is necessary to safeguard employees from disciplinary action which is unjust, arbitrary, capricious, or which lacks some reasonable foundation for its support.

PAST PRACTICE: A reasonable uniform response to a recurring situation over a substantial period of time which has been recognized, implicitly or explicitly. Past practice may be confined to a division or department, an operation, or small work group of employees.

PROBATIONARY: A trial period of employment in which the employee's work PERIOD: performance is monitored and measured against department policies, procedures, work rules, and standards.

Appendix B: UNIVERSITY PROHIBITIONS (reviewed and updated 12/2012)

The list below shows examples of behaviors prohibited by University policy. The list is illustrative, not exhaustive. This list is intended to describe the types of behaviors the University will not tolerate and which merit disciplinary action. This list is to be used for reference only.

- Insubordination or refusal to comply with employer's instructions unless such instructions are injurious to the employee's safety and health.
- Sexual Harassment
- Immoral or indecent conduct on University property.
- Violation of a safety rule or safety practice.
- Conduct endangering the safety of self or other employees.
- Abusive, threatening, or coercive treatment of another individual while on duty or on University property, including provoking or instigating a fight during working hours or on University property.
- Tardiness
- Absenteeism
- Job Abandonment, including:
 - Neglect of duty,
 - Sleeping while on duty,
 - Inattentiveness to work,
 - Failure to start work at the designated time,
 - Quitting work before proper time,
 - Leaving assigned work area without authorization
 - Failure to report for work without giving the employee's supervisor or department head notice of absence.
- Knowingly admitting an unauthorized person or persons into any locked or restricted building or area of the campus.
- Knowingly punching the clock card of another, having one's clock card punched by another, or unauthorized altering of a clock card or time record.
- Falsification of personnel records, payroll reports, or other University records.
- Theft, destruction, or defacing of the University's, another employee's or student's property.
- Gambling on the employer's premises during working hours.
- Smoking in prohibited areas.
- Posting unauthorized materials on walls or bulletin boards, defacing, or removing authorized material from bulletin boards.
- Vending, soliciting, or collecting contributions on the University's time or premises without prior appropriate authorization from the University
- Violation of any University policy. The following websites contain policies, procedures, and guidelines that are in effect at the University.
 - https://www.cmich.edu/bot/about/Pages/policy_manual.aspx
 - https://www.cmich.edu/office_president/general_counsel/Pages/policies.aspx
 - <https://www.cmich.edu/fas/hr/HRAssociatedVicePresident/Pages/Policies.aspx>

While the University will generally take disciplinary action in a progressive manner, it reserves the right, in its sole discretion, to decide whether and what disciplinary action will be taken in a given situation. Steps in progressive discipline include counseling, verbal reprimand, written reprimand, suspension without pay, and termination of employment. The University reserves the right to combine or skip steps

in this process based upon facts surrounding each circumstance, taking into account factors such as, but not limited to:

- severity, duration and frequency of the behavior at issue;
- consequences or possible consequences (to the University and its members) of the behavior at issue,
- past employment history
- record of prior disciplinary actions
- length of employment
- the employee's role in the act
- discipline issued in similar circumstances to similarly situated employees

Appendix C: SUPERVISOR'S CHECKLIST

This checklist should be helpful in analyzing an employee problem and determining what disciplinary action might be appropriate. It is intended to help the supervisor remain objective in analyzing and administering progressive disciplinary action. "No" answers may indicate that more information, further analysis, or non-disciplinary action may be required. You should answer all of the questions before deciding on a plan of action. Then consult your supervisor and/or Employee Relations.

I. Work Performance Problem - <i>If the employee is not adequately performing the work assigned</i>	YES	NO
1. Does the employee understand your expectations: <ul style="list-style-type: none"> • What to do? • How to do it? • Why to do it? • When to do it? 		
2. Does the employee have access to and know where to find written instructions/procedures?		
3. Has the employee ever demonstrated the skill?		
4. Is it a skill the employee can be taught?		
5. Based on experience/education, is it a skill the employee should possess?		
6. Could the employee perform the skill if he/she wanted to?		
7. Is the work expected reasonable?		
8. Has the job changed?		
II. Behavior Problem - <i>If the employee's behavior is inappropriate/unacceptable</i>		
1. Does the employee understand acceptable behavior?		
2. Has the behavior been acceptable in the past?		
III. Supervisor's Responsibility - <i>The University depends on supervisors to communicate University policies and practices. Since the supervisor determines job tasks/duties, job performance expectations and departmental work rules must be communicated.</i>		
1. Has the supervisor provided adequate training?		
2. Can the employee function within the work group without using the deficient skill?		
3. Does the supervisor reinforce acceptable behavior?		
4. Has acceptable behavior been clearly communicated to the employee?		
5. Has the supervisor discussed this problem with the employee to get an explanation?		
6. Does the supervisor understand the employee's explanation?		
7. Has the supervisor conducted an objective investigation by approaching the problem from all angles?		
8. Has the supervisor questioned the people involved including those mentioned by the		

employee?		
9. Has the supervisor examined the physical evidence (e.g., time cards, vouchers, daily logs, equipment, location)?		
10. Does the supervisor know the basic facts (e.g., dates, times, places, people involved)?		
11. Has the supervisor separated the disputed facts from the undisputed facts?		
12. Has the supervisor considered any mitigating or aggravating circumstances which may affect the level of disciplinary action?		
13. Has the supervisor checked University and Departmental policy?		
14. Is there a past history of enforcing disciplinary action for the same/similar offense?		
15. Has the employee been employed a long time?		
16. Is the employee's work record below the rest of the work group?		
17. Did the employee know or should he/she have known the rule or policy?		
18. Is the rule that has been violated a reasonable one?		
19. Did the inappropriate performance/behavior result in cost to others?		
20. Did the inappropriate performance/behavior result in danger to other?		
21. Has the supervisor set a date to follow up with the employee?		
22. Have you determined the appropriate disciplinary action?		
23. Have you consulted Employee Relations?		
24. Above all, have you documented your investigation in writing?		
<i>Before administering disciplinary steps, take into consideration answers to the following questions.</i>		
1. Should the employee have known the supervisor's work expectations?		
2. Is the employee guilty?		
3. Has the employee been warned previously for violation of this rule?		
4. If previously warned, did the supervisor communicate the consequences if the employee did not correct the problem?		
5. Has it been less than a year since the most recent disciplinary action		

Appendix D: NOTICE OF DISCIPLINARY ACTION

**CENTRAL MICHIGAN UNIVERSITY
NOTICE OF DISCIPLINARY ACTION**

TYPE OF ACTION

- Written Record of Verbal Reprimand
- Written Reprimand
- Suspension without pay (from _____ to _____)
- Termination

EFFECTIVE DATE OF ACTION:

ISSUED TO:

Name: _____ **Date of Hire:** _____
Title: _____ **Department:** _____

Provide all the information requested below; attach additional pages if necessary.

I. DISCIPLINARY ACTION IS BEING TAKEN FOR THE FOLLOWING REASONS (INCLUDE DATES):

II. EMPLOYMENT HISTORY (include date and explanation of previous disciplines and relevant counseling):

III. THE FOLLOWING CORRECTIVE ACTION IS EXPECTED:

FUTURE INFRACTION(S) MAY RESULT IN FURTHER DISCIPLINE UP TO AND INCLUDING DISCHARGE

Employee Representative (WHEN REQUIRED) _____

Employee's Signature _____ Date: _____

(RECEIPT OF, BUT NOT NECESSARILY CONCURRENCE WITH, THIS NOTICE)

Supervisor's Signature _____ Date _____

Appendix E: Verbal Reprimand (Example)

CENTRAL MICHIGAN UNIVERSITY
NOTICE OF DISCIPLINARY ACTION

TYPE OF ACTION

- Written Record of Verbal Reprimand
- Written Reprimand
- Suspension without pay (from _____ to _____)
- Termination

EFFECTIVE DATE OF ACTION: 01/09/1991

ISSUED TO:

Name: Mary Jones

Date of Hire: 08/08/1989

Title: Administrative Secretary

Department: Accounting

Provide all the information requested below; attach additional pages if necessary.

I. DISCIPLINARY ACTION IS BEING TAKEN FOR THE FOLLOWING REASONS (INCLUDE DATES):

On January 5, 1991, you reported to work 35 minutes late. This is the fourth time in the last three weeks. Your receptionist responsibilities require that you be at work on time to open the office, answer the telephone, and assist visitors who come to the office. Because of your frequent tardiness, students have had to wait longer than necessary and other employees have to cover your work.

II. EMPLOYMENT HISTORY (include date and explanation of previous disciplines and relevant counseling):

You were told when you accepted this position that reporting to work on time was essential. Since November, 1989, you have been late for work an average of 15 minutes a week. I counseled you on November 15, 1990, and again on December 10, 1990. I told you that you must report to work on time.

III. THE FOLLOWING CORRECTIVE ACTION IS EXPECTED:

You must report to work on time.

FUTURE INFRACTION(S) MAY RESULT IN FURTHER DISCIPLINE UP TO AND INCLUDING DISCHARGE

Employee Representative (WHEN REQUIRED) _____

Employee's Signature _____ Date: _____
(RECEIPT OF, BUT NOT NECESSARILY CONCURRENCE WITH, THIS NOTICE)

Supervisor's Signature _____ Date _____

Appendix F: Verbal Reprimand Memo (Example)

Verbal Reprimand - Optional memo which may be attached to disciplinary record.

DATE: January 9, 1991

TO: Mary Jones, Administrative Secretary

FROM: Tom Doe, Office Supervisor

RE: Verbal Reprimand - Mary Jones for Poor Work Performance

On Wednesday, January 8, at 2:30 p.m., I met with you to discuss your failure to report to work in a timely fashion on January 5, 1990. This is a written record of the verbal reprimand which was imposed at that meeting. The most recent instances of tardiness are:

- January 5, 1991 - 10 minutes late (overslept)
- December 20, 1990 - 15 minutes late (car problem)
- December 18, 1990 - 20 minutes late (alarm didn't ring)
- December 14, 1990 - 15 minutes late (car problem)

I stressed to you when you began working in this position, that you were expected to perform receptionist responsibilities, we would rely on you to open the office and be there promptly to answer the phone and deal with our "customers". When you are late, students have to wait longer than necessary, frequently long lines develop since other staff members have to cover the phone, etc. in your absence.

Things seemed to be going along fine during your probationary period, as I indicated in your 90 day evaluation. I counseled you on November 15, 1990, for 3 instances of tardiness which occurred on November 11, 13 and 15. I spoke with you again on December 10, 1990, for tardiness on November 25, December 2, December 8 and December 9. On both occasions I tried to impress upon you how important it is you be on time. I warned you disciplinary action might be necessary if you did not correct the problem.

I regret this action is necessary, but you have not made the required improvement in reporting to work on time. Further instances of tardiness will result in additional disciplinary action, up to and including discharge.

PC:

- Personnel File
- Employee Relations
- Union Representative

Appendix H: Written Reprimand Memo (Example)

Written Reprimand - Optional memo which may be attached to disciplinary record.

November 3, 1991

Mr. Fred Jones

Maintenance Department

Campus

Dear Mr. Jones:

This letter constitutes a written reprimand. You are receiving this reprimand because you were observed operating the grinder without wearing your safety goggles on November 2, 1991.

You are required to review and follow all shop work rules. Failure to take the corrective measures may result in further discipline, up to and including discharge.

A copy will be placed in your Personnel file and another will be provided to the Union, although you declined representation when we met.

Sincerely,

Don Smith, Supervisor

PC:

- Department Head
- Personnel File
- Employee Relations
- Union Representative

Appendix J: Suspension Without Pay Memo (Example)

Suspension Without Pay - Optional memo which may be attached to disciplinary record.

DATE: April 21, 1990

TO: Ed Smith, Custodian

FROM: Marion Blake, Supervisor of Custodial Services

RE: Suspension for Poor Performance

This memo will serve as a notice of suspension in the matter of your performance problems and to outline, once again, the guidelines for your continued employment with the University.

On February 8, 1990, you were given a verbal reprimand for failure to empty wastebaskets on the third floor. One month later on March 10, 1990, you again failed to empty the wastebaskets on the third floor and you were given a written reprimand. Your failure to perform your work in a satisfactory manner is unacceptable and cannot continue. On April 18, 1990, you failed to properly clean the restrooms on the first floor, you are being placed on a three day disciplinary suspension effective April 22, April 23, and April 24. You are expected to report back to work on your regular shift on April 25.

Further performance problems can lead to the termination of your employment. I hope that you understand the gravity of this situation. While I have no wish to terminate your employment, it is important that you perform your work in an acceptable fashion.

PC:

- Personnel File
- Employee Relations
- Union Representative

Appendix L: Termination Letter (Example)

Termination Letter - Option letter which may be attached to termination form.

April 23, 1992

Mr. Johnny Adams
Electrical Shop
Campus

Dear Mr. Adams:

This is to inform you that effective April 23, 1992 your employment with CMU is being terminated.

This action arises out of your theft of three (3) boxes of computer diskettes on April 12, 1992.

Sincerely,

Don Smith Supervisor

PC:

- Department Head
- Personnel File
- Employee Relations
- Union Representative

Appendix M: Suspension Pending Investigation Memo (Example)

Suspension Pending Investigation Memo

DATE: June 1, 1990

TO: Janice Brown, Lab Technician

FROM: Mary Jones, Department Chairperson

RE: Suspension Pending Investigation

This is to notify you that effective June 2, 1990 you are being placed on a five-day suspension pending investigation and subject to termination of employment.

This action is being taken due to your participation in a fight at work today with another employee. When questioned earlier, you denied starting the fight, but you did admit to striking the other employee. Instigating a fight and/or retaliating with physical violence are totally unacceptable actions in the work place, and result in severe disciplinary action.

An investigation of your involvement in this incident will be conducted during the ensuing five days at which point you will have the opportunity to again explain what happened. You will be notified of your employment status at the end of this five-day suspension period.

PC:

- Personnel File
- Employee Relations (who will send a copy to the appropriate employee representative)

Appendix N: Disciplinary Investigation Checklist

Conducting the Investigation

Immediate Actions:

- Secure any evidence in danger of being lost or erased.
- Take actions to suspend employee if appropriate.

Preparing for the Investigation:

- Plan investigation to determine what took place, when the event occurred, where the event took place, how the event occurred, who saw or heard the event and who was told about it, and why the event occurred.

Interviewing Witnesses:

Preparation:

- Arrange a site for interview with privacy and minimum distractions.
- Visit work site and sketch out if necessary.
- Sketch out your plan for the interview.

Conducting the Interview:

Non-suspects:

- Establish rapport; make the interviewee feel at ease.
- Explain general nature of incident to the interviewee.
- Explain your note-taking.
- Use open-ended questions regarding incident to begin the interview.
- Use direct, probing question for follow-up
- Check the ability of the witness to accurately see or hear what happened. How far were they from the incident? How much could they hear?
- Take notes about important points during the interview.
- Get the facts from the interviewee; avoid opinions.
- Close the interview on a positive note.

Suspects:

- Establish rapport try to the make the interviewee feel at ease.
- Explain your note-taking.
- Begin interview with open-ended questions and use direct, probing questions to follow up on responses.
- Explore knowledge and understanding of the rules with the employee.
- Check to determine whether mitigating or aggravating circumstances exist.
- Attempt to determine why the incident took place.
- Take notes about important points.
- Close the interview on a positive note and explain what will happen next.

Citizen or customer witnesses:

- ___ Obtain statements from any citizens or customer witnesses.
- ___ Explore willingness to testify in arbitration if necessary.
- ___ Consider any special problems with witness competence to testify, availability, etc.

Interview Checklist (All Interviews):

- ___ Is the interview complete? Has the interviewee told everything he/she knows? Are there gaps in his/her knowledge that must be filled in from other sources?
- ___ Is the witness sincere? Does he/she appear to believe what you were told?
- ___ Does the witness statement appear to you to be true? You can never be sure of this, but each succeeding interview should help you decide.
- ___ Will the statements of the witness stand up in front of an arbitrator?

Interview Report/Statements:

- ___ Obtain signed statements, if appropriate, as quickly as possible after the interview.
- ___ Arrange your report or statement in a logical order but with as much of the wording and style of the witness or suspect as possible.
- ___ If the witness is signing the statement, have him/her read the statement and make any corrections in ink. You and the witness should then initial the corrections. The top and bottom of each page should then be initialed by the witness and he/she should sign at the end of the statement.

Statement Contents:

- ___ Date and place where the statement was taken.
- ___ Full name, work location (or name and address if non-employee) of person interviewed.
- ___ Full name and official capacity of the person conducting the interview.

Securing Physical Evidence:

- ___ Limit the number of individuals handling physical evidence.
- ___ Check the condition of the evidence each time it is handled.

When evidence leaves your possession:

- ___ Record name of person taking evidence along with date and time.
- ___ Have each person handling evidence sign for it.
- ___ When the evidence is returned, inspect it to ensure that it is the same, and in the same condition, as when it left.

Evaluating Evidence

Evaluating "Facts":

- ___ Is there a strong likelihood that the "fact" is what it is said to be?
- ___ Is the "fact" a product of first-hand knowledge?
- ___ Do all witnesses to the "fact" report the same thing?
- ___ Are all parts of the statements by the witness consistent with each other?

Witness Credibility - Assess the Following for Impact Upon Credibility:

- Demeanor.
- Bias or interest on the part of the witness.
- Competence to testify.
- Clarity of memory.
- Consistency of facts.
- Support of facts by other evidence.
- Accuracy of perceptions.

The Investigation Report or Summary

Assess Your Report Against the Following:

- The report contains an outline of facts and pertinent information.
- The format of the report is narrative.
- The tone of the report is neutral and opinions are avoided.
- The report is limited to the issue under investigation.
- The report was prepared promptly after the completion of the investigation.

Appendix O: SUPERVISORS GUIDE TO COMMON DISCIPLINARY ISSUES

SUPERVISORS GUIDE TO COMMON DISCIPLINARY ISSUES

Poor Performance

Where an employee is to be disciplined or discharged for poor performance, arbitrators will usually support management's action if:

1. The employee received adequate training;
2. The employee received adequate supervision and has suitable equipment;
3. The employee's performance was judged against reasonable job standards;
4. The employee was made aware of these standards;
5. The employee was warned of his or her sub-standard performance before more serious disciplinary action was administered;
6. If management discharges or demotes, the employee was warned specifically that such actions would result unless performance improves; and
7. Other employees with the same or similar work records were treated in the same manner.

These are the operational questions that managers should ask themselves if corrective action for poor performance is contemplated. Furthermore, they are the proactive steps that managers should take to prevent the need for disciplinary actions.

Conduct Away From the Job

Arbitrators usually find no basis to justify a discipline for misconduct away from the place of work unless:

1. The behavior harms the organization's reputation;
2. The behavior renders the employee unable to perform his or her duties or appear at work, in which case the discipline would be based upon inefficiency or excessive absenteeism; or
3. The behavior leads to refusal, reluctance, or inability of other employees to work with the employee. The effect of the employee's outside activity on the employer's organization must be reasonably discernible; mere speculation as to adverse effect upon the organization will not suffice.

Insubordination

1. Insubordination includes: · Refusal of a direct order · Intentional act of disrespect
2. The normal procedure for an employee to follow when he or she questions a supervisor's directive is to carry out the order, then file a grievance.
3. An employee may legitimately refuse to carry out an order if he or she reasonably believes the order would require the employee to engage in illegal or immoral behavior.
4. If an employee contends that the carrying out of an order would be dangerous or unsafe, the supervisor must investigate the allegation. If the supervisor determines that the operation can be conducted safely, the employee must comply with the order.

5. If insubordination arises, you must deal with it immediately: · Repeat the order clearly, using the word "order" · Get another supervisor as a witness · Repeat the order · Warn of the consequences of non-compliance · Contact the Employee Relations office.

Attendance and Punctuality

1. **Excessive Absences** - The right to terminate employees for excessive absences, even where they are due to illness, is generally recognized by arbitrators. Arbitrator Edwin R. Teple explained:

"At some point the employer must be able to terminate the services of an employee who is unable to work more than part-time, for whatever reason. Efficiency and the ability to compete can hardly be maintained if employees cannot be depended upon to report to work with reasonable regularity. Other arbitrators have so found . . . and upheld terminations in several appropriate cases involving frequent and extended absences due to illness."

However, an examination of the cases provides no clear standards as to what constitutes "excessiveness".

Additional factors that a manager should consider include:

- Intermittent nature of absences as opposed to extended absence (long-term illnesses should be looked at on a case-by-case basis with real consideration being given);
 - Some consideration to seniority in the case of long-service employees; and
 - An opportunity for good attendance to improve an employee's record.
2. **Failure to Call In.** - Arbitrators consistently uphold management's actions in disciplinary actions involving an employee who fails to follow an organization's policy regarding notification to the employer when absences will be necessary. Nevertheless, as always, before disciplinary action is taken an investigation must take place in which the employee receives an opportunity to provide his or her explanation as well as any mitigating circumstances.
 3. **Misuse of Contractually Provided Time Off.** Should an employee intentionally use inappropriately contractually justified absences (e.g., by claiming jury duty when one was not called), disciplinary action would be warranted and normally supported.
 4. **Tardiness.** One of the most troublesome disciplinary areas for employers is tardiness. It is an infraction perceived as minor in some cases (e.g., payroll clerk) and major in others (e.g., corrections officer). It is often, therefore, inconsistently enforced. Arbitrators recognize the reasonableness of an employer exception that its workers will report for work on time. As always, clear communication, consistent enforcement, thorough investigation, and penalties consistent with the offense and the past disciplinary record of the employee are critical.

5. Steps for Handling Attendance and Punctuality Problems

Maintain an attendance record for each employee and record each occurrence of absence or tardiness.

Discuss with the employee after each absence or tardiness:

- If good attender, give positive feedback about good attendance and express concern about absence or tardiness
- If poor attender, discuss the importance of good attendance and your concern with his or her poor attendance record
- In either case, find out the reason for the absence or tardiness and make note of it

If a problem arises:

Conduct investigation

If counseling is warranted, proceed with formal or informal counseling as appropriate

If discipline is warranted, proceed with notice of a disciplinary conference; impose penalty if appropriate

In either case, if your organization provides for the services of an employee assistance program (EAP), make sure that the employee is aware of the services available.