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Please note that discipline, performance and fact finding documents can be found on the Human Resources website on the City’s Intranet at <http://citynet.sannet.gov/hr/index.shtml>

INTRODUCTION

The workforce of the City of San Diego is made up of individuals with a wide range of knowledge, skills, and abilities. These assets are of great value to the people of San Diego and to our organization. In recognition of the worth of our employees and our obligation to San Diego's residents, the City has established a set of fundamental guidelines for addressing employee performance. The City has established reasonable, job-related and non-discriminatory standards for employee conduct and performance. The City expects that all employees will live up to these standards, thus creating an organization and a work environment that are sources of pride to both employees and residents. Managers and supervisors are expected to use the available tools and resources to reward and encourage City employees who perform their job duties to a fully satisfactory level and above. On the other hand, managers and supervisors are also expected to use the available tools and resources to discipline employees whose workplace conduct or job performance do not meet the City's standards.

On those occasions when discipline is required, it must be guided by several principles. The foremost is that discipline is intended to be constructive, improve performance and behavior. Discipline should not be used to retaliate against or punish individuals. Discipline should encourage employees to correct or modify their unsatisfactory behavior, thereby restoring job performance to fully satisfactory levels.

Another fundamental principle is that discipline should be consistent, fair, and equitable to the behavior, and it should be progressive. This means that an initial corrective action will usually be less severe than action taken for a subsequent offense. This does not mean that all discipline must follow a prescribed pattern. Supervisors and managers should determine the appropriate disciplinary action for a given offense after careful consideration of all relevant factors, including the nature and severity of the offense, the history of the employee, consistency with similar disciplinary actions, any mitigating circumstances and the effect on the organization. In administering discipline, the goal is to employ the least severe disciplinary action that will bring about the desired change in behavior.

Finally, the discipline process is based on the principle that *disciplinary actions are prompted by two separate and distinct types of employee behavior*: one, incompetent or inefficient job performance, and the other, misconduct. These two different factors require a two-track system for disciplinary action. The track for employee performance problems involves the progressive steps of Verbal and Written Counseling, Supplementary Performance Evaluations, Reduction in Compensation, Demotion, and Termination. On the other hand, the disciplinary track for misconduct problems is not necessarily progressive; the severity of the disciplinary action taken should be determined by the seriousness of the misconduct. The disciplinary actions typically used for misconduct are Verbal and Written Warning, Reprimand, Suspension, Demotion, and Termination.

The employees of the City of San Diego are a valued resource critical to the effective delivery of services to our residents. Constructive, progressive discipline, administered appropriately in accordance with these principles, will benefit the entire organization, its employees, and the residents, businesses and visitors they serve.

This manual is designed to assist supervisors and managers in ensuring satisfactory employee performance through the use of constructive, progressive discipline. It provides a comprehensive explanation of the City's disciplinary procedures, and outlines the responsibilities of supervisors and managers in the disciplinary process. Use this manual as a guide, but also use the following resources: other supervisors, your supervisor, the Human Resources Department and your department's human resources office (if applicable). These resources are very important to provide advice on how to use these procedures in real-life situations. This will help to ensure that disciplinary procedures are used appropriately, and that they are consistently applied throughout the organization.

Please note that the disciplinary processes and procedures outlined in this manual apply to classified employees who are not covered by the Police Officers Association Memorandum of Understanding (MOU), the International Association of Fire Fighters MOU, the Public Safety Officers Procedural Bill of Rights, or the Firefighters Procedural Bill of Rights.

Other References

This manual is a reference tool and is used in conjunction with applicable Memoranda of Understanding, the Personnel Manual, Administrative Regulations, Council Policies, Departmental/Divisional Instructions, and any other applicable documents. If there is any conflict between information in those documents and information given in the Dimensions in Discipline manual, then the information in the Memoranda of Understanding, the Personnel Manual, Administrative Regulations, Council Policies, or Departmental/Divisional Instructions should prevail.

Using Dimensions in Discipline

This manual is organized into three distinct units:

Unit I covers the basics of discipline and includes an introduction to the disciplinary process and Fact Finding investigations, and an overview of the Employee Performance Review Program.

Unit II covers the counseling's, warnings, and reprimands. These actions, while disciplinary in nature, are less severe than suspensions, reductions in compensation, demotions, and terminations, and do not entail a loss of property rights

Unit III covers suspensions, reductions in compensation, demotions and terminations. These disciplinary actions have a financial impact and affect employees' property rights

UNIT 1**DISCIPLINE OVERVIEW****Two-Track System**

As noted in the Introduction, the City of San Diego's discipline process is designed to address both performance-related problems and misconduct. It is a **two-track system**, with different measures for those two different types of behavior. Performance-related discipline is intended to guide employees in improving their performance, as well as to demonstrate that substandard performance will not be tolerated. It is appropriate to progressively increase the level of performance-related discipline if problems do not show sustained improvement.

Misconduct-related discipline, on the other hand, is intended to correct negligent or intentional policy violations and is not necessarily progressive. In cases of misconduct, the severity of the disciplinary action taken should reflect the severity of the misconduct. The particular circumstances and departmental standards, combined with supervisory judgment, will dictate which disciplinary measure is appropriate.

Performance-Related Discipline

Performance problems are related to job performance standards contained in the Performance Plan or Work Standards. It is the responsibility of each supervisor to ensure every employee he/she supervises has a Performance Plan that is signed by the employee and the supervisor.

Discipline is appropriate for cases such as failure to meet minimum work standards, failure to follow directions from a supervisor, mistakes, an inadequate quantity or quality of work by an employee, excessive tardiness or unapproved absenteeism. The measures for addressing performance-related problems are listed below, in order from least to most severe:

1. Verbal Counseling
2. Written Counseling
3. Supplemental Performance Evaluation and required Performance Development Plan
4. Reduction in Compensation
5. Demotion
6. Termination

If an employee's overall performance is acceptable, but there are minor failures to meet an established standard, the discipline process usually begins with a Verbal Counseling. This involves a discussion between the supervisor and the employee in which the supervisor describes the elements of the employee's performance which fail to meet expected standards, and explains exactly what the employee must do to improve performance. Depending on the seriousness of the performance issue, a more severe form of discipline may be appropriate in the first instance. If the employee fails to improve performance, a more severe level of discipline should be used.

If an employee's overall performance fails to meet standards, a Supplemental Performance Evaluation and Performance Development Plan should be completed. This provides formal notification to the employee that there is a performance problem, defines expectations and a timeline for expected improvements, and also documents the problem for future reference if further disciplinary action becomes necessary. If the employee fails to improve performance to meet standards, the supervisor must consider more serious disciplinary action. The discipline process should be followed and documented through its progressive steps up to Termination if the employee does not improve his or her job performance to meet standards. Progressive discipline emphasizes the need for employees to correct performance problems by imposing discipline of increasing severity if the performance problems are not corrected.

Misconduct-Related Discipline

Misconduct-related problems stem from employee violations of City policy, whether negligent or intentional. Behavior warranting a misconduct charge can be a single or repeated incident, with the severity of the discipline based on the gravity of the misconduct. Examples of misconduct include offenses such as failure to follow a direct order, falsification of records or documents, theft, drug use, physical violence, threats, retaliation, or racial or sexual harassment.

The primary measures for addressing misconduct, in order from least to most severe, are listed below. The particular circumstances, combined with supervisory judgment, should dictate which disciplinary measure is most appropriate.

1. Verbal Warning
2. Written Warning
3. Reprimand
4. Suspension
5. Demotion
6. Termination

Although the procedures used are similar whether the problem is performance-related or misconduct-related, the type, severity and timing of the discipline varies depending on the circumstances. When dealing with cases of misconduct, the supervisor should discuss the problem with his or her supervisor, fellow supervisors, or Appointing Authority.

For more serious misconduct problems, the Appointing Authority should take the issue to the department's human resources office (if applicable), and to the Human Resources Department to determine the appropriate level of discipline and ensure consistency in discipline levels across the city for similar misconduct.

The following table shows a side-by-side comparison of the two disciplinary tracks, again listing each step in order of severity. Remember that misconduct-related discipline need not be progressive, so disciplinary action might not be administered in order of severity.

MATRIX OF PROGRESSIVE DISCIPLINE

Performance Discipline	Misconduct Discipline
1. Verbal Counseling 2. Written Counseling 3. Supplemental Performance Evaluation 4. Reduction in Compensation ¹ 5. Demotion ^{1,2} 6. Termination ¹	1. Verbal Warning 2. Written Warning 3. Reprimand 4. Suspension ¹ 5. Demotion ^{1,2} 6. Termination ¹

¹ Requires due process (See Chapter 7 and Appendix III for more information on Skelly rights).

² Used in those rare situations related to employee performance where there is a legitimate, defensible expectation that an employee will be able and willing to properly perform tasks of reduced responsibility.

Practicing Discipline: Consistency

The proper practice of discipline is not easy. Discipline is a complex mix involving many factors such as: the supervisor's judgment, the work standards and norms in the department and City, the employee's Performance Plan, the facts and circumstances of an incident in question, and the work history of the individuals involved. This manual, while providing helpful tips and information about the City's disciplinary procedures, is not intended to cover every possible situation. It is intended to help provide consistency regarding disciplinary issues throughout the City.

To ensure that disciplinary actions are consistent within the department and across the City as a whole, supervisors must begin by discussing disciplinary options with their own supervisors. It is important to discuss disciplinary issues with a higher-level supervisor to gain his or her confidence, perspective and support before taking disciplinary action. In the heat of the moment, it may be difficult for a supervisor to make balanced, rational decisions about whether disciplinary action is needed, or which action would be most suitable. In addition, some conflicts between employees and supervisors may involve personal issues that should not enter into the formal discipline process. A discussion with a higher-level supervisor can help to keep the focus on job-related behavior.

The next-line supervisor will also be able to share with the first-line supervisor the department, division or section policies on particular issues. For example, when a supervisor discusses a proposed disciplinary action with other supervisors, it may become clear that he or she is either more or less tolerant of a problem than is the practice in a section. The supervisor can then modify the plan to be more consistent with the disciplinary actions taken by other supervisors. If a department has historically treated a specific behavior in an appropriate manner, then all supervisors in the department should be consistent. Discussing disciplinary issues with a next-line supervisor does more than simply establish consistency. It also involves the next-level supervisor in the matter, and his or her involvement will be necessary if the discipline passes beyond the Written Counseling or Written Warning stage. For more serious disciplinary actions

that financially impact the employee, the Human Resources Department and the City Attorney's Employment Attorney should be consulted in this process to insure citywide consistency as well.

Practicing Discipline: Communication

Managers have the responsibility to develop consistent work standards for both performance and discipline, and make those work standards known to subordinate supervisors. Supervisors have an obligation to maintain proper work standards in their sections and to carry out progressive discipline that is consistent with department and City standards. Please note that an employee cannot be disciplined more than once for the same offense and that includes verbal counseling. Supervisors also have the duty to keep the chain of command informed about situations requiring disciplinary action. Once the discipline reaches the "property rights" stage, in which the level of discipline will financially impact the employee (Suspension, Reduction-in-Compensation, Demotion or Termination) the Department Director or designee will be responsible for completing the disciplinary process and coordinating with the Human Resources Department (See Chapter 7 in this manual for details about property rights). If the Department Director or designee is kept informed about a situation as it develops, he or she is in a better position to make a prompt, informed decision.

Practicing Discipline: Privacy and Confidentiality

Remember to carefully choose the time and the place for discipline. Each chapter of this manual includes a "who-what-when-where-why and how" summary for each type of discipline to give supervisors a quick overview of the process. The "where" is always identified as a "private location." The location should always be private, but supervisors should use their own judgment as to what is the best "private location."

You should avoid the "trip to the office" only for discipline; the automatic response from employees is that being called into a private room means that something is wrong. If co-workers see a supervisor taking an employee into "the office" when it is out of the ordinary, both the co-workers and the employee will notice, adding to tension and reducing privacy. One way to destigmatize the "trip to the office" is to have frequent, informal conversations with employees in your office. Call your employees in to recognize good performance, ask how things are going,

ask if there are any issues that need to be addressed, or if employees need anything from you. Employees should be able to view a meeting in their Supervisor's office as an opportunity to communicate and interact with their supervisor in a positive way.

In early stages of the disciplinary process, particularly in Verbal Counseling, the supervisor may want to take a less formal approach. The Supervisor should respect the employee's privacy by not discussing the matter in front of co-workers, and instead select a different site for the discussion. An example of a less conventional but private location would be the supervisor's vehicle in departments with employees who work in the field.

Supervisors should be very discreet in dealing with disciplinary issues, treating them as confidentially as possible. Disciplinary issues should be discussed only with the employee involved and with the appropriate supervisors, the department's human resources office (if applicable) and, when necessary, with persons from other confidential organizations within the City such as the City Attorney's Office, the Employee Assistance Program, and the Human Resources Department.

Practicing Discipline: Documentation

Documentation is a critical "next step" in the disciplinary process if verbal discussions are not bringing about the desired changes in employee performance. It constitutes a more serious level of interaction between supervisor and employee, and accomplishes a number of objectives.

Timely, accurate documentation provides a record of the discussions between a supervisor and employee regarding the required changes in employee performance. It provides a clear statement of the behaviors required to return the employee to a performance level that meets standards, and the consequences for failing to make the needed changes. If done properly, it contains the information necessary for a third party to review the actions of the employee and supervisor during the course of a disciplinary interaction. Finally, it memorializes appropriate levels of responses to performance and/or misconduct problems.

When to Discipline

Here are some helpful criteria for determining when discipline is appropriate:

- When the employee's behavior negatively impacts other employees, including the supervisor
- When the employee's behavior violates work rules, City rules, other laws or regulations
- When the employee's behavior negatively impacts the public
- When the employee is not performing a full range of duties that meets standards

A supervisor should check with his or her supervisor and Appointing Authority to determine the work standards and norms for the work group, and consider those work standards and norms prior to selecting a level of discipline. In addition, supervisors can contact their department's human resources office (if applicable) or the Human Resources Department for assistance.

Employee Assistance Program

The City's Employee Assistance Program (EAP) offers a wide variety of services and referrals to community resources. The EAP's mission is to provide City of San Diego employees with high-quality EAP and Work Life services that enable them to maximize both their individual and organizational potential.

The purpose of EAP is to assist employees in solving problems which affect job performance. The EAP may help employees deal with issues such as: job challenges and uncertainty, work relations, workplace stressors, marital/family problems, alcohol/drug problems, medical concerns, and financial difficulties.

The supervisor should not try to analyze or diagnose an employee's personal problems, but should focus on job performance and behavior. If an employee's personal problems seem to be affecting his or her work performance or work conduct, it is appropriate for the supervisor to recommend Employee Assistance, and to offer to contact EAP on the employee's behalf. There are no mandatory referrals to EAP unless it is part of a Last Chance Agreement/Conditions of

Continued Employment process. EAP is a cost-free service (though they may refer employees to other agencies that do charge fees for services). All referrals to EAP are voluntary on the part of the referred employee and rejection of a referral, whether formal or informal, will not be cause for discipline.

Information regarding the EAP can be found in A.R. 4.50 and on CityNet (<http://citynet/riskmanagement/eap/index.shtml>).

Employment Status

It is the City's policy to follow the concepts of progressive discipline and to provide appropriate notice of adverse action to all employees. Appeal rights differ based on the status of the employee. Classified, permanent employees have appeal rights to the Civil Service Commission on matters of Suspension, Reduction in Compensation, Demotion or Termination. Probationary and limited employees have appeal rights to the Civil Service Commission for Suspensions only.

Rights for Reduction in Compensation vary depending on the bargaining unit. It is important, however, that performance be addressed in a manner consistent with the principles in this manual to assist employees in returning their performance to meet standards. Supervisors should refer to the appropriate Memorandum of Understanding (MOU) for specific details.

Discipline for Probationary Employees

Probationary employees have many of the same rights as permanent employees and should be accorded the same considerations as permanent employees when performance issues are involved. Exceptions are that probationary employees do not have a right to appeal probationary failure to the Civil Service Commission, and they have appeal rights only for Suspensions and Reductions in Compensation in some bargaining units.

When a probationary employee does not meet standards, it is important to advise the employee verbally and/or in writing that failure to improve job performance to meet standards and sustain the performance at that level will result in probationary failure. Since the probationary period is considered part of the appointment process, employees who fail probation and leave City employment are not considered to have been terminated. When a probationary employee fails probation for performance reasons, it is important for the supervisor to follow the probationary failure procedure well in advance of the probationary end date.

Extending Probation:

Probationary periods can be extended by the Personnel Department, but only for certain specific reasons such as extended military or industrial leave. These “extended periods” of absence are covered in more detail in the Personnel Manual Index Code G-2A. Without advance written extensions for these reasons, employees will become permanent on the final day of their probation regardless of any pending actions. Appeals or hearings that are scheduled beyond the final date of the employee’s probation do not extend the probationary period.

“Name-Clearing”(Liberty Interest) Hearings

If a probationary or limited employee is terminated for reasons of misconduct, and the named misconduct will affect his or her chances for future employment, the employee may request a name-clearing (liberty interest) meeting before his or her Department Director or designee. The Human Resources Department should be contacted before conducting this type of hearing.

60-Day Transfer Trial Period

A permanent employee transferring to another department but remaining in the same job classification, or demoting to a position in which he or she has achieved permanent status, has a trial period of 60 calendar days of active duty in the new position. If the employee is not performing at a level that meets standard in the new job, he or she can be returned to his or her previous position without any change in status. See Personnel Manual Index Code G-2 for more details.

FACT FINDING

Overview

A Fact Finding is an administrative process used to establish facts surrounding reports of employee misconduct. A Fact Finding is not used to determine performance related issues. A Fact Finding involves interviewing the complainant, witnesses, subjects and other employees. There are requirements regarding truthfulness, answering questions, rights to representation, and other formal procedures. The purpose of a Fact Finding is to conduct an unbiased inquiry into an event to determine what actually happened, what role the employees played and what further action, if any, is appropriate.

A Fact Finding is conducted by the Department Director or designee, usually in response to information forwarded by a subordinate supervisor, employee, or member of the community. The information is typically in the form of a statement or allegation that some impropriety has occurred. Because the information is in the form of an allegation, a Fact Finding is used to establish whether or not the allegation is founded, and provides the documentation and support for further disciplinary action, if warranted. The Fact Finding panel that conducts the Fact Finding does not determine the level of discipline (if any), or serve as the appeal authority for any resulting disciplinary action.

Fact Findings are generally not required in instances where a supervisor has direct knowledge of inappropriate behavior by a subordinate employee over whom the supervisor has disciplinary authority. For example, if a supervisor directly observes a subordinate employee misusing City equipment for personal use, he or she should simply take the actions necessary to correct the behavior, consistent with the progressive discipline process.

Representation

When scheduling a Fact Finding meeting, the panel chairperson or designee should ensure that employees' representation rights are properly provided. Representation rights vary, depending on the employees' bargaining units; be sure to check the appropriate Memorandum of

Understanding before conducting a Fact Finding interview. Employees are entitled to representation during a Fact Finding meeting only when it is possible that they may face disciplinary action as a result of the investigation. Employees who are acting exclusively as witnesses and are not themselves facing disciplinary action are not entitled to representation during the Fact Finding. However, if in the course of the interview, the witness makes a statement that could result in disciplinary action against him or her, the panel chairperson should stop the interview and inform the witness of the right to obtain representation. If the employee waives this right, it should be documented in writing and signed by the employee. The interview may then proceed. If not, the interview must be rescheduled to provide time for the employee to obtain representation. An employee cannot be represented by another employee who is involved in the same investigation. Refer to the MOU of the labor organization which represents the employee's classification to ensure you are aware of any other restrictions. Obtaining representation is both the right *and* responsibility of the employee; an investigation should not be unduly delayed while the employee makes arrangements for representation.

Employees and Management: Rights and Responsibilities

The Fact Finding meeting should be controlled exclusively by the panel chairperson and panel members. Management has the right to interview employees as it deems appropriate, and to require that employees respond truthfully to questions which are related to the scope and course of their employment. Employees should be advised at the beginning of the meeting that failure to respond truthfully to these questions when directly ordered to do so could be grounds for a separate disciplinary action. A written admonishment must be provided to, and signed by, the employees to acknowledge that they understand the requirement to respond truthfully and to answer questions. Employees should also be admonished to keep the questions and any discussions held during the Fact Finding confidential, except for discussions with their representatives, if one is present. Disciplinary action could also result if the employee fails to maintain confidentiality after the Fact Finding interview. Employees involved in the Fact Finding do not have a right to ask questions of other witnesses, and/or to be present during the interviews of other employees.

Preparing for the Fact Finding

In planning the Fact Finding investigation, it's important that the panel chairperson:

- Schedule meetings as soon as possible after the incident or event in question. The meeting should be conducted in a confidential setting.
- Review any relevant correspondence, evaluations or other documentation regarding the matter.
- Prepare a rough outline of allegations and the questions that may be asked. Use open-ended questions where possible and confine inquiries to the matter under discussion.
- If employees are entitled to representation, advise them of their rights in advance so that they have enough time to make arrangements. It is the employee's responsibility to arrange for representation if they elect to have a representative.

In the interest of confidentiality, the details of the Fact Finding investigation must be discussed only with those involved, and with the appropriate supervisors and managers.

Holding the Fact Finding

The Fact Finding should be conducted as soon as possible from the date of the alleged incident. Please refer to the appropriate MOU for time frames that must be followed.

The Fact Finding should be held in a private location, such as a private office or conference room, free from interruptions and distractions to ensure the confidentiality of the proceedings.

It is very important to maintain objectivity and impartiality, and to avoid having any preconceived ideas about the details of the incident or the outcome of the Fact Finding.

Remember, the purpose of the Fact Finding is to obtain a clear picture of the alleged incident.

It is also important for the panel members to have reviewed all relevant rules, regulations, policies and laws related to the incident prior to the Fact Finding meeting if the type of incident alleged identifies policies which may have been violated.

Keep the meeting focused on the issue at hand; do not be distracted by irrelevant issues such as previous, unrelated disciplinary problems. If new issues do arise, make a note to address them later, and continue the discussion of the issue(s) at hand. During a Fact Finding meeting, it is

advisable to have at least two panel members in addition to the Panel Chairperson. This will help facilitate the process, and will also provide a source of corroboration in the event of a misunderstanding or confusion about statements made during the interviews. Per City management policy, video and tape recorders may not be used except as permitted by law under the Peace Officer Procedural Bill of Rights and the Fire Fighter Procedural Bill of Rights.

Each witness should be interviewed separately. To ensure consistency during the interview(s), follow the previously prepared outline, and ask follow-up questions as necessary to clarify any unclear, incomplete, and/or contradictory statements. Open-ended questions are best. Employee representatives are not allowed to respond on behalf of the employee.

The final Fact Finding report is prepared by the Fact Finding Panel Chairperson and signed by all panel members. The report is a collaborative effort and represents the view of all panel members. The report must provide a background of the alleged incident, names of the complainant, witnesses, subjects and other employees interviewed, the dates of the interviews, the determination or “finding” of facts including a determination of whether a violation of city policy occurred, and any specific department, city or other policies, regulations or laws which were found to be violated. Attach all documents that were used in supporting the conclusions and retain all related documents and notes until all appeal rights have been exhausted by the employees. If any areas which need further research are found during the Fact Finding, these areas should be identified in the report for follow up by the Appointing Authority. The Finding Report does not include any recommendation of disciplinary action.

If the Appointing Authority has additional questions after reading the report, additional Fact Finding meetings/interviews may be scheduled if necessary to clarify the facts of the incident(s). After reading the report, the Appointing Authority will decide if discipline is warranted based on the facts presented. If there is no discipline the subject is notified that the results were unfounded, or unsubstantiated. Since no discipline was issued, the subject should not be given a copy of the fact finding report. If there is discipline, the Appointing Authority will decide on the appropriate level (refer to the progressive level of discipline) and after consulting with The

Human Resources Department and City Attorney's Office, administer the disciplinary action to the employee, along with a copy of the fact finding report. Whether discipline is issued or not, the complainant must be told that the allegations were investigated and appropriate action was taken. The complainant should not be told if discipline was issued, nor the level of discipline. In the interest of confidentiality, exercise discretion in the discussion of outcomes by avoiding any direct statements about other individuals who may be involved in the disciplinary proceedings.

Resources

Please refer to Appendix II for additional information about conducting a Fact Finding. This appendix includes more detailed guidance on how to develop an investigative strategy, interview witnesses, take statements, reach conclusions, prepare a final report, and close the investigation. The Human Resources website (<http://citynet/hr/index.shtml>) on the City's Intranet also has templates and formats that should be used in Fact Finding processes.

Summary

Who: A Fact Finding is conducted by a panel identified by the Department Director or designee, usually in response to information forwarded by a subordinate supervisor or employee.

What: A Fact Finding is an administrative process used to establish facts surrounding reports of employee misconduct. It involves holding interviews of witnesses, victims and other employees, during which formal provisions regarding truthfulness, requirements to answer questions, employee rights to representation, and other formal procedures are applied.

When: A Fact Finding should be conducted when statements or allegations are made involving potential employee misconduct.

Where: A Fact Finding should be held in a private location, free from interruptions and distractions and respecting the confidentiality of the proceedings, such as in a private office.

Why: A Fact Finding is used to establish whether or not an alleged incident occurred, and establish the facts surrounding the incident. It provides the documentation and support for further disciplinary action, if warranted.

How: The Fact Finding panel interviews witnesses and reviews written records, electronic media and other sources, while observing the employee's representation rights.

THE EMPLOYEE PERFORMANCE REVIEW PROGRAM

The primary purpose of the City’s Employee Performance Review Program (EPRP) is to provide a formal, fair and consistent structure to evaluate the job performance of every employee on a regular basis. In accordance with Personnel Manual Index Code G-7A, this section applies to employees represented by AFSCME Local 127, Police Officers Association, Teamsters Local 911, and the Municipal Employees Association. The EPRP for employees represented by IAFF Local 145 can be found in Personnel Manual Index Code G-7 and is not reviewed here.

Performance Standards

Before employee performance can be evaluated, work standards must be established. These standards define the expected level of performance for the job, and give both employees and supervisors a common point of reference. The supervisor should determine which job standards are relevant by reviewing job specifications, departmental policy statements and other related materials including City policies and procedures. The supervisor must determine which duties are critical for acceptable performance and what the standards are for the performance of those duties. Outlined in the employee’s Performance Plan, these standards will provide the basis for any performance-related disciplinary action.

The expectations of the employee should be consistent with the signed Performance Plan. The Plan should contain specific, clearly identifiable standards so that the employee’s level of performance can be easily determined. For example, “check 15 plans per month” is a concrete job standard that both the employee and the supervisor can easily measure and track.

Program Overview

The EPRP is to be used to evaluate job performance of all classified employees, including hourly, part-time and full-time. Performance evaluations are to be conducted annually for permanent employees, and more frequently for probationary, limited and seasonal employees.

Refer to Personnel Manual Index Code G7-A for procedures, or contact your department's Personnel Liaison Analyst or payroll specialist. In addition, every supervisor should take the 8-hour EPRP training course offered by the Personnel Department. For information or to schedule a class, call (619) 236-6400.

The Employee Performance Review Program is comprised of two primary elements:

1. **Employee Performance Plan:** Outlines the job functions and performance standards of the position.
2. **Performance Evaluation (Supervisor-Employee Conference or Supplemental Performance Report):** Formal discussion of the employee's actual performance of the job functions.

1. Performance Plan

The Supervisor is responsible for developing each employee's Performance Plan, which should clearly and accurately reflect the employee's job functions and standards. Employees should have the opportunity to provide input into the development of their Performance Plans. Upon the Plan's completion, the supervisor should hold a Performance Plan conference with the employee, to ensure that both the supervisor and the employee have a clear and mutual understanding of the job performance standards. For new employees, the Performance Plan should be discussed within the first few days on the job.

The employee's Performance Plan should be reviewed each year and updated as necessary. In addition, whenever there is a supervisory change, a new Performance Plan should be issued to the employee and signed.

2. Performance Evaluation

The performance evaluation is a formal review of the employee's job performance based on the job functions and standards outlined in the employee's Performance Plan. Refer to Personnel Manual Index Code G-7A for detailed procedures. A supervisor should review employee

performance evaluations with his or her own supervisor prior to presenting the performance evaluation to the employee. This gives the next-level supervisor a chance for review and comment and keeps him or her apprised of the performance of employees in the section and division.

Performance Evaluations and the Disciplinary Process

The EPRP forms the foundation for taking disciplinary action due to poor job performance (i.e., the employee fails to meet performance standards). Because it is the City's official documentation of employee work performance, it is used to verify and support the use of discipline in cases of poor work performance.

The Supplemental Performance Report provides supervisors with the opportunity to document poor overall job performance and discuss it with the employee. The Performance Development Plan provides the employee with clear, concrete steps he or she must follow in order to improve job performance.

Once disciplinary action is taken based on poor job performance, the previous employee performance evaluations will play an important role if any appeals are filed. The EPRP, when used consistently and fairly, will assist the supervisor in justifying or explaining any disciplinary actions. The past performance evaluations document patterns of employee behavior, record prior disciplinary actions and provide justification for further disciplinary actions.

It is important to note that any disciplinary action based on poor job performance begins by identifying and documenting the problem in the employee evaluation when previous Verbal Counseling(s), Verbal Warning(s), Written Counseling(s) or Written Warning(s) have not resulted in acceptable performance. When noting past disciplinary actions in the employee's performance evaluation, note the behavior but do not refer to the specific disciplinary action.

Supplemental Performance Reports

A Supplemental Performance Report shall be given when an employee exhibits poor overall performance. A Supplemental Performance Report may be completed between regular evaluation periods or at the end of an evaluation period. As in the regular performance evaluation, the employee's performance documented in a Supplemental Performance Report should be based on the job standards contained in the Performance Plan. Procedures for a Supplemental Performance Report are identical to those for a regular performance evaluation (Supervisor-Employee Conference). See Personnel Manual Index Codes G-7, G-7A and L-2 for more information.

If an employee fails to meet performance standards, the supervisor can address any issues through a Supplemental Performance Report. However, performance issues should be addressed as soon as possible; supervisors should not wait until the employee's performance evaluation to discuss poor performance. A Supplemental Performance Report should never be a surprise to the employee; he or she should be aware that there is a performance issue before receiving a Supplemental Performance Report. The employee's specific performance problem should be indicated on the Supplemental Performance Report. If the employee's performance does not improve after he or she receives one or more Supplemental Performance Reports, more serious disciplinary action should be taken. A Supplemental Performance Report should always indicate to an employee that further consequences, up to and including Termination, may result if performance is not improved immediately.

Performance Development Plan

A Performance Development Plan must be used whenever an employee receives a Supplemental Performance Report. The purpose of the Performance Development Plan is to assist the employee in identifying areas of weakness and identify improvements required to bring his or her performance up to an acceptable level. The supervisor or manager should meet with the employee on a weekly or bi-weekly basis for a period of up to 90 days to discuss the employee's progress or lack of progress. This provides the employee with regular feedback and ensures that

there are no surprises at the end of the evaluation period. A quick and easy way to ensure doing this, is to set the dates, times, and location for the weekly/bi-weekly in the Performance Development Plan. This way, there is no confusion as to what was agreed to. This review may be completed sooner at the discretion of the supervisor.

Career Enhancement Plan

The Career Enhancement Plan may be used as developmental tool for employees who meet or exceed performance standards. This plan outlines career management suggestions and specific actions, behaviors, training or education employees can utilize to further improve job performance.

Notice of Representation Rights

Delivery of any Supplemental Performance Report requires notice to the employee of his or her representation rights. Generally, an employee is given a Supplemental Performance Report and a Performance Development Plan before “property rights” discipline (such as a Demotion or Termination) is administered in performance-related cases. An employee must be given a Supplemental Performance Report and a Performance Development Plan before a Reduction in Compensation can be administered. Supervisors should be sure to discuss matters with their higher-level supervisors before beginning the procedures, to ensure that the delivery of performance evaluations complies with the appropriate MOU, as well as with divisional and departmental policies.

Withholding Normal Step Increases

A normal annual or semi-annual step increase can be withheld if an employee does not make adequate progress toward correcting performance deficiencies as specified in the employee’s Supplemental Performance Report and a Performance Development Plan. While this need not be done in conjunction with a Supplemental Performance Report and a Performance Development Plan, the time periods often correspond and thus provide an opportunity to discuss the problems

leading to the postponement of the increase. The employee should be advised of the performance problem and be given the opportunity to correct it before the increase is withheld. If a step increase is withheld, the employee must be notified of the reasons as well as of the length of time the increase will be withheld (See Personnel Manual Index Code H8, for more information on withholding pay increases). A Skelly hearing is not required to withhold a pay increase because there is an expectation that the employee meet the requirements of the position in order to qualify for normal step increases (See Chapter 7 and Appendix III for more information on Skelly rights).

Performance Evaluations and Rewards

It is important to note that the performance evaluation is not merely a tool for discipline. As mentioned earlier in this chapter, the performance evaluation is the City's official documentation of employee work performance, and is used to verify and support the need for discipline in cases of poor work performance. Conversely, the performance evaluation also serves as the City's official documentation of excellent job performance. The performance evaluation should be used to motivate, reinforce and reward good work when possible. In addition, a Commendation form can be used to recognize an employee with exceptional performance. In fact, the Commendation form can help provide the necessary justification to further reward high performing employees with Discretionary Leave, Exceptional Merit Step Increases, and Exceptional Merit Cash Payments.

Additional Resources

The procedures for implementing the EPRP are outlined in Personnel Manual Index Codes G-7A and L-2. Each supervisor should thoroughly review these sections, along with any department or division standards, and the respective MOU for the employee group prior to undertaking any phase of the EPRP. Each supervisor should also take the EPRP training course offered by the Personnel Department. For more information or to enroll in the course, call the Personnel Department at (619) 236-6400.

Summary

Who: The Performance Plan, Performance Evaluation, Supplemental Performance Report, Performance Development Plan, Commendation and Career Enhancement Plan are presented by the immediate supervisor after discussion with the next-level supervisor.

What: The EPRP uses a three-pronged approach to provide a formal, fair, and consistent method to regularly evaluate all employees' job performance. First, the Performance Plan outlines the job functions and standards. Second, the Performance Evaluation or Supplemental Performance Report provides formal feedback to employees about their job performance. Third, the Performance Development Plan and Career Enhancement Plan outline career management suggestions and specific actions, behaviors, training or education employees need to improve job performance.

When: Performance Plans should be given to employees by their supervisors when they start work in a new position or when there is a permanent supervisory change. Performance evaluations should be given quarterly for probationary employees or for limited employees in their first year of employment in a classification. Performance evaluations should be given annually for permanent employees and for limited employees following the first year of employment in a classification. Seasonal employees should receive a performance evaluation at the end of the season. Supplemental Performance Reports can be presented at anytime during the evaluation period. An employee is usually given a Supplemental Performance Report and Performance Development Plan before "property rights" discipline (Demotion or Termination) can be administered in performance-related cases. Performance Development Plans must be given to employees who have received a Supplemental Performance Report in order to help them improve their job performance. Career Enhancement Plans may be used as developmental tools for employees who meet or exceed performance standards. Lastly, a Commendation can be presented anytime to record an employee's exceptional performance.

UNIT II**COUNSELING**

Counseling is a discussion between the employee and supervisor regarding specific work performance. In its most basic form, it is a normal supervisory activity: feedback from the supervisor to the employee. Counseling for disciplinary purposes is a special kind of counseling; it is a serious discussion of employee job performance between employee and supervisor which emphasizes the need for improvement in problem areas. Counseling usually precedes formal (written) discipline and in most cases is enough to motivate employees to raise their work performance to acceptable levels.

Feedback on performance, both positive and negative, is an essential aspect of supervision and employee development. Positive feedback from a supervisor helps keep an employee motivated and enthused about his or her job. The City encourages supervisors to have discussions about performance expectations with their employees on a regular basis, not just when there are problems.

Counseling is not used in cases of misconduct. For minor misconduct, the appropriate form of disciplinary action is a Warning; see Chapter 4 for details on those procedures.

Two Types of Counseling

There are two levels of disciplinary Counseling: Verbal and Written. Verbal Counseling is an informal, though important, meeting between the supervisor and the employee that is not documented in the employee's permanent Personnel Department file. Written Counseling includes a Notice of Counseling and is a formal, documented discussion between the employee and the supervisor. A Verbal Counseling does not have to precede a Written Counseling. As with all steps in the progressive discipline process, the Counseling, whether verbal or written, should be appropriate for the incident.

Step 1: Verbal Counseling

Verbal Counseling is the least severe step in the disciplinary process for performance problems, and should be used when the performance problems are minor. A supervisor should use a Verbal Counseling when he or she believes that the employee's performance problem can be corrected by having a discussion, sharing information, correcting a misunderstanding, or referring the employee to training, if appropriate.

A Verbal Counseling session may also be appropriate if an employee, who previously met standards, demonstrates a dramatic change in behavior: for example, an employee has developed an absenteeism problem, has become argumentative, or has stopped doing his or her share of the work.

Verbal Counseling Procedure

When a supervisor becomes aware of instances in which an employee fails to meet performance standards, the problem should be discussed with the employee in a Verbal Counseling.

Employees do not have the right to representation during a Verbal Counseling. The Verbal Counseling should be conducted in a private location, free from interruptions and distractions and respecting the confidentiality of the proceedings, such as in a private office. Be sure to thoroughly discuss the performance issue so the employee has a real opportunity to share his or her feelings, opinions or understanding of the problem. The process should be a two-way dialogue so both parties leave with a feeling of cooperation and understanding.

Describe how the employee is not meeting performance standards and clearly explain the impact on the workplace. Use specific, objective terms: describe behaviors and events, not feelings and personality traits; do not label the employee. For example, it would not be appropriate to say, "You are so unreliable. I'm sick and tired of your laziness!" This statement does not describe the behavior or its impact, labels the employee as lazy, and brings the supervisor's feelings about the employee into the matter. However, it would be appropriate to say, "You reported to work 20 minutes late today, and kept the whole crew waiting for you. That wasted City time and

money, and put us all behind schedule for the day.” This statement describes the behavior and its impact in objective terms, does not involve emotions or personality issues, and does not label the employee.

After describing how the employee is not meeting performance standards and the impact on the workplace, describe the change in behavior you expect from the employee. Clearly outline the specific changes the employee must make in order to improve behavior. Be sure he or she clearly understands. Ask the employee to describe the expected behavior in his or her own words. Provide explicit, practical direction that the employee will be able to apply. Explain how he or she can develop better work habits. Suggest retraining where appropriate to develop or improve skills in problem areas. The supervisor may recommend that the employee contact Citywide training, or offer to help the employee locate applicable training. If appropriate, the supervisor may also recommend that the employee contact EAP. The supervisor should not attempt to act as a therapist. If the employee does not follow through on suggested contacts, this is not cause for discipline. However, continued poor performance may result in further discipline.

The emphasis of the Counseling session should be to help the supervisor discover the causes of poor job performance and offer appropriate assistance to help the employee correct and sustain his or her work performance. Further disciplinary action should not be threatened, although a date for a follow-up session may be set for reviewing the employee’s progress. At the same time, make it clear to the employee that further consequences can and will result if the behavior is not corrected.

During the Verbal Counseling session, be sure to keep the meeting on the subject of the performance issue. If other issues come up that are not related to the discipline issue, it is proper to note and set aside those issues until the purpose of the meeting, the performance problem under discussion, is settled. If other legitimate issues arise during the meeting, supervisors may want to schedule another session to address those issues. During a Verbal Counseling session, it is important to stay focused on the original, specific point of the meeting and not be sidetracked by new, unrelated issues.

Keep notes of the Verbal Counseling session, including the date, employee name, situation, changes to be made by one or both parties, date to review progress and general outcome of the session. Do not put a written record of a Verbal Counseling in any permanent personnel file, whether it is Departmental or Personnel Department. Inform the employee that the notes will not be placed in the employee's permanent Personnel Department file. These notes should be kept in a working file for reference in any future disciplinary action, and, if appropriate, to note the behavior in the employee's annual Performance Evaluation. When noting past disciplinary actions in the employee's annual Performance Evaluation, you must note the behavior but cannot refer to the specific verbal counseling(s), warning(s), written counseling(s) or warning(s). These notes from a Verbal Counseling should be referenced in a future Written Counseling, if the employee's performance does not improve.

Step 2: Written Counseling

If the employee's performance does not improve after he or she has been given a Verbal Counseling regarding performance problems, then the supervisor should proceed to the next step in the disciplinary process, Written Counseling. A Written Counseling also documents the expectations for improvement previously discussed in the Verbal Counseling. In other words, the Written Counseling reinforces the Verbal Counseling session by repeating, in writing, the directions given in the Verbal Counseling. In some cases, the Written Counseling may be the first disciplinary action taken, and so would not follow a Verbal Counseling.

Instructions in the Written Counseling should be specific, include examples of the employee's performance problems and offer suggestions as to how the employee can correct the behavior. Written Counseling should also reiterate any agreements or commitments made by the employee during a Verbal Counseling regarding his or her previous behavior (See sample Notice of Counseling in Appendix I). A Written Counseling includes the following elements:

- Description of the problem behavior and its impact on the workplace
- Description of the desired behavior and a timeline during which it must be attained

- Description of any previous commitments the employee made to improve his or her behavior, and if those commitments have been kept
- Assistance to the employee (i.e. training, prioritizing, etc.)
- A clear statement that further disciplinary action can and will result if the behavior is not improved.

Written Counseling Procedure

Prior to giving the employee the Written Counseling, the supervisor must inform the employee in writing that the matters to be discussed will be documented and placed in the employee's file and that he or she has the right to representation. The employee must be given five working days to arrange for representation. The supervisor is entitled to have a witness in the meeting, such as a fellow supervisor, the next in line supervisor, or the Deputy Director.

The Written Counseling should be conducted in a private location, free from interruptions and distractions and respecting the confidentiality of the proceedings, such as in a private office. Be sure to thoroughly discuss the performance issue so the employee has an opportunity to share perspectives, opinions or understanding of the problem. The process should be a two-way dialogue to allow both parties to fully understand the situation.

As in the Verbal Counseling, clearly state the problem or situation, describing the specific behaviors. Do not label; instead discuss events or behaviors in objective, factual terms. It may be appropriate to actually read the Notice of Written Counseling to the employee in the private meeting. After describing the behavior expected from the employee, be sure he or she understands by having the employee describe the expected behavior in his or her own words.

Again, as in a Verbal Counseling, provide specific, practical direction that the employee will be able to apply. Describe the behavior changes the employee must make in order to improve performance. Explain how he or she can develop better work habits. Suggest training where

appropriate to develop or improve skills in problem areas. When applicable, suggest to the employee how he or she may obtain assistance to improve the behavior.

If appropriate, the supervisor may recommend that the employee contact the Department's Human Resources, if applicable, training office and/or EAP. The supervisor should not attempt to act as a therapist. If the employee does not follow through on suggested contacts, this is not cause for discipline. Only continued poor performance justifies further discipline. Advise the employee that immediate and sustained improvement is expected, and that failure to improve could lead to a recommendation for more serious disciplinary action.

When counseling an employee, be sure to keep the meeting on the subject of the performance issue. If other issues come up that are not related to the discipline issue, it is proper to note and set aside those issues until the purpose of the meeting, the discussion of the performance problem, is settled. If other legitimate issues arise during the meeting, supervisors may want to schedule another session to address those issues. During a counseling session, it is important to stay focused on the original, specific point of the meeting and not be sidetracked by new, unrelated issues.

Have the employee sign and date the Notice of Written Counseling. If a witness is present, he or she should also sign and date the Notice of Written Counseling. Advise the employee that the signature merely indicates receipt of the document, not necessarily agreement with the contents. If the employee chooses not to sign, the supervisor should indicate that the employee chose not to sign on the Notice of Written Counseling, then date and sign the form, and have the witness, if present, sign and date it. Provide the employee with a copy of the Notice of Written Counseling.

Refer to the appropriate MOU and advise the employee of his or her appeal rights. If the employee appeals the discipline, the Director or designee will then schedule an appeal hearing.

Summary

Who: Counseling is usually conducted by the immediate supervisor. A Verbal Counseling session should be between the employee and the supervisor; employees do not have the right to representation. A Written Counseling becomes part of the employee's personnel record, so the employee is entitled to representation if he or she desires. The supervisor is entitled to have a witness in the meeting, such as a fellow supervisor, the next in line supervisor, or the Deputy Director.

What: Counseling is a face-to-face meeting between employee and supervisor in which the supervisor reviews the performance problem and offers ways to assist the employee in correcting the problem. There are two types of Counseling: Verbal and Written. Verbal Counseling is a meeting between employee and supervisor during which they discuss the employee's performance problem, its impact on the workplace, the desired behavioral changes, and any offers of assistance to the employee.

In Written Counseling, the employee is first given a five day notice which informs the employee of his/her right to representation. The Notice of Written Counseling details the problem and its impact, lists any commitments the employee has made to improve his or her behavior, gives a description of the desired behavior, provides the offer of assistance to the employee and puts forth a statement of consequences for failure to improve. If the Written Counseling follows a Verbal Counseling for the same problem, it should repeat the directions given in the Verbal Counseling and reiterate any previous commitments made by the employee. The Notice of Written Counseling is signed by the employee and the supervisor and is placed in the employee's permanent Personnel Department file.

When: Counseling should be conducted as soon as possible after the performance problem is discovered.

Where: Counseling should be conducted in a private location, free from interruptions and distractions and respecting the confidentiality of the proceedings, such as in a private office.

Why: Counseling reinforces City work standards, and helps to foster a mutual understanding of the difference between acceptable and unacceptable work performance.

How: Both Verbal and Written Counseling sessions should describe the unacceptable performance behavior and its impact on the workplace. The supervisor should also offer assistance as appropriate to help the employee correct or modify the behavior. Finally, the counseling should state the expectation of immediate, sustained improvement.

WARNING

A Warning is a disciplinary step taken by the employee's supervisor to address a specific incident of misconduct. A Warning is less serious than a Reprimand and can be given by the first-line supervisor. While Counseling is used for a performance-related problem, a Warning is issued for a violation of a rule, policy or procedure. A Warning can be verbal or written; if written, it is placed in the employee's permanent departmental and Personnel Department files.

The Verbal Warning is typically the first step for employee misconduct in the progressive discipline process. Since it is the least severe step, it should be used for a minor, first-time incident. A Warning should be used when the supervisor believes a serious discussion with the employee will prevent a repeat occurrence of the misconduct. If the incident is serious, the matter should be referred through the chain of command to the Department Director or designee for consideration of more serious disciplinary action.

Two Types of Warnings

As with Counseling (which is used in performance matters), there are two steps to the Warning process: Verbal and Written. A Verbal Warning is an informal but important meeting between supervisor and employee which is not documented in the employee's permanent departmental and Personnel Department files. A Written Warning includes a Notice of Written Warning and is a more formal, documented discussion between employee and supervisor. A Verbal Warning does not have to precede a Written Warning; as with all steps in the progressive discipline process, the severity of the discipline imposed should be appropriate for the incident.

Step 1: Verbal Warning

A Verbal Warning is the least severe step in the disciplinary process for misconduct, and is generally used when the situation is minor. A Verbal Warning should be used when the supervisor believes the situation may be corrected by a discussion, sharing information, or correcting a misunderstanding.

A Warning session may also be appropriate when an employee demonstrates a dramatic change in behavior; for example, the employee has become argumentative or has failed to follow directions. In addition to disciplinary action, behavior like this may also lead to a recommendation of a referral to EAP.

Verbal Warning Procedure

When a supervisor becomes aware of misconduct, the problem should be discussed with the employee. Employees do not have the right to representation during a Verbal Warning session. Do not put a written record of the discussion of a Verbal Warning in the employee's permanent departmental and Personnel Department files. However, it is appropriate to note the date, time, and subject in a working file for reference and inclusion in any future disciplinary actions if the employee does not correct his or her behavior. The Verbal Warning should be conducted in a private location, free from interruptions and distractions and respecting the confidentiality of the proceedings, such as in a private office. Be sure to thoroughly discuss the situation so the employee has an opportunity to share his or her perspective, opinions or understanding of the situation. The process should be a two-way dialogue to allow both parties to fully understand the situation.

Describe the misconduct by citing the employee's specific behavior, and by clearly explaining the impact of that behavior on the workplace. Use concrete, objective terms. Describe behaviors and events, not feelings and personality traits. Do not label the employee. For example, it would not be appropriate to say to an employee who is heard behaving rudely toward a customer, "You're obnoxious. You make me so mad!" This statement does not describe the behavior or its impact. It labels the employee as obnoxious, and brings the supervisor's feelings into the matter. However, it would be appropriate to say, "You were heard arguing with a customer and then hanging up on him. Your job is to provide courteous service to our customers. You represent the City of San Diego to that customer, and when you are rude, it makes all of us look bad." This statement describes the behavior and its impact in objective terms. It does not involve emotions or personality issues, and does not label the employee.

After describing the employee's misconduct and its impact on the workplace, describe the change in behavior you expect from the employee. Clearly outline the specific changes the employee must make in order to improve behavior. Be sure he or she clearly understands and ask the employee to describe the expected behavior in his or her own words. Provide explicit, practical direction that the employee will be able to apply. When applicable, suggest to the employee how he or she may obtain assistance to improve the behavior. The supervisor may recommend that the employee contact the department's training office or offer to help the employee locate applicable training. If appropriate, the supervisor may recommend that the employee contact EAP. The supervisor should not attempt to act as a therapist. If the employee does not follow through on suggested contacts, this is not cause for discipline. However, continued misconduct may result in further discipline.

The emphasis of the Verbal Warning should be to help the employee clearly understand the nature of his or her misconduct and its impact on the workplace, and to allow the supervisor to discover the cause(s) of the misconduct, describe the behavior(s) needed to correct the problem, and offer any necessary assistance. A date for a follow-up session may be set for reviewing the employee's progress. It must be clear to the employee that further consequences may result if the behavior is not corrected.

When issuing a Verbal Warning, be sure to keep the meeting on the subject of the misconduct. If other issues come up that are not related to the discipline issue, it is proper to note and set aside those issues until the misconduct issue at hand is settled. If other legitimate issues arise during the meeting, supervisors may want to schedule another session to address those issues. During a Verbal Warning session, it is important to stay focused on the original, specific point of the meeting and not be sidetracked by new, unrelated issues.

It is important to keep brief notes of the Verbal Warning session such as date, employee name, situation, changes to be made by one or both parties, date to review progress and general outcome of the session. Inform the employee that the notes will not be placed in the employee's permanent departmental or Personnel Department files. Notes of a Verbal Warning should be

referenced in a future Written Warning or other disciplinary action if the behavior and/or pattern persists.

Step 2: Written Warning

If the employee fails to respond to the Verbal Warning regarding his or her misconduct problems and the misconduct continues or escalates and stronger disciplinary action is needed, the next step puts the warning in writing. The Written Warning should repeat the relevant information given in the Verbal Warning, including the direction given by the supervisor, in order to reinforce the importance of that earlier session. Instructions should be specific, and include examples of misconduct as well as ways the employee can correct the behavior.

The Written Warning should contain the following elements:

- A description of the inappropriate behavior and its impact on the workplace
- Expected change in behavior
- If appropriate, an offer of assistance to the employee
- A clear statement that further disciplinary action may result if the behavior is not corrected.

(A sample Notice of Warning is included in Appendix I.)

Written Warning Procedure

Prior to giving the employee the Written Warning, the supervisor must inform the employee that the matters to be discussed will be documented and placed in the employee's permanent departmental and Personnel Department files; and that he or she has the right to representation. The employee must be given five working days to arrange for representation. The supervisor is entitled to have a witness in the meeting, such as a fellow supervisor, a next-line supervisor, or the Deputy Director.

The Written Warning should be conducted in a private location, free from interruptions and distractions and respecting the confidentiality of the proceedings, such as in a private office. Be

sure to discuss the situation fully so the employee has an opportunity to share his or her perceptions, opinions or understanding of the situation. The process should be a two-way dialogue to allow both parties to fully understand the situation.

As in the Verbal Warning, clearly state the problem or situation describing the specific behaviors. Do not label; instead describe events or behaviors in objective, factual terms. It may be appropriate to actually read the Notice of Warning to the employee. After describing the expected behavior, be sure the employee understands by having the employee describe it in his or her own words. The supervisor should give specific practical direction which the employee is able to apply; for example, descriptions of needed behavior changes or improvement in particular work habits. If appropriate, the supervisor may wish to suggest how assistance may be obtained or recommend contact with the Department's Human Resources, if appropriate, training office, and/or EAP. The supervisor should not attempt to act as a therapist. If the employee does not follow through on suggested contacts, this is not cause for discipline. Only continued misconduct justifies further discipline. Advise the employee that immediate and sustained improvement is required and that failure to improve can and will lead to a recommendation for more serious disciplinary action.

When giving a Written Warning to an employee, be sure to keep the meeting on the subject of the misconduct issue. If other issues come up that are not related to the discipline issue, it is proper to note and set aside those issues until the discussion of the misconduct problem at hand is settled. If other legitimate issues arise during the meeting, supervisors may want to schedule another session to address those issues. During a Written Warning session, it is important to stay focused on the original, specific point of the meeting and not be sidetracked by new, unrelated issues.

Have the employee sign and date the Notice of Written Warning. If a witness is present, he or she should also sign and date the Notice of Written Warning. Advise the employee that the signature merely indicates receipt of the document, not necessarily agreement with the contents. If the employee chooses not to sign, the supervisor should indicate that the employee chose not

to sign on the Notice of Written Warning, then date and sign the form. Provide the employee with a copy of the Notice of Written Warning.

Refer to the appropriate MOU and advise the employee of his or her appeal rights. If the employee opts to appeal, the Director or designee will then schedule an appeal hearing.

Summary

Who: A Warning is conducted by the immediate supervisor. A Verbal Warning session should be between the employee and the supervisor; employees do not have the right to representation at a Verbal Warning. A Written Warning becomes part of the employee's permanent departmental and Personnel Department files, so the employee is entitled to representation if he or she requests it. The supervisor is entitled to have a witness in the meeting, such as a fellow supervisor, a next-line supervisor, or the Deputy Director.

What: A warning is a face-to-face meeting between the employee and the supervisor in which the supervisor reviews the problem behavior and advises the employee on how to correct the problem. This may include an offer of assistance, if appropriate. There are two types of warnings: Verbal and Written.

A Verbal Warning is a meeting between employee and supervisor to discuss the employee's misconduct, its impact on the workplace, and the desired change in behavior. The supervisor should also offer assistance, if appropriate, and clearly state the consequences for the employee if he or she does not comply.

A Written Warning details the problem behavior and its impact on the workplace, and the expected behavior. The supervisor should offer assistance, if appropriate, and clearly state the consequences for failure to improve. If the Written Warning follows a Verbal Warning for the same problem, it should repeat the directions given in the Verbal Warning and reiterate any previous commitments made by the employee. The Written Warning is signed by the employee

and supervisor and is placed in the employee's permanent departmental and Personnel Department files.

When: A Warning should be conducted as soon as possible after the misconduct problem is discovered.

Where: A Warning should be conducted in a private location, free from interruptions and distractions and respecting the confidentiality of the proceedings, such as in a private office.

Why: A Warning should be issued when warranted by employee misconduct.

How: Both Verbal and Written Warning sessions should describe the situation and state specific required behaviors. The supervisor should offer assistance as appropriate to help the employee in correcting or modifying behavior, and then state the expectation of immediate, sustained improvement.

REPRIMAND

A Reprimand is a more serious disciplinary action than a Warning and is used to document a specific incident of misconduct. It is typically, though not necessarily, the second written step in the progressive discipline process dealing with incidents of misconduct. Unlike the disciplinary actions discussed previously in this manual, a Reprimand must be issued by a division head or higher authority.

A Reprimand should be used for a serious first offense or for a repeat instance of misconduct after issuance of a Written Warning by an immediate supervisor. A Reprimand should be used when the supervisor believes that the occurrence requires stronger disciplinary measures than a Verbal or Written Warning. This step is an indication of serious employee misconduct and it is important not only to conduct a thorough investigation, but also to have the division head or higher authority deliver the Reprimand as soon as possible after the incident in order to immediately correct the employee's behavior.

Reprimand Procedure

When he or she believes it is warranted, the supervisor requests through the chain of command that the division head or higher authority give an employee a Reprimand. The supervisor must present information supporting the request, including a detailed written account of the incident prompting the request, such as the Fact Finding report. Copies of any prior Written Warnings or notes regarding Verbal Warnings should also be submitted.

If the facts support the issuance of a Reprimand, the division head or higher authority will prepare the Reprimand, following the sample in Appendix I. If the division head or higher authority is unable to define the particular standards that are being violated, she or he should go back to the supervisor for more information. The Reprimand process should not proceed until it is clear that City standards or procedures have been violated in such a manner that a Reprimand is the appropriate disciplinary action.

The division head or higher authority will schedule a meeting with the employee. At the time the meeting is scheduled, the employee should be advised of the right to representation during the delivery of the Reprimand, and informed that the written document will be placed in his or her permanent departmental and Personnel Department files. If the employee wants representation or to have a witness present at the meeting, they are allowed five business days for the arrangements to be made before the meeting takes place. It is appropriate, but not mandatory, for the division head or higher authority to have another party present as a witness during the delivery of the Reprimand. The witness can verify matters that occur during the course of the meeting in the event of any future allegations or misunderstandings.

At the meeting, the division head or higher authority will discuss the Reprimand with the employee, including references to previous disciplinary actions, such as Verbal or Written Counselings or Warnings, or any previous commitments the employee has made pertaining to the problem that caused the Reprimand. The division head or higher authority should describe the unacceptable behavior and its impact on the workplace, describe the expected change in behavior, and state that further consequences may result if improvement is not made. If, during the meeting, an employee who does not have a representative present should decide he or she would like representation, the meeting should be stopped and rescheduled to a time when representation has been obtained.

The division head or higher authority and the employee must sign and date the Reprimand. If a witness is present, he or she should also sign and date the document. The division head or higher authority should explain to the employee that his or her signature only signifies receipt of the Reprimand, not necessarily agreement with its contents. If the employee chooses not to sign, the division head or higher authority should record that the employee chose not to sign on the Reprimand and then sign and date it, and a witness, if present, should also sign and date. The employee will receive a copy of the Reprimand. The supervisor must inform the employee that a copy will be placed in his or her permanent Personnel Department file and copies will be distributed to designated personnel. See Appendix VI for standardized routing procedures.

The division head or higher authority should keep in mind that he or she has discretion regarding when and if a Reprimand is to be given. If, after meeting with the employee, the division head or higher authority decides to modify the Reprimand or reopen the investigation, he or she should do so and inform the employee and the supervisor.

Appeal

The division head or higher authority should refer to the appropriate MOU and advise the employee of his or her appeal rights. The employee must submit a request for an appeal, in the form of an appeal letter, to the Department Director within the time frame stated in the appropriate MOU or in the written Reprimand document. The division head or higher authority should instruct the employee that the appeal letter must be in writing, and be submitted to the Department Director or designee.

Summary

Who: A Reprimand is issued by a division head or higher authority. The recommendation for the Reprimand is usually made by the employee's immediate supervisor, and goes through the chain of command if necessary before the division head or higher authority issues the Reprimand.

What: A Reprimand is a formal, documented disciplinary step given when more serious misconduct occurs, or after a repeat instance of a behavior problem that has not been corrected by prior disciplinary action.

When: After an incident of more serious misconduct or a repeat instance of a behavior problem not corrected through previous disciplinary action, a Reprimand may be the appropriate course of action.

Where: A Reprimand should be given in a private location, free from interruptions and distractions and respecting the confidentiality of the proceedings, such as in a private office.

Why: After an impartial inquiry, the division head or higher authority decides a Reprimand should be issued because the misconduct warrants this level of discipline.

How: The Reprimand should be given to the employee after notification of his or her right to representation. A copy of the Reprimand is placed in the employee's permanent Personnel Department file, with copies distributed per the standardized routing referenced in Appendix VI.

UNIT III

PROPERTY RIGHTS, DUE PROCESS, AND THE SKELLY PROCEDURE

The Skelly Process

The law requires that employees not be deprived of property interests (i.e., any disciplinary action that involves a taking of money (wages), such as a Suspension or Termination) without due process. Thus, the City is required to provide an employee with the opportunity to review the charges against him or her, with a copy of the information upon which the charges are based and the opportunity to respond to the charges is provided. Typically, this will include a written document summarizing charges or violations of City policies, as well as copies of previously related discipline. It also may include a copy of an investigative report. This is commonly known as the Skelly process.

Appointing Authorities are required to provide the employee with the information necessary to allow the employee to prepare a response to the discipline. Appointing Authorities must provide all documentary evidence that supports the charges (e.g., time cards, mileage reports, work logs). Additionally, summaries of witness statements that have been signed and dated should be included if the witnesses are an essential part of the investigation which justifies the discipline.

It is suggested that you consult with your department's appointing authority, its human resources office (if applicable), its liaison from the City Attorney's Office and the Human Resources Department (for Mayoral departments) before conducting Skelly procedures (See Appendix III for a detailed discussion of the origin and application of Skelly procedures). Advance Notices of Adverse Action must be sent to the Human Resources Department. The Human Resources Department Liaison, along with the City Attorney's Office, will review the documentation prior to the discipline being issued.

Skelly Procedures

All Skelly procedures are handled by the Department Director or unclassified designee. The Department Director or designee should have previously authorized or conducted an investigation into allegations of misconduct leading up to the recommendation for disciplinary action. Performance problems should be documented by appropriate disciplinary steps such as Supplemental Performance Evaluations, Written Counselings, etc. (See Appendix II for more information about conducting investigations). The Department Director or designee must prepare an “Advance Notice of Adverse Action.” The title of this notice is based on the specific disciplinary action that is to be taken; for example, if the employee is to be suspended, the notice is titled, “Advance Notice of Suspension;” if the employee’s compensation is to be reduced, the notice is titled, “Advance Notice of Reduction in Compensation,” etc. (See Appendix I for samples of these notices or go to <http://citynet/hr/resourcestools/discipline.shtml>).

The Advance Notice of Adverse Action is the most important document that will be prepared for a disciplinary action. *It must contain every allegation of misconduct or substandard performance that is used as a basis for disciplining the employee.* The Advance Notice, properly prepared, will lay out the Department’s case as it may ultimately be presented to the Civil Service Commission.

Preparing an Advance Notice of Adverse Action

Each incident of misconduct or poor performance with supporting documentation describing the factual basis for the discipline must be referenced in detail and included in the Advance Notice of Adverse Action. Each allegation must be supported by evidence in the form of witness statements, documentary or other physical evidence. Any allegation not supported by evidence will generally be rejected by the Commission as unproven.

The Notice must list the specific discipline and specific charge or rule violations. Describe how the employee’s actions violated each rule, policy or procedure. The notice should reference all Civil Service Rules violated as well as any Administrative Regulations, Department or Division

Instructions, work standards and other City or departmental policies or procedures that were violated. It is important to note that the same behavior(s) may violate multiple Civil Service Rules, and it is important to note how the conduct violated each rule, even if it appears to be repetitive. This information must be included in both the advance notice and the final notice of adverse action. Previous relevant notices of discipline and Performance Evaluations should be listed and attached. Also include and attach copies of all supporting documents to the Advance and Final Notices. Consult the MOU that covers the employee's classification, since appeal rights vary. Include a statement of the employee's appeal rights. (A sample of this statement is included in Appendix I).

Forward the entire package to your department's human resources office (if applicable), who will review and forward it to Human Resources Department. For departments that do not have a Human Resources office, forward the entire packet to the Human Resources Department Liaison for review prior to delivering the Advance Notice to the employee. Upon approval, deliver the Advance Notice to the employee, preferably in person. If for some reason the employee has not been at work for several days and is not expected to return to work soon, the Advance Notice must be mailed to the employee's home address. Mail one copy by certified mail, return receipt requested; mail the other copy by regular first-class mail. Note this action on all copies of the Advance Notice.

Appeals

The employee has ten working days after receipt of the Advance Notice of Adverse Action to appeal. If the employee properly appeals the intended action referenced in the Advance Notice of Adverse Action, the Department Director or designee will then hold a meeting with the employee and his or her representative, should the employee choose to have representation. During this meeting, the employee may:

- Respond verbally and/or in writing to the charges.

- Respond to the facts, conclusions and the relevance of any prior discipline upon which the disciplinary action is based. The employee does not have the right to cross-examine or call witnesses.
- Present any additional relevant facts. The Department Director or designee must give full and impartial consideration to such additional facts and may delay the disciplinary decision pending investigation of such facts.

(Note: If the employee declines the meeting or fails to appear at the scheduled meeting, continue the process and make a note of it on the Notice of Adverse Action). Following the meeting with the employee, it is advisable for the Department Director or designee to consider the matter for a minimum of 24 hours before making a decision. The Skelly Officer may also interview the employee's supervisor and/or Appointing Authority for any pertinent information they provide.

The Department Director or designee has discretion to uphold or modify the recommended discipline. If the discipline is to be upheld (with the same charges as in the Advance Notice or with reduced charges) or if the discipline is modified to a less severe action, notify the employee via the Notice of Adverse Action. This step will terminate the appeal process for this disciplinary action.

Notice of Adverse Action

This notice should contain:

- All of the relevant information from the Advance Notice of Adverse Action
- The results of the appeal meeting including what was presented and considered by the Director or designee
- The Director or designee's decision
- The date(s) upon which the discipline will take effect

When complete, forward the Notice of Adverse Action to the department's human resources office (if applicable), the City Attorney's Office, and the Human Resources Department for advance approval. Deliver the Notice of Adverse Action to the employee within five working

days and route copies to the appropriate parties (As listed in Appendix VI). If the notice is mailed to the employee, prepare two copies of the notice in a letter format and mail them to him or her. Mail one copy by certified mail, return receipt requested; mail the other copy by regular first-class mail. Note this action on all copies of the Notice.

Amended Advance Notice of Adverse Action

If further poor performance and/or misconduct occurs after the Advance Notice of Adverse Action is given to the employee, or if new information becomes available in the Skelly hearing, this information may *not* be added to the Final Notice *unless* an Amended Advance Notice is issued and the employee is given an opportunity to respond to the new evidence or charges. Occasionally, it is determined that previous information and/or disciplinary actions relative to the issue were omitted from the initial Advance Notice. It is essential that an Amended Notice including the omitted material be prepared and delivered if the information is to be considered during the deliberations on the proposed action. It is important to discuss the decision to issue an amended notice with the Human Resources Department and the City Attorney's Office before taking any action.

The employee can request that another hearing be held on the Amended Advance Notice. In addition, if the Department Director or designee decides to uphold the discipline with new charges added, or to impose a more severe discipline (for example, an increase from two to three days of Suspension, or from Suspension to Termination), an Amended Advance Notice of Adverse Action must be issued so that the employee has an opportunity to respond to the new charges or increased discipline. Issue the Amended Advance Notice following the same procedures as for the Advance Notice, outlined above.

Resources

Use all the resources available to you on any matters involving Skelly procedures. Consult with your department's appointing authority, its human resources office (if applicable), the City Attorney's Office, and the Human Resources Department and review the applicable Memorandum of Understanding and the Personnel Manual prior to addressing any serious disciplinary matter. See Appendix IX for a list of City resources.

SUSPENSION

A Suspension is a serious disciplinary action in which an employee is compelled to take a specified period of time off, in some cases without pay. There are three types of Suspensions: Suspension in Response to Misconduct, Suspension Pending Investigation, and On-the-Spot Suspension.

Suspension Due To Misconduct

When to Suspend

Suspensions should be used sparingly for misconduct problems in which previous steps (for example, Verbal and/or Written Warnings or Reprimands) have been insufficient to correct the problem behavior. Suspension can also be used as an initial disciplinary step for misconduct problems that dictate a more serious response than a Warning or Reprimand.

Due Process

Because a suspension due to misconduct involves the permanent employee's "property interest" or job rights, formal due process must be observed. These procedures are commonly known as Skelly rights, and are outlined in Chapter 7 (see also Appendix III for more information about due process and Skelly). Skelly procedures are required by law any time a disciplinary action affects an employee's wages. Disciplinary actions that affect wages include Suspension, Demotion, Reduction in Pay, and Termination.

Other Types of Suspensions

Suspension Pending Investigation

A Suspension Pending Investigation is a non-disciplinary step taken by a Department Director or designee to remove an employee from the job on paid leave while his or her conduct is being investigated. **A Suspension Pending Investigation must be approved by the Mayor or the Human Resources Department prior to taking the action.** However, suspension pending investigation is generally not taken unless serious misconduct has already occurred, and the purpose of the suspension is to prevent further misconduct or other problems during the investigatory period. This type of suspension may last for a maximum of 30 calendar days. If final discipline is not issued prior to the end of 30 calendar days, the employee is reinstated.

Because this is a non-disciplinary suspension, the employee does not have appeal rights. The employee should be given a written notice immediately, describing the allegations against him or her, and an opportunity to respond prior to his or her departure from the workplace. The notice may be given verbally if circumstances do not permit written notification.

It is the policy of the City that this type of Suspension only be used when an alternative temporary assignment is not available and/or the continued presence of the employee in the workplace constitutes a threat to the safety and welfare of the public or other employees. For example, a Suspension Pending Investigation is referenced in the City Threat Management Policy, A.R. 97.10. It may also be used if there is a fear that damage to City property may occur if the employee remains in the workplace during the investigatory period.

If the allegations made against the employee are substantiated by an investigation (whether through a formal Fact Finding or other investigation), the Department Director or designee may take the appropriate disciplinary action. Any disciplinary action must be taken in accordance with procedures outlined in this manual, the City Personnel Manual and the applicable Memorandum of Understanding. The procedures must include notice of the proposed

disciplinary action, an opportunity to respond to the charges, and notice of the employee's right to appeal. The term of the Suspension Pending Investigation shall be considered by the Department Director or designee when taking disciplinary action.

It is important to note that the Advance Notice of Adverse Action must be completed and delivered to the employee *prior to* the end of the 30 calendar day period. Failure to complete the entire process will result in the restoration of all rights and benefits to the suspended employee. See Index Code L-2 of the Personnel Manual and Appendix V for further information.

On-the-Spot Suspension

In some instances, a supervisor may suspend an employee on the spot for the remainder of the work day where such action is deemed necessary in order to maintain the safety of the community or the reputation, morale and harmony of the organization. On-the-Spot suspensions are generally used in misconduct cases, where a suspension can be a first step. This suspension does not give the employee the due process rights provided by the Skelly procedures and should be used in cases where the misconduct is egregious, and the effect on other employees or the public is grave. It is recommended that an Appointing Authority approve the on-the-spot suspension, if possible.

Summary

Who: A Suspension can be given only by a Department Director or designee, and the concurrence of the Human Resources Department and the City Attorney's Office must be obtained.

What: A Suspension is usually a disciplinary step in which the employee is placed on leave for violation of City policies. Due process procedures must be followed for unpaid suspensions because the employee's property rights are affected by the loss of pay.

When: In most cases, the employee is given a Suspension following the due process procedures outlined in the Skelly procedure. A suspension can be given after a private meeting following proper Advance Notice, or on the spot in cases of serious misconduct.

Where: A suspension should be given in a private location, free from interruptions and distractions and respecting the confidentiality of the proceedings, such as in a private office.

Why: A Suspension is generally used after less serious measures have proved ineffective. It may also be the first disciplinary action taken for serious misconduct by an employee. Employees can also be given non-disciplinary suspensions, not to exceed 30 calendar days, to allow for a full investigation into charges of misconduct against the employee. These suspensions should be used infrequently and only when there is no alternative duty available for the employee, or where the employee's removal from the workplace is necessary to maintain the safety of the community or the reputation, morale and harmony of the organization. These Suspensions may be initiated only after consultation with, and agreement by the Human Resources Director and the City Attorney Employment Attorney.

How: Written notice should be given whenever possible, stating the reasons for the Suspension. If the need to remove the employee from the workplace is immediate because of potential harm to the employee, the public, or other employees, a written notice should be sent as soon as possible. See Appendix I for a sample Notice of Suspension or on CityNet at <http://citynet/hr/resourcestools/discipline.shtml> .

REDUCTION IN COMPENSATION

A Reduction in Compensation is one of the more serious steps in progressive discipline, and is generally used in cases of sustained poor work performance. For the duration of the Reduction in Compensation, an employee's pay is reduced to a lower level, but must remain within the range of compensation for the employee's job classification. Reduction in Compensation is imposed when an employee has failed to improve his or her performance to an acceptable level despite previous disciplinary measures.

It is important to note that a Reduction in Compensation can only be ordered when the most recent Performance Evaluation has rated the employee's overall performance as "Unsatisfactory." The Reduction in Compensation will remain in effect until the employee's performance improves significantly and meets appropriate City work standards, or for a maximum of six months. When one or both of these events occur, the employee is reinstated to his or her previous salary step. If the reinstatement occurs because the six-month period has run out, and the performance problem persists, some other form of discipline must be taken.

After a Reduction in Compensation has been imposed, the employee's performance must be reviewed within 90 calendar days, although it may be reviewed sooner. This follow-up review should reference any change, either improvement or deterioration, in the employee's performance. More serious action should be recommended if the employee has failed to make adequate progress in returning his or her performance to the fully satisfactory level. It is important to note that "reviewed" means a formal written evaluation, given in accordance with notice of representation and all related requirements. As noted earlier in this manual, supervisors should provide employees regular verbal feedback during the course of the Reduction in Compensation to assist the employee in correcting his or her behavior.

The range of reduction varies within the employee's salary range within his or her job classification. Consult the applicable Memorandum of Understanding for specific information

regarding the range of reduction, length of time, conditions for restoration of pay and appeal rights for members of the employee's bargaining unit.

The Reduction in Compensation Process

The employee's Performance Evaluations provide the documentation and support for imposing a Reduction in Compensation. The division head or higher authority acts based on a request through the chain of command from the employee's immediate supervisor. The supervisor must supply the division head or higher authority with sufficient evidence to substantiate the request for a Reduction in Compensation. If the division head or higher authority concurs there is sufficient evidence to proceed, the next step in the process may begin. Division head or higher authorities do not have to make a final decision on the Reduction in Compensation at this time; they need only determine that there is sufficient evidence to proceed. If desired, the division head or higher authority may conduct an independent investigation or hold a Fact Finding session.

Due Process

Since a Reduction in Compensation involves the employee's "property interest" or job rights, formal due process procedures must be observed and a hearing provided. These procedures are outlined in Chapter 7. Following the Skelly hearing, the Department Director or designee makes the final decision on whether to issue the Reduction in Compensation. The decision is then communicated to the supervisor and the employee through the chain of command or as determined by the Department Director or designee.

Summary

Who: A division head or higher authority issues the Reduction in Compensation, based on a recommendation from the employee's supervisor.

What: A Reduction in Compensation reduces the employee's salary to a lower level that is still within the salary range of the employee's job classification.

When: A Reduction in Compensation must follow other steps in the progressive discipline process, including an Unsatisfactory Performance Evaluation.

Where: A Reduction in Compensation should be conducted in a private location, free from interruptions and distractions and respecting the confidentiality of the proceedings, such as in a private office.

Why: Reduction in Compensation is imposed when an employee has failed to improve his or her work performance to an acceptable level despite previous disciplinary measures.

How: Based upon information provided by the employee's supervisor, the division head or higher authority determines if there is sufficient evidence to warrant a Reduction in Compensation. If desired, the division head or higher authority can conduct an independent investigation or hold a Fact Finding session. After the Skelly hearing and a response by the employee, the Department Director or designee considers all relevant information and makes his or her decision, and informs the employee and the supervisor of the decision and the employee's appeal rights. Consult the applicable Memorandum of Understanding to ensure compliance with the specific procedures and appeal processes of the various bargaining units.

DEMOTION

A Demotion is a disciplinary reduction of an employee's job classification and is second only to termination in the severity of its effect on the employee. A demotion demonstrates that an employee has proven unable to effectively perform the full range of duties of a given position, but still deserves continued City employment in another capacity.

Performance-Related Demotion

Demotion is *not* a mandatory, progressive step leading to the termination of an unsatisfactory employee. Very careful consideration must be given to this alternative: it should be used only in those rare situations related to employee performance where there is a legitimate, defensible expectation that an employee will be able and willing to properly perform tasks of reduced responsibility.

Take care, when considering this action, to ensure that organizational requirements are not compromised to retain a substandard employee. A demotion is only an option when there is a lower position available; an existing position should not be under-filled simply to accommodate a demoted employee. Remember that a demotion should only be used when there is a high degree of certainty that the employee will be able to function satisfactorily in the new position. Also note that demotions should be given only to employees who have permanent status. Unresolved problems with probationary employees should be dealt with by probationary failure.

Misconduct-Related Demotion

While not ruled out as a disciplinary option, demotions are generally not appropriate in cases of misconduct. Demotions are usually associated with performance, and evaluating the employee's performance helps the Department Director or Mayoral designee determine whether the employee can and will perform at a satisfactory level within the demoted position.

The Demotion Process

The employee's Performance Evaluations provide the documentation and support for demotion. The Department Director or Mayoral designee acts based on a request (through the chain of command) from the employee's immediate supervisor. The supervisor must supply the Department Director or Mayoral designee with sufficient evidence to substantiate the request for Demotion. The Department Director or Mayoral designee then determines if there is sufficient evidence to proceed. A final decision on the Demotion need not be made at this time; he or she need only determine that there is sufficient evidence to proceed with the Demotion.

As this is a very serious and complicated disciplinary action, the Department Director or Mayoral designee should work closely with the department's human resources office (if applicable), the City Attorney's Office and the Human Resources Department.

Due Process

Since a demotion involves the permanent employee's "property interest" or job rights, formal due process procedure must be observed and a Skelly hearing provided. These procedures are outlined in Chapter 7. Following the Skelly procedure and after carefully considering all the relevant information, the Department Director or designee makes the final decision on whether to issue the demotion, and informs the employee and the supervisor of the decision and appeal rights.

Summary

Who: A Demotion is issued by the Department Director or Mayoral designee after consultation with the Human Resources Department, the department's human resources office (if applicable) and the City Attorney's Office.

What: A Demotion is a reduction in job classification.

When: A Demotion is issued following the Skelly hearing and follow-up procedures.

Where: A Demotion should be conducted in a private location, free from interruptions and distractions and respecting the confidentiality of the proceedings, such as in a private office.

Why: It is issued following continued poor performance in those rare cases where there is good reason to believe the employee can perform the duties of a lower-classed position.

How: Based upon information provided by the employee's supervisor, the Department Director or Mayoral designee determines if there is sufficient evidence to warrant a demotion. If desired, the Department Director or Mayoral designee can conduct an independent investigation or hold a Fact Finding session. After the Skelly hearing and a response by the employee, the Department Director or Mayoral designee considers all relevant information and makes his or her decision, and informs the employee and the supervisor of the decision and appeal rights. Consult the applicable Memorandum of Understanding to ensure compliance with the specific procedures and appeal process of the appropriate bargaining unit. See Appendix I for a sample Notice of Demotion or see <http://citynet/hr/resourcestools/discipline.shtml>.

TERMINATION

This is the final and most severe form of discipline that can be given to an employee. It is distinct from the other steps in the progressive disciplinary process in its recognition that less severe discipline and guidance have not corrected the employee's misconduct or performance problems. It is also used in instances of misconduct that so severely violate City standards that retention of the employee is unacceptable. Since termination means that the employee will lose his or her job, especially careful consideration must be taken to ensure that due process is followed and that the evidence fully supports this final disciplinary action.

Who Can Be Terminated?

Any employee in the classified service who has attained permanent status may be removed from employment for cause by the Appointing Authority. Any employee who has not attained permanent status, including limited status employees, may be removed (through probationary failure) by the Appointing Authority without Civil Service Commission appeal rights. See Chapter 3, Performance Plans, for information on failing an employee's probation. Seasonal/hourly employees can be terminated by sending the employee a Notice of Termination of Hourly Employment either as a result of the lack of work or the lack of the employee's availability to work hours.

Performance-Related Termination

Previous disciplinary steps should be taken in performance-related problems before resorting to termination of the employee. The problem should be well documented, consistent and unresolved throughout the progressive discipline process in order for a termination to be the appropriate option.

Misconduct-Related Termination

Termination may be appropriate even for a first offense in misconduct cases if the behavior constitutes gross misconduct or poses a serious threat to the operation of the City or to the welfare of co-workers and/or the public.

The Termination Process

The employee's Performance Evaluations provide the documentation and support for any performance-related disciplinary action. Disciplinary action for misconduct may be based on other information. The Department Director or Mayoral designee generally acts based on a request from the employee's immediate supervisor that has come to the Deputy Director or designee through the chain of command. The supervisor must supply the Department Director or Mayoral designee with sufficient information to substantiate the request for termination. The Department Director or Mayoral designee then determines if there is sufficient information to proceed. He or she does not have to make a final decision on the termination at this time, but only determine that there is sufficient information to proceed with the termination process.

Conditions of Continued Employment

There may occasionally be circumstances where an employee's performance has been such that a Termination is the appropriate response. During the appeal process for the termination, occasionally employees will advise the Appointing Authority of external factors that have impacted their ability to perform satisfactorily and request a reduction in the severity of the proposed discipline. When an employee takes responsibility for their conduct, agrees to correct it and often agrees to participate in external assistance programs, a reduction in discipline may be considered in conjunction with Conditions of Continued Employment (CCE).

A CCE is a multi-year document that details the specific requirements, behaviors and work expectations or conditions the employee must meet to continue working. In addition, the CCE contains a provision that the employee knowingly and willingly enters into the agreement and

forfeits their right to a Civil Service Commission appeal of any discipline associated with the initial action that accompanies the CCE's as well as a termination in the future for failure to complete the requirements of the CCE's.

Prior to presenting a CCE to an employee, the Department Director or Mayoral designee must review the circumstances of the matter and the elements of the CCE with the Human Resources Department and the City Attorney's Employment Attorney and gain their concurrence that a CCE would be appropriate given the nature of the behavior and the employee's working history.

Due Process

A termination involves the employee's "property interest" or job rights, therefore a formal due process procedure must be observed and a Skelly hearing provided. These procedures are outlined in Chapter 7. Following the Skelly procedure, after carefully considering all the relevant information and conducting additional investigations if necessary, the Department Director or Mayoral designee makes the final decision on whether to issue the termination.

Consultation

The Department Director or Mayoral designee must consult with the City Attorney's office and the Human Resources Department. This review is designed to ensure that the discipline is consistent with the offense, and that the employee's legal rights have been properly addressed. Any departmental and citywide issues may be considered in the review. The Notice of Termination is signed by the Department Director or Mayoral designee (Mayoral Departments) or by the Department Director (non-Mayoral Departments). See Appendix 1 for a sample Notice of Termination or <http://citynet/hr/resourcestools/discipline.shtml>.

Summary

Who: Upon recommendation by the Division Head or designee, the termination is reviewed in advance by the Human Resources Department and the City Attorney's Office.

What: These proceedings result in the permanent employee losing his or her job.

When: An employee is terminated in cases of gross misconduct or after all other disciplinary options have failed to improve the employee's performance to an acceptable level.

Where: A Termination should be conducted in a private location, free from interruptions and distractions and respecting the confidentiality of the proceedings, such as in a private office.

Why: In cases of gross misconduct, or after other forms of discipline have failed.

How: As Termination is the most severe form of job-related discipline used by the City, all facts should be carefully considered before terminating the employee. The proceedings are performed at the direction of the Department Director or Mayoral designee, the Human Resources Department and the City Attorney's Office. Once the Department Director or Mayoral designee has determined that an employee should be terminated, the matter is forwarded to the Group Human Resources Manager, the Human Resources Department and the City Attorney's Office for review and concurrence.

CIVIL SERVICE COMMISSION APPEAL HEARINGS

The Civil Service Commission consists of five members appointed by the Mayor. These members serve as hearing officers at employee disciplinary appeal hearings. An employee may appeal a disciplinary action to the Civil Service Commission only when the discipline involves the employee's property rights. Disciplinary actions involving property rights include Suspension, Reduction in Compensation, Demotion, and Termination.

Requests for appeals of disciplinary action to the Civil Service Commission must be submitted by the affected employee to the Personnel Director's Office. The request must be written, and must be filed within five calendar days of receipt of the Notice of Demotion, Suspension, Reduction in Compensation, or Termination.

The Personnel Director or designee reviews the request for appeal letter to determine if it meets the requirements of Civil Service Rule XI, and acknowledges receipt of the request for an appeal. If the Civil Service Rule XI requirements have been met, the Personnel Director or designee will schedule a public hearing before the Civil Service Commission. The appellant will be notified of the date and time of the hearing via certified mail. Copies of the notice will also be sent to the appellant's representative and the Department Director or designee of the appellant's division. Finally, a public notice of the hearing will be posted on the Personnel Department bulletin board at least 72 hours prior to the hearing.

Pre-Hearing Conference

Before the actual Civil Service Commission appeal hearing, a pre-hearing conference is conducted. Present at this conference are the Department Director or designee and his or her City attorney, if appropriate, the appellant and his or her representative, the Personnel Director or designee and Civil Service Commission staff and attorney, if appropriate.

The goal of this pre-hearing conference is to ensure a smooth Appeal Hearing before the Civil Service Commission. At the conference, points of dispute can be clarified and the relevant

issues focused. For example, is the appellant disputing the accuracy of the evidence or the severity of the discipline imposed? Also during the conference, a list of proposed witnesses and testimony is reviewed and any documents are numbered for clarity. The Appointing Authority must bring five copies of the exhibits to the pre-hearing conference, and appellants are encouraged, but not required, to provide copies of exhibits at this time. Appointing Authority exhibits are numbered, and appellant exhibits are alphabetized. Copies of the documents will be provided to the appellant at no cost and the Department Director or designee must be allowed to make copies of relevant documents held by the appellant.

The pre-hearing conference not only focuses the issues in dispute, but may also lead to a discussion of other options. For example, an employee may prefer to resign instead of being terminated. However, even if the Department Director or designee agrees at the pre-hearing conference to allow the employee to resign (rather than be terminated), only the Civil Service Commission can actually change the discipline once a request for appeal has been filed with the Commission. Any agreements reached during the pre-hearing conference must be approved by the Civil Service Commission. Without an agreement, the appeal hearing will be held unless the applicant unilaterally withdraws the appeal.

The pre-hearing conference allows the actual hearing before the Civil Service Commission to be conducted in a manner that gives the Commission a clear, concise presentation of both sides of the argument. This ensures that the Commission can make the best possible decision for all the parties involved.

The Civil Service Commission Appeal Hearing

Appeal Hearings are typically heard by a single Commissioner acting as a hearing officer. The Appellant may select a hearing officer from the next two Civil Service Commissioners in the rotation. In cases where the Appellant feels there are new or unusual issues being raised by the proceedings, he or she may request that a quorum of Commissioners hear the case. The decision to grant a request for a quorum (three of the five Commissioners) is within the sole discretion of the Civil Service Commission. All appeal recommendations are ratified by the full Commission.

A Commission Appeal Hearing of a Demotion, Suspension, Reduction in Compensation, or Termination is a full evidentiary hearing, which means that the Commissioners act as independent hearing officers who review the evidence and may conduct further investigation if necessary. The hearing officers make a recommendation to the full Commission, and after deliberation in a closed session, they render a final determination. The purpose of the hearing is to give management an opportunity to present its evidence in support of the discipline. After Management has presented its case, the employee has an opportunity to be fully heard, to present evidence on his or her behalf regarding the allegations, and to present evidence in mitigation.

Representation

Since a Civil Service Commission Appeal Hearing is not a trial, employees may represent themselves, select another person as their representative or seek legal counsel. The Department Director or designee is represented by a Deputy City attorney only in Suspension, Demotion, and Termination cases, or in cases where significant legal issues are involved; however, the City Attorney liaison may be consulted on any case for guidance or legal support.

Witnesses

A list of the Appointing Authority's proposed witnesses must be submitted to the Personnel Director or designee at the pre-hearing conference. The Personnel Director or designee will notify the Appointing Authority and the Appellant of the time, date, and place of the hearing. City employees called as witnesses are paid for this time and will be expected to appear as notified unless excused by the Commission. Non-City employees will be subpoenaed by the President of the Commission. Delivery of subpoenas will be the responsibility of the party requesting the non-City witness.

Hearing Procedures

During a Civil Service Commission Appeal Hearing, all testimony is taken under oath and recorded by an official reporter. The order of presentation is as follows:

- 1. The Department presents its evidence.** This may include documentary evidence, physical evidence, and witnesses. After the Department examines each of its witnesses, the appellant has the right to cross-examine that witness. The burden of proof is on the Department, which must present sufficient evidence to support the discipline.
- 2. The appellant presents his or her evidence.** After the Department has presented its case, the appellant presents the evidence and/or witnesses that support the appellant's side of the case. This may include evidence which refutes the Department's evidence, or evidence which supports a decrease in the level of discipline due to mitigating circumstances.
- 3. Each side may present Rebuttal evidence.** This allows both parties an opportunity to refute evidence presented by the other side.
- 4. Closing arguments:** Both parties briefly summarize their cases.
- 5. Formal closing of the hearing by the Commissioners:** No further evidence may be submitted by either party after this closing except as ordered by the Commission.

In making its decision, the Commission must be convinced by a preponderance of the evidence that the discipline was warranted. This means that the Commission must be convinced that the events are more likely than not to have occurred as Management presented them. The Commission makes its own determinations of credibility. The Commission may make inferences based on the evidence presented; it may not, however, make such inferences without evidence that supports the inference. During the Appeal hearing, the Commission cannot hear issues which have not been included in the Advance Notice of Adverse Action (or amended Advance Notice of Adverse Action) to which the employee had an opportunity to respond in the Skelly hearing. If the employee or his or her representative raises issues that were not previously discussed, the Department can respond to those issues during rebuttal.

The Hearing Officer(s), after deliberation, will usually produce findings of fact and recommended conclusions within 30 days after the hearing. The Commission as a whole deliberates and may ratify or modify a hearing officer's decision in the case. In all cases, the Commission's decision is the final step in the administrative appeal.

APPENDIX I

Listing Of Sample Discipline Documents

Please note that although this manual provides you with samples documents for various discipline levels, the particular circumstances of your specific discipline situation may not immediately “fit” into one of these documents. Please contact the Human Resources Department or your departmental Human Resources staff (if applicable) to assist you in preparing the document if needed. All formats can be found in Word format on the Human Resources Department page on the City’s Intranet Website (CityNet).

Discipline Document Samples

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Discipline Document Samples

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO: (Witness Name)

FROM: (Fact Finding Chair)

SUBJECT: Notice of Fact Finding Interview, Witness

You are hereby directed to report to *(place, at time on day and date)* for a fact finding into allegations of possible misconduct in violation of City of San Diego and/or NAME Department administrative policies.

You are not subject to disciplinary action, however, it is anticipated that you could provide helpful information about the allegations. Therefore, you do not have the right to a representative.

As with other personnel issues, this is a confidential investigation. You are advised to refrain from discussing the issues in this fact finding with anyone besides the panel. You are also directed not to contact potential witnesses prior to or after the fact finding is completed. You are further directed not to engage in any retaliatory actions or behavior toward anyone. Any violations of these directives could result in discipline.

If you have any questions, please call (Insert Name, Title and Phone Number of Fact Finding Chair or Human Resources Personnel).

(Fact finding Chair, with signature above)

I have read and received a copy of this notice

(name and title of witness)

Date

I have witnessed the employee's receipt of this memorandum.

Witness Signature

Date

Discipline Document Samples

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO: *(Name and Title of Subject of Fact Finding)*

FROM: *(Name of Fact Finding Panel Chairperson)*

SUBJECT: **Notice of Fact Finding Interview, Subject**

You are hereby directed to report to *(place, at time on day and date)* for a fact finding into allegations of possible misconduct by you in violation of City of San Diego and/or *Name* Department administrative policies.

Disciplinary action could take place as a result of this fact finding investigation. You are hereby advised of your right to have representation in accordance with Personnel Manual Index Code L-2. If you choose to be represented, it is your responsibility to make all necessary arrangements per the Memorandum of Understanding (MOU) with your bargaining unit.

As with other personnel issues, this is a confidential investigation. You are advised to refrain from discussing the issues in this fact finding without anyone besides the panel and/or your representative. You are also directed not to contact potential witnesses prior to or after the fact finding is completed. You are further directed not to engage in any retaliatory actions or behavior toward anyone. Any violations of these directives could result in discipline.

If you have any questions, please call *(Insert Name, Title and Phone Number of Fact Finding Chair or Human Resources personnel)*.

Name and Title of Panel Chair

I have read and received a copy of this notice.

(Insert Name and Title of Subject)

Date

Signature of Witness

Date

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Waiver of Right To Representation

By my signature below, I hereby confirm that I voluntarily and intentionally waive my right to representation during my *(type of discipline)* on *(date)*. I fully understand that I retain the right to retract this waiver in writing.

Employee Name with Signature Above

I have witnessed the above employee signing this waiver.

Witness name

Date

cc: Division Head
Second Level Supervisor
Department Personnel File

Discipline Document Samples

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Written Counseling - Performance

This Written Counseling is being issued for *(insert performance issue. Provide a brief summary of the facts upon which discipline is based. Include dates, places, identity of supervisors or other employees involved and impacts on operations)*.

You were previously verbally counseled about *(state performance problems)* on *(date(s))*. Your performance negatively impacts the workplace because *(describe impacts)*.

You are expected to show immediate and sustained improvement in your performance as follows: *(State specific behaviors)*. Failure to improve the described work performance will result in additional disciplinary action.

If you need assistance in this matter, please contact me.

You have the right to appeal the placement of this written counseling in your personnel file by requesting a hearing from your Department Head within 10 working days from your receipt of this counseling. Failure to submit a written appeal by this date shall be considered a waiver of your right to an appeal and forfeiture of your right to a hearing.

Copies of the documents upon which the Written Counseling is based are attached.

Supervisor Name with Signature Above

I have read and received a copy of this Written Counseling and the accompanying documents.

Employee Signature

Date

Discipline Document Samples

I have witnessed the personal delivery of this Written Counseling to the above employee.

Signature of Witness

Date

Employee Representative
(Employee's Option)

Date

Attachments: *(Number and List Attachments)*

cc: Division Head
Second Level Supervisor
Department Personnel File
Personnel Department Personnel File

Discipline Document Samples

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Written Counseling – Substandard Work Attendance

The purpose of this Written Counseling is to document your record of substandard work attendance. Listed below is your record of unscheduled absences and/or incidences for tardiness for the last (*enter number of months*) months.

DATES	ABSENT OR TARDY	# OF HOURS/MINUTES

You were previously verbally counseled for unscheduled (*absences and/or tardiness*) on (*date(s)*). As was indicated during discussion of your performance standards, you are required and expected to report to work as scheduled and on time. When you are going to be absent or tardy, you are expected to notify me by phone prior to the start of your work shift.

If you need assistance in this matter, please contact me.

Please be advised that failure to make immediate and sustained improvement will result in further disciplinary action.

You have the right to appeal the placement of this Written Counseling in your personnel file by requesting a hearing from your Department Head within 10 working days from your receipt of this counseling. Failure to submit a written appeal by this date shall be considered a waiver of your right to an appeal and forfeiture of your right to a hearing.

Supervisor Name with Signature Above

I have read and received a copy of this Written Counseling and the accompanying documents.

Employee Signature

Date

Discipline Document Samples

cc: Division Head
Second Level Supervisor
Department Personnel File
Personnel Department Personnel File

Discipline Document Samples

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Written Counseling - Tardy

You reported to work (*x minutes*) late on (*date(s)*) at (*exact time(s)*). Work rules require you to report to work at (*time*). (*When necessary, add more detail, such as specific location and supervisor to report to, specific phone number(s) to call, etc.*)

You were previously verbally counseled about tardiness on (*date(s)*). Tardiness negatively impacts the workplace because (*Describe impacts, e.g. other crew members are delayed, reducing the work that can be accomplished; fewer people are available to respond to customer inquiries so the public are kept waiting; etc.*)

If you need assistance in this matter, please contact me.

Please be advised that failure to make immediate and sustained improvement will result in further disciplinary action.

You have the right to appeal the placement of this Written Counseling in your personnel file by requesting a hearing from your Department Head within 10 working days from your receipt of this counseling. Failure to submit a written appeal by this date shall be considered a waiver of your right to an appeal and forfeiture of your right to a hearing.

Supervisor Name with Signature Above

I have read and received a copy of this Written Counseling and the accompanying documents.

Employee Signature

Date

cc: Division Head
Second Level Supervisor
Department Personnel File
Personnel Department Personnel File

Discipline Document Samples

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Written Warning - Misconduct

This Written Warning is being issued for *(insert misconduct or behavior issue. Provide a brief summary of the facts upon which discipline is based. Include dates, places, identity of supervisors or other employees involved and impacts on operations).*

You previously received a Written Counseling about *(state issue of misconduct)* on *(date(s))*. Your misconduct negatively impacts the workplace because *(describe impacts)*.

You are expected to show immediate and sustained improvement in your behavior as follows: *(State specific behaviors)*. You should be aware that continued misconduct or substandard performance may result in more severe disciplinary action, up to and including Termination. If you need assistance in this matter, please contact me.

You have the right to appeal the placement of this Written Warning in your personnel file by requesting a hearing from your Department Head within 10 working days from your receipt of this warning. Failure to submit a written appeal by this date shall be considered a waiver of your right to an appeal and forfeiture of your right to a hearing.

Copies of the documents upon which the Written Warning is based are attached.

Supervisor Name with Signature Above

I have read and received a copy of this Written Warning and the accompanying documents.

Employee Signature

Date

I have witnessed the personal delivery of this Written Warning to the above employee.

Signature of Witness

Date

Discipline Document Samples

Employee Representative
(Employee's Option)

Date

Attachments: *(Number and List Attachments)*

cc: Division Head
Second Level Supervisor
Department Personnel File
Personnel Department Personnel File

Discipline Document Samples

CITY OF SAN DIEGO M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Reprimand

This notice is a Reprimand for your actions on *(dates(s))*. *(This Reprimand is a result of a Fact Finding on (date) that determined your conduct was as follows: or This Reprimand is a result of your misconduct as follows: Provide a brief summary of the facts upon which this discipline is based. Include dates, places, identity of supervisors or other employees involved, and the impact on the work environment.)*

This behavior violated the following division, department and City work rules:

List all paragraphs of Civil Service Rule XI Section 3 that are violated and relate the facts to the charges; e.g., “that the employee is incompetent or inefficient in the performance of his/her duty”, in that he/she failed to perform supervisory tasks in the areas of cross-training, review of leave slips, and performance evaluations. It is important to recognize that the same behavior often violates more than one paragraph of Civil Service Rule XI, Section 3, so cite violations of each applicable paragraph even if it appears repetitive. If employee violated Rule XI 3(d), lawful regulations, also list each regulation, such as Department/Division policies, Administrative Regulations, etc.

You were previously disciplined for related misconduct as follows *(if applicable, list all relevant verbal and written warnings with subject covered and dates, and any relevant issues in the recent past)*

You are expected to show immediate and sustained improvement in your behavior as follows: *(State specific behaviors)*. You should be aware that continued misconduct may result in more severe disciplinary action, up to and including Termination.

If you need assistance from your supervisor, please feel free to ask. In addition, you have been advised of the services offered by the Employee Assistance Program.

You have the right to appeal the placement of this Reprimand in your personnel file by requesting a hearing from your Department Head within 10 working days from your receipt of this Reprimand. Failure to submit a written appeal by this date shall be considered a waiver of

Discipline Document Samples

your right to an appeal and forfeiture of your right to a hearing.

Copies of the documents upon which the Reprimand is based are attached.

*Supervisor Name with Signature Above
Title*

I have read and received a copy of this Reprimand and the accompanying documents.

Employee Signature

Date

I have witnessed the personal delivery of this Reprimand to the above employee.

Signature of Witness

Date

Employee Representative
(Employee's Option)

Date

Attachments: *(Number and List Attachments)*

cc: Division Head
Second Level Supervisor
Department Human Resources Manager *(if applicable)*
Department Personnel File
Personnel Department Personnel File

Note: Deliver the Reprimand to the employee. If the Reprimand is mailed to the employee, prepare two copies in a letter format and mail it to him or her. Mail one copy by certified mail, return receipt requested; mail the other copy by regular first-class mail. Note this on the top right corner of the first page of all copies.

Discipline Document Samples

CITY OF SAN DIEGO M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Advance Notice of Suspension

This is to notify you that I am recommending to the Appointing Authority that you be suspended from your position as a _____ effective _____ (*date & time*) for _____ days.

*If over 5 days, Appointing Authority **must** obtain pre-approval from the Human Resources Director.*

This Suspension is based on the results of a Fact Finding(s) on _____ (*date(s)*) which determined the following facts:

Provide a brief summary of the most recent facts upon which this discipline is based. Include dates, places and identity of supervisors or other employees involved.

Therefore, based on the information available to me, I believe Suspension is appropriate for the following reasons:

You have violated Civil Service Rule XI Section(s) 3(), (), ().

List all paragraphs of the Civil Service Rule XI Section 3 that are violated and relate the facts to the charges; e.g., “that the employee has violated any lawful or official regulation or order or failed to obey any lawful and reasonable direction given by a superior officer when such violation or failure to obey amounts to... serious breach of discipline” in that you failed to follow verbal and written direction to immediately report any motor vehicle accident by not properly reporting a motor vehicle accident on (date). If employee violated Rule XI 3(d), lawful regulations, also list each regulation.

A Suspension is further justified on the basis that you have been previously disciplined for related substandard performance or misconduct on the following dates (*if applicable*):

List the dates of verbal and written discipline, the offenses and the discipline imposed.

I also note that you have had prior Supplemental performance report(s) for the following periods,

Discipline Document Samples

and have been given Performance Development Plans *(if applicable)*.

List the overall evaluation ratings and the periods covered for Supplemental Performance Evaluations and Performance Development Plans within the recent past. Make sure that any prior discipline or negative evaluations are within any relevant period (e.g. exclude vehicle accidents over 3 years old) and are within the pertinent past.

I further note that you have been referred to the Employee Assistance Program as follows *(if applicable)*:

Give the dates of any suggested performance referrals to the Employee Assistance Program, or any voluntary attendance of which you are aware.

This combination of performance which does not meet established standards and previous disciplinary action justifies this proposed action.

Before the Suspension takes effect, you have the opportunity to respond and appeal this recommended action. You have the right to be represented and may respond either verbally or in writing to the Appointing Authority (or designee) within ten (10) working days. Failure to respond by that time will be deemed a waiver of your opportunity to respond. Copies of all documents upon which these charges are based are attached. These reports are listed below:

Name with Signature Above
Title

I have read and received a copy of this Advance Notice of Suspension and the accompanying documents.

Employee Signature

Date

I have witnessed the personal delivery of this Advance Notice of Suspension to the above employee.

Signature of Witness

Date

Discipline Document Samples

Employee Representative
(Employee's Option)

Date

Attachments: (Number and List Attachments)

List individually and attach all documentary exhibits, prior disciplinary actions, performance evaluations and written rules referred to in the text of this letter.

cc: Department Head
Division Head
Department Human Resources Manager (if applicable)
Deputy City Attorney
Human Resources Officer
Personnel Director
Department Personnel File
Personnel Department Personnel File

***Note:** Deliver the Notice to the employee. If the notice is mailed to the employee, prepare two copies of the notice in a letter format and mail it to him or her. Mail one copy by certified mail, return receipt requested; mail the other copy by regular first-class mail. Note this on the top right corner of the first page of all copies of the Notice.*

Discipline Document Samples

CITY OF SAN DIEGO M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Notice of Suspension

You are hereby advised that you will be Suspended from your position as a _____ with the City of San Diego for a period of _____ days effective _____ (*date & time*), in accordance with Personnel Manual Index Code L-2. You are expected to return to your normal duties at _____ (*time*) on _____ (*date*).

You were given Advance Notice that this action was being considered and the grounds for this action on _____ (*date*). You were given an opportunity to respond to these charges, and as part of that response, you met with _____ (*conducting authority*) on _____ (*date*) [*or you declined to respond*].

In that hearing, the following issues were discussed:

Either reference and attach a copy of the Response to Appeal of Advance Notice of Suspension or cite all who attended and synopsize the employee's basis for appeal and management's response to those arguments.

After consideration of the available information, it has been decided that the Suspension is upheld for the following reasons:

Provide a brief summary of the most recent facts upon which this discipline is based.

You have violated Civil Service Rule XI Section(s) 3(), (), ().

List all paragraphs of Civil Service Rule XI Section 3 that are violated and relate the facts to the charges; e.g., "that the employee is incompetent or inefficient in the performance of his/her duty", in that he/she failed to perform supervisory tasks in the areas of cross-training, review of leave slips, and performance evaluations. It is important to recognize that the same behavior often violates more than one paragraph of Civil Service Rule XI, Section 3, so cite violations of each applicable paragraph even if it appears repetitive. If employee violated Rule XI 3(d), lawful regulations, also list each regulation, such as Department/Division policies, Administrative

Discipline Document Samples

Regulations, etc.

A Suspension is further justified on the basis that you have been previously disciplined for related substandard performance or misconduct on the following dates *(if applicable)*:

List the dates of verbal and written discipline, the offenses and the discipline imposed.

I also note that you have had prior Supplemental performance report(s) for the following periods, and have been given Performance Development Plans *(if applicable)*.

List the overall evaluation ratings and the periods covered for Supplemental Performance Evaluations and Performance Development Plans within the recent past. Make sure that any prior discipline or negative evaluations are within any relevant period (e.g. exclude vehicle accidents over 3 years old) and are within the pertinent past.

I further note that you have been referred to the Employee Assistance Program as follows *(if applicable)*:

Give the dates of any suggested performance referrals to the Employee Assistance Program, or any voluntary attendance of which you are aware.

This combination of performance which does not meet established standards and previous disciplinary action justifies this proposed action.

This combination of substandard performance *(and previous disciplinary action)* justifies this proposed action.

Any further instance of misconduct or less than satisfactory job performance can result in further disciplinary action up to and including Termination.

In accordance with Civil Service Rule XI, you have the right to appeal your Suspension to the Civil Service Commission. If you wish to appeal, your written request for appeal must be delivered within 5 days after receipt of this notice to the Personnel Director, located at 1200 3rd Avenue, 3rd Floor, San Diego, CA, 92101. Failure to submit a written appeal to the Civil Service Commission within 5 days shall be deemed a waiver of your right to appeal and forfeiture of your right to a hearing before the Civil Service Commission.

Name with Signature Above
Title

Discipline Document Samples

I have read and received a copy of this Notice of Suspension and the accompanying documents.

Employee Signature

Date

I have witnessed the personal delivery of this Notice of Suspension to the above employee.

Signature of Witness

Date

Employee Representative
(Employee's Option)

Date

Attachments: **(Number and List Attachments)**

List individually and attach all documentary exhibits, prior disciplinary actions, performance evaluations and written rules referred to in the text of this letter.

cc: Department Head
Division Head
Department Human Resources Manager *(if applicable)*
Deputy City Attorney
Human Resources Officer
Personnel Director
Department Personnel File
Personnel Department Personnel File

Note: *Deliver the Notice to the employee. If the notice is mailed to the employee, prepare two copies of the notice in a letter format and mail it to him or her. Mail one copy by certified mail, return receipt requested; mail the other copy by regular first-class mail. Note this on the top right corner of the first page of all copies of the Notice.*

Discipline Document Samples

CITY OF SAN DIEGO M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Immediate Suspension

You are hereby immediately suspended from duty for the remainder of this work shift. This suspension is effective from *(time)* on this date for a total of *(number of)* hours.

The reason for this suspension is your violation of Civil Service Rule XI, Section _____. *List all paragraphs of Civil Service Rule XI that are violated and relate the facts to the charges; e.g., “that the employee is incompetent or inefficient in the performance of his/her duty”, in that he/she failed to perform supervisory tasks in the areas of cross-training, review of leave slips, and performance evaluations. It is important to recognize that the same behavior often violates more than one paragraph of Civil Service Rule XI, Section 3, so cite violations of each applicable paragraph even if it appears repetitive. If employee violated Rule XI 3(d), lawful regulations, also list each regulation, such as Department/Division policies, Administrative Regulations, etc.*

This suspension is deemed necessary in order to maintain the safety of the community or the reputation, morale and harmony of the *(name of department)*.

Specifically, it is noted that you *(record acts of misconduct as they occurred)*

Additionally, you are hereby notified that an administrative fact finding will be conducted regarding the above misconduct. Disciplinary action could take place as a result of this fact finding investigation. You are hereby advised of your right to have representation in accordance with Personnel Manual Index Code L-2. If you choose to be represented, it is your responsibility to make all necessary arrangements per the Memorandum of Understanding (MOU) with your bargaining unit.

As with other personnel issues, this is a confidential investigation. Therefore, you are advised not to discuss this matter with anyone other than your representative.

Appointing Authority Name with Signature Above

Discipline Document Samples

I have read and received a copy of this Immediate Suspension.

Employee Signature

Date

I have witnessed the personal delivery of this Immediate Suspension to the above employee.

Signature of Witness

Date

cc: Division Head
Second Level Supervisor
Department Human Resources Manager *(if applicable)*
Human Resources Officer
Department Personnel File
Personnel Department Personnel File

Discipline Document Samples

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Advance Notice of Reduction in Compensation

This is to notify you that I am recommending to the Appointing Authority that your compensation be reduced in your position as a _____ step(s) in pay (%) effective _____.

This Reduction in Compensation is based on the following facts:

Provide a brief summary of the most recent facts upon which this discipline is based. Include dates, places and identity of supervisors or other employees involved.

Therefore, based on the information available to me, I believe Reduction in Compensation is appropriate for the following reasons:

You have violated Civil Service Rule XI Section(s) 3(), (), ().

List all paragraphs of Civil Service Rule XI Section 3 that are violated and relate the facts to the charges; e.g., “that the employee is incompetent or inefficient in the performance of his/her duty”, in that he/she failed to perform supervisorial tasks in the areas of cross-training, review of leave slips, and performance evaluations. It is important to recognize that the same behavior often violates more than one paragraph of Civil Service Rule XI, Section 3, so cite violations of each applicable paragraph even if it appears repetitive. If employee violated Rule XI 3(d), lawful regulations, also list each regulation, such as Department/Division policies, Administrative Regulations, etc..

A Reduction in Compensation is further justified on the basis that you have been previously progressively disciplined for related substandard performance or misconduct on the following dates (*if applicable*):

List the dates of discipline, the offenses and the discipline imposed.

I also note that you have had prior Supplemental performance report(s) for the following periods,

Discipline Document Samples

and have been given Performance Development Plans (if applicable).

List the overall evaluation ratings and the periods covered for Supplemental Performance Evaluations and Performance Development Plans within the recent past. Make sure that any prior discipline or negative evaluations are within any relevant period (e.g. exclude vehicle accidents over 3 years old) and are within the pertinent past.

I further note that you have been referred to the Employee Assistance Program as follows *(if applicable)*:

Give the dates of any suggested performance referrals to the Employee Assistance Program, or any voluntary attendance of which you are aware.

This combination of performance which does not meet established standards and previous disciplinary action justifies this proposed action.

Before the Reduction in Compensation takes effect, you have the opportunity to respond and appeal this action. You have the right to be represented and may respond either verbally or in writing to the Appointing Authority (or designee) within ten (10) working days. Failure to respond by that time will be deemed a waiver of your opportunity to respond. Copies of all documents upon which these charges are based are attached. These documents are listed below:

*Name with Signature Above
Title*

I have read and received a copy of this Advance Notice of Reduction in Compensation and the accompanying documents.

Employee Signature

Date

I have witnessed the personal delivery of this Advance Notice of Reduction in Compensation to the above employee.

Signature of Witness

Date

Employee Representative
(Employee's Option)

Date

Discipline Document Samples

Attachments: (Number and List Attachments)

List individually and attach all documentary exhibits, prior disciplinary actions, performance evaluations and written rules referred to in the text of this letter.

cc: Department Head
Division Head
Department Human Resources Manager *(if applicable)*
Deputy City Attorney
Human Resources Officer
Personnel Director
Department Personnel File
Personnel Department Personnel File

***Note:** Deliver the Notice to the employee. If the notice is mailed to the employee, prepare two copies of the notice in a letter format and mail it to him or her. Mail one copy by certified mail, return receipt requested; mail the other copy by regular first-class mail. Note this on the top right corner of the first page of all copies of the Notice.*

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Notice of Reduction in Compensation

You are hereby advised that your compensation will be reduced ____ step(s) (%) effective _____ (*date*), in accordance with Personnel Manual Index Code L-2.

You were given Advance Notice that this action was being considered and the grounds for this action on _____ (*date*). You were given an opportunity to respond to these charges, and as part of that response, you met with _____ (*conducting authority*) on _____ (*date*) [*or you declined to respond*].

In that hearing, the following issues were discussed:

Either reference and attach a copy of the Response to Appeal of Advance Notice of Reduction in Compensation or cite all who attended and synopsize the employee's basis for appeal and management's response to those arguments.

After consideration of the available information, it has been decided that the Reduction in Compensation is upheld for the following reasons:

Provide a brief summary of the most recent facts upon which this discipline is based.

You have violated Civil Service Rule XI Section(s) 3(), (), ().

List all paragraphs of Civil Service Rule XI Section 3 that are violated and relate the facts to the charges; e.g., "that the employee is incompetent or inefficient in the performance of his/her duty", in that he/she failed to perform supervisory tasks in the areas of cross-training, review of leave slips, and performance evaluations. It is important to recognize that the same behavior often violates more than one paragraph of Civil Service Rule XI, Section 3, so cite violations of each applicable paragraph even if it appears repetitive. If employee violated Rule XI 3(d), lawful regulations, also list each regulation, such as Department/Division policies, Administrative Regulations, etc.

Discipline Document Samples

A Reduction in Compensation is further justified on the basis that you have been previously disciplined for related substandard performance or misconduct on the following dates (*if applicable*):

List the dates of discipline, the offenses and the discipline imposed.

I also note that you have had prior Supplemental performance report(s) for the following periods, and have been given Performance Development Plans (*if applicable*).

List the overall evaluation ratings and the periods covered for Supplemental Performance Evaluations and Performance Development Plans within the recent past. Make sure that any prior discipline or negative evaluations are within any relevant period (e.g. exclude vehicle accidents over 3 years old) and are within the pertinent past.

I further note that you have been referred to the Employee Assistance Program as follows (*if applicable*):

Give the dates of any suggested performance referrals to the Employee Assistance Program, or any voluntary attendance of which you are aware.

This combination of performance which does not meet established standards and previous disciplinary action justifies this proposed action.

Your performance will be reviewed again within ninety (90) days, and unless there is immediate and sustained improvement, you will subject to further disciplinary action, up to and including Termination. Be advised that your next Supplemental Performance Evaluation may occur before ninety (90) days.

You have the right to file a written appeal of this Reduction in Compensation (check applicable Memorandum of Understanding for appeal rights). If you wish to appeal, your written request for appeal must be delivered within ten (10) working days of receipt of this notice to (applicable appeal authority). Failure to submit a written appeal by this date shall be considered a waiver of your right to appeal and forfeiture of your right to a hearing before the (applicable appeal authority).

*Name with Signature Above
Title*

I have read and received a copy of this Notice of Reduction in Compensation and the

Discipline Document Samples

accompanying documents.

Employee Signature

Date

I have witnessed the personal delivery of this Notice of Reduction in Compensation to the above employee.

Signature of Witness

Date

Employee Representative
(Employee's Option)

Date

Attachments: *(Number and List Attachments)*

List individually and attach all documentary exhibits, prior disciplinary actions, performance evaluations and written rules referred to in the text of this letter.

cc: Department Head
Division Head
Department Human Resources Manager *(if applicable)*
Deputy City Attorney
Human Resources Officer
Personnel Director
Department Personnel File
Personnel Department Personnel File

***Note:** Deliver the Notice to the employee. If the notice is mailed to the employee, prepare two copies of the notice in a letter format and mail it to him or her. Mail one copy by certified mail, return receipt requested; mail the other copy by regular first-class mail. Note this on the top right corner of the first page of all copies of the Notice.*

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Advance Notice of Demotion

This is to notify you that I am recommending to the Appointing Authority that you be demoted from your position as a _____ to _____ (position) effective _____ (date) at _____ (time).

IMPORTANT: Demotion should only be used in rare situations where there is a high degree of certainty that the employee will be willing and able to perform satisfactorily in the new position. Refer to the Dimensions in Discipline manual chapter on Demotion when considering this form of discipline. Substandard performance or misconduct which could potentially occur in the lower level position should be grounds for recommending termination instead of demotion.

This Demotion is based on the following facts:

Provide a brief summary of the most recent facts upon which this discipline is based. Include dates, places, impacts of the behavior on the workplace or the public and identity of supervisors or other employees involved.

Therefore, based on the information available to me, I believe a Demotion is appropriate for the following reasons:

Due to the nature of the unacceptable conduct, no opportunity will exist for the conduct to occur again in the position to which you will be demoted.

You have violated Civil Service Rule XI Section(s) 3(), (), ().

List all paragraphs of Civil Service Rule XI Section 3 that are violated and relate the facts to the charges; e.g., “that the employee is incompetent or inefficient in the performance of his/her duty”, in that he/she failed to perform supervisory tasks in the areas of cross-training, review of leave slips, and performance evaluations. It is important to recognize that the same behavior often violates more than one paragraph of Civil Service Rule XI, Section 3, so cite violations of each applicable paragraph even if it appears repetitive. If

Discipline Document Samples

employee violated Rule XI 3(d), lawful regulations, also list each regulation, such as Department/Division policies, Administrative Regulations, etc.

A Demotion is further justified on the basis that you have been previously progressively disciplined for related substandard performance or misconduct on the following dates (*if applicable*):

List the dates of discipline, the offenses and the discipline imposed.

I also note that you have had prior Supplemental performance report(s) for the following periods, and have been given Performance Development Plan(s) (*if applicable*).

List the overall evaluation ratings and the periods covered for Supplemental Performance Evaluations and Performance Development Plans within the recent past. Make sure that any prior discipline or negative evaluations are within any relevant period (e.g. exclude vehicle accidents over 3 years old) and are within the pertinent past. If the demotion is of an employee rated Meets Standards or above based on serious misconduct which could not occur in the lower level position, mention that the Meets Standards rating was considered and that the seriousness of the misconduct outweighs this.

I further note that you have been referred to the Employee Assistance Program as follows (*if applicable*):

Give the dates of any suggested performance referrals to the Employee Assistance Program, or any voluntary attendance of which you are aware.

This combination of performance that does not meet established standards and previous disciplinary action justifies this proposed action.

Before the Demotion takes effect, you have the opportunity to respond and appeal this recommended action. You have the right to be represented and may respond either verbally or in writing to the Appointing Authority (or designee) within ten (10) working days. Failure to respond by that time will be deemed a waiver of your opportunity to respond. Copies of all documents upon which these charges are based are attached. These documents are listed below:

*Name with Signature Above
Title*

I have read and received a copy of this Advance Notice of Demotion and the accompanying documents.

Discipline Document Samples

Employee Signature

Date

I have witnessed the personal delivery of this Advance Notice of Demotion to the above employee.

Signature of Witness

Date

Employee Representative
(Employee's Option)

Date

Attachments: **(Number and List Attachments)**

List individually and attach all documentary exhibits, prior disciplinary actions, performance evaluations and written rules referred to in the text of this letter.

cc: Department Head
Division Head
Department Human Resources Manager *(if applicable)*
Deputy City Attorney
Human Resources Officer
Personnel Director
Department Personnel File
Personnel Department Personnel File

***Note:** Deliver the Notice to the employee. If the notice is mailed to the employee, prepare two copies of the notice in a letter format and mail it to him or her. Mail one copy by certified mail, return receipt requested; mail the other copy by regular first-class mail. Note this on the top right corner of the first page of all copies of the Notice.*

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Notice of Demotion

You are hereby advised that you will be Demoted from a _____ (*classification*) to _____ (*classification*) effective _____ (*date & time*), in accordance with Personnel Manual Index Code L-2.

IMPORTANT: Demotion should only be used in rare situations where there is a high degree of certainty that the employee will be willing and able to perform satisfactorily in the new position. Refer to the Dimensions in Discipline manual chapter on Demotion when considering this form of discipline. Substandard performance or misconduct which could potentially occur in the lower level position should be grounds for recommending termination instead of demotion.

You were given Advance Notice that this action was being considered and the grounds for this action on _____ (*date*). You were given an opportunity to respond to these charges, and as part of that response, you met with _____ (*conducting authority*) on _____ (*date*) [*or you declined to respond*].

In that hearing, the following issues were discussed:

Either reference and attach a copy of the Response to Appeal of Advance Notice of Demotion or cite all who attended and synopsise the employee's basis for appeal and management's response to those arguments.

Due to the nature of the unacceptable conduct, I believe that no opportunity will exist for the conduct to occur again in the position to which you will be demoted; therefore, I believe a Demotion is appropriate for the following reasons:

Provide a brief summary of the most recent facts upon which this discipline is based. Include dates, places and identity of supervisors or other employees involved.

You have violated Civil Service Rule XI Section(s) 3(), (), ().

List all paragraphs of Civil Service Rule XI Section 3 that are violated and relate the facts

Discipline Document Samples

to the charges; e.g., “that the employee is incompetent or inefficient in the performance of his/her duty”, in that he/she failed to perform supervisory tasks in the areas of cross-training, review of leave slips, and performance evaluations. It is important to recognize that the same behavior often violates more than one paragraph of Civil Service Rule XI, Section 3, so cite violations of each applicable paragraph even if it appears repetitive. If employee violated Rule XI 3(d), lawful regulations, also list each regulation, such as Department/Division policies, Administrative Regulations, etc.

A Demotion is further justified on the basis that you have been previously progressively disciplined for related substandard performance or misconduct on the following dates (*if applicable*): *List the dates of discipline, the offenses and the discipline imposed.*

I also note that you have had prior (*Supplemental/Less than Satisfactory*) performance report(s) for the following periods, and have been given Performance Development Plan(s) (*if applicable*).

List the overall evaluation ratings and the periods covered for Supplemental Performance Evaluations and Performance Development Plans within the recent past. Make sure that any prior discipline or negative evaluations are within any relevant period (e.g. exclude vehicle accidents over 3 years old) and are within the pertinent past. If the demotion is of an employee rated Meets Standards or above based on serious misconduct which could not occur in the lower level position, mention that the Meets Standards rating was considered and that the seriousness of the misconduct outweighs this.

I further note that you have been referred to the Employee Assistance Program as follows (*if applicable*):

Give the dates of any suggested performance referrals to the Employee Assistance Program, or any voluntary attendance of which you are aware.

This combination of performance that does not meet standards and previous disciplinary action justifies this proposed action.

In your demoted position, your performance will be reviewed again within ninety (90) days, and unless there is immediate and sustained improvement, you will be subject to further disciplinary action, up to and including Termination. Be advised that your next Supplemental Performance Evaluation may occur before ninety (90) days.

In accordance with Civil Service Rule XI, you have the right to appeal your Demotion to the Civil Service Commission. If you wish to appeal, your written request for appeal must be delivered within five (5) days after receipt of this notice to the Personnel Director, located at 1200 3rd Avenue, 3rd Floor, San Diego, CA, 92101. Failure to submit a written appeal to the

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Notice of Probationary Failure

You are hereby advised that you have failed probation as a _____ with the City of San Diego effective _____ *(date and time)*. ***[This date should be No later than 5 days before the end of probation.]*** .

This Probationary Failure is based on the following facts:

Provide a brief summary of the most recent facts upon which discipline is based. Include dates, places and identity of supervisors or other employees involved.

Probationary Failure is appropriate for the following reasons:

List all paragraphs of Civil Service Rule XI Section 3 that are violated and relate the facts to the charges; e.g., “that the employee is incompetent or inefficient in the performance of his/her duty”, in that he/she failed to perform supervisorial tasks in the areas of cross-training, review of leave slips, and performance evaluations. It is important to recognize that the same behavior often violates more than one paragraph of Civil Service Rule XI, Section 3, so cite violations of each applicable paragraph even if it appears repetitive. If employee violated Rule XI 3(d), lawful regulations, also list each regulation, such as Department/Division policies, Administrative Regulations, etc.

Probationary Failure is further justified on the basis that you have been previously disciplined for related misconduct/substandard performance on the following dates:

List the dates of verbal and written discipline, the offenses and the discipline imposed.

I also note that you have had prior Supplemental performance report(s) for the following periods, and have been given Performance Development Plans *(if applicable)*.

List the overall evaluation ratings and the periods covered for Supplemental Performance Evaluations and Performance Development Plans within the recent past. Make sure that any

Discipline Document Samples

prior discipline or negative evaluations are within any relevant period (e.g. exclude vehicle accidents over 3 years old) and are within the pertinent past.

I further note that you have been referred to the Employee Assistance Program as follows *(if applicable)*:

Give the dates of any suggested performance referrals to the Employee Assistance Program, or any voluntary attendance of which you are aware.

This combination of performance which does not meet established standards and previous disciplinary action justifies this proposed action.

*Name with Signature Above
Title*

Without agreeing, I have read and received a copy of this Notice of Probationary Failure and the accompanying documents.

Employee Signature

Date

I have witnessed the personal delivery of this Notice of Probationary Failure to the above employee.

Signature of Witness

Date

Employee Representative
(Employee's Option)

Date

Attachments: **(Number and List Attachments)**

List individually and attach all documentary exhibits, prior disciplinary actions, performance evaluations and written rules referred to in the text of this letter.

cc: Department Head
Division Head
Department Human Resources Manager *(if applicable)*
Deputy City Attorney
Human Resources Officer

Discipline Document Samples

Personnel Director
Department Personnel File
Personnel Department Personnel File

Note: Deliver the Notice to the employee. If the notice is mailed to the employee, prepare two copies of the notice in a letter format and mail it to him or her. Mail one copy by certified mail, return receipt requested; mail the other copy by regular first-class mail. Note this on the top right corner of the first page of all copies of the Notice.

Discipline Document Samples

CITY OF SAN DIEGO M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Advance Notice of Termination

This is to notify you that I am recommending to the Appointing Authority that you be terminated from your position as a _____ effective _____ (*date*) at _____ (*time*).

This Termination is based on the following facts:

Provide a brief summary of the most recent facts upon which this discipline is based. Include dates, places and identity of supervisors or other employees involved.

Therefore, based on the information available to me, I believe Termination is appropriate for the following reasons:

You have violated Civil Service Rule XI Section(s) 3(), (), ().

List all paragraphs of Civil Service Rule XI Section 3 that are violated and relate the facts to the charges; e.g., “that the employee is incompetent or inefficient in the performance of his/her duty”, in that he/she failed to perform supervisory tasks in the areas of cross-training, review of leave slips, and performance evaluations. It is important to recognize that the same behavior often violates more than one paragraph of Civil Service Rule XI, Section 3, so cite violations of each applicable paragraph even if it appears repetitive. If employee violated Rule XI 3(d), lawful regulations, also list each regulation, such as Department/Division policies, Administrative Regulations, etc..

A Termination is further justified on the basis that you have been previously disciplined for related substandard performance or misconduct on the following dates (*if applicable*):

List the dates of verbal and written discipline, the offenses and the discipline imposed.

I also note that you have had prior Supplemental performance report(s) for the following periods, and have been given Performance Development Plans (*if applicable*).

Discipline Document Samples

List the overall evaluation ratings and the periods covered for Supplemental Performance Evaluations and Performance Development Plans within the recent past. Make sure that any prior discipline or negative evaluations are within any relevant period (e.g. exclude vehicle accidents over 3 years old) and are within the pertinent past.

I further note that you have been referred to the Employee Assistance Program as follows *(if applicable)*:

Give the dates of any suggested performance referrals to the Employee Assistance Program, or any voluntary attendance of which you are aware.

This combination of performance which does not meet established standards and previous disciplinary action justifies this proposed action.

Before the Termination takes effect, you have the opportunity to respond and appeal this recommended action. You have the right to be represented and may respond either verbally or in writing to the Appointing Authority (or designee) within ten (10) working days. Failure to respond by that time will be deemed a waiver of your opportunity to respond. Copies of all documents upon which these charges are based are attached. These documents are listed below:

Name with Signature Above
Title

Without agreeing, I have read and received a copy of this Advance Notice of Termination and the accompanying documents.

Employee Signature

Date

I have witnessed the personal delivery of this Advance Notice of Termination to the above employee.

Signature of Witness

Date

Employee Representative
(Employee's Option)

Date

Discipline Document Samples

Attachments: (Number and List Attachments)

List individually and attach all documentary exhibits, prior disciplinary actions, performance evaluations and written rules referred to in the text of this letter.

cc: Department Head
Division Head
Department Human Resources Manager *(if applicable)*
Deputy City Attorney
Human Resources Officer
Personnel Director
Department Personnel File
Personnel Department Personnel File

***Note:** Deliver the Notice to the employee. If the notice is mailed to the employee, prepare two copies of the notice in a letter format and mail it to him or her. Mail one copy by certified mail, return receipt requested; mail the other copy by regular first-class mail. Note this on the top right corner of the first page of all copies of the Notice.*

Discipline Document Samples

CITY OF SAN DIEGO M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Notice of Termination

You are hereby advised that your employment with the City of San Diego as a _____ is being Terminated effective _____ (*date & time*), in accordance with Personnel Manual Index Code L-2.

You were given Advance Notice that this action was being considered and the grounds for this action on _____ (*date*). You were given an opportunity to respond to these charges, and as part of that response you met with _____ (*conducting authority*) on _____ (*date*) [*or you declined to respond*].

In that hearing, the following issues were discussed:

Either reference and attach a copy of the Response to Appeal of Advance Notice of Termination or cite all who attended and synopsize the employee's basis for appeal and management's response to those arguments.

After consideration of the available information, it has been decided that the Termination is upheld for the following reasons:

Provide a brief summary of the most recent facts upon which this discipline is based.

You have violated Civil Service Rule XI Section(s) 3(), (), ().

List all paragraphs of Civil Service Rule XI Section 3 that are violated and relate the facts to the charges; e.g., "that the employee is incompetent or inefficient in the performance of his/her duty", in that he/she failed to perform supervisory tasks in the areas of cross-training, review of leave slips, and performance evaluations. It is important to recognize that the same behavior often violates more than one paragraph of Civil Service Rule XI, Section 3, so cite violations of each applicable paragraph even if it appears repetitive. If employee violated Rule XI 3(d), lawful regulations, also list each regulation, such as Department/Division policies, Administrative Regulations, etc.

Discipline Document Samples

A Termination is further justified on the basis that you have been previously progressively disciplined for related substandard performance or misconduct on the following dates:

List the dates of verbal and written discipline, the offenses and the discipline imposed.

I also note that you have had prior Supplemental Performance Reports for the following periods, and have been given Performance Development Plans.

List the dates covered by the supplemental evaluations and dates of reduction in compensation within the recent past. Make sure that any prior discipline or supplemental evaluations are within the pertinent past. If the termination is of an employee rated meets standards or above, mention the Satisfactory performance was considered and that the seriousness of the conduct outweighs this.

I further note that you have been referred to the Employee Assistance Program as follows (*if applicable*):

Give the dates of any suggested performance referrals to the Employee Assistance Program, or any voluntary attendance of which you are aware.

This combination of performance and previous disciplinary action justifies this action.

In accordance with Civil Service Rule XI, you have the right to appeal your Termination to the Civil Service Commission. If you wish to appeal, your written request for appeal must be delivered within five (5) days after receipt of this notice to the Personnel Director, located at 1200 3rd Avenue, 3rd Floor, San Diego, CA, 92101. Failure to submit a written appeal to the Civil Service Commission within five (5) days shall be deemed a waiver of your right to appeal and forfeiture of your right to a hearing before the Civil Service Commission.

Name with Signature Above
Title

Without agreeing, I have read and received a copy of this Notice of Termination and the accompanying documents.

Employee Signature

Date

Discipline Document Samples

I have witnessed the personal delivery of this Notice of Termination to the above employee.

_____ Signature of Witness	_____ Date
_____ Employee Representative (Employee's Option)	_____ Date

Attachments: *(Number and List Attachments)*

List individually and attach all documentary exhibits, prior disciplinary actions, performance evaluations and written rules referred to in the text of this letter.

cc: Department Head
Division Head
Department Human Resources Manager *(if applicable)*
Deputy City Attorney
Human Resources Officer
Personnel Director
Department Personnel File
Personnel Department Personnel File

***Note:** Deliver the Notice to the employee. If the notice is mailed to the employee, prepare two copies of the notice in a letter format and mail it to him or her. Mail one copy by certified mail, return receipt requested; mail the other copy by regular first-class mail. Note this on the top right corner of the first page of all copies of the Notice.*

Discipline Document Samples

In the event the employee is not in the workplace where a memo can be delivered to them personally, a letter should be sent to the employee. See note at the end of the letter for mailing instructions.

Date

CERTIFIED LETTER / RETURN RECEIPT # _____

*Mr.
Address
Address*

*Subject: **Advance Notice of Termination***

Mr./Ms. Surname,

This is to notify you that I am recommending to the Appointing Authority that you be terminated from your position as a _____ effective _____ (date) at _____ (time).

This Termination is based on the following facts:

Provide a brief summary of the most recent facts upon which this discipline is based. Include dates, places and identity of supervisors or other employees involved.

Therefore, based on the information available to me, I believe Termination is appropriate for the following reasons:

You have violated Civil Service Rule XI Section(s) 3(), (), ().

List all paragraphs of Civil Service Rule XI Section 3 that are violated and relate the facts to the charges; e.g., “that the employee is incompetent or inefficient in the performance of his/her duty”, in that he/she failed to perform supervisory tasks in the areas of cross-training, review of leave slips, and performance evaluations. It is important to recognize that the same behavior often violates more than one paragraph of Civil Service Rule XI, Section 3, so cite violations of each applicable paragraph even if it appears repetitive. If employee violated Rule XI 3(d), lawful regulations, also list each regulation, such as Department/Division policies, Administrative Regulations, etc..

A Termination is further justified on the basis that you have been previously disciplined for

Discipline Document Samples

related substandard performance or misconduct on the following dates *(if applicable)*:

List the dates of verbal and written discipline, the offenses and the discipline imposed.

I also note that you have had prior Supplemental performance report(s) for the following periods, and have been given Performance Development Plans *(if applicable)*.

List the overall evaluation ratings and the periods covered for Supplemental Performance Evaluations and Performance Development Plans within the recent past. Make sure that any prior discipline or negative evaluations are within any relevant period (e.g. exclude vehicle accidents over 3 years old) and are within the pertinent past.

I further note that you have been referred to the Employee Assistance Program as follows *(if applicable)*:

Give the dates of any suggested performance referrals to the Employee Assistance Program, or any voluntary attendance of which you are aware.

This combination of performance which does not meet established standards and previous disciplinary action justifies this proposed action.

Before the Termination takes effect, you have the opportunity to respond and appeal this recommended action. You have the right to be represented and may respond either verbally or in writing to the Appointing Authority (or designee) within ten (10) working days. Failure to respond by that time will be deemed a waiver of your opportunity to respond. Copies of all documents upon which these charges are based are attached. These documents are listed below:

*Name with Signature Above
Title*

Without agreeing, I have read and received a copy of this Advance Notice of Termination and the accompanying documents.

Employee Signature

Date

Discipline Document Samples

I have witnessed the personal delivery of this Advance Notice of Termination to the above employee.

Signature of Witness

Date

Employee Representative
(Employee's Option)

Date

Attachments: (Number and List Attachments)

List individually and attach all documentary exhibits, prior disciplinary actions, performance evaluations and written rules referred to in the text of this letter.

cc: Department Head
Division Head
Department Human Resources Manager *(if applicable)*
Deputy City Attorney
Human Resources Officer
Personnel Director
Department Personnel File
Personnel Department Personnel File

***Note:** Deliver the Notice to the employee. If the notice is mailed to the employee, prepare two copies of the notice in a letter format and mail it to him or her. Mail one copy by certified mail, return receipt requested; mail the other copy by regular first-class mail. Note this on the top right corner of the first page of all copies of the Notice.*

Discipline Document Samples

In the event the employee is not in the workplace where a memo can be delivered to them personally, a letter should be sent to the employee. See note at the end of the letter for mailing instructions.

Date

CERTIFIED LETTER / RETURN RECEIPT # _____

*Mr./Ms.
Address
Address*

SUBJECT: Notice of Termination

Mr./Ms. Surname,

You are hereby advised that your employment with the City of San Diego as a _____ is being Terminated effective _____ (*date & time*), in accordance with Personnel Manual Index Code L-2.

You were given Advance Notice that this action was being considered and the grounds for this action on _____ (*date*). You were given an opportunity to respond to these charges, and as part of that response you met with _____ (*conducting authority*) on _____ (*date*) [*or you declined to respond*].

In that hearing, the following issues were discussed:

Either reference and attach a copy of the Response to Appeal of Advance Notice of Termination or cite all who attended and synopsize the employee's basis for appeal and management's response to those arguments.

After consideration of the available information, it has been decided that the Termination is upheld for the following reasons:

Provide a brief summary of the most recent facts upon which this discipline is based.

You have violated Civil Service Rule XI Section(s) 3(), (), ().

List all paragraphs of Civil Service Rule XI Section 3 that are violated and relate the facts to the

Discipline Document Samples

charges; e.g., “that the employee is incompetent or inefficient in the performance of his/her duty”, in that he/she failed to perform supervisory tasks in the areas of cross-training, review of leave slips, and performance evaluations. It is important to recognize that the same behavior often violates more than one paragraph of Civil Service Rule XI, Section 3, so cite violations of each applicable paragraph even if it appears repetitive. If employee violated Rule XI 3(d), lawful regulations, also list each regulation, such as Department/Division policies, Administrative Regulations, etc.

A Termination is further justified on the basis that you have been previously progressively disciplined for related substandard performance or misconduct on the following dates:

List the dates of verbal and written discipline, the offenses and the discipline imposed.

I also note that you have had prior Supplemental Performance Reports for the following periods, and have been given Performance Development Plans.

List the dates covered by the supplemental evaluations and dates of reduction in compensation within the recent past. Make sure that any prior discipline or supplemental evaluations are within the pertinent past. If the termination is of an employee rated meets standards or above, mention the Satisfactory performance was considered and that the seriousness of the conduct outweighs this.

I further note that you have been referred to the Employee Assistance Program as follows (*if applicable*):

Give the dates of any suggested performance referrals to the Employee Assistance Program, or any voluntary attendance of which you are aware.

This combination of performance and previous disciplinary action justifies this action.

In accordance with Civil Service Rule XI, you have the right to appeal your Termination to the Civil Service Commission. If you wish to appeal, your written request for appeal must be delivered within five (5) days after receipt of this notice to the Personnel Director, located at 1200 3rd Avenue, 3rd Floor, San Diego, CA, 92101. Failure to submit a written appeal to the Civil Service Commission within five (5) days shall be deemed a waiver of your right to appeal and forfeiture of your right to a hearing before the Civil Service Commission.

*Name with Signature Above
Title*

Discipline Document Samples

Without agreeing, I have read and received a copy of this Notice of Termination and the accompanying documents.

Employee Signature

Date

I have witnessed the personal delivery of this Notice of Termination to the above employee.

Signature of Witness

Date

Employee Representative
(Employee's Option)

Date

Attachments: *(Number and List Attachments)*

List individually and attach all documentary exhibits, prior disciplinary actions, performance evaluations and written rules referred to in the text of this letter.

cc: Department Head
Division Head
Department Human Resources Manager *(if applicable)*
Deputy City Attorney
Human Resources Officer
Personnel Director
Department Personnel File
Personnel Department Personnel File

***Note:** Deliver the Notice to the employee. If the notice is mailed to the employee, prepare two copies of the notice in a letter format and mail it to him or her. Mail one copy by certified mail, return receipt requested; mail the other copy by regular first-class mail. Note this on the top right corner of the first page of all copies of the Notice.*

Discipline Document Samples

CITY OF SAN DIEGO M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Conditions of Continued Employment

This memorandum is written to stipulate the conditions for your continued employment with the City of San Diego and the (name of Department), in lieu of Termination. These Conditions of Continued Employment are based on the following:

That you violated Civil Service Rule XI, Section 3 “Cause for Removal or Suspension” paragraph (add paragraph letter), which states, (provide specific part of Civil Service Rule)

The following conditions are stipulated and will remain enforceable throughout your employment with the City of San Diego: (List all conditions)

- 1. If demotion, and not intended to be permanent, specify demotion classification and length of time.*
- 2. After review of Supplemental Employee Performance Evaluation, you must meet the standards of your performance plan during the term of this agreement.*
- 3. List all other conditions. Consult with the Human Resources Department and your Department Human Resources Manager (if applicable) for additional assistance preparing additional Conditions of Continued Employment.*

In addition, you must comply with all City and departmental rules and regulations. You must not refuse any lawful direction by any supervisor or manager, or any agent of any supervisor or manager. You must inform your supervisor or the chain of command of any difficulties you may have in complying with any of these Conditions, before it becomes a violation of the Condition.

Appointing Authority Name with Signature Above

ACKNOWLEDGEMENTS AND WAIVERS

A. I acknowledge and agree that I must comply with all of the above referenced conditions and

Discipline Document Samples

that failure to comply with the conditions shall result in my termination.

B. I acknowledge and agree that these conditions related to the treatment of my behavior will remain enforceable during my employment with the City of San Diego for a period of **(number)** years from the date of my signature.

C. I acknowledge and agree that I am being offered this Agreement in lieu of termination.

D. I acknowledge that I fully understand and voluntarily agree to these conditions, and that by signing this agreement I waive my rights to due process for an evidentiary appeal before the Civil Service Commission for any discipline, up to and including termination, imposed in conjunction with these conditions.

E. I acknowledge receiving, reading, having explained to me, understanding, knowingly and voluntarily agreeing to these Conditions of Continued Employment. I have reviewed and discussed the terms of these Conditions of Continued Employment with my representative.

Employee Signature

Date

I have witnessed the personal delivery of this Agreement to the above employee.

Signature of Witness

Date

Employee Representative
(Employee's Option)

Date

Attachment: Advance Notice of Termination, dated **(add date)**

cc: Division Head
Second Level Supervisor
Department Human Resources Manager **(if applicable)**
Human Resources Officer
City Attorney's Office
Department Personnel File
Personnel Department Personnel File

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Notice of Inactivation of Hourly Employment

This is to advise you that your last working day as a _____ (*classification*) in Limited/Hourly status during this employment period will be _____ (*date*). If your job performance has been satisfactory, your supervisor will recommend that you be retained on _____ Division's payroll on **INACTIVE STATUS** until work is again available.

Some of the advantages of being retained on the Division's payroll on **INACTIVE STATUS** are:

1. You can resume work if you are available at the time needed, without additional certification or interview.
2. You are considered as being employed during this inactive period in meeting minimum Civil Service requirements for promotional examinations, etc.
3. Remaining on the payroll will not jeopardize your rights for unemployment insurance.

Please complete the upper portion of the attached Availability Form and return it to your supervisor as soon as possible. If you do not wish to remain on the payroll on inactive status, please complete a Resignation Form, attached.

Appointing Authority Name with Signature Above

Attachments: Availability Form
 Resignation Form

cc: Department Head
 Department Human Resources Manager (*if applicable*)
 Department Personnel File
 Personnel Department Personnel File
 Human Resources Officer

Discipline Document Samples

[DATE]

VIA CERTIFIED MAIL # _____ (return receipt)

[EMPLOYEE NAME]

[EMPLOYEE ADDRESS]

[CITY/STATE/ZIP]

Dear [EMPLOYEE NAME]

Subject: Notice of Update of Your Availability for Hourly Employment

We are in the process of updating our records and find that it has been quite some time since you last actively worked hours as a limited/hourly _____ (classification) in the (Department/Division).

If you are presently available for an assignment in the (Department/Division), please contact _____ at (phone). If you are no longer interested in employment, please sign the enclosed Resignation Form and return that form immediately. A return envelope is enclosed for your convenience.

If you do not respond to this letter by _____ (date), we will assume that you are no longer interested in employment with us and will recommend to the Department Head that you be terminated from your position effective immediately. This recommendation for your termination will be based on your unavailability to report to work as specified in Civil Service Rule XI, Section 3 (j).

You have the opportunity to respond to me within five (5) working days from the date postmarked on the envelope regarding any of the above actions. A failure by you to respond within this time will be considered to be a waiver of your right to respond.

Sincerely,

Name with Signature Above
Title

Enclosures: Resignation Form

cc: Department Head
Department Human Resources Manager (if applicable)
Department Personnel File
Personnel Department Personnel File

Discipline Document Samples

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Notice of Termination of Hourly Employment

You are hereby advised that you are terminated from your position as a limited/hourly _____ (*classification*) with the _____ (*Department/Division*) effective at _____ (*time*) on _____ (*date*).

This action is based on your excessive absenteeism and tardiness. You were hired on (*date*). In the subsequent (*# of months*), you have had (*# of instances*) instances of unscheduled absence as follows:

06/20/06 - Red K for 0.2 hours (late) - called in
07/17/06 - Red K for 0.1 hours (late) - called in
07/31/06 - Red K for 0.1 hours (late) - called in
08/20/06 - Red K for 8.0 hours (sick) - called in

Describe any previous actions taken to notify the employee of the problem behavior(s).

After consideration of the available information, it has been decided that the Termination is upheld for the following reasons: you violated Civil Service Rule XI, Section 3(K), “that the employee hindered the regular operation of the department or division because of excessive absenteeism”.

If you have reasons why this termination of your hourly employment should not take place, you may contact my designee (*name and title*) at (*phone number or address*) for an appointment to discuss it.

Supervisors Name with Signature Above

Without agreeing, I have read and received a copy of this Notice of Termination and the accompanying documents.

Discipline Document Samples

Employee Signature

Date

I have witnessed the personal delivery of this Notice of Termination to the above employee.

Signature of Witness

Date

Employee Representative
(Employee's Option)

Date

Attachments: *(Number and List Attachments)*

cc: Division Head
Department Human Resources Manager *(if applicable)*
Second Level Supervisor
Department Personnel File
Personnel Department Personnel File
Human Resources Officer

Note: *Deliver the Notice to the employee. If the notice is mailed to the employee, prepare two copies of the notice in a letter format and mail it to him or her. Mail one copy by certified mail, return receipt requested; mail the other copy by regular first-class mail. Note this on the top right corner of the first page of all copies of the Notice.*

Discipline Document Samples

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Response to Appeal of Discipline, Dated _____

On *(date)*, you received a *(type of written discipline)*. On *(date)*, you appealed the *(discipline)* (attachment 1) and that appeal hearing was scheduled for *(date)*. You declined representation, *(if applicable)*. Also present at the meeting were: *(your representative, affiliation (union, attorney, co-worker, etc.) and name); your 1st level supervisor, (name); and your 2nd level supervisor, (name)*.

At the meeting, we discussed issues, which you **[or your representative, if applicable]** raised in support of your appeal:

- 1. Describe employee's first issue. Provide management's response to the issue.*
- 2. Describe employee's second issue. Provide management's response to the issue.*

Having considered all available information, *(Insert one of the following three options)*

[I deny your appeal and uphold the (discipline)]

[I uphold the appeal and [reduce the discipline to a _____]]

[I uphold the appeal and overturn the discipline. All reference to the discipline will be removed from your file.]

Appointing Authority (or designee) Name with signature above

Attachment(s): 1. Employee's Request for Appeal

cc: Department Head
Department Human Resources Manager *(If applicable)*
Department Personnel File *(unless discipline overturned & removed from file)*
Personnel Department Personnel File *(unless discipline overturned & removed from file)*

APPENDIX II

Fact Finding Investigations & Sample Documents

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FACT FINDINGS

Please note that although this manual provides you with sample documents for use in conducting a fact finding process, your specific situation may need additional documents. Please contact your department's human resources staff (if applicable), or the Human Resources Department to assist you prepare the documents needed. Additional fact finding training is also available by contacting the Human Resources Department at 236-6313. All key documents and templates can be found in Word format on the Human Resources Department page on the City's Intranet Website (<http://citynet/hr/resourcestools/index.shtml>).

Fact Finding

I. Definition

A "fact finding" is an administrative process used to establish facts surrounding reports of employee misconduct, such as a report of theft, abuse of City time or equipment, threat, sexual harassment, or violation of the Equal Employment Opportunity policy. In its broadest sense, the term "fact finding" can be applied to any action whose purpose is to establish factual information. In this sense, everything from labor card review to a workplace search can be considered a "fact finding". However, as commonly used, the term generally is applied to any investigative process which involves interviews of victims, witnesses and other employees where formal provisions regarding truthfulness, requirements to answer questions, employee rights to representation, and other formal procedures are applied. Throughout this guide, we will use the term fact finding in this second sense.

II. Overview

The fact finding process is initiated by an Appointing Authority in response to information forwarded by a subordinate supervisor or employee. The information is typically in the form of a statement or allegation that some impropriety has occurred. Because the information is in the form of an allegation, a fact finding is used to establish whether or not something occurred, and forms the basis for any subsequent discipline that may be imposed.

Fact findings are generally not required in instances where a supervisor has direct knowledge of inappropriate behavior by a subordinate employee over whom the

Fact Findings

supervisor has disciplinary authority. In this instance, the supervisor should take action necessary to correct the behavior, consistent with the progressive discipline process. For example, if a supervisor directly observes a subordinate employee misusing City equipment for personal use, the supervisor should take steps to correct the behavior. In this instance, while a fact finding may be conducted if there are other issues in doubt, there is no requirement to conduct a fact finding regarding the misuse of City equipment, as the facts are already known to the supervisor: s/he observed the inappropriate conduct directly. A possible exception to this rule is when the supervisor is involved in the action that could be questionable. As an example, a supervisor and an employee have a verbal altercation. In this situation, the appointing authority would determine if a fact finding is warranted to ensure all employees are being treated fairly and objectively.

In general, fact finding investigations should be completed within 30 days after interviewing the subject(s), including the report given to the Appointing Authority. It is important that the fact finding panel members understand and adhere to this time commitment.

III. Fact Finding Investigator(s)

Fact finding investigators should have reputations for honesty and credibility which will reassure individuals involved in the incident that a confidential, fair and unbiased investigation will take place. Generally, fact findings are conducted by an investigative team comprised of two or three individuals responsible for reviewing written materials, examining records and other data, conducting interviews, and preparing a formal summary report on the findings of the investigation. Like an interview panel, members of the fact finding panel need to be of a higher classification of the person being investigated. Individuals who conduct the fact finding investigation should not be the appeal authority for the resultant discipline, if any.

One member of the fact finding panel is designated as the chairperson. This individual should have good interviewing skills, the ability to take thorough, accurate notes, and write clear and concise reports. If the fact finding involves technical material, it is advisable to have a panel member who is proficient in the field that is being investigated. While the lead investigator has the overall responsibility for the conduct

of the investigation, additional fact finders may also have many of the same skills and abilities and therefore serve as additional resources for completing and finalizing interview notes, formal findings, etc. In addition, these fact finding investigators provide support in interpreting and reconciling information obtained, provide double checks with which to confirm statements made during interviews, and support the conclusions of the fact finding by virtue of their signature on the final report. Often times these fact finding panel members also bring valuable insight regarding the operational and business activities associated with the workplace, which will help ensure that statements made and data reviewed are interpreted in the proper context.

IV. Investigation Plan

Plan Development

Prior to beginning a fact finding, the investigator(s) should assess the environment under which the investigation will take place. Such issues as length of time from the alleged act, degree of information already made “public”, and the number of potential witnesses all play a key role in the way an investigation may proceed. If significant time has passed since the alleged act, witness statements may be influenced by intervening rumors, memories may become less reliable and exculpatory or incriminating documentation may be less readily available.

If there are a large number of witnesses to be interviewed, significant thought should be put into the ordering of the interviews and the controls necessary to ensure confidentiality. Be sure to recognize that the chronology of interviews can either contaminate or enhance the success of the investigation. For example, the interview of employee A may be intentionally scheduled *before* employee B, so that B has no chance to influence A’s statements. There are numerous possible variations on this scenario, so investigators must think carefully about the underlying network of workplace relationships that may be an obstacle.

The subject of the complaint is usually the last person to be interviewed for a fact finding. This allows the fact finding panel to ask the subject pointed questions if the subject’s recollection of the events is different than that of the witness(es). It also helps the fact finding panel prepare the questions for the subject.

Fact Findings

Prior to commencing the investigation, to the extent possible, the investigator(s) must formulate a **preliminary** outline of the issue, including a draft chronology of events, list of potential witnesses, etc. The purpose of this outline is to identify facts that are undisputed versus those in doubt, identify target areas for further investigation, and identify possible sources of information (witnesses, documents, etc.) which will possibly confirm or refute a particular fact. This preliminary outline is necessary in order to minimize the number of workplace disruptions due to repeated witness interviews or requests for data and records. Investigator(s) must strive to get the needed information in as few requests/ interviews as possible.

Work Place Familiarization

Based upon the degree to which the investigative fact finding panel is from outside the work unit, an important part of the pre-interview process may be the education of the investigator(s) regarding the basic work place organization and activities. This education may be needed in order to put information obtained into context and to be able to identify issues as they arise during the course of the investigation. Education may be through review of organization charts and discussion with upper or mid-level management in the unit, and should be based on the degree to which this familiarization is needed in light of the issues being investigated.

For example, an investigation into allegations of favoritism or workplace harassment may be conducted without too much knowledge of the business activities of the workplace, since the issue is based on an interpretation of employee conduct not specific to a particular work unit. On the other hand, an investigation regarding a potential violation of the City's conflict of interest code may require more in-depth understanding of workplace operations in order to properly assess the degree to which an individual's outside activities may be incompatible with his or her job responsibilities.

Time Line

The investigative fact finding panel should establish a time line for the project, including each step that will be taken and the target completion date. The timeline varies among the various labor organizations' MOUs. Please refer to the appropriate MOU to ensure adherence to the proper timeline. Based on the timeline the fact finding

Fact Findings

panel must conclude all interviews, write a detailed report and submit it to the Appointing Authority with sufficient time for the Appointing Authority to make a final decision and let the subject know what has been decided. The time line will help insure that focus is maintained on the overall goals of the fact finding and can assist in answering questions regarding progress of the investigation. In addition, a well constructed time line can show the fact finding panel how much resource commitment will be necessary in order to meet investigation goals and can be used to communicate to managers the impact the investigation will have on regular job responsibilities.

Identifying Documents to be Reviewed

A judicious review of available documentation can enhance the reliability of fact finding conclusions. However, care must be exercised to ensure that only documents related to the issue at hand be reviewed. For example, records regarding employee leave time, labor card data, and requests for annual leave may be appropriate when considering a issues surrounding failure to report work place absences, but would probably be inappropriate if the fact finding centered on use of derogatory or racial epithet, when there is no dispute regarding the physical presence at work of one or more employees. Be sure that documents reviewed can be clearly linked to the fact finding issue under investigation. Documents to be reviewed may include:

- Departmental policies and procedures
- Memoranda or notes about the incident
- Time cards
- Logs or diaries
- Communications to employees
- Prior complaints
- Security videos, if any
- Phone, computer, and pager records

It is not necessarily appropriate for the investigator to review personnel files before the investigation begins. Remember, the investigator should not have any preconceived judgments or opinions about the allegations or persons involved. If the investigator learns about prior complaints or discipline made by one party or the other, it may affect his or her ability to remain impartial. Thus, the investigator should only review

Fact Findings

personnel files when it becomes necessary, such as when making credibility determinations based upon past similar misconduct.

Identifying Potential Witnesses

Before conducting interviews, develop a list of potential witnesses, all of whom are candidates for interviews. In addition to any “complainant” and “subject”, consider others who work in the area in which the alleged misconduct occurred, customers, former employees, employees of other departments, etc. From this list, identify those who will be interviewed based upon the likelihood of providing relevant information.

During the course of the investigation, it is likely that other witnesses will be identified. For a thorough investigation, it is important to ask witnesses and especially the employee who is accused of misconduct, for the identity of others who may provide useful information. Your investigation will be more objective and credible if you actively follow-up on information that is likely to produce both exculpatory as well as incriminating “evidence”.

Plan Flexibility

The fact finding panel should be prepared to modify the original investigation time line and plan based on feedback received as the investigation is being conducted.

Modification of the original plan may include:

- Filling loopholes and oversights in your plan
- Determining whether there is new information that must be investigated, Identifying evidence of other misconduct that may require separate investigations
- Paying attention to the timing of your investigation, checking whether delays could lead to the loss of key witnesses or documentation or access to other physical materials, such as equipment.

Security of Information

Finally, special, secure files should be maintained for the investigators’ records and any “evidence” uncovered during the investigation. Typically, these files are maintained by the Chair in a locked cabinet where access is strictly limited. If interviews extend

Fact Findings

beyond one day, the Chair should collect all notes at the end of each day and secure them until the next interview. Documents, other than working drafts, should not be destroyed once an investigation has commenced.

V. Objectively Interviewing Witnesses

Preparation

Prepare an outline of the questions for witness interviews to ensure a thorough and consistent line of questioning. This will help demonstrate the objectivity of your approach. In addition, if similarly situated witnesses are the subject of the same type of interview, you can compare and contrast the results from a standardized approach to help determine the likelihood of events.

In general, when developing your questions consider the order in which your questions will be asked. This ordering may help confirm or refute specific issues in dispute, especially if an answer to a general question gives you specific details that you had not mentioned previously. Avoid leading questions. Don't ask questions that indicate the answer that you're looking to get. Besides discouraging the witness from providing you with the truth, these questions suggest that you're unwilling to accept any result other than the one you've anticipated. Avoid multiple (compound) questions. Don't combine two or three issues into a single question. Ask open-ended questions (at the start). If you ask specific questions, you will get specific answers. So during most of the interview, avoid use of the "yes", "no" type questions - instead, try to get the witness to open up. Asking "closed" questions may be useful at the end of an interview, however, to pin down the witness to a specific position.

While your list of questions should include sufficient opportunities for "open ended" questions to assure that you obtain all relevant details, the fact finding panel must also ensure that witnesses, the subject, or complainant (as appropriate) answer direct questions regarding the issues under investigation. For example, if an allegation is made that an employee falsified records, the fact finding panel must at some point ask the employee directly whether s/he falsified these records. .

While you should have an outline of questions, be sure that you follow-up on statements made by individuals if it will help clarify events. You should not limit the

Fact Findings

questions to those prepared in advance, and should avoid irrelevant questions. Remember, the point is to ask questions to determine the accuracy of what has been relayed while at the same time staying focused on the issue at hand.

As mentioned, the fact finding panel should prepare in advance for the interviews and anticipate what should and could transpire. However, too much preparation that results in a delay can be counterproductive. Generally, time is of the essence, in getting the facts before the witness memories degrade. So balance the need for preparation with the need to expedite the process.

If you are planning to interview several witnesses in one day, schedule sufficient time to complete your notes after each interviewee leaves. Do not interview witnesses in groups. Group dynamics and peer pressure can discourage and suppress responses.

In spite of all of the advantages of advance preparation for an interview, do not overlook a spontaneous opportunity to obtain valuable information. Listening during a fact finding will often serve to be more important than focusing on the next prepared question.

Representation

When scheduling a fact finding meeting, the investigator should be familiar with employee representation rights and ensure that they are provided properly, as specified in the appropriate Memorandum of Understanding for the employee, or Personnel Manual Index Code K -1 for positions not represented by a bargaining unit.

Representation is only an option for the employee when it appears that he or she may later be disciplined as a result of the investigation. As a fact finder, you must give the employee a “reasonable” amount of time to secure this representation. However, obtaining representation is the right and responsibility of the employee. You are not compelled to unreasonably delay the progress of the investigation until the employee obtains such representation. In addition, you do not have to tell the subject the details of the specific allegations. In most cases, the employee or the Labor Organization representative will ask for details about what the employee has done to warrant a fact finding. When this occurs, it is best to say that the allegation(s) involves possible violations of City policies and procedures and that further detail of the allegation(s) will

Fact Findings

be explained at the fact finding interview. By doing this, you are helping to ensure that the employee will be giving spontaneous answers to questions instead of having time to prepare answers.

Employees who are not the subject of the fact finding may be interviewed without representation. However, should information revealed during the interview result in the possibility of discipline against the interviewee, the fact finder should stop the interview and inform the interviewee that information reveals a potential for discipline and that s/he is entitled to representation. If the employee waives this right, the process may continue.

In the event the employee has representation, be sure to focus your questions to the employee and get his or her response. The representative is present as an aid to the employee but should not be allowed to answer questions for him/her.

In conducting the fact finding interview, it is important to note that the employees involved do not have a right to confront or cross-examine witnesses, nor to be present during the interviews of other employees. Similarly, formal rules of evidence do not apply. The meeting should be controlled exclusively by the Fact Finding Chair.

Beginning the interview

Appropriate disclosures of what the investigation is about should be made at the commencement of the interview. The interviewee should also be admonished regarding his or her responsibility to respond fully and truthfully to fact finding questions and to maintain the confidentiality of the interview. The employee should also be informed about the City's policy regarding retaliation (See attached for sample notifications).

The fact-finder(s) will provide the general purpose for the interview. Identifying a general topic such as "to inquire about complaints of unfair treatment of women" may be all that is needed. You may simply say that "due to a complaint" you were identified as a person who may be able to provide information as related to a complaint.

Be prepared for the "why me?" question from witnesses. Why are you interviewing

Fact Findings

this particular witness? Are you going to disclose the entire reason or would that compromise your overall investigative strategy?

Recognize that witnesses will have worries about what your “real” agenda is, and whether they could become the focus of your investigation. This can be either an advantage or disadvantage; it can either restrict the flow of information as witnesses attempt to protect themselves, or enhance the flow if they attempt to demonstrate teamwork and cooperation. In any case, be aware of the natural leverage of uncertainty.

When interviewing the subject, tell him/ her that the interview is designed to provide an opportunity to relate his or her version of events and to advise management of any other information that should be considered during the investigation. If the subject refuses to participate, the interviewer should tell the subject that the investigative panel will be forced to base its decision on the other information gathered during the investigation, the inferences drawn from the evidence, and the subject’s unwillingness to cooperate in the interview. The subject should also be informed that refusal to answer a direct question could be deemed insubordination and could result in disciplinary action.

Confidentiality

Information will be kept as confidential as reasonable possible. Do not promise absolute confidentiality. If an investigation occurs and/or discipline is issued, information relevant to the investigation will be in the fact finding report. The witness can be informed that information will be shared with management or others who have a bona fide need to know. Thus, try to keep all information as confidential as possible, but do not promise to do so.

Create a Non-Restrictive Environment for the Interview

Do not use threats, coercions or intimidation in questioning witnesses. Avoid making any promises of benefit or threat of adverse action. Maintain objectivity in your demeanor and in your questioning. Be factual. Do not compromise the investigation in any way.

Fact Findings

Develop the Facts

In investigations regarding specific events, inquire about all events which occurred during the relevant time frame, in chronological blocks of time. Do not leave the chronological block until you are sure that the details necessary to recreate the scene have been established. Use the “who, what, when, where, why and how” method of questioning.

For each block of time, the investigator should typically cover:

- Exactly what occurred?
- When did it happen?
- Where did it happen?
- Who was present?
- Who else may know relevant information?
- How did it happen?
- Who did or said what? In what order?
- Why did it happen? Could it have been avoided?
- Are there any notes, documents or other evidence? Be sure to obtain any written information that the witness may have, but don't send him/her on mission to “hunt” for evidence.

Ask the witness to identify all individuals who have knowledge of any of the events. For each individual, you should ask:

- What knowledge does the witness have?
- What is the source of the knowledge?
- Was the witness present?
- Did the individual hear the information from someone else?
- Did the individual see the information in writing?

On-going Summary

Regularly restate what the witness has said. This is useful to judge whether you've been hearing the witness accurately; assure the witness that you've been listening; and to close a particular topic or keep a discussion on track. When restating witness

Fact Findings

information, ask the witness to confirm that the information reiterated by the fact finding panel is complete and accurate. Reflect that confirmation in the notes. Distinguish and label any information that is based on hearsay, rumors, gossip, or conjecture as such. Allow the witness to make changes or additions that he or she believes are necessary to correct statements already provided.

Before concluding an interview, make sure the interviewee has told you everything he or she knows about the incident(s). Ask if there is any other information or documentation that might help with the investigation, or help you in reaching a conclusion. Ask the interviewee if there are any questions you have not asked that he or she feels you should have asked. Finally, encourage the employee to contact you if he or she later remembers any additional information that could be helpful to the investigation.

Interview Documentation

A crucial part of any fact finding is taking detailed notes. By having two or three panel members, the essence of what each person interviewed should be captured. Try to get actual quotes when possible. It may require the chairperson to ask the person to speak slowly or repeat what was said. Having direct quotes makes the final report stronger and will help support the conclusion.

Be sure to check the specific MOU that applies to the subject for specific details regarding the retention of each panel member's notes. In certain labor organizations, employees can request copies of the notes taken when a fact finding results in discipline. This means that doodling, incomplete notes, or inappropriate comments should be avoided. Any notes should reflect what is in the report and nothing more.

VI. Working Through the Investigation

As mentioned previously, while your investigation plan may have included specific time frames for witness interviews and data gathering, the investigation panel must be flexible in altering the plan in the face of new or unexpected information or disclosures. While working through the investigation, the fact finding panel should remain flexible enough to call in additional witnesses, or research additional records. As always, it is essential that such shifts in approach be implemented quickly in order to complete the

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investigation in a timely manner. Too often, fact finding panel fails to follow-up on additional information revealed during the interview because of the impact this would have on the time table. On the other hand, they may allow follow-up action to act as a drag on moving the investigation forward. Remember, if additional information comes to light, evaluate its impact on the substance of the investigation, identify a course of action, and promptly follow-up. You'll find that in the end, the report will appear more complete and your findings more valid if such action is followed.

VII. Reaching Conclusions

After the interviews and data gathering have been completed, the fact finding panel usually synthesizes the information obtained and analyzes the degree to which certain disputed allegations can be determined as fact. In this analysis, the fact finding panel needs to review the totality of circumstances surrounding the issues, including statements by the subject, witnesses, and victim, written records, etc. The fact finding panel should review each conflicting element of the fact finding, decide if it is relevant to the overall issue at hand, and reach a decision as to its reflection of actual events, based upon whether it was reasonable and probable.

Typically, conflicting information centers around employee statements. In instances where witnesses are few, the fact finding panel is usually left with an alleged victim and an alleged perpetrator whose versions of events differ significantly. In these instances, assessing the credibility of both individuals is key to forming a conclusion regarding what can and cannot be established. Unfortunately, there is no "fool proof" way of sifting the true from the false. In forming their opinions, the fact finding panel must consider the various factors which may have influenced the statements made during the interview. These influencing factors could include:

- A relationship between the interviewee and the victim or subject
- Interest in the outcome of the investigation
- A possible motive for making statements as they have
- A bias or prejudice, if one appears
- The degree of knowledge displayed
- The strength or weakness of the interviewee's recollection
- The opportunities they may have had to see, hear, and know the things to which

Fact Findings

they have testified

- Their frankness and candor, or lack of it
- The extent to which their statements sound reasonable, and are in line with the probabilities.

It is not unusual for witnesses to differ in some details. Such discrepancies may be due to difference in the witnesses' power to observe accurately, or their ability to remember or to relate what they saw, heard or did. The fact finding panel should try to reconcile discrepancies as far as they reasonably can, taking into account these differing capacities to observe, to remember and to relate. The fact finding panel should consider all the possible causes of untrue statements such as confusion, nervousness, mistake, poor memory, thoughtlessness, and bad intent.

VIII. Final Report

Final fact finding reports can take a variety of forms. However, they usually are in standard memo format and include the following major elements:

- Background regarding who and how the investigation was initiated, including a summary of what issues were investigated
- A list of interviews, by name, classifications and date of interview
- A summary of documentation reviewed, including written memos, logs, computer records, e-mail, phone records, etc.
- Determinations of fact which the fact finding panel believes it has established, based upon the material reviewed and employees interviewed
- The conclusions that can be drawn based upon the facts determined. In this section, the investigation usually cites the specific policy, rule, Administrative Regulation which may have been violated
- Attachment of pertinent documents which were used in supporting the conclusions. Do not attach working drafts or other interim notes

In general, the fact finding report should be completed and submitted to the Appointing Authority within 30 days from the subject interview. The final report is signed by each member of the fact finding panel, and submitted to the appropriate supervisor for review.

IX. Investigation Close-Out

At the end of the investigation, and after related discipline (if any), the Appointing Authority should inform the claimant that the issue has been investigated. Depending on the outcome of the fact finding, the results could range from unfounded, to inconclusive, to founded. If discipline is involved, the claimant should be told that the allegations were investigated and appropriate action has been taken. It is important to exercise prudence in the discussion of outcomes by avoiding direct statements about other individuals possibly involved in the disciplinary proceedings of other individuals. As with other personnel matters, any discipline that has been imposed should be discussed only with the disciplined employee, and his or her designated representative, if any.

As with all confidential information, all fact finding reports must be kept in secure location. In addition, each panel member must not discuss the fact finding or the results with anyone. Finally, after submitting the signed report to the Appointing Authority, all notes should be destroyed, unless otherwise stipulated by the applicable MOU.

CITY OF SAN DIEGO

MEMORANDUM

DATE:

TO: (Employee, Job Classification)

FROM: (Department Director or Designee)

SUBJECT: Notice of Suspension Pending Investigation

This is to notify you that effective immediately you are suspended with pay pending investigation according to the provisions outlined in the Personnel Manual, Section L-2, Section III, Paragraph E(1)(b). This suspension is necessary because your presence in the workplace would be disruptive and harmful to morale.

This suspension is based on the following:

Provide a brief summary of the incident(s) or threat(s) that this suspension is based upon. Include dates, places, and other appropriate facts.

This is a non-disciplinary removal from the workplace pending an investigation into charges of misconduct against you. As such, it cannot be appealed to the Civil Service Commission.

The investigation will be conducted as quickly as possible. If misconduct is proved, appropriate disciplinary action in accordance with the City’s usual procedures, including any appeal rights, will be taken.

You will shortly be provided with a Notice of Fact Finding Interview – Subject with a specific location, date and time for you to return for your fact finding interview. Since you are on a paid suspension pending investigation you are required to return to work as stated in the fact finding notice. If you do not attend the fact finding interview or refuse to attend due to personal reasons, unrelated to any disability or protected leave, you may be subject to discipline, up to and including termination.

Department Director or Designee

Date

Notice of Suspension Pending Investigation
Page 2

I have received a copy of this notice.

Employee

Date

If the employee chooses not to sign, note this in the signature space.

On _____, I witnessed the personal delivery of this notice to the employee.

Witness

Note: Usually, the notice will be hand delivered to the employee. If the notice is mailed to the employee, prepare two copies of the notice in a letter format and mail them to him or her. Mail one copy by certified mail, return receipt requested; mail the other copy by regular first-class mail. Note this on the notice.

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO: (Witness Name)

FROM: (Fact finding Chair)

SUBJECT: Fact Finding Notification, Witness

You are hereby directed to report to *(place, at time on day and date)* for a fact finding into allegations of possible misconduct in violation of City of San Diego and/or NAME Department administrative policies.

You are not subject to disciplinary action, however, it is anticipated that you could provide helpful information about the allegations. Therefore, you do not have the right to a representative.

As with other personnel issues, this is a confidential investigation. You are advised to refrain from discussing the issues in this fact finding with anyone besides the panel. You are also directed not to contact potential witnesses prior to or after the fact finding is completed. You are further directed not to engage in any retaliatory actions or behavior toward anyone. Any violations of these directives could result in discipline.

If you have any questions, please call *(Insert Name, Title and Phone Number of Fact Finding Chair or Human Resources Personnel)*.

(Fact finding Chair)

I have read and received a copy of this notice

(Insert Name and Title of Witness)

Date

(Witness Signature)

I have witnessed the employee's receipt of this memorandum.

(Witness to Signature)

Date

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO: *(Name and Title of Subject of Fact Finding)*

FROM: *(Name and Title of Appointing Authority or Human Resources Manager)*

SUBJECT: Fact Finding Notification, Subject

You are hereby advised that you are the subject of a fact finding. The purpose of this fact finding is to investigate allegations that you *(Insert general summary of key violations triggering Fact Finding e.g. inappropriate use of City E-Mail, violations of the City Threat Policy, misappropriation of City equipment, etc.)* in violation of City of San Diego and *(Insert Department/Division Name)* policies.

You could be subject to discipline should the facts of this investigation indicate such action is warranted. Therefore, you have the right to have a representative present during an interview which will be scheduled for a future date and noticed to you in advance. Should you desire representation, it will be your responsibility to contact your representative and make the necessary arrangements.

This is a confidential Department investigation. You are advised to refrain from discussing the issues in this fact finding or contacting potential witnesses unless you are required to do so in official performance of your duties. You are further directed not to engage in any retaliatory actions or behavior toward potential witnesses. Any violations of these directives could result in discipline.

If you have any questions, please call *(Insert Name, Title and Phone Number of Fact Finding Chair or Human Resources personnel)*.

Name and Title of Appointing Authority

I have read and received a copy of this notice.

(Insert Name and Title of Subject)

Date

(Subject Signature)

I have witnessed the employee's receipt of this memorandum.

(Witness to Signature)

Date

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO:

FROM:

SUBJECT: Waiver of Right to Representation

By my signature below, I hereby confirm that I voluntarily and intentionally waive my right to representation during my *(type of discipline)* on *(date)*. I fully understand that I retain the right to retract this waiver in writing.

(Employee Signature)

Date

I have witnessed the above employee signing this waiver.

(Witness to Signature)

Date

cc: Division Head
Second Level Supervisor
Department Personnel File

**FACT-FINDING ADMONISHMENT
SUBJECT**

This is an official fact-finding.

You could be subject to discipline as a result of this fact-finding should the facts indicate such action is warranted. Therefore, you have the right to have a representative present at this time.

You are hereby directed to answer all the questions completely, truthfully, and to the best of your knowledge. You may consult with your representative before answering any question, but your representative may not answer the question for you.

Refusal to answer any of the questions will be considered disobedience to a direct order, and may be sufficient cause for further discipline.

The Department has a strong interest in protecting the integrity of its investigations. In order to preserve evidence, prevent fabrications and protect witnesses from harassment, intimidation or retaliation, the Department advises you to refrain from discussing the issues raised in this fact-finding investigation unless you are required to do so in official performance of your duties. Willfully disclosing confidential information to corrupt the integrity of this investigation could result in discipline. However, your involvement in this investigation does not, in any way, limit your right to report any occurrence of unlawful activity.

If you fully understand these instructions that I have just read to you, print and sign your name below.

(Insert Name and Title of Witness)

Subject (Signature)

Date

(Insert Name and Title of Fact Finder)

Fact Finder Name (Signature)

Date

**FACT-FINDING ADMONISHMENT
WITNESS**

You are considered a witness in an official fact-finding.

You are not subject to discipline at this time. If, as a result of any information obtained during this fact-finding, the facts indicate that you might be subject to discipline, you may request representation at that time.

You are hereby directed to answer all of the questions completely, truthfully, and to the best of your knowledge. Refusal to answer any of the questions will be considered disobedience to a direct order, and may be sufficient cause for discipline.

The Department has a strong interest in protecting the integrity of its investigations. In order to preserve evidence, prevent fabrications and protect witnesses from harassment, intimidation or retaliation, the Department advises you to refrain from discussing the issues raised in this fact-finding investigation unless you are required to do so in official performance of your duties. Willfully disclosing confidential information to corrupt the integrity of this investigation could result in discipline. However, your involvement in this investigation does not, in any way, limit your right to report any occurrence of unlawful activity.

If you fully understand these instructions that I have just read to you, print and sign your name below.

(Insert Name and Title of Witness)

Witness (Signature)

(Date)

(Insert Name and Title of Fact Finder)

Fact Finder Name (Signature)

(Date)

CITY OF SAN DIEGO
M E M O R A N D U M

DATE:

TO: *(Insert Appointing Authority Name and Title)*

FROM: *(Insert Name and Title of Fact Finding Panel Chairperson
Insert Names and Titles of additional Fact Finders)*

SUBJECT: Fact Finding Report – *(Insert Subject Name, Identifying Number, etc. to Assist
reader in understanding the subject of the Fact Finding)*

Background

Who initiated the investigation, why, and what issues were investigated.

Interviews Conducted

A list of interviews, by name, classification, and date of interview

Documentation Reviewed

A summary of documentation reviewed, including written memos, logs, computer records, e-mail, phone records, etc..

Fact Determination

Determinations of facts that the fact finding panel establishes based upon the material reviewed and employees interviewed. Best if listed individually by number or outline form.

Conclusions

The conclusions that can be drawn based upon the facts determined. In this section, the fact finding panel cites the specific policy, and/or rules (e.g. Civil Service Rules, Departmental Instructions, Administrative Regulations, etc) which may have been violated.

Attachments: 1. Signed Interview Statements, Notices, Policies, materials referenced in the body of the report, etc... *(Organize the attachments by Indexing with dividers or other method e.g. Attachment A, Attachment B etc.)*

APPENDIX III

CITY OF SAN DIEGO EMPLOYEE PERFORMANCE REVIEW PROGRAM	
Employee Performance Plan	
EMPLOYEE NAME: _____	
CLASSIFICATION: _____	
WORKING TITLE: _____	
DEPARTMENT: _____	DIVISION/SECTION: _____
PERFORMANCE PLAN	
SUPERVISOR: _____	DATE: _____
REVIEWED BY: _____	DATE: _____
EMPLOYEE: _____	DATE: _____
This Plan has been discussed with me.	
<input type="checkbox"/> Employee Performance Plan Attached	

CITY OF SAN DIEGO EMPLOYEE PERFORMANCE REVIEW PROGRAM	
Performance Plan	
EMPLOYEE	CLASSIFICATION
FUNCTION: 	
STANDARDS:	
This function and these standards have been discussed with me.	
Employee Signature	Date

CITY OF SAN DIEGO EMPLOYEE PERFORMANCE REVIEW PROGRAM

Employee Evaluation Notice

DATE: _____

TO: _____

FROM: _____

I have scheduled your Employee Performance Evaluation for:

_____ at _____.

This will be an opportunity for us to discuss your performance of the duties and responsibilities in your Performance Plan. This is intended to be an open and honest exchange between us. I hope you will be prepared to tell me how you think you are doing as well as suggest what you and I can do to improve your career opportunities with the City.

If you have any questions prior to the meeting, I will be happy to discuss them with you.

Supervisors Signature

CITY OF SAN DIEGO EMPLOYEE PERFORMANCE REVIEW PROGRAM

Supervisor-Employee Conference

EMPLOYEE NAME _____ REPORT PERIOD _____ TO _____

CLASSIFICATION _____

DEPARTMENT _____ DIVISION _____

PERMANENT 60 DAY 9 MONTH

PROBATIONARY 3 MONTH 12 MONTH

LIMITED 6 MONTH SEASONAL

Supervisor-Employee postponed while employee is on a Supplemental: From _____ To _____

The Reviewer-Supervisor conference took place on _____.

(Date)

Supervisor's Signature

Reviewer's Signature

The Supervisor-Employee Conference took place on _____.

EMPLOYEE: _____

(Print Name) _____

(Signature)

SUPERVISOR: _____

(Print Name) _____

(Signature)

NOTED:
APPOINTING AUTHORITY: _____

CITY OF SAN DIEGO EMPLOYEE PERFORMANCE REVIEW PROGRAM

Overall Job Performance

Employee

Classification

COMMENTS:

EMPLOYEE _____ DATE: _____

REVIEWED BY: _____ DATE: _____

SUPERVISOR: _____ DATE: _____

APPOINTING AUTHORITY: _____ DATE: _____

CITY OF SAN DIEGO EMPLOYEE PERFORMANCE REVIEW PROGRAM	
Career Enhancement Plan	
_____ EMPLOYEE	_____ DATE
<p>AREAS FOR DEVELOPMENT: Describe specific areas for development; may include functions from the employee=s performance plan or functions from other career opportunities.</p>	
<p>CAREER ENHANCEMENT PLAN: Record actions that may be taken for career enhancement (E.G. special assignments, training classes, outside education.)</p>	
_____ Employee's Signature	_____ Supervisor's Signature
<p>FOLLOW-UP REVIEW: Indicate what actions have been taken and describe current performance.</p>	
<p>THIS FOLLOW-UP REVIEW HAS BEEN DISCUSSED WITH ME.</p>	
EMPLOYEE _____	DATE _____
SUPERVISOR _____	DATE _____
APPOINTING AUTHORITY _____	DATE _____

CITY OF SAN DIEGO EMPLOYEE PERFORMANCE REVIEW PROGRAM

Commendation

EMPLOYEE

CLASSIFICATION

During the evaluation period from _____ to _____ this employee's performance was exceptional for the following reasons:

EMPLOYEE: _____

DATE: _____

SUPERVISOR: _____

DATE: _____

REVIEWED BY: _____

DATE: _____

APPOINTING AUTHORITY: _____

DATE: _____

CITY OF SAN DIEGO EMPLOYEE PERFORMANCE REVIEW PROGRAM		
Supplemental Performance Report		
<p>EMPLOYEE NAME _____ REPORT PERIOD _____ TO _____</p> <p>CLASSIFICATION _____</p> <p>DEPARTMENT _____ DIVISION/SECTION _____</p>		
<input type="checkbox"/> PERMANENT	<input type="checkbox"/> 60 DAY	<input type="checkbox"/> 9 MONTH
<input type="checkbox"/> PROBATIONARY	<input type="checkbox"/> 3 MONTH	<input type="checkbox"/> 12 MONTH
<input type="checkbox"/> LIMITED	<input type="checkbox"/> 6 MONTH	<input type="checkbox"/> SEASONAL
<p>Employee's performance is poor for the following reasons (cite specific dates, examples from the employee's performance plan):</p> 		
<p>My performance of the above function/standards was discussed with me:</p>		
EMPLOYEE: _____	DATE: _____	
SUPERVISOR: _____	DATE: _____	
REVIEWED BY _____	DATE: _____	
APPOINTING AUTHORITY _____	DATE: _____	
<p>Date performance to again be reviewed (within 90 days): _____</p>		
<input type="checkbox"/> Performance Development Plan Attached		

CITY OF SAN DIEGO EMPLOYEE PERFORMANCE PROGRAM	
Performance Development Plan	
<input type="checkbox"/> REQUIRED FOR SUPPLEMENTAL PERFORMANCE REPORTS	
_____ EMPLOYEE	_____ CLASSIFICATION
PERFORMANCE DEVELOPMENT PLAN: Record actions that should be taken to improve performance (e.g., Special Assignments, counseling, training classes)	
_____ Employee Signature	_____ Supervisors Signature
FOLLOW-UP REVIEW: Indicate what developmental actions have been taken and describe current performance. (If a Supplemental Performance report is used to document a follow-up review, simply state this here.)	
SUPERVISOR: _____	DATE: _____
REVIEWED BY: _____	DATE: _____
EMPLOYEE: _____	DATE: _____

APPENDIX IV

Skelly Procedures

Property Rights

Along with the nuts and bolts of how the City’s progressive discipline process works, it is helpful to have a basic understanding of the constitutional protections granted to all permanent City employees and the underlying basis for those constitutional protections. This essay outlines those rights and protections.

The Fourteenth Amendment to the United States Constitution provides procedural protection for an individual’s property rights and acts as a safeguard of the security of the interests that a person has acquired in specific benefits. Property rights extend beyond the mere ownership of land or things. It includes interests in things in which a person has an expectation of receiving a benefit. The United States Supreme Court has said “to have an interest in a benefit, a person must clearly have more than an abstract need or desire for it. He must, instead, have a legitimate claim of entitlement to it.” The Court went on to say, “it is the purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is the purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims.”¹ This means that when an individual has a property interest in a specific benefit, he or she cannot be deprived of that benefit without first having an opportunity to show why the benefit should not be taken away.

How does a property interest arise? And, why do public sector employees have a property interest in their employment when private sector employees do not? Although property rights are protected by the due process clause of the Constitution, they are not created by the Constitution. Rather, they are created, and their dimensions defined, by laws or statutes.

¹*Board of Regents of State Colleges et al v. Roth* 408 U.S. 564,577 (1972)

So, for example, the courts have said individuals have property interests in things such as unemployment insurance, welfare payments and social security, because all these benefits are created by statutory law.

Similarly, federal, state and local civil service systems are created by law, thus creating a property interest in the employee's job rights. The City's Civil Service rules are found in the City Charter and the Municipal Code. Charter section 129 and Civil Service Rule XI provide that a permanent City employee may only be removed for cause. These rules provide the basis for the legitimate claim of entitlement that the Supreme Court said was a necessary component of a property interest. This is the property interest that triggers the need for the City, as an employer, to comply with due process procedures when it imposes discipline which will impact an employee's property interest in his or her employment. Discipline which does not affect an employee monetarily is not subject to the same strict due process requirements because there is said to be no property interest at stake in such disciplinary procedures.

The courts have said the property right attaches when the discipline will have a significant impact on an employee's pay. So for purposes of City disciplinary actions, property rights are associated with terminations, suspensions, demotions and reductions in compensation. Thus, when discipline at any of these levels is imposed, due process protections must be adhered to.

Due Process Procedures and Skelly Rights

Due process essentially requires that an employee who has a property interest in continued employment may not be denied that employment or the benefits of that employment without notice and an opportunity to be heard on the issue. In early Supreme Court cases and the California cases which followed the Supreme Court's lead, the due process clause was interpreted in a strict and mechanical fashion. Under this line of cases, every significant deprivation whether temporary, like a suspension, or permanent, like a termination "of an interest which qualified as 'property' was required under the mandate of due process to be

preceded by notice and a hearing”² The hearing in these cases required that the affected party be allowed a hearing before an impartial officer, the right to confront and cross-examine witnesses, the right to present favorable evidence and the right to be represented by counsel. In other words, the cases required the same type of appeal City employees have before the Civil Service Commission, but it had to be held before the action was taken.

Later cases defined due process in less rigid terms and while they still require that some form of notice and a hearing be given before the final deprivation, the form of the notice and hearing is determined by balancing the competing interests involved. In employment cases, the courts have said the determination is made by balancing the employer’s “interest in the expeditious removal of an unsatisfactory employee against the interest of the affected employee in continued public employment”³ The court in the Skelly case acknowledged that the governmental interest is great because of the potential problems that can be created by an incompetent or disgruntled employee. For that reason, the court said that in cases where there are sufficient pre-removal safeguards which minimize the risk of error in the initial decision making process, and adequate compensation if the post-removal hearing determines the deprivation of the property interest was wrongful, then less stringent requirements would suffice at the pre-removal stage. The court said the minimum safeguards that must be provided prior to a deprivation of a property interest are:

1. A notice of the proposed action
2. The reasons for the action
3. A copy of the charges and the materials upon which the action was based
4. The right to respond, either verbally or in writing to the authority initially imposing discipline.

These are the rights that are commonly known as the Skelly rights. Remedies are available to employees when these procedures are not strictly followed. Although the requirements may

²Skelly v. State Personnel Board, 15 Cal. 3d 194,208. (1975)

³Skelly v. State Personnel Board 15 Cal. 3d 194, 212(1975)

seem to be burdensome, they actually serve a dual purpose. The package serves as both the notice to the employee who is being disciplined and as the basis for the appointing authority's case should the employee appeal the discipline to the Civil Service Commission. A properly prepared package will make the appeal process go smoothly because all the preparation will have been completed well in advance of the hearing.

Discipline Matrix

Action	Issuing Authority	Prior Approval By Human Resources Department and City Attorney's Office	Advance Notice	Employee Representation Rights	Skelly Procedures*	Appeal Rights and Authority
Supplemental Performance Evaluation	Employee's Supervisor	No	Yes	Yes	No	Employee may appeal in writing to Department Head within 10 working days. Department Head or designee will conduct the hearing.
Verbal Counseling	Employee's Supervisor	No	No	No	No	No
Verbal Warning	Employee's Supervisor	No	No	No	No	No
Written Counseling	Employee's Supervisor	No	Yes	Yes	No	Yes -- Department Head. The Department Head or designee will conduct the hearing.
Written Warning	Employee's Supervisor	No	Yes	Yes	No	Yes -- Department Head. The Department Head or designee will conduct the hearing.
Reprimand	Division Head/Higher Authority	No	Yes	Yes	No	Yes -- Department Head. The Department Head or designee will conduct the hearing.

Suspension Pending Investigation	Department Head or designee	Yes	No, advance notice is not required. However, a written order of suspension by the Department Head or designee should be given to the employee immediately upon suspension and prior to leaving the work premises. **	No	If investigation results in disciplinary action, Skelly procedures must be followed, if applicable.	No
Suspension	Appointing Authority	Yes	Yes	Yes	Yes -- Department Head or designee. Please note: Final Notice of Suspension must be signed by Department Head.	Yes – Civil Service Commission
Reduction in Compensation	Division Head/Higher Authority	Yes	Yes	Yes	Appointing Authority	Yes – Refer to applicable MOU and Personnel Manual, Index Code L-2.
Demotion of Permanent Employee	Appointing Authority	Yes	Yes	Yes	Yes -- Department Head or designee	Yes - Civil Service Commission.

Termination of Permanent Employee	Appointing Authority	Yes	Yes	Yes	Yes -- Department Head or designee	Yes - Civil Service Commission.
Probationary Failure (original first year of City employment)	Appointing Authority	Yes	Suggested	Yes	No	Liberty/Name-clearing hearing may be granted, if applicable. Refer to applicable MOU.
Termination of a Limited or Hourly Employee	Appointing Authority	No	Suggested	Yes	No	Liberty/Name-clearing hearing will be granted, if applicable. Refer to applicable MOU.

* Skelly Procedures - The City is required to provide an employee with the opportunity to review the charges against him/her, with a copy of the information upon which the charges are based and the opportunity to respond to the charges. Typically, this will include a written document summarizing charges or violations of City policies, as well as copies of previously related discipline. It also may include a copy of an investigative report. This is commonly known as the Skelly process.

Appointing Authorities are required to provide the employee with the information necessary to allow the employee to prepare a response to the discipline,

** Any suspension order made under the above authority shall be in writing and shall be handed to the employee immediately. If applicable, the order shall specify the exact number of unworked hours remaining in the workday after said suspension. A general reference to Civil Service Rule XI shall be made and copies of said suspension order shall be promptly forwarded through channels to the department head and the Personnel Director. (Personnel Manual L-2, Section III, E-2

Personnel Matters Reference

Items	References
Appeals and hearings	Personnel Manual L-2, L-3
Bonus Pay	Administrative Regulation 95.91
Delay step increase	Personnel Manual H-8
Discipline: Warning; Reprimand; Supplemental Performance Evaluation; Reduction in Compensation; Suspension; Demotion, Termination	Personnel Manual L-2 Civil Service Rule XI
Discretionary Leave	Administrative Regulation 95.91
Drug and Alcohol Policy	Administrative Regulation 97.00
Employee Assistance Program	Administrative Regulation 4.50
Employee Awards	Administrative Regulation 95.91
Excessive Absenteeism	Personnel Manual I
Illegal Activities	Civil Service Rule XI, Section 3
Insubordination	Civil Service Rule XI, Section 3
Job Abandonment	Civil Service Rule XI, Section 3
Merit Step Increase	Personnel Manual H-8
Performance Evaluation	Personnel Manual G-7A and G-7 (Fire)
Performance Referral	Administrative Regulation 4.50
Probationary Employees	Personnel Manual Index Code G-2, L-2

Supplemental or Unsatisfactory Performance Evaluation	Personnel Manual G-7A, G-7 (Fire) and L-2
Threat Management Policy	Administrative Regulation 97.10
Training	Administrative Regulation 70.40
Tuition Reimbursement	Administrative Regulation 70.30
Unethical Activities	Administrative Regulation 95.60 and Personnel Manual L-2
Vehicle Accident	Administrative Regulation 75.12

November 11, 1993

PERSONNEL REGULATIONS
City of San Diego

Rule: XI

CIVIL SERVICE RULES

**RESIGNATION, REMOVAL, SUSPENSION, REDUCTION IN
COMPENSATION, DEMOTION**

Section 1. RESIGNATIONS:

An employee in the classified City Service who desires to resign in good standing shall submit a written resignation to the appointing authority and must give at least one week's notice of intention to leave the service, unless the appointing authority consents to the employee's leaving sooner. Such request when approved by the appointing authority shall be immediately forwarded to the Commission.

(Incorporated 1-22-52 by Ord. 5046 N.S., contained in Ord. 4340 N.S., adopted on 3-21-50; Amended 5-5-76 by Ord. 11838 N.S.)

Section 2. REMOVALS:

Upon attaining permanent status, any employee in the classified service may be removed from employment for cause by the appointing authority. Any employee who has not achieved permanent status may be removed at the sole discretion of the appointing authority.

(Incorporated 1-22-52 by Ord. 5046 N.S., contained in Ord. 4340 N.S., adopted on 3-21-50; Amended 5-5-76 by Ord. 11838 N.S.; Amended 7-27-81 by Ord. 15553 N.S.; effective 9-4-81)

Section 3. CAUSE FOR REMOVAL OR SUSPENSION:

The following are declared to be causes for removal or suspension from the classified service of the City, though charges may be based on causes other than those enumerated:

- (a) That the employee is incompetent or inefficient in the performance of his or her duty.
- (b) That the employee has been offensive in his or her conduct toward fellow employees, wards of the City, or the public.
- (c) That the employee has some permanent or chronic physical or mental ailment which incapacitates the employee for the proper performance of his or her duties.
- (d) That the employee has violated any lawful or official regulation or order or failed to obey any lawful and reasonable direction given by a superior officer when such violation or failure to obey amounts to insubordination or serious breach of discipline.
- (e) That the employee has solicited or taken for personal use a fee, gift, or other valuable thing in the course of his or her employment or in connection with it when such fee, gift, or other valuable thing is so solicited or given the employee by any person in the hope or expectation of receiving a favor or better treatment than that accorded other persons.
- (f) That the employee has failed to pay or make reasonable provision for future payment of just debts when annoyance is caused the employee's superior officer or other City officer or scandal is caused the service because of such failure.

- (g) That the employee has been convicted of a criminal offense involving moral turpitude.
- (h) That the employee through negligence or willful conduct has caused damage to public property or waste of public supplies.
- (i) That the employee has been guilty of any conduct unbecoming an officer or employee of the City.
- (j) That the employee has been absent without leave, contrary to the rules of the Commission, or has failed to report after leave of absence has expired, or after such leave of absence has been disapproved, revoked, or cancelled by the Commission; provided, however, that if such absence or failure to report is excusable, the Commission may dismiss the charges.
- (k) That the employee has hindered the regular operation of the department or division because of excessive absenteeism.
- (l) That the employee has violated the provisions of Section 134 of the Charter of The City of San Diego.
- (m) That the employee has violated the provisions of Section 135 of the Charter of The City of San Diego.
- (n) That the employee has failed to obey an order from the City Manager or other department head to terminate or desist from outside employment or enterprise that has been determined to be incompatible with City employment or detrimental to the efficiency of his or her regular City work.
- (o) An Employee who is designated as exempt under the terms and provisions of the Fair Labor Standards Act may be suspended from work without pay only for a violation of a safety rule of major significance and not for any other reason.

(As added 5-12-53 by Ord. 5589 N.S., Incorporated 1-22-52 by Ord. 5046 N.S., contained in Ord. 4340 N.S., adopted on 3-21-50; Amended 5-5-76 by Ord. 11838 N.S. which changed title to CAUSE FOR REMOVAL OR SUSPENSION; Amended 10-11-93 by Ord. 17995 N.S.)

Section 4. PROCEDURE FOR REMOVAL:

The following steps shall be completed by the appointing authority prior to making a final decision to remove any employee in the classified service who has attained permanent status, except when the appointing authority deems immediate removal necessary in order to maintain the safety of the community or the reputation, morale, or harmony of the organization. The employee must be:

- (a) Given advance notice of the proposed action which includes a statement of the reasons for the action;
- (b) Provided with a copy of the proposed charges and, if practical, a copy of the materials or documents upon which the charges are based;
- (c) Given the right to respond either orally or in writing to the appointing authority;
- (d) Notified that he or she may have representation at any time during this procedure.

After due consideration has been given to the information provided by the employee, personal service of written notice of removal or written notice delivered and left at or mailed to the employee's last place of residence shall be sufficient to put any such removal into effect. Such notice shall include a statement of the charges upon which the action is based and a statement

advising the employee of any rights of appeal. A copy of such notice shall also be provided to the Civil Service Commission.

(Incorporated 1-22-52 by Ord. 5046 N.S., contained in Ord. 4340 N.S., adopted on 3-21-50; Amended 2-2-61 by Ord. 8430 N.S.; Amended 9-13-66 by Ord. 9500 N.S.; Amended 5-5-76 by Ord. 11838 N.S.; Amended 7-27-81 by Ord. 15553 N.S.; effective 9-4-81.)

Section 5. APPEAL OF REMOVAL:

- (a) **APPEAL PROCEDURE.** Within five days of receipt of notice of removal, an employee in the classified service who has attained permanent status may file an appeal by submitting a written demand to the Civil Service Commission for the right to be heard before the Commission.
 - (1) Failure of the employee to submit said written demand to the Commission within five days after the receipt of notice of removal shall result in the waiver of the right to appeal and the forfeiture of all rights to a hearing in the case before the Commission.
 - (2) The employee may at any time withdraw an appeal to the Commission. Such withdrawal may be either by written request prior to the public hearing, or may be made orally by the employee at or during the time of public hearing.
 - (3) Any employee who has appealed to the Commission for a public hearing and who fails to make an appearance at the hearing either in person or through a duly authorized representative after having received notice of the time and place for such hearing may be deemed to have abandoned the appeal. In the event of such failure to appear, the appointing authority or the appointing authority's representative may move the Commission to dismiss the appeal. The Commission shall have the discretion to grant or to deny such motion.
 - (4) On verified petition of any party, the Commission may order the testimony of any material witness be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of the testimony; a showing that the witness will be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify.
- (b) **CONDUCT OF HEARING.** With the fulfillment by the employee of the above appeal procedure, the Commission shall fix a time and place for a public hearing.
 - (1) The Commission, at its discretion, may appoint one or more of its members to hear the appeal and submit findings of fact and a decision to the Commission. Based on the findings of fact, the Commission may affirm, modify, or overturn the decision, in accordance with the provisions of Section 5(d).
 - (2) The employee under charges shall be given an opportunity to produce witnesses and testimony and to be represented by counsel. The appointing authority shall have the same rights.
 - (3) The proceedings shall be as informal as is compatible with the requirements of justice, and the Commission need not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the matter through oral testimony and records presented at the hearing, which is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit and provisions of the Charter. The testimony taken at the hearing shall be under oath and shall be recorded by a reporter.

- (4) The Commission shall have the power to subpoena and require the attendance of witnesses and the production of pertinent documents, and to administer oaths and, if necessary, to continue the hearing from time to time.

(Amended 12-9-91 by Ord. 17721 N.S.)

- (c) ORDER OF PROOF. The order of proof in any hearing of complaint shall be as follows:

- (1) The appointing authority shall present the evidence in support of the charges.
- (2) The employee shall then produce such evidence as he or she may wish to offer in defense.
- (3) The parties in interest may then offer rebuttal evidence.

- (d) FINDINGS AND DECISIONS. The Commission shall report its findings and decisions to the appointing authority responsible for the removal. Thereupon, said appointing authority shall make such final disposition of the matter as may be determined by the Commission. The Commission may at its discretion:

- (1) Notwithstanding Section 6 below, order the restoration of the employee to the position without loss of pay or with any intermediate degree of discipline during the period between the filing of the charges and a date specified in the Commission's order.
- (2) Order the demotion of the employee to a class for which a lower maximum rate of compensation is prescribed.
- (3) Order the removal of the employee from the position; provided that in case of such removal the Commission may at its discretion put the name of the employee on the eligible list for the class for certification when a vacancy occurs in some other department. The decision of the Civil Service Commission in any such case shall be final. A copy of the written statement of reasons given for any removal, and a copy of any written reply thereto by the officer or employee involved, together with a copy of the findings of fact and decision of the Commission, shall be filed as a public record in the office of the Civil Service Commission.

(Added 5-5-76 by Ord. 11838 N.S.; Amended 6-26-78 by Ord. 12381 N.S.; Amended 12-9-91 by Ord. 17721 N.S.)

Section 6. PROCEDURE FOR SUSPENSION:

Any employee in the classified service may be suspended without pay, for disciplinary purposes for one or more periods aggregating not more than ninety (90) days in a calendar year. The procedure and rights afforded any such employee prior to such suspension shall be the same as those prescribed in the rules relating to removal of an employee who has attained permanent status, including the provision for immediate suspension necessary in order to maintain the safety of the community or the reputation, morale, or harmony of the organization.

(Incorporated 1-22-52 by Ord. 5046 N.S., contained in Ord. 4340 N.S., adopted on 3-21-50; Amended 5-5-76 by Ord. 11838 N.S.; Amended 7-27-81 by Ord. 15553 N.S.; effective 9-4-81.)

Section 7. APPEAL OF SUSPENSION:

The procedures and rights for any employee in the classified service appealing a suspension shall be the same as those prescribed in the rules relating to removal of an employee who has attained permanent status.

(Added 5-5-76 by Ord. 11838 N.S.; Amended 12-9-91 by Ord. 17721 N.S.)

Section 8. SUSPENSION PENDING INVESTIGATION:

Any employee in the classified service may be suspended without pay, for up to thirty (30) calendar days, pending investigation of charges of misconduct, when in the opinion of the appointing authority such suspension is necessary in order to maintain the safety of the community or the reputation, morale, or harmony of the organization. Such suspension is not a disciplinary action and may not be appealed to the Commission. If the charges are substantiated, disciplinary action may be taken in accordance with the other provision of this rule. If the charges are unfounded, the employee shall be restored to duty and paid for the term of the suspension.

(Added 10-13-76 by Ord. 11924 N.S.; Amended 7-27-81 by Ord. 15553 N.S.; effective 9-4-81.)

Section 9. REDUCTION IN COMPENSATION:

The compensation of any employee in the classified service may be reduced within the salary range of that employee's current classification by the appointing authority. Such reduction in compensation may be put into effect upon a determination that the employee's performance has not met the standards established for the employee's classification and/or position. The procedure for, and appeal of, a reduction in compensation shall be provided in the Personnel Manual and/or a current ratified Memorandum of Understanding.

(Added 7-28-80 by Ord. 15302 N.S.; Amended 11-7-83 by Ord. 16076 N.S.)

Section 10. DEMOTIONS:

The reduction of an employee from a position in a class to a position in another class for which the maximum rate of pay is lower, shall be called a 'Demotion' and may be made upon the written request of the employee, approved by the appointing authority concerned, or upon the written recommendation of the appointing authority concerned, or upon the written recommendation of the appointing authority with a statement giving the specific reasons therefore, in which latter case, the employee so demoted shall be entitled to a hearing before the Commission. The procedure and appeal rights affecting such a disciplinary demotion shall be the same as those prescribed in Sections 4 and 5 above.

(Incorporated 1-22-52 by Ord. 5046 N.S., contained in Ord. 4340 N.S., adopted on 3-21-50; Renumbered and amended 11-7-83 by Ord. 16076 N.S.)

Standardized Routing

Document	Route To
Notice of Right to Representation	Employee's Division/Department file Supervisor Deputy Director
Written Counseling Written Warning	Employee's Permanent Personnel Department file Employee's Division/Department file Supervisor Deputy Director
Reprimand	Employee's Permanent Personnel Department file Employee's Division/Department file Supervisor Deputy Director
Advance & Final Notices Probationary Failure Reduction in Compensation Demotion Suspension Termination	Employee's Permanent Personnel Department file Employee's Division/Department file Deputy Director Department Director City Attorney Liaison Human Resources Director Personnel Director
Notice of Termination of Hourly Employment	Employee's Permanent Personnel Department file Employee's Division/Department file Supervisor Deputy Director
Notice of Inactivation of Hourly Employment Notice of Update of Availability for Hourly Employment Notice of Job Abandonment	Employee's Division/Department file Supervisor Deputy Director
Response to Appeal	Employee's Permanent Personnel Department file Employee's Division/Department file Supervisor Deputy Director

Document Retention in Employee Personnel Files After Appeal

Disciplinary Action	Documents Retained?		
	Discipline Upheld	Discipline Reduced	Discipline Rescinded
Fact Finding Notice	Yes	Yes	No
Fact Finding Report	Yes	Yes	No
Written Warning*, Counseling, Reprimand*, Suspension, Reduction in Compensation, Demotion, Termination	Yes	Only amended discipline	No
Advance Notice of: Suspension, Reduction in Compensation, Demotion, Termination	Yes	Only amended discipline	No
Written Response to Appeal of Discipline	Yes	Yes	No
Mention of the conduct in Performance Evaluation	Yes	Yes	Yes, if conduct inappropriate
Mention of discipline in Performance Evaluation	Yes	Only amended discipline	No

* Written warnings and reprimands are subject to removal after certain periods of time, under certain conditions. Please refer to the appropriate MOU for further information (Article 37, Appeals, in the MEA MOU; Article 52, Disciplinary Actions and Appeal, in the Local 127 MOU).

Constructive Communication

The following “script” may be helpful when dealing with employees in tense or problem situations. This method of constructive communication is known as the **DESC** (**D**escribe, **E**xplain, **S**pecify, **C**onsequences) Model.

Describe the problem

Use concrete, objective terms. Describe behaviors and events, not feelings and personality traits. Do not make personal comments or label the employee:

“You arrived 15 minutes late to work today.”

Explain the impact

Clearly explain the impact of the employee’s behavior on the workplace:

“Your crew had to wait for you and will be late leaving the yard to start work. That wasted City time and money, and put us all behind schedule for the day.”

Specify actions required

Clearly outline the specific changes the employee must make in order to improve performance:

“You are required to report to work on time at 7 a.m. every work day.”

Consequences if behavior does not change

Make it clear to the employee that further consequences can and will result if the behavior is not corrected:

“If you are late again, I’ll document your tardiness in a Written Counseling.”

This example describes the employee’s specific behavior, explains the impact of that behavior on the workplace, specifies the actions the employee must take to correct the behavior, and names the consequences if it continues. It uses concrete, objective terms. It describes behaviors and events, not emotions and personality traits. Following the **DESC** Model for constructive confrontation will help supervisors to deal rationally and consistently with employees’ problem behavior.