

## Disciplinary Action Policy

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### § 1. Policy

State employees are expected to meet performance standards and conduct themselves appropriately. This policy is intended to provide tools for addressing employee conduct and performance issues in a reasonable, consistent, and effective manner.

The procedures in this policy provide for progressive discipline to address issues involving unsatisfactory job performance for employees to be given notice of deficiencies and an opportunity to improve them. However, this policy also recognizes that some employee conduct occurring either on-duty or off-duty is so egregious and intolerable that continued employment is not a possibility and progressive discipline is not appropriate. Behavior of this type is considered either unacceptable personal conduct, which can be either on-duty or off-duty, or in the case of on-duty behavior, grossly inefficient job performance.

The imposition of any disciplinary action shall comply with the procedural requirements of this policy.

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### § 2. Covered Employees

This policy applies to employees who have attained career status as defined by North Carolina General Statute 126-1.1.<sup>1</sup>

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### § 3. Employee Assistance Program (EAP)

Prior to or in conjunction with disciplinary action, a supervisor may elect to refer an employee to the Employee Assistance Program (EAP) as appropriate. Referral to EAP is not

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<sup>1</sup> This does not preclude an agency from issuing a disciplinary action to an employee who is not a career status employee, as defined in N.C.G.S. § 126-1.1, however the issuance of a disciplinary action to an employee without career status does not create any requirement for the agency to utilize progressive discipline nor does it create grievance rights for employees who do not otherwise have these rights.

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considered a substitute for any disciplinary action. For more information on the appropriate referral type, please see the *Employee Assistance Program Policy*.

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### § 4. Just Cause for Disciplinary Action

#### § 4.1. Introduction

There are two bases for the discipline or dismissal of employees under the statutory standard for "just cause" as set out in N.C.G.S. § 126-35. These two bases are:

1. Discipline or dismissal imposed on the basis of unsatisfactory job performance, including grossly inefficient job performance.
2. Discipline or dismissal imposed on the basis of unacceptable personal conduct<sup>2</sup>.

The categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case. No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.<sup>3</sup>

The courts have interpreted Just Cause to mean satisfying the requirements of the administrative code (as discussed in this policy) and in addition meeting an equitable test discussed in case law. Human Resources staff should consult with agency legal counsel about how case law has interpreted just cause with respect to past fact patterns.

#### § 4.2. Unsatisfactory Job Performance

Unsatisfactory job performance means work-related performance that fails to satisfactorily meet job requirements as set out in the relevant job description, work plan, or as directed by the management of the work unit or agency.

#### § 4.2(a) Addressing performance issues before disciplinary action

The intent of disciplinary action for unsatisfactory job performance is to promote improved employee performance. When coaching and a documented counseling session fail to correct employee performance, the manager/supervisor may address the matter by issuing a formal disciplinary action, the first level of which is a written warning. For more

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<sup>2</sup> 25 NCAC 01J .0604(b)

<sup>3</sup> 25 NCAC 01J .0604(c)

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information on how to address performance issues prior to proceeding to disciplinary action, please refer to the *Performance Management Policy*.

### § 4.2(b) **What is Just Cause for Unsatisfactory Job Performance?**

Any work-related performance issue may establish just cause to discipline an employee for unsatisfactory job performance. Just cause for a warning or other disciplinary action for unsatisfactory job performance occurs when an employee fails to satisfactorily meet job requirements.

Disciplinary actions administered for unsatisfactory job performance are intended to prompt a permanent improvement in job performance. Should the employee's performance fail to improve in the time prescribed in a disciplinary action, or if the required improvement later deteriorates, or other inadequacies occur, the manager or supervisor may deal with this occurrence of uncorrected or new unsatisfactory job performance with additional progressive disciplinary action(s).<sup>4</sup>

The determination that an employee has engaged in unsatisfactory job performance is generally made by the supervisor in consultation with management. The supervisor's and/or managements' determination should be reasonable, consistent, factually supported and made in conjunction with the Human Resources Office. In determining whether an employee's job performance is unsatisfactory job performance, a manager/supervisor may consider any one or a combination of the factors set forth below. These include but are not limited to:

1. Failure to produce work of acceptable quality, accuracy, quantity, promptness, work habits, or by established deadlines;
2. Deficiencies in performance as required in the work plan or as noted in the performance evaluation;
3. Inability to follow instructions or procedures, appropriateness of work performed, or demonstrated poor judgement, analysis or decision-making;
4. Insufficient or inappropriate customer service, service delivery, or teamwork;
5. Misuse/abuse of fiscal resources, including a wasteful use of State resources;
6. Absenteeism, tardiness, or other abuses of work time; and

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<sup>4</sup> 25 NCAC 01J .0605(a), (b)

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7. Any other factors that, in the opinion of the supervisor and/or manager, are appropriate to determine whether an employee's performance constitutes unsatisfactory job performance.

### § 4.3. What is Just Cause for Grossly Inefficient Job Performance?

Just cause to **issue** disciplinary action for grossly inefficient job performance exists when an employee fails to satisfactorily perform job requirements as specified in their job description, work plan, or as directed by the management of the work unit or agency, and that act or failure to act causes or results in:

1. death or serious bodily injury or creates conditions that increase the chance for death or serious bodily injury to an employee(s) or to members of the public or to a person(s) for whom the employee has responsibility; or
2. the loss of or damage to State property or funds that results in a serious adverse impact on the State or work unit.

### § 4.4. What is Just Cause for Unacceptable Personal Conduct?

Just cause to issue a warning or take other disciplinary action for unacceptable personal conduct may be created by intentional or unintentional acts. The conduct may be job-related (on duty) or off duty so long as there is a sufficient connection between the off duty conduct and the employee's job.

Unacceptable personal conduct means:

1. Conduct for which no reasonable person should expect to receive prior warning;
2. Job-related conduct which constitutes a violation of State or federal law;
3. Conviction of a felony or an offense involving moral turpitude that is detrimental to or negatively impacts the employee's service to the State;
4. The willful violation of known or written work rules;
5. Conduct unbecoming a State employee that is detrimental to State service;
6. The abuse of client(s), patient(s), student(s), or person(s) over whom the employee has responsibility or to whom the employee owes a responsibility, or the abuse of an animal owned by or in custody of the State;

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7. Material falsification of a State application or other employment documentation;<sup>5</sup>
8. Insubordination, which means the willful failure or refusal to carry out a reasonable order from an authorized supervisor; and
9. Absence from work after all authorized leave credits and benefits have been exhausted. (See alternatively the *Separation Policy* for information on Separation due to Unavailability, which may apply to situations in which leave credits and benefits have been exhausted.)

Examples of unacceptable personal conduct may include, but are not limited to:

- Use of professional State credentials for personal gain (which may be an example of unacceptable personal conduct type (1) and/or (5) above);
- Serious disruption in the workplace (which may be an example of unacceptable personal conduct type (1), (4) and/or (5) above);
- Subjecting an employee, client, contractor, or customer to intentionally discriminatory treatment or harassment. (which may be an example of unacceptable personal conduct types (1), (2), (4) and/or (5) above); and
- Falsification of work-related documentation, such as a timesheet (which may be an example of unacceptable personal conduct type (1), (4), and/or (5) above).

Under Wetherington v. NC Department of Public Safety, 270 N.C. App. 161 (N.C. Ct. App. Feb. 18, 2020) a manager or supervisor should consider the following factors when deciding about the appropriateness of a disciplinary action for unacceptable personal conduct:

1. The severity of the violations.
  2. The subject matter involved.
  3. The harm resulting from the violations.
  4. Prior work history, including disciplinary and performance history; and
  5. The discipline imposed in other cases involving similar violations.
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<sup>5</sup> Staff interpreting this provision should consider N.C.G.S. § 126-30 (see also 25 NCAC .01J 0616) which provides any employee who knowingly and willfully:

- discloses false or misleading information, or
- conceals dishonorable military service; or
- conceals prior employment history or other requested information, either of which are significantly related to job responsibilities

on an application for State employment may be subjected to disciplinary action up to and including immediate dismissal from employment, but the severity of the disciplinary action shall be at the discretion of the agency head. Dismissal shall be mandatory where the applicant discloses false or misleading information in order to meet position qualifications.

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### § 5. Types of Disciplinary Action

When just cause exists, any career State employee, regardless of occupation, position or profession may be warned, demoted, suspended or dismissed by the appointment authority. The degree and type of action taken shall be based upon the sound and considered judgement of the employing agency in accordance with this policy and after consultation with the Human Resources Office.<sup>6</sup> Agency legal counsel should be consulted as necessary.

#### § 5.1. Written Warning

The supervisor shall monitor and promote the satisfactory performance of work assignments and ensure that employees do not engage in unacceptable personal conduct.

#### § 5.1(a) Unsatisfactory Job Performance

When the supervisor determines that disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of disciplinary action that an employee shall receive. However, prior to the written warning, the manager/supervisor should provide feedback, as described in the *Performance Management Policy*, to the employee regarding the need for the employee to improve their performance. If performance does not improve following the feedback provided by the manager/supervisor (coaching), a Documented Counseling Session (DCS) shall be conducted prior to beginning disciplinary actions (including a PIP if it is issued as a disciplinary action, as described below) for most performance issues. Any disciplinary action issued for unsatisfactory job performance without a prior DCS must first be approved by the agency HR Director or designee. If performance does not improve after the first written warning, a supervisor may give additional written warnings or a higher level of disciplinary action.

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<sup>6</sup> While investigating or deciding upon either a potential disciplinary action or an EEO-related complaint, agency staff may need to access material that otherwise would be inappropriate in the workplace, or agency staff may need to obtain testimony about allegedly inappropriate remarks or conduct. It is not a violation of policy — and it is not unsatisfactory job performance, grossly inefficient job performance, or unacceptable personal conduct — to access inappropriate material, or to ask for or receive testimony that otherwise would be inappropriate in the workplace, as part of a good faith effort to investigate or decide upon a potential disciplinary action or an EEO-related complaint. To be a good faith effort, the investigation must have been authorized by the agency head or agency Human Resources Director.

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### § 5.1(b) Performance Improvement Plan

A Performance Improvement Plan (PIP) is a disciplinary action only if it is in writing and states it is a disciplinary action.<sup>7</sup> In order to be considered a disciplinary action, the PIP must also include all other information listed in 25 NCAC 01O .0210. Agencies may issue PIPs or other performance documentation that is not a written warning.

### § 5.1(c) Unacceptable Personal Conduct or Grossly Inefficient Job Performance

The supervisor may elect to issue a written warning for grossly inefficient job performance or unacceptable personal conduct. However, this policy does not require a written warning before management administers other disciplinary action in these types of cases.

### § 5.1(d) Written warnings shall:

1. Inform the employee in writing that it is a written warning, and not some other non-disciplinary process such as counseling;
2. Inform the employee of the specific issues that are the basis for the warning;
3. Tell the employee what specific improvements, if applicable, shall be made to address these specific issues;
4. Tell the employee the time frame allowed for making the required improvements or corrections. Absent a specified time frame, 60 days is the time frame allowed for correcting unsatisfactory job performance<sup>8</sup> and immediate correction is required for grossly inefficient job performance or unacceptable personal conduct; and
5. Tell the employee the consequences of failing to make the required improvements or corrections.

### § 5.2. Disciplinary Suspension without Pay

An employee may be suspended without pay for disciplinary purposes for unsatisfactory job performance after the receipt of at least one prior disciplinary action, or for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance without any prior disciplinary action. Prior to placing an employee on disciplinary suspension without pay, a management representative shall conduct a pre-

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<sup>7</sup> 25 NCAC 01O .0210

<sup>8</sup> Unsatisfactory job performance involving absenteeism, tardiness, or other abuses of work time may require immediate improvement.



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disciplinary conference with the employee in accordance with the procedural requirements of this policy.

§ 5.2(a)

### Length of Time for Disciplinary Suspension

A disciplinary suspension without pay for an employee who is subject to the overtime compensation provisions of the Fair Labor Standards Act (FLSA) must be for at least one full work day, but not more than two work weeks (ten work days). The length of a disciplinary suspension without pay for an employee who is exempt from the overtime compensation provisions of the FLSA must be for at least one full work week (five work days), but not more than two full work weeks (ten work days). The length of a disciplinary suspension for an employee on a non-forty-hour week/schedule shall be no more than 80 hours.

An agency or university has the option of imposing the same periods of disciplinary suspension without pay upon all employees as long as the time period is the same as for employees exempt from the overtime provisions of the FLSA as set forth in this Section.

Type of Employee	Minimum Period for Disciplinary Suspension	Maximum Period for Disciplinary Suspension	Minimum Time Block
Subject to FLSA	1 work day	2 work weeks (10 work days)	At least 1 work day
Exempt from FLSA	1 work week (five work days)	2 work weeks (10 work days)	1 work week (five work days) but no portion of a full work week.

§ 5.3.

### Demotion

Any employee may be demoted as a disciplinary measure. Demotion may be made based on unsatisfactory job performance, grossly inefficient job performance or unacceptable personal conduct. An employee may be demoted for disciplinary purposes for unsatisfactory job performance after the receipt of at least one prior disciplinary action, or for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance without any prior disciplinary action.

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Prior to demoting an employee, a management representative shall conduct a pre-disciplinary conference with the employee in accordance with the procedural requirements of this policy.

Disciplinary demotions must be conducted in accordance with the appropriate salary administration policies. See *Demotion and Reassignment Policy*

### § 5.4. **Dismissal**

Dismissal may be a result of unsatisfactory job performance, grossly inefficient job performance or unacceptable personal conduct. An employee may be dismissed for disciplinary purposes for unsatisfactory job performance after the receipt of at least two prior disciplinary actions, or for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance without any prior disciplinary action.

Prior to dismissing an employee, a management representative shall conduct a pre-disciplinary conference with the employee in accordance with the procedural requirements of this policy.

### § 5.5. **Required Consultation**

The supervisor recommending dismissal must discuss the recommendation with appropriate agency management, including Human Resources. Agency legal counsel should be consulted as necessary. Upon approval by agency management, a pre-disciplinary conference shall be held with the employee.

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## § 6. **Procedures for Issuing Disciplinary Action Other Than a Written Warning**

Prior to the decision to issue a disciplinary action other than a written warning, the following procedures must be followed in accordance with this policy. Before a manager/supervisor can issue a disciplinary action of suspension, demotion, or dismissal, a Pre-Disciplinary Conference (PDC) must be held. A PDC is not required if management intends to issue a written warning.

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### § 6.1. Prerequisites for Disciplinary Action

Unsatisfactory Job Performance	Unacceptable Personal Conduct or Grossly Inefficient Job Performance
<ol style="list-style-type: none"> <li>1. The employee must have a current unresolved incident of unsatisfactory job performance.</li> <li>2. Demotion or suspension: the employee must have at least one active disciplinary action (these do not need to be related to the current incident).</li> <li>3. Dismissal: the employee must have at least two active disciplinary actions (these do not need to be related to the current incident). *</li> <li>4. A Pre-Disciplinary Conference (PDC) must have been held with the employee.</li> </ol>	<ol style="list-style-type: none"> <li>1. The employee must have a current unresolved incident of unacceptable personal conduct or grossly inefficient job performance.</li> <li>2. A Pre-Disciplinary Conference (PDC) must have been held with the employee.</li> </ol>

Note: Disciplinary actions related to personal conduct may be included in the progressive system for performance-related dismissal provided the employee receives at least the number of disciplinary actions, regardless of the basis of the disciplinary actions, required for dismissal based on unsatisfactory job performance.

### § 6.2. Active Disciplinary Actions

Disciplinary actions issued for unsatisfactory job performance, grossly inefficient job performance, or unacceptable personal conduct are all subject to becoming inactive for the purposes of counting towards the number of prior disciplinary actions needed for further discipline. Disciplinary actions are deemed inactive if:

1. the manager or supervisor notes in the employee's file that the reason for the disciplinary action had been resolved or corrected;
2. the purpose of a performance based disciplinary action has been achieved, as evidenced by an overall performance rating at an acceptable level or better and

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satisfactory performance in the goal(s) and/or organizational value(s) cited in the disciplinary action;<sup>9</sup> or

3. 18 months have passed since the disciplinary action, and the employee does not have another active disciplinary action which occurred within the last 18 months.

If an employee receives a new disciplinary action while he/she has an active disciplinary action in their personnel file, the oldest active disciplinary action(s) in the file will take on the life span of the most recent disciplinary action, not to exceed an additional 18 months (that is, the action cannot remain active for more than 36 months). The actions do not have to be related in content.

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### § 7. Procedures for Pre- Disciplinary Conference (PDC)

#### § 7.1. Prior to the Conference

- Before demotion, suspension or dismissal of an employee:
- A supervisor or management designee must schedule and conduct a Pre-Disciplinary Conference (PDC) after discussing their recommendation with the appropriate agency management and receiving management's authorization to hold the PDC.
  - The supervisor or management designee must give the employee advance written notice (at least 24 hours) of the conference. While a minimum of twenty-four (24) hour's notice to the employee is required, advance notice should be as much time as practical under the circumstances.
  - The notice must inform the employee of the type of disciplinary action being considered (demotion, suspension or dismissal), that a lesser disciplinary action is possible, the conference time and location, and the specific acts or omissions that are the reasons for the recommendation.
  - If a demotion is being considered, the supervisor must inform the employee if the demotion may change the employee's compensation rate or classification title.

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<sup>9</sup> Disciplinary actions based only on unacceptable personal conduct or grossly inefficient job performance cannot become inactive due solely to an acceptable performance management rating.

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- The person conducting the pre-disciplinary conference must have the authority to recommend or decide what, if any, disciplinary action should be issued to the employee.

The following people may be included in the conference:

- The supervisor or other person chosen by agency management to conduct the conference.
- A second management representative may be present at management's discretion.
- The employee:
  - If the person conducting the conference chooses, security may be present. In lieu of security being present, the agency may require that the conference be held virtually.
  - In addition to the participants in the conference noted above, agency procedures may provide for one additional neutral party if agreed upon by the employee and management.

### § 7.1(a) **Virtual Pre-Disciplinary Conference**

The pre-disciplinary conference may be held virtually, upon agreement of the agency representative and the employee (except when the agency has security concerns as noted above). Both parties must have access to computer equipment with audio and video capabilities, as well as the ability to send and receive e-mail during the virtual conference.

### § 7.1(b) **Legal Representation**

No attorneys representing either side may attend the conference nor shall any witnesses attend the conference for either party. This provision does not prevent either party from consulting with legal representation.

### § 7.1(c) **Employee Absence**

The employee's failure to attend the PDC after receipt of written notification shall not automatically stop the disciplinary process. In such situations, management must consult with Human Resources to determine whether rescheduling the PDC is warranted.

### § 7.1(d) **Recordings**

There shall be no stenographic, audio, or video recording of the pre-disciplinary conference by any participant. However, either party may take notes of the conversation during the PDC.

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### § 7.2. During the Conference

During the conference, the person conducting the conference must:

- Give the employee written notice (hard copy or electronic) that the PDC cannot be recorded by either party or attended by attorney representatives;
- Give to the employee written notice (hard copy or electronic) of the recommendation for demotion, suspension or dismissal, including the specific reasons for the proposed disciplinary action and a summary of the facts supporting the recommendation; and
- Give to the employee an opportunity to respond to the recommended disciplinary action, offer facts that are different from those offered by management and offer facts in support of the employee's position. Every effort shall be made by management to ensure an employee has every opportunity to set forth any available information in opposition to the recommendation. This policy does not give an employee the right to have witnesses present at the conference.

### § 7.3. Following the Conference

After the conference, management shall:

- Review all necessary information, consider the response of the employee, and decide on the recommended disciplinary action;
- Allow time to review all necessary information and not communicate the decision to the employee prior to the beginning of the next business day following the conclusion of the pre-disciplinary conference or after the end of the second business day following the completion of the pre-disciplinary conference; and
- If management decides to demote, suspend, or dismiss the employee, then the employee shall receive a written disciplinary action letter either in person or by certified mail (or equivalent) with return receipt requested.

The written disciplinary action letter must include:

1. The basis for the disciplinary action;
2. The effective date of the disciplinary action;
3. The specific acts or omissions that are the reason(s) for the disciplinary action;
4. The employee's right to appeal and a copy of the grievance policy;

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5. If the disciplinary action is a dismissal, the employee shall be informed that a copy of the written notice of the final decision is public record and open to inspection per N.C.G.S. § 126-23.

### § 7.3(a) **Effective Date**

The effective date of the dismissal for unsatisfactory job performance shall be determined by management. A career state employee who is dismissed for unsatisfactory job performance may, at management's discretion, be given up to two weeks' working notice of the dismissal. Instead of providing up to two weeks' working notice, an employee may be given up to two weeks' pay in lieu of the working notice. Such working notice or pay in lieu of notice is applicable only to dismissal for unsatisfactory job performance. The effective date of the dismissal for unsatisfactory job performance shall be no sooner than the date of the written notice of dismissal and no later than 14 calendar days after the written notice.

### § 7.4. **Failure to Follow Procedure**

Failure to give written reasons for the demotion, suspension, or dismissal, written notice of appeal rights, or to conduct a pre-disciplinary conference is a procedural violation. If an agency fails to follow procedure, the agency shall be subject to the rules of the Commission dealing with procedural violations as described in 25 NCAC 01J .1316.

The time for filing a grievance because of the demotion, suspension, or dismissal does not start until the employee receives written notice of any applicable appeal rights.

### § 7.4(a) **Public Information**

- The date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the agency are public records open to inspection per N.C.G.S. § 126-23.
- If the disciplinary action was dismissal, a copy of the written notice of the final decision including the specific acts or omissions are public records open to inspection per N.C.G.S. § 126-23.
- If an employee is dismissed and appeals their dismissal through the grievance procedure, the final agency decision shall set forth the specific acts or omissions that are the basis of the employee's dismissal. In addition, the employee shall be informed in the final agency decision letter that the final agency decision

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letter is a public record and that the agency is required by law to release it pursuant to any public record requests.

### § 7.4(b) **Additional Pre-Disciplinary Conference**

- An additional pre-disciplinary conference is required if the employer receives new information about the allegations of wrongdoing that requires additional investigation and these specific acts or omissions were not included in the initial pre-disciplinary conference notification letter.
- When a pre-disciplinary conference is conducted for a recommended type of disciplinary action, but after the conference, the agency decides to take disciplinary action of a higher degree of seriousness than the one for which the conference was held, it is required that the agency conduct an additional pre-disciplinary conference.
- When a pre-disciplinary conference is conducted for a recommended type of disciplinary action, but after the conference, the agency decides to take disciplinary action of a lesser degree of seriousness than the one for which the conference was held, it is not required that the agency conduct an additional pre-disciplinary conference as long as the employee was notified and had the opportunity to be heard with respect to the behavior which is the basis for the less serious disciplinary action.

However, it is permissible for the agency to conduct such an additional pre-disciplinary conference if the agency determines that it would be appropriate under the circumstances, or if the employee requests the additional opportunity to be heard.

For example, if a pre-disciplinary conference is conducted with a recommendation or intent of dismissal and the agency decides to demote rather than dismiss, it would not be necessary to conduct another pre-disciplinary conference unless the agency or employee believes that there are relevant issues that could not have been addressed or were not addressed in the previous pre-disciplinary conference or, if the employee was not notified of the possibility of a lesser degree of disciplinary action.

- If any agency determines an additional PDC is necessary, the agency will follow the procedures described in § 7.1, 7.2 and 7.3 of this policy.



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### § 8. Transfer of Disciplinary Action

When an employee transfers to another department or unit, any active written warnings or disciplinary actions will transfer with the personnel file of the employee and will remain in full force at the new work unit until removed by the new employer or made inactive by operation of this policy.

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### § 9. Investigatory Leave with Pay

Investigatory leave with pay shall be used to temporarily remove an employee from work status. Placement on investigatory leave with pay does not constitute a disciplinary action. However, the information discovered during the investigation may be the basis of disciplinary action.

#### § 9.1. Procedures for Placing an Employee on Investigatory Leave with Pay<sup>10</sup>

- Management must notify an employee in writing (hard copy or electronic) of the reasons for placement on investigatory leave with pay status no later than the second scheduled workday after the beginning of the placement. A placement on investigatory leave with pay may last no more than thirty (30) calendar days without written approval of an extension by the State Human Resources Director (of no more than an additional 30 calendar days).
- When an extension beyond the thirty-day period is required, the agency must advise the employee in writing of the extension, the length of the extension, and the specific reasons for the extension. If no action has been taken by an agency by the end of the thirty-day period and no further extension has been granted, the agency must either take appropriate disciplinary action based on the findings from the investigation or return the employee to active work status.
- Under no circumstance is it permissible to use placement on investigatory leave with pay for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.

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<sup>10</sup> 25 NCAC 01J .0615(a), (b)

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### § 9.2. **Acceptable Reasons for Initial Placement of an Employee on Investigatory Leave with Pay<sup>11</sup>**

An employee may be placed on investigatory leave with pay for the following reasons:

- To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
- To provide time within which to schedule and conduct a pre-disciplinary conference;
- To avoid disruption of the work place and/or to protect the safety of persons or property;
- To facilitate a management directed referral or fitness for duty evaluation to ensure the employee's safety and the safety of others and to obtain medical information regarding the employee's fitness to perform his or her essential job functions.

### § 9.2(a) **Acceptable Reasons for Extending Investigatory Leave with Pay<sup>12</sup>**

- The matter is being investigated by law enforcement personnel, the investigation is not complete, and the agency is unable to complete its own independent investigation without facts contained in the law enforcement investigation, and the agency is unable to conduct its own investigation;
- A management individual who is necessary for resolution of the matter is unavailable; or
- A person or persons whose information is necessary for resolution of the matter is/are unavailable.

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## § 10. **Right of Appeal**

Every disciplinary action shall include notification to the employee in writing of any applicable appeal rights.

An agency shall furnish to the employee, as an attachment to the written documentation of any grievable disciplinary action, a copy of the State Grievance Policy.

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<sup>11</sup> 25 NCAC 016 .0615(c)

<sup>12</sup> 25 NCAC 01J .0316(a)

## Disciplinary Action Policy

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### § 10.1. Waiver of Appeal Rights

If a disciplinary action is grievable, and the employee fails to timely grieve the disciplinary action, the employee is deemed to have waived the right to contest the validity of the disciplinary action.

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### § 11. Policy Responsibilities

#### § 11.1. Agency

Through the supervisor, the agency shall:

1. Assure the satisfactory performance of work assigned to an employee of the work unit. The supervisor's determination of what is satisfactory is presumed to be reasonable and factually supported;
2. Maintain and communicate an expectation of acceptable personal behavior by its employees;
3. Initiate a disciplinary action when in the judgement of the supervisor the employee has engaged in behavior prohibited by this policy;
4. Maintain records of disciplinary actions. All finalized actions must be placed in the system of record designated by OSHR. (For example, in the HR/Payroll system as of 2024).
5. Provide to the Office of State Human Resources information and statistics on the discipline and dismissal process in a form prescribed by the Office of State Human Resources; and
6. Have personnel trained in the administration of this policy.

#### § 11.2. Office of State Human Resources

The Office of State Human Resources shall:

1. Provide for training in the administration of this policy;
2. Provide technical assistance and advice to agencies and universities;
3. Review agency compliance;
4. Establish reasonable benchmarks for program performance; and
5. Report and make recommendations to the State Human Resources Commission on the discipline process.

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### § 11.3. State Human Resources Commission

The State Human Resources Commission shall:

1. Identify corrective measures on any agency that:
  - a. Fails to comply with this policy;
  - b. Fails to report in a format prescribed by the Office of State Human Resources; or
  - c. Fails to administer the discipline and dismissal process in a manner that is fair to all parties, equitable, free of unlawful discrimination, and maintains discipline.

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### § 12. Credentials

By statute, regulation, and administrative rule, some duties assigned to positions in service may be performed only by persons who are duly licensed, registered, or certified as required by the relevant law or policy. All such requirements and restrictions are specified in the statement of essential qualifications or recruitment standards for job classifications established by the State Human Resources Commission.

Failure to obtain or maintain legally required credentials can be dealt with as disciplinary action, or through the *Separation Policy*.

#### § 12.1. Falsification of Credentials

Falsification of employment credentials or other documentation about securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with a State agency, disciplinary action shall be administered as follows:

1. If an employee was determined to be qualified and was selected for a position based on falsified work experience, education, registration, licensure, or certification information that was a requirement of the position, the employee may be dismissed without warning following a pre-disciplinary conference. An employee dismissed on this basis shall be given a notice of the dismissal in writing that includes specific reason for the dismissal and notice of the employee's right to appeal.
2. In all other cases of post-hiring discovery of false or misleading information, disciplinary action will be taken, but the severity of the disciplinary action shall be at the discretion of the agency head.

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3. When credential or work history falsification is discovered before employment with a State agency, the applicant shall be disqualified from consideration for the position in question.
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### § 13. Definitions

Agency: Organizational units to include agencies, universities, boards, commissions, and other entities subject to the provisions of this policy.

Current Unresolved Incident: An act of unacceptable personal conduct, unsatisfactory job performance or grossly inefficient job performance for which no disciplinary action has previously been taken by the agency.

Demotions: A personnel action taken, without employee agreement, to discipline the employee, which results in:

- lowering the salary of an employee within their current pay grade, or
- places the employee in a position at a lower pay grade with or without lowering the employee's salary.

Dismissal: The involuntary termination of an employee from employment for disciplinary reasons or for failure to obtain or maintain necessary job-related credentials.

Grossly Inefficient Job Performance: Defined in §4.3 of this Policy.

Inactive Disciplinary Action: A disciplinary action becomes inactive, i.e., cannot be counted towards the number of prior disciplinary actions that must be received before further disciplinary action can be taken for unsatisfactory job performance when:

- the manager or supervisor notes in the employee's personnel file that the reasons for the disciplinary action have been resolved or corrected; or
- the purpose of a performance based disciplinary action has been achieved, as evidenced by an overall performance rating at an acceptable level or better and satisfactory performance in the goal(s) and/or organizational value(s) cited in the disciplinary action, or
- eighteen (18) months have passed since issuance of the warning or disciplinary action and the employee has not received another active disciplinary action during the 18-month timeframe.

Note: The completion of the personnel transactions necessary for a demotion or suspension do not make the disciplinary action inactive. These actions remain active for 18 months.

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Insubordination: The willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning.

Suspension without Pay: The unpaid removal of an employee from work for disciplinary reasons.

Unacceptable Personal Conduct: Defined in § 4.4 of this Policy.

Unsatisfactory Job Performance: Defined in § 4.2 of this Policy.

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### § 14. Sources of Authority

This policy is issued under any and all of the following sources of authority:

- [N.C.G.S. § 126-4\(6\)](#), which authorizes the State Human Resources Commission to establish policies governing the “appointment, promotion, transfer, demotion and suspension of employees.”
- [N.C.G.S. § 126-4\(7a\)](#), which authorizes the State Human Resources Commission to establish policies governing the “separation of employees.”
- [N.C.G.S. § 126-4\(10\)](#), which authorizes the State Human Resources Commission to establish policies governing “other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and modern system of personnel administration.”
- [N.C.G.S. § 126-30\(c\)](#), which requires the State Human Resources Commission to “issue rules and procedures” to implement N.C.G.S. § 126-30, the statute on fraudulent disclosure and willful nondisclosure on applications for State employment.
- [N.C.G.S. § 126-35\(a\)](#), which states, “The State Human Resources Commission may adopt, subject to the approval of the Governor, rules that define just cause.”

It is compliant with the following additional laws and regulations:

- [N.C.G.S. § 126-1.1](#), [126-23](#), and [126-30](#)
- [25 NCAC 01J .0600](#), [25 NCAC 01J .1316](#), and [25 NCAC 01O .0210](#)

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### § 15. History of This Policy

Date	Version
December 15, 1969	First version. policy concerning disciplinary action and dismissal designed to solve problems in a fair and equitable manner without prejudice or favoritism.
December 29, 1975	Revised hearing procedure to shorten delay of hearings of new evidence or exceptions to the findings and rulings of the hearing officer.
January 7, 1976	Revised to provide for an impartial departmental employee relations committee. Allows personnel officers to serve only in an advisory capacity on personnel policy during grievance hearings.
September 30, 1977	Revised to provide law enforcement division to correct conduct of law enforcement personnel when said division has specific narrowly defined uses for suspension and the period of suspension does not exceed 3 days.
December 1, 1984	Final Written Warning - As a part of counseling, management may request employee to take up to a day's leave with pay to consider whether or not employee wishes to continue employment. Suspension – a department may extend the period of investigatory suspension without pay beyond the 45-day limit. Permanent employees may file an appeal of disciplinary action.
February 1, 1985	Established procedures for administering the Disciplinary Action, Suspension and Dismissal Policy.
August 1, 1985	Revised pre-dismissal hearing policy due to decision of the US Supreme Court, which defined minimum procedural due process due employees upon being dismissed.
December 1, 1985	Changed pay in lieu of notice to apply to situations other than job performance.
January 1, 1988	Added section on credentials - applicant information and application.
June 1, 1988	Dismissal during probationary or trainee period revised to conform to legislation.

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May 1, 2004	Delete the Grandfather provision, which is outdated.
August 1, 1988	Pre-suspension and pre-demotion conferences added. Agencies do not need to inform OSP as disciplinary suspensions without pay since its purpose in monitoring the use has been served.
April 1, 1989	Changed process for filing grievances/
July 1, 1989	Clarification of warnings/reprimands based on personal conduct. Such warnings cannot be used to shorten the mandatory three warning process for job performance dismissal.
November 1, 1989	Employee may be given 2 weeks pay in lieu of notice without getting prior approval. Technical change that requires at least one disciplinary action to be taken in cases of falsification. Deleted pay in lieu of notice for falsification.
March 1, 1990	Allows management to have a witness or security personnel present at predismisal conference if deemed necessary.
March 1, 1991	Employee Appeals & Grievances – revised to require approval of SPC for any settlement or agreement which requires exception to policy.
September 1, 1991	Dismissal part of policy revised. 7-1-93 Change “permanent” to “career.”
August 2, 1993	“Just cause,” unacceptable job performance, unacceptable personal conduct defined.
October 1, 1995	Entire policy revised.
January 1, 2002	Page 18 changed to conform to current rule which states that "A second management representative may be present at management's discretion."  Page 19 changed to conform to current rule which states that the decision should not be communicated after the end of the second business day following the completion of the conference.
May 1, 2004	Delete the Grandfather Provision, which is outdated.
July 1, 2004	Disciplinary Action, Suspension and Dismissal Clarified Falsification of Credentials as follows: (1) Deleted last paragraph under “What is



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	just cause for grossly inefficient job performance?” (2) Revised paragraph on Obtaining and Maintaining Credentials. (3) Revised Paragraph 1 under Falsification of Credentials.
July 1, 2010	Deletes the out-dated provision for an extension under the definition of Inactive Disciplinary Action. “Extensions” of disciplinary actions were permitted initially to provide a smooth changeover from a system with no time limits on disciplinary actions to a system with an 18 month time limit. Since we are now well beyond 18 months past 1995, this provision is no longer needed and is occasionally confusing.
February 1, 2011	The 2010 General Assembly passed House Bill 961 which, among other things, made the dismissal letter public information. This rule explains how to mesh the statutory requirement that the dismissal letter be public with the reality that the final dismissal letter might not contain the same reasons as originally used. It also provides a process that contemplates that the employee might in fact be reinstated as a result of the internal appeals process and not even be dismissed as a final agency action.
October 1, 2017	Updated to support the performance management policy, clarify or expand existing information in the policy, and delete outdated portions of the policy. The specific disciplinary procedures have not changed.
August 7, 2023 (effective September 15, 2023)	All sections of the policy revised. Added cross references to other policies, removed gendered language, revised language that was inconsistent with the North Carolina Administrative Code to be consistent with the Code, including the definition of Unacceptable Personal Conduct, added footnotes with citations to the Administrative Code, removed definitions that were already written elsewhere in policy, and added reference to specific policy section.
October 17, 2024	<ul style="list-style-type: none"> <li>Added a footnote to Section 5, Types of Disciplinary action that states:</li> </ul>

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	<p>“While investigating or deciding upon either a potential disciplinary action or an EEO-related complaint, agency staff may need to access material that otherwise would be inappropriate in the workplace, or agency staff may need to obtain testimony about allegedly inappropriate remarks or conduct. It is not a violation of policy — and it is not unsatisfactory job performance, grossly inefficient job performance, or unacceptable personal conduct — to access inappropriate material, or to ask for or receive testimony that otherwise would be inappropriate in the workplace, as part of a good faith effort to investigate or decide upon a potential disciplinary action or an EEO-related complaint. To be a good faith effort, the investigation must have been authorized by the agency head or agency Human Resources Director.”</p> <ul style="list-style-type: none"><li>• Edited Section 11.1, Agency Responsibilities, to make clear finalized actions needed to be placed in the electronic system of record, the HR/Payroll System.</li></ul>
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