

adopted: 01/11/2012            OTHER MODEL POLICY

SUBJECT: EMPLOYEE DISCIPLINE

Number: 2-6

EFFECTIVE DATE: 00/00/0000

REVIEW DATE: 00/00/0000

AMENDS/SUPERSEDES: 05/10/2000

APPROVED: \_\_\_\_\_

Chief Law Enforcement Officer

**I.    POLICY**

It is the policy of this agency to impose positive reinforcement or disciplinary action fairly and impartially, and to ensure due process so that the rights of employees are protected.

**II.   PURPOSE**

The purpose of this policy is to establish procedures concerning informal and formal disciplinary practices within the agency consistent with any collective bargaining agreements or personnel policies in effect.

**III. DEFINITIONS**

- A.    Days:    Means as used herein, work days.
- B.    Discipline:    Means the process of imposing formal sanctions that will help train, develop or change an employee's behavior, preferably through constructive rather than punitive measures. Discipline in this agency involves training and counseling, and as a last resort, punitive action.
- C.    Relief from duty:    Means an administrative action by a superior, whereby a subordinate employee is temporarily relieved of his or her duties.

**IV.   PROCEDURES - General**

- A.    Positive Reinforcement:    Positive reinforcement is oriented towards seeking voluntary compliance with established policies, procedures or orders. Methods of positive reinforcement may include:
  - 1.    Recognition of excellent job performance through performance appraisals, rewards or awards.

a. When positive feedback concerning an employee's performance is received; the person who receives the information shall make a record of the comments, which will be passed on to the employee and the employee's supervisor. Normally, when the CLEO receives positive comments about an employee, an acknowledgment thanking the citizen will follow. Copies of the written acknowledgment shall be placed in the employee's personnel file.

b. Truly exceptional acts should be clearly and promptly brought to the attention to the CLEO. Such acts may be the basis for special awards or for special recognition by citizens, community groups or the media.

2. Discussion and Counseling.

3. Training.

B. Consistency in Discipline: Discipline must be applied consistently and uniformly.

1. This agency does not purport to provide employees with an all inclusive list of specifically prohibited behavior. Employees are expected to have a reasonable perception of what constitutes proper behavior, based on training and the observance of the behavior of employees generally.

2. One list of examples of such behavior appears in MCOA Model Policy 2-5 on "Prohibited Conduct", **but** no list can be all inclusive.

3. Employees shall be afforded legal representation per collective bargaining agreements or personnel

policies.

C. Relief From Duty: May be imposed whenever a supervisor has a reasonable basis to question an employee's fitness for duty. An internal affairs investigation may follow.

1. The supervisor has authority to relieve an employee from duty, but must promptly report such action to the CLEO, accompanied by a written report setting forth details and circumstances.

2. If the necessity to relieve from duty is not immediate, the behavior or actions of the employee may be deemed a matter of internal affairs. In an internal

affairs investigation, the CLEO may relieve an employee from duty.

3. An employee who refuses to obey a lawful direct order in conformance with the agency rules, regulations, and orders may be relieved from duty by the supervisor, who may recommend disciplinary action to the CLEO.

D. Penalties - The following penalties are available:

1. Oral reprimand, counseling and training.
2. Written reprimand.
3. Demotion or suspension without pay.
4. Dismissal from agency.

E. Oral Reprimand, Counseling and Training: Oral reprimands, while informal, require documentation with an employee's acknowledgment of such record. The following steps shall be observed:

1. At the time of an oral reprimand, the employee receiving it shall be counseled as to correct behavior, and further advised that a written record shall be maintained concerning the reprimand/counseling, and that the employee may read the record.
2. In the case of a disagreement, the employee shall be further advised that the employee has the right to file a statement in the employee's personnel file setting forth the employee's position.
3. The reprimanding supervisor shall record the reprimand/counseling in a memorandum to the personnel record containing the following information:
  - a. Employee's name.
  - b. Date of reprimand/counseling.
  - c. Summary of reasons for reprimand/counseling.
  - d. Summary of employee's response.
  - e. Suggestions for improvement or specific actions suggested.
  - f. Name of counselor and signature.
  - g. The following statement must appear: "I acknowledge that I have today received counseling and I have been advised of the following rights:
    - (1) that a written record of reprimand/counseling shall be maintained;
    - (2) that the employee has a right to review the record and respond in writing;
    - (3) that the form shall become part of the personnel file; and

(4) that the employee is required to acknowledge the reprimand/counseling by signing the record."

h. The employee shall sign and date the form following the statement.

4. The oral reprimand/counseling may involve remedial training. Such training may be deemed necessary to rectify the improper behavior. Remedial training may include attendance of basic academy classes, in-service training, or other training specially created to accomplish the agency's recommended actions to correct or modify behavior. Remedial training may be reasonably offered until the employee can demonstrate proficiency in the corrected behavior.

All training shall be documented.

5. Supervisors are expected to counsel employees regularly without oral reprimands. Most counseling is informal, positive, supportive, and perhaps undocumented.

a. Within their capabilities, supervisors are responsible to counsel employees concerning job-related matters. Many factors can affect the job and employee performance; job-related counseling may involve family and other individuals.

b. A variety of counseling resources may be available within the community including psychological, family, marital and financial counseling. Employees in need of counseling, or desiring information about available resources, are encouraged to talk with the CLEO.

F. Written Reprimand: A written reprimand, issued by the supervisor, outlines the poor behavior, cautions an employee about the poor behavior, sets forth the corrected or modified behavior mandated by the agency and specifies the penalty in case of recurrent poor behavior.

1. A written reprimand becomes a permanent part of the employee's personnel record.

2. An employee may appeal a written reprimand in writing using the proper procedure consistent with in the applicable collective bargaining contract or personnel policy.

G. Demotion or Suspension Without Pay: If the situation warrants, the CLEO may demote an employee or suspend without pay, measures normally considered coequal.

1. Suspensions without pay will normally apply to a period of up to 15 days, as determined by the CLEO.
2. Employees who face a suspension a 2nd time within one year after the first suspension may be dismissed.
3. Suspensions resulting from criminal investigations may be prolonged pending court action. If an employee is acquitted of criminal charges, the employee may still be disciplined.
4. Any employee suspended for a period of five days or longer may be required to return all agency-owned property to the CLEO or designee.
5. During a suspension, the employee shall not undertake any official duties.
6. Demotion may be to the next lowest rank.
7. An employee may appeal a suspension or demotion pursuant to the guidelines set out in the collective bargaining contract or personnel policy in effect at the time.

H. Dismissal: Dismissals are made in cases of extreme misconduct. A complete record of the circumstances of the misconduct shall be made by all persons having knowledge of the misconduct.

1. Employees may appeal a dismissal pursuant to the guidelines set out in the collective bargaining contract or personnel policy in effect at the time.
2. Whenever dismissal or suspension is contemplated, the agency shall provide notice to the employee pursuant to the guidelines set out in the collective bargaining contract or personnel policy.

I. Reporting Arrests or Citations: Any employee arrested for, charged with, or convicted of any crime, or required to appear as a defendant in any criminal or civil proceedings must inform the CLEO in writing, as soon as practicable. Employees must report citations or arrests for reckless driving, OUI, second or subsequent violations for speeding

or any other traffic offenses. Failure to notify the agency of the foregoing may be cause for discipline.

## V. PROCEDURES - Infractions and Punishments

A. Except for gross breaches of discipline, supervisors should attempt to begin employee discipline with the least punitive measures. If these do not work, then increasingly more severe measures may be required. While this process may take some time, it is important that each employee be dealt with fairly and impartially, and in a manner which clearly indicates that positive, constructive measures to change behavior or performance preceded the imposition of more negative sanctions.

B. Unacceptable conduct is divided into three categories according to severity of misbehavior.

1. Category I: Examples included, but not limited to:
  - a. Extended absences, tardiness.
  - b. Abuse of duty time (too much time away from established duties; too much time for personal business).
  - c. Abusive or obscene language.
  - d. Rudeness to other officers or the public.

Category I offenses are of minor severity, yet require correction in the interest of maintaining a productive and well-managed agency.

Category I offenses normally result in discipline for the first offense, such as counseling, an oral reprimand, or formal counseling.

Three Category I offenses in one year may result in a written reprimand or an unpaid suspension of up to five days.

A Fourth Category I offense in one year may provide grounds for longer suspension or dismissal.

2. Category II: Examples included, but not limited to:
  - a. Failure to follow supervisor's instructions, failure to perform assigned work, or otherwise comply with policy.
  - b. Violating safety rules (No threat to life).
  - c. Unauthorized time away from work assignments without permission.

- d. Failure to report to work without proper notice to a supervisor.
- e. Unauthorized use or misuse of agency property.
- f. Refusal to work overtime.
- g. Inadequate or unsatisfactory job performance.
- h. Disruptive behavior.
- i. Sleeping on duty.

Category II offenses include more severe acts of misbehavior.

in Category II offenses could result, on the first instance, issuance of a written reprimand. Subsequent infractions to within two years may result in an unpaid suspension of up to 10 days or demotion or dismissal.

3. Category III: Examples:

- a. Absence in excess of three days without notice to a superior.
- b. Use of alcohol or unlawful possession or use of a controlled substance while on duty.
- c. Reporting to work under the influence or when ability is impaired by alcohol or the unlawful use of controlled substances.
- d. Insubordination or serious breach of discipline.
- e. Falsification of any reports such as, but not limited to, vouchers, official reports, time records, leave records, or knowingly making any false official statement.
- f. Willful or negligent damage or destruction of agency property.
- g. Theft or unauthorized removal of agency records or employee property.
- h. Gambling on duty.
- i. Acts of physical violence or fighting (except official law enforcement actions).
- j. Violating safety rules where there is a threat to life.
- k. Participating in any kind of work slowdown or other concerted interference with agency operations.
- l. Unauthorized possession or use of firearms, dangerous weapons, or explosives.

m. Threatening or coercing employees or supervisors.

n. Criminal convictions for acts of conduct occurring on or off the job which are plainly related to job performance or are of such that to continue the employee in the assigned position could constitute the negligence in regard to the agency's duties to public.

o. Failure to take a medical or fitness for duty examination as required. The CLEO may require a medical or fitness for duty examination of an employee by a designated clinician when, in the CLEO's estimation, it is in the best interest of the employee or the agency.

p. Using public office for private gain.

q. Engaging in criminal conduct on or off the job.

r. Engaging in dishonest or immoral conduct that undermines the effectiveness of the agency's activities or employee performance, whether on or off the job.

s. Making false arrests prohibited by state or federal law.

t. Disclosure of confidential information to any unauthorized person.

u. Taking any action which will impair the efficiency or reputation of the agency or its employees.

v. Acceptance of any bribe, gift, token, money, or other things of value intended as an inducement to perform or refrain from performing any official act, or any action of extortion or other means of obtaining money or anything of value through the employee's position.

w. Manifesting cowardice, feigning illness, or otherwise attempting to shirk official duties.

x. Involvement in any compromise between persons accused of crime and the person or persons who may have suffered from criminal acts with the purpose of allowing the accused to escape punishment.

y. Failure to answer questions specifically directed and related to official duties or job fitness. (Unless criminal prosecution is contemplated)



- z. The use of unnecessary force.
- aa. Deviation from established procedures in the disposition of summons or arrest cases.

Category III offenses include acts of such severity which may merit suspension or dismissal at a single occurrence.

Category III offenses may be punished by an unpaid suspension for 15 days or longer, demotion, or dismissal.

Category III offenses shall be permanently retained in the employee's personnel file, unless otherwise stipulated in a collective bargaining agreement or personnel policy.

## V. PROCEDURES - Discipline Checklist

- A. Discipline Checklist: The following checklist, from the Management Kit of the American Management Association, should be used by supervisors to help analyze employee misbehavior and offer correction.
  - 1. Have I secured the necessary facts?
    - a. Did the employee have an opportunity to tell fully their side of the story?
    - b. Did I check with the employee's immediate supervisor?
    - c. Did I investigate all other sources of information?
    - d. Did I hold my interview privately, in order to avoid embarrassing the interested employee or employees?
    - e. Did I exert every possible effort to verify the information?
    - f. Did I check the employee's personnel folder to look at their past record?
  - 2. Have I considered all the facts in deciding upon the disciplinary action?
    - a. Have I found out what has been done in similar cases in my agency?
    - b. Have I found out what has been done in similar cases in other agencies?
    - c. Have I shown any discrimination toward the employee?
    - d. Have I let personalities affect my decision?
    - e. Does the measure fit the violation?
    - f. Will the measure prevent a recurrence?

- g. Will the measure maintain morale?
  - h. Will the measure encourage the employee's initiative?
  - i. Will the measure create a desire on the part of the employee to do what is right?
  - j. Have I checked this decision with my immediate supervisor?
3. Have I administered the corrective disciplinary action in the proper manner?
- a. Did I consider whether it should be done individually or collectively?
  - b. Am I prepared to explain to the employee why the disciplinary action is necessary?
    - (1) The effect of the violation on the agency, fellow employees, and themselves.
    - (2) To help the employee improve their efficiency and also that of the agency.
  - c. Am I prepared to tell the employee how they can prevent a similar offense in the future?
  - d. Am I prepared to deal with any resentment?
  - e. Have I filled out a personnel folder memo to be signed by the employee?
4. Have I made the necessary follow-up?
- a. Has the disciplinary action had the desired effect on the employee?
  - b. Have I done everything possible to overcome any resentment?
  - c. Is the employee convinced that the disciplinary action was for their best interest?
  - d. Have I endeavored to compliment the employee on their good work?
  - e. Has the action had the desired effects on other employees in the agency?

This Maine Chiefs of Police Association model policy is provided to assist your agency in the development of your own policies. All policies mandated by statute contained herein meet the standards as prescribed by the Board of Trustees of the Maine Criminal Justice Academy. The Chief Law Enforcement Officer is highly encouraged to use and/or modify this model policy in whatever way it would best accomplish the individual mission of the agency.

**DISCLAIMER**

This model policy should not be construed as a creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this policy will only form the basis for administrative sanctions by the individual law enforcement agency and/or the Board of Trustees of the Maine Criminal Justice Academy. This policy does not hold the Maine Chiefs of Police Association, its employees or its members liable for any third party claims and is not intended for use in any civil actions.