

13.0 DISCIPLINE

13.1 DISCIPLINE GENERALLY

On-the-job conduct of District employees affects the ability of the District to serve its citizens and affects the ratepayer's impression of District government. Employee safety, productivity and morale are dependent upon employee conduct.

Occasionally it is necessary for supervisors to utilize corrective action when employee actions are inappropriate, or where a particular employee fails to respond to informal guidance.

In order to provide a fair method of correcting, and when necessary, disciplining employees, the District will use progressive discipline procedures where appropriate given the situation. This section concerning discipline does not apply to the District Manager, who serves under the terms of an employment agreement. This section establishes procedures and a process, and it does not constitute the creation of contractual right to retain employment.

13.2 DISCIPLINE - GENERAL GUIDELINES

A. Discipline may be initiated for many proper reasons, including, but not limited to, violations of the work rules, insubordination, or poor job performance. The severity of the disciplinary action generally depends on the nature of the offense, an employee's work record, and may range from verbal counseling to termination.

B. Progressive discipline for infractions includes, but is not limited to:

- 1.** Verbal counseling;
- 2.** Written counseling or warning;
- 3.** Temporary reduction in pay in lieu of suspension;
- 4.** Suspension;
- 5.** Demotion; and
- 6.** Termination.

Any or all of these steps may be utilized, depending upon individual circumstances and the nature of the infraction. Exceptions or deviations from the normal procedure may occur whenever the District deems it appropriate, case by case.

C. Suspension of Salaried Exempt Employees

No salaried exempt employee will be suspended by the District except for serious misconduct which does not warrant discharge and in such a case the employee must be suspended for not less than one full work week.

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13.3 APPLICATION OF PROGRESSIVE DISCIPLINE

- A. For performance deficiencies and minor matters, employees will normally be verbally counseled. A supervisor may or may not choose to make the imposition of a verbal warning part of the employee's personnel file by documenting what was said into a memorandum.
- B. In the event of two or more performance problems or a more serious violation of a District policy or rule, a written warning may be issued.
 - 1. The warning should be signed and dated by the employee. An employee who disagrees with the facts in the warning may submit a written response. It will be placed in the personnel file with the warning.
 - 2. A written warning need not pertain to the same or similar matter (issue).
 - 3. In addition to a written warning, the District Manager may also suspend an employee without pay for a period of up to thirty (30) working days, or take other disciplinary action deemed appropriate. Prior to suspending an employee without pay, the District Manager will meet with and afford the employee an opportunity to respond.
 - 4. The District may demote or reduce the pay of an employee. A written statement of the reasons for such action shall be furnished to the employee, and a copy shall be made a part of the personnel file. The employee will sign the statement acknowledging he/she has received a copy of it, and may file a rebuttal statement.
- C. Discharge may result if the employee violates District policy, commits serious misconduct, or fails to improve the level of performance. However, this statement does not limit the District's right to end the employment relationship with or without cause, at any time.
- D. An employee should not be reinstated or otherwise relieved of misconduct if to do so would be contrary to public policy. In determining if reinstatement or other action would be contrary to public policy, the District will look at public policy requirements as clearly defined in statutes or judicial decisions, including but not limited to policies respecting sexual harassment or sexual misconduct, unjustified or egregious use of physical or deadly force and serious criminal misconduct, related to work.

Additionally, when an employee claims the employer's alleged previous differential treatment of employees for the same or similar conduct is the basis for reinstatement of an employee who has engaged in misconduct, the following principles apply:

- 1. Some misconduct is so egregious that no employee can reasonably rely on past treatment for similar offenses as justification or defense to discharge or other discipline.
- 2. Public managers have a right to change disciplinary policies at any time, notwithstanding prior practices, if reasonable advance notice is given to affected employees.

13.4 DISCHARGE PROCEDURE

13.4.1 Pre-Discharge Conference - If a District Manager determines there is cause for the discharge of an employee, the District Manager shall notify the employee of the specific reasons and that a

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suspension without pay, pay reduction, and/or discharge is being considered. The employee shall be provided with the facts upon which the contemplated disciplinary actions are based. The District Manager shall afford the employee a formal opportunity to refute the charges orally or in writing. Once the employee has been afforded an opportunity to refute the charges and explain the facts and circumstances, the employee may be suspended without pay. An employee may be put on administrative leave without pay at any time. If a pre-discharge conference is to be held, it will be scheduled and held at least three (3) days after notice of action has been given. The employee will be given adequate time to develop a response and to seek outside assistance as the employee feels necessary. The time limits may be varied by the District to meet individual needs.

The District Manager and the Director of Administrative Services will conduct the conference and decide whether to impose discharge or a lesser degree of discipline, or no discipline as appropriate.

13.5 APPEAL OF DISCIPLINE ACTION

13.5.1 Right of appeal from discipline - Any regular employee subordinate to the District's District Manager who has been suspended, reduced in pay, demoted or dismissed, shall have the right of appeal to the Board of Directors. Notice of the appeal must be filed not later than ten (10) days of the effective date of the action. The notice of appeal shall include at least the following information:

1. A statement of the complaint and the facts upon which it is based;
2. The remedial action requested;
3. A statement of the reasons why the remedial action is appropriate;
4. A statement of any policies, procedures or law or rules which have not been adhered to or which should be followed. The appeal generally will be heard by the Board of Directors within twenty (20) days after receipt of the request. The Board of Directors shall furnish the District Manager with a copy of the notice of appeal in advance of the hearing.

13.5.2 Who may appeal - Only regular employees not excluded from the application of these policies have a right to appeal disciplinary actions. In addition to formal appeals under this Section, the Board of Directors may give consideration to all suggestions and complaints that concern administration of the personnel policies.

13.5.3 Investigations - In connection with an appeal or complaint, with respect to any matter arising under these personnel policies, the District Manager may conduct an investigation, as he/she deems necessary. The investigator shall make a written report upon all matters investigated under the personnel policies. A copy will be given to the employee and a signed copy placed in the file.

13.5.4 Hearings on Appeal.

13.5.4.1 Procedure - The Board of Directors shall set a hearing upon timely requests made under this policy. The employee, the supervisor, the District Manager and the Director of Administrative Services shall be given written notification of the time and place of the hearing.

The order of procedure at the hearing will be as follows:

1. The District Manager will set forth the reasons for the action and the facts on which it is based. The employee may conduct cross-examination if appropriate.
2. The employee may present evidence in support of the appeal with or without the assistance of legal counsel or other representative.

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3. The District Manager or a designee may cross-examine or submit evidence in rebuttal or both.
4. Opening statements, if any, will be brief and confined to the issues. Closing argument, if any, will be first by the District Manager or a designee then by the employee. The District Manager may offer rebuttal evidence if desired.
5. Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. Irrelevant, immaterial or unduly repetitious evidence may be excluded. Affidavits and counter-affidavits are acceptable as evidence. If either party intends to rely on an affidavit, it shall provide the other party with such affidavit together with the name, address and telephone number of the affiant at least ten (10) days prior to the hearing or such affidavit shall be inadmissible.

13.5.4.2 Conduct of Hearings - A hearing before the Board of Directors is intended solely for the purpose of receiving evidence either to refute or substantiate specific charges brought to the Board of Directors. The hearing shall be conducted accordingly. The Board of Directors may impose limits on questioning in the interest of the orderly conduct of the hearing and fairness.

13.5.4.3 Counsel or Representative - In appealing a disciplinary action to the Board of Directors an employee may, but is not required to, have counsel or other representative at the appeal. The District's counsel shall assist the District exclusively.

13.5.5 Board of Directors Findings - If, after receiving evidence presented in hearings on disciplinary actions, the Board of Directors finds that sufficient evidence supports the charges, that the complained-of action taken by the District Manager was reasonable and was taken for a proper reason consistent with policy, the Board may affirm the action; if they find that the complained-of action taken by the District Manager was not so made, the Board shall fashion an appropriate remedy and the personnel file shall be revised accordingly or purged of such record inconsistent with the Board's determination. The Board of Directors in lieu of affirming the disciplinary action may modify the discipline as the circumstances warrant.

The Board may refer any issue to a Hearings Office who shall conduct the proceedings in accordance with these rules. In such event, all provisions of these rules relating to the duties and authority of the Board shall also apply to the Hearings Officer in the conduct of the hearing. The Hearings Officer shall issue Recommended Findings which shall be reviewed by the Board based solely on the record and applicable law. The Board may adopt the Findings by voice vote. In all other cases the Board shall issue a final written decision within twenty (20) working days from receipt of the Recommended Findings.

At the time of filing of the request of the appeal with the Board, the District Manager shall supply the employee with an outline of the procedures used by the Board of Directors. The decision of the Board of Directors shall include findings of fact and shall be final.

13.5.6 Procedural rights related to performance and discipline for supervisors and the District Manager - The standards of conduct, performance and discipline to which the District holds the District Manager and supervisors is quantitatively and qualitatively different (higher) than the standards by which other employees are judged. Discussions of expectations, goals and objectives,

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and coaching and counseling should, in the case of management employees, be sufficient. In rare cases of misconduct, it may be that a suspension could be justified, however, ordinarily instances committed by this level of employee warrant either discharge or counseling. The District Manager is expected to ensure standards are established and met, and that an appropriate combination of performance plans, evaluations and counseling are utilized to help the supervisor succeed. In the event a supervisor is discharged, asked to resign, or suspended without pay, then such supervisor may request review of the decision of the District Manager by the Board of Directors.

In the event such a hearing is requested, the request shall meet the requirements of Section 13.5. The hearing procedure involving the District Manager before the Board of Directors shall be conducted in the same manner provided in Section 13.5. The Board shall determine whether the action was taken for sufficient cause and is not arbitrary and capricious as determined solely by the Board of Directors. Sufficient cause shall be judged based on factors which include the considerations set forth above. The following shall also apply:

- A.** Evidence objected to may be received by the Board and, in the Board's discretion, rulings on admissibility or exclusion may be reserved until such time as the Board's findings are issued. In considering the admissibility of evidence, the Board may consider but is not bound by the Oregon's Rules of Evidence.
- B.** If, after receiving evidence presented in hearings on disciplinary actions, the Board finds that the complained-of action taken by the District Manager and the action was taken for sufficient cause, the Board may affirm the action; if the Board finds that the complained-of action taken was for insufficient cause, the employee shall be reinstated to the position and shall not suffer any loss in pay or status and the official personnel file shall be purged of such record. The Board, in lieu of affirming the disciplinary action, may modify it as the circumstances may warrant. The decision of the Board shall include findings of fact and shall be final and binding on all interested parties.
- C.** Any specific language contained in the Contract for Employment between the District Manager and the Board of Directors shall supersede this section.