

# Supervisor's Guide to Discipline



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## ***What is the Purpose of Discipline?***

Guiding employee performance is often a very challenging task although it is the most important responsibility of a supervisor. As a supervisor, you are responsible for developing and maintaining good work habits and relationships and maintaining a high level of performance in your work unit.

Each State employee represents a large investment by the State. The State spends considerable time and money in the processes that lead to appointments and training on the job. To protect this investment the State, through you, makes every effort to help each employee become and remain an efficient, productive and satisfied worker. Many supervisors think of discipline only as a punishment or penalty. Discipline is better thought of in terms of instruction, teaching, and training. The word discipline comes from the word disciple - a person who follows the teachings and examples of a respected leader.



It is important to differentiate between discipline and disciplinary action. The latter is what we take when discipline has failed. Disciplinary actions are those actions taken by management in response to an employee's failure to meet the standards, objectives, or rules of the organization. The objective of discipline is to correct or eliminate inappropriate behavior or conduct.

Traditionally discipline has been viewed as essentially negative - associated with punishment. An alternative view holds that the emphasis should be positive, on its corrective aspect. Both approaches share the same objectives: to develop and maintain good work habits, behaviors, and relationships in your work unit for the accomplishment of the agency's mission.

The approach taken in this handbook is to develop discipline aimed at improving behavior and promoting self-discipline (employees choosing to abide by the rules and standards of good conduct) with only the occasional need to correct behavior.

The importance of establishing and following disciplinary policies and procedures that are fair, prompt, and legal cannot be emphasized too strongly. These are determined not only by common sense and your own departmental rules, but also by applicable labor contracts and the Nebraska Classified System Personnel Rules and Regulations. The applicable labor contracts, or Personnel Rules, give an employee a property interest in his/her job. Since the employee has a property interest in his/her job all forms of discipline must comply with due process requirements.

A technique often utilized in correcting behavior is termed "progressive discipline" when the action taken for misconduct increases in severity when there is a lack of improvement. Each step in progressive discipline is designed to stimulate a change in

the behavior that began the disciplinary process. After routine supervisory guidance has not succeeded in changing the appropriate behavior, the usual sequence is: counseling, written warning, disciplinary probation, suspension, and dismissal. The steps are so timed that the employee has the opportunity to correct the behavior prior to the next stage. The goal again is to apply the minimum level of discipline that will bring the employee's performance up to the expected level. Discipline must be based on the severity of the infraction, and other considerations. In serious cases, it may be possible to skip some, or all lower levels of discipline.

Corrective progressive discipline is geared to correcting inappropriate behavior and improving the performance of the employee by giving ample opportunity and assistance for change.

### **Two Approaches**

#### **Correction**

1. The corrective approach, if successful, will allow the employee to achieve the desired self-discipline to work productively with a minimum of supervision.
2. Most workers want to do a good job and the corrective approach guides them in the right direction in a positive way.
3. People respond better to corrective measures than to punitive measures.

#### **Punishment**

1. The punitive approach should be used if repeated measures meet with failure or if a flagrant act of misconduct occurs.
2. Remember the punishment should fit the offense and that the measure should be progressive in severity.
3. Unfair discipline based on threats of punishment often results in resentment and unrest.

In addition, it should be stressed that discipline for adults must revolve around personal choice. That is, the employee should be placed in a position to decide whether he or she wishes (or is able) to favorably respond to the requirements of a particular job -- as opposed to being forced to meet the job performance requirements.

## ***How Can You Prevent Disciplinary Problems From Occurring?***

Effective supervisors recognize that the average employee wants to do a good job. They help the employee by setting a good example, by matching the right person to the right job, by giving clear instructions, by observing and evaluating everyone's work periodically, and by praising a job well done. They reinforce each employee's self-control and self-respect, and create a well-disciplined and self-disciplined atmosphere. An effective supervisor is impartial.

Most employees expect to follow certain rules and regulations which govern: their performance on the job; use of equipment and materials; safety and health standards; and standards of acceptable conduct. Often, if an employee steps out of line, other fellow workers will put pressure on him or her to get back on track. As a supervisor, you can bolster your employees' desire to do what is expected by helping to strengthen each employee's self-discipline and by avoiding typical causes of discipline problems. Most causes of troublesome behavior can be traced to one of the following:

- A low sense of self-worth
- Discontent which comes from boredom, idleness from lack of work, or lack of interest in the work.
- Ignorance which comes from lack of instruction, guidance, goals, training, or experience, or misunderstanding of rules and standards.
- Belief that one has been treated unfairly.
- Personal problems which cannot be left at home.

Sometimes the supervisor has created situations that produce behavior problems. Without realizing it, you may be doing one of the following:

- Enforcing rules unfairly or inconsistently.
- Reinforcing poor job performance by ignoring it.
- Rewarding poor conduct by giving it more attention than good work.
- Rewarding good work with additional work, thereby overloading the good worker.

### *Supervisory Responsibilities Concerning Discipline*

Supervisors must be familiar with labor contract and rule provisions which apply to the initiation of the disciplinary process and employee due process rights.

### Rules and Standards of Performance

In your responsibilities as a supervisor, you should be aware that there are things employees need to know in order to efficiently perform their job responsibilities. You are responsible for seeing that each employee knows:

1. The policies, labor contract provisions, and rules and regulations that govern the employees' work, and that the employee has acknowledged receipt of a copy of these or that he/she has read them on-line and has acknowledged reading them.
2. The proper kind of behavior expected of the employee.
3. The duties and tasks the employee is expected to perform.
4. What you, as supervisor, consider the standards of performance for the job.
5. How well the employee is meeting those standards of performance.
6. How the employees' work can be improved and better working capabilities developed.
7. The provisions of applicable labor contracts which apply to the initiation of the disciplinary process and employee rights.

If and when an employee violates a rule, you will want to be able to answer "yes" to the following questions:

1. Was the rule properly communicated to employees?
2. Was the employee aware of the rule?
3. Does the employee understand what the rule means?
4. Is the rule reasonable (job relatedness is the key)?

Work of high quality done on a regular basis develops into a habit. Work habits are developed on the job. People are not born with either bad or good work habits. The supervisor establishes these work habits through supervision and personal example. Most employees respond to good leadership by developing acceptable work habits. Others require more attention. A few may require disciplinary or some other administrative action. Through adequate training, communication, and setting an example, good discipline can become a reality that insures high performance.

### Self-Discipline

Self-discipline in our employees is largely dependent upon our own self-discipline as supervisors. We often think of people according to their abilities to perform their tasks on their own, without supervision or other assistance. The following supervisory actions have been found useful in developing self-discipline. Compare them with your present actions and seek ways to improve:

1. Decide upon areas of activities where self-discipline is needed.
2. Provide employees with planned work procedures.
3. Explain "how" and "why" in training.
4. Permit the employee to gain gradual control as his or her ability to perform increases. Compliment achievement and efforts to gain independence. Show your confidence in his or her ability.
5. Help employees gain self-confidence.
6. Follow up periodically and decrease frequency of follow-up contacts as confidence and competence are apparent in employees.
7. Maintain regular supervisory checks and other contacts.

What are some indicators of employee self-discipline?

1. Employees arriving on time for work and on a regular basis.
2. Employees properly dressed for the type of work in which they are engaged.
3. Employees handling equipment, tools, and material properly.
4. Employees turning out the quality and quantity of work expected.
5. Tasks performed in good spirits.
6. Harmonious work relationships.

### Working Environment

Is the working environment encouraging your employees to do their best?

As a supervisor do you:

- Keep employees informed of policy changes?
- Remain sensitive to employees' needs and give praise for a job well done?



- Listen to employees?
- Explain why suggestions are, or are not, used?
- Set reasonable work objectives for employees with employee participation?
- Communicate what kind of performance is expected and how their work will be evaluated?
- Carry out periodic performance appraisals to measure employees' job performance including written evaluations explained to employees?

### Set a Good Example

As a supervisor you set the pattern of acceptable conduct and performance for your employees in what you do and do not do. While poor conduct of a supervisor will not excuse unacceptable performance of employees, it certainly will complicate obtaining acceptable performance.



### Maintain fair, impartial control

Fair and impartial control creates respect. Violations should not be allowed to go uncorrected. If they are not corrected, employees can come to regard them as accepted practices.

### Plan and organize

Preventative action is preferable to corrective action in the supervisor-employee relationship. A well prepared and well organized supervisor helps keep workplace problems from getting out of hand before corrective actions are needed or imposed.

Most of the time when something goes wrong, it is the result of poor planning or not enough planning. Once the planning has been done, the supervisor's job is to allow employees to do their jobs and be available for special help in solving problems.

Problems arise on a daily basis. Carefully made plans go astray for a variety of reasons. Having an alternate plan can be helpful but often the original plan can be altered to fit the new situation.

Keep records on your operation and fix a date to review them for efficiency. This is one method that indicates if there is a need for improvement, rescheduling, or other reorganization. Paperwork helps tell what has happened along the way to getting the job done. There are good reasons for doing the paperwork and keeping it current: records allow management to evaluate the operation and plan ahead; records are needed to meet any questions that come up at a later date; and records establish your accountability.

## ***Use of the Original Probationary Period***

Supervisors should make effective use of the original probationary period with employees. The original probationary period is an important part of the process in which employees demonstrate abilities to satisfactorily perform assigned duties and responsibilities.

During the orientation time for new employees, accepted standards of conduct should be placed in writing where they are not self-evident. In cooperation with your employees you can develop and write the standards of conduct that are expected in your section, or unit, and see that all employees, and particularly the new employees, receive a copy of these standards.

During the original probationary period supervisors must give employees training and counseling normally necessary to assure success on a new job. Training, counseling, mutually understood job standards, and carefully prepared performance reports are the ways in which you assure the employee's understanding. They also cause awareness of the strengths and deficiencies of job performance.

If it becomes apparent that you have an employee with unacceptable conduct or performance, it is important to initiate corrective actions immediately. Do not wait until the end of the original probationary period.

Good supervisory practice requires that you keep complete records so that you can back up a decision to terminate an original probationary employee or possibly extend the original probation of the employee. If a supervisor needs to extend original probation, the employee must be given written notice of the extension of probation prior to the ending date of the original probationary period. Original probation cannot be extended without documentation.

### ***Positive Reinforcement***

Reinforcing appropriate employee behaviors will greatly reduce the need for disciplinary action by supervisors. Positive feedback by supervisors can be a powerful force in preventing discipline problems.

In praising employees it is important for supervisors to know that the way reinforcement is carried out is more important than the amount. Insincere or overabundant praise will have a negative result. The emphasis should be on the performance, not the person, and should be specific. Reinforcement should be as immediate as possible, and supervisors should not always wait for those big "wins" to praise an employee- rewarding small "wins" are often more meaningful.

Positive reinforcement that comes from the top is probably the most powerful of all, and reinforcement works better when it is unpredictable and intermittent.

## ***What Steps Should You Take When Discipline Problems Do Occur?***

Although supervisors practice preventative measures and guide employees in attempts to correct undesirable situations, there are times that these methods just do not work.

### *Informal discussions*

The obvious first step to correct a rule or policy violation should be a part of a supervisor's routine informal discussions with employees with suggestions and guidance (oral). But often these opportunities are missed. Supervisors sometimes kid themselves into believing that even though there is evidence of unsatisfactory performance, it will not happen again. Rarely is this the case. Instead, the offense most likely will be repeated if the employee is not reprimanded when an offense is first observed. Once a pattern of undesirable behavior is established, especially with new employees, it is much harder to re-establish the proper behavior you desire.

### The objective should be to improve the employee's performance

With the informal discussion or suggestion about a rule infraction or misconduct, supervisors give the employee an opportunity to be reminded of a rule- a rule he or she may have taken lightly before. It is a chance for the employee to take responsibility for his or her own behavior. It is also a notice to the employee that as a supervisor, you are aware of a problem. (For example, let them know you have noticed them arriving late, and they need to be here at 8:00 a.m.) It is a perfect time for you to be constructive, offer help, and to practice positive discipline. An informal discussion is not meant to threaten, embarrass, or verbally abuse. It is to make the employee aware of a problem and that you have a noted concern. This step is often referred to as "putting the employee on notice".

### Awareness of the problem is so important in solving discipline problems

If a person does not recognize that a problem exists; that person will have no reason to change their performance or behavior.

Often minor infractions are not simply the result of a total disregard for regulations, rules, or policy or trying to sneak something by the manager- usually the employee was not told the rules, was not aware of specific rules, or was determining the limits of what was allowable.

Supervisors may want to note, for their own records, the incident and the discussions that occur regarding the situation. Informal discussions are intended to correct the problem situation without beginning a formal action under the Nebraska Classified System Personnel Rules and Regulations or labor contracts.

### When is formal disciplinary action warranted?

Generally you should begin formal disciplinary action when other informal measures (routine supervisory counseling) have failed to bring about the desired change in behavior. But how do you know for sure when a situation warrants disciplinary action? To make this determination, ask yourself the following questions?

- Is this one situation calling for disciplinary action?
- Reasonable Rule or Order - Was the agency's order or rule reasonably related to the safe and efficient performance of the job? What is the exact nature of the violation? What rule or policy has been violated?
- Notice - did the employee receive adequate forewarning of the consequences of misconduct?
- Sufficient Investigation - Did the agency investigate the incident, and did it give the employee a due process hearing before administering discipline?
- Fair investigation - was the agency's investigation unbiased and objective?
- Adequate Proof - did the investigation yield substantial evidence that the employee was guilty?
- Equal Treatment - Has the Agency applied this rule or order and penalties for misconduct even-handedly among employees?
- Appropriate Penalty- Was the degree of discipline reasonably related to the seriousness of the offense?

It is recognized of course, that what is a minor offense in one work situation may well be a major offense in another. Leaving the work station without permission or relief in a routine office environment, for example, might be a simple inconvenience. In a hospital or prison, however, such an absence might cause a serious danger to life or property. It would be ridiculous to suggest that the penalty should be the same in such instances simply because the offense is technically the same. Discipline policies can only be established in relation to the work environment, and penalties for a particular offense may legitimately vary from mild to severe, depending on the situation. Agencies having NAPE/AFSCME Contract covered employees must maintain an abstract of agency disciplinary records for bargaining unit employees.

## ***Reasons For Imposing Disciplinary Action***

The following list shows examples of offenses for which an agency head or delegated supervisor may take disciplinary action under the NAPE/AFSCME Labor Contract:

1. Violation of, or failure to comply with, the Labor Contract, State constitution or statute; an executive order; regulations, policies or procedures of the employing agency; or legally promulgated published rules.
2. Failure or refusal to comply with a lawful order or to accept a proper assignment from an authorized supervisor.
3. Inefficiency, incompetence or gross negligence in the performance of duties.
4. Unlawful manufacture, distribution, dispensation, possession or use of a controlled substance or alcoholic beverage in the workplace or reporting for duty under the influence of alcohol and/or unlawful drugs. Use of a controlled substance by the employee as prescribed by his/her physician and/or other licensed health practitioner shall not be a violation.
5. Negligent or improper use of state property, equipment or funds, or conversion of state property. This includes transmitting threatening, obscene, or harassing material through the State's communication systems.
6. Bribery to gain, or attempt to gain, promotion, leave, or favorable assignment for individual benefit or advantage.
7. Falsification or intentional omission of required information on the employment application/resume.
8. Unauthorized use or abuse of any type of leave, meal or rest periods.
9. Repeated tardiness or unauthorized leave, including unauthorized departure from the work area.
10. Failure to maintain appropriate working relationships with the public, employees, supervisors, or managers while on the job or when performing job related functions.
11. Failure to obtain and maintain a current license or certification required by law or agency standards as a condition of employment.
12. Conviction of a felony.



13. Acts or conduct which adversely affects the employee's performance and/or the employing agency's performance or function.

14. Work place harassment based, in whole or in part, on race, color, sex, religion, age, disability or national origin, which manifests itself in the form of unwelcome comments, jokes, printed material and/or unwelcomed sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature.

15. Display of materials and/or the utterance of offensive comments in the workplace that are derogatory towards a group or individual based upon race, gender, color, religion, disability, age or national origin.

In addition, if your agency has published work rules, administrative regulations or other policies to which employees must comply, violations of these provisions may also be cause for disciplinary action.

## ***Investigate the Problem***



If you decide to take formal action, you must decide what action should be taken after an infraction has occurred. Considering all aspects of the problem is important. The following are key factors in investigating discipline problems:

### **1. Seriousness of the problem.**

How severe by normal standards was the problem? Was it deliberate or unintentional?

### **2. Circumstances.**

All the facts of the situation must be reviewed. Each situation is usually unique. Circumstances surrounding the case will often help explain the situation and aid in solving the problem.

Some circumstances when explained may make the employee's behavior more understandable. With the knowledge of these facts, a supervisor may decide to impose less severe disciplinary action. These circumstances are called mitigating circumstances.

Other conditions under which a rule violation occurs could make the situation more serious. These circumstances could cause a supervisor's disciplinary actions to be more serious when all the facts are known. These circumstances are called aggravating circumstances.

In gathering the facts about an incident of improper employee conduct on the job which may warrant disciplinary action, the supervisor should do the following:

- Check any written record of the incident.
- Interview supervisors and other employees who were involved or who witnessed the incident, and record the information during or immediately after each interview.
- Make every effort to reconcile conflicting statements.
- Where necessary, examine pertinent records or equipment and make a written notation of such information as may have a bearing on the case.
- Make sure the employee knew the applicable standards of behavior or performance.
- Check the employee's records for prior incidents.

### 3. Time span.

Have there been discipline problems in the past and over how long a time span? Have previous disciplinary records been removed from the employee's personnel file after two years at the employee's request?

A long period of good conduct between disciplinary actions shows correction in behavior, and provides some indication as to the extent of disciplinary actions' effect on the employee.

### 4. Frequency and nature of problems.

Is the current problem part of an emerging or continuing pattern of discipline infractions?

### 5. Employee's work history.

How long has the employee worked for the organization and what was the quality of performance?

### 6. Degree of orientation.

To what extent has management made an earlier effort to train the employee causing the problem, about the existing discipline rules and procedures and consequences of violations? What has the agency done to help prevent this type of behavior?

### 7. History of department discipline practice.

What has been done in the past to correct the undesired behavior observed? Has there been consistency in the application of discipline procedures? Review the agency's abstract of discipline for the same or similar offenses to ensure consistency.

### 8. Workable disciplinary action.

Determine what disciplinary action will serve to eliminate the cause of the infraction rather than as a punishment or reprisal. In doing this, the probable impact of the action on the employee is the major consideration.

### 9. Effect on other employees.

The disciplinary action must not violate the sense of fair play of the other members of the work group.

You should always investigate thoroughly before you discipline. You may wish to place the employee on investigatory suspension (see page 20) while you investigate. Hearsay and secondhand information are not enough to serve as a basis for discipline.



Employees have the right to know that they are being interviewed in connection with a disciplinary matter. They have the right to have a representative present, and they must always be given the opportunity to refute the information or present mitigating evidence.

If your investigation discloses that there is likelihood that an employee is guilty of a serious infraction of a work rule or regulation, you must give some thought to an appropriate charge. The charge should be stated as accurately and as briefly as possible. Broad general charges should be avoided. You must reference the work rule, policy, statute, etc., that has allegedly been violated in your written statement of charges.

The burden of proof in discipline cases is on management; not the employee. Management must be able to show adequate proof and evidence to support the charges.

### Act Decisively

Although it is important to give yourself enough time to make a reasonable decision, it is important to be prompt and deliberate in your actions. Once your investigation is complete, and you have gathered all your supporting documentation and considered the mitigation offered by the employee in the pre-discipline meeting, decide on your course of action.

Keep in mind what you want to accomplish with the discipline. The disciplinary action taken by the supervisor should be aimed at guiding the employee, strengthening the employee's self-discipline, and improving the employee's work behavior. The action that is sufficient to accomplish the desired change should be selected.

Include a thorough review of applicable labor contracts, Nebraska Classified System Personnel Rules and Regulations and agency policy. In all cases, seek counsel from your agency's personnel officer. When working with labor contract covered employees, contact the AS-Employee Relations Division. This is especially important since employees are entitled to certain procedural rights (due process).

Generally, less severe disciplinary actions are more appropriate for first offenses than for repeated offenses. However, a serious first offense such as a misconduct that endangers the life or safety of employees, may justify imposing a heavy penalty, such as suspension or dismissal.

In cases other than those of dismissal, make it clear that the disciplinary action is the end of the matter if performance becomes satisfactory. Criticism can be discouraging even when it is given in good faith and for good cause, so be certain to recognize an improvement as soon as it becomes apparent.

## Be Consistent and Fair

Consistency is important when disciplining. You should impose the same discipline for the same offense committed under similar circumstances by employees with similar work records. It will undermine morale and confidence in you as a supervisor if your employees find you arbitrary and unfair in your disciplining. It is also not practical for you to take any disciplinary action when personal feelings, including your own, run high. Anger directed toward others is likely to make them angry or afraid in return, which tends to decrease their readiness to change. Your purpose again, is to correct, not punish. Check with your own supervisor and agency personnel officer before doing anything. Actions which are taken without following proper procedures are often overturned in grievance proceedings.

The following are things to remember for all disciplinary actions:

### What to Avoid

- ✘ Sarcasm
- ✘ Loss of temper
- ✘ Humiliating an employee
- ✘ Profanity
- ✘ Public reprimands
- ✘ Threats and bluffs
- ✘ Showing favoritism
- ✘ Delay tactics
- ✘ Unduly harsh penalties
- ✘ Inconsistent enforcement
- ✘ Retaliation for Whistleblowing

### What to Do

- Consider feelings of employees
- Cool down, analyze each situation
- Show confidence in the employee's ability to make necessary changes
- Carefully explain the nature of the violation and the correction expected
- Always reprimand in private

- Outline specific consequences of future violations and follow through
- Give every employee fair treatment
- Give prompt attention to violations
- Define objectives of disciplinary actions
- Deal promptly with all violations of the rules

Supervisors should assume that disciplinary action may lead to the filing of a grievance. All non-probationary employees have the right to grieve disciplinary actions, including immediate dismissals. Grievance of a disciplinary action by the employee, however, does not postpone the action.

Whenever a disciplinary action is taken, you should follow up to check the employee's progress against the agreed upon behavioral change and the timetable you and the employee have worked out. Complete your record when the employee has made the agreed upon changes and inform the employee of such action. If the employee's behavior has not improved, hold your records for the purpose of taking additional disciplinary action. Your own supervisor should be informed of your progress with any employee who has a behavioral problem.

Documentation which reflects unfavorably on an employee must not be placed in the employee's personnel file without his/her knowledge. Information gathered by supervisors to construct a performance evaluation should be kept in a separate supervisory file. This file should include information on good or outstanding performance as well as information relating to needed improvements in performance. Employees should not be surprised by information in a supervisory file. Supervisors having on-going performance counseling with employees will discuss positive and negative performance issues as they arise. A supervisory file can be shared with (or shown to) the employee if the employee requests to see it. (i.e., the supervisory file is "discoverable" to the extent that it was used to support the discipline imposed or to the extent it would refute the supervisor's allegations if a disciplinary matter is grieved).

## ***Supervisory Counseling***

### ***(Counseling is not considered formal discipline)***

Counseling consists of a visit with the employee, during which the supervisor explains in detail the reasons for the counseling and also advises the employee of the action required to correct weaknesses or other matters that caused the counseling to occur. Employees are not entitled to representation at non-disciplinary counseling sessions unless management agrees to allow a representative to attend.

The counseling session should be held as soon as possible after the offense has been committed. It is more likely to be effective when it closely follows the offense. Everyone concerned is more likely to give a more accurate explanation and description of the events that occurred.

#### *Objectives in a counseling session should include:*

1. The employee will understand the rule or standard of conduct that has been allegedly violated. ("Put the employee on notice")
2. The employee and supervisor will determine a contract plan for improved behavior.
3. Assistance from the supervisor will be determined.
4. A review date will be set to assess the employee's progress in achieving the acceptable behavior.

Once you are certain that a counseling session is necessary after investigating the problem, set up a time and place for the counseling as soon as it can be arranged. Here are some pointers on what to do.

The word "Before" is written in a large, bold, blue font with a red outline and a 3D effect, making it stand out as a key concept.

*The  
Counseling  
Session:*

1. Plan to use an appropriate amount of time to do the counseling session. Hold telephone calls and other interruptions coming into your office.
2. Give the employee a notice of the time for the counseling session. (Twenty-four to forty-eight hours' notice is sufficient.)
3. Advise your supervisor. Give the details of the situation and of your intended course of action.

4. Plan in advance what you intend to cover. Make notes, for reference during the interview. In your planning tailor your approach to your knowledge of the employee, including personality traits - people react differently.

5. Arrange to hold the session in the most confidential place possible.

## **During** *The Counseling Session:*

1. Keep the session professional and impersonal. Be firm, fair, and friendly. Be sure the problems discussed are job related and not of a personal nature.

2. Keep in mind that your objective is to correct the employee's observable behavior. Do not accuse or recriminate.

3. State the problem clearly, as you understand it. Review the rule or policy violated. Clarify the rule or policy and reasons for its existence.

4. Be specific as to the proper kind of behavior you expect the employee to perform. Give specific examples of changes in behavior you require from the employee.

5. Stick to the subject. Do not apologize for the session or find excuses for the employee's behavior. Avoid "softening up" praise.

6. Maintain a helpful attitude. Sincerely work with the employee to plan for a change in behavior.

7. Listen to the employee's side of the story. Do not jump to conclusions. Look for mitigating circumstances.

8. Respect the employee's dignity and right to a viewpoint.

9. Stay calm. Do not bluff or threaten. Do not argue, harass or entrap. Be aboveboard. You are there to solve a problem.

10. Above all, express confidence in the employee's ability to improve. The session should remain positive with assurances that the intent is to help the employee.

11. Share the blame gracefully on points where you may be at fault.

12. Take notes during the session.

13. Summarize the discussions and set a time for a progress review.
14. Set a final deadline for specific measurable change in the employee's behavior.

# After

*The  
Counseling  
Session:*

1. Complete a written, dated, and signed record that the counseling session took place, including a general statement as to the nature of the counseling and inform the employee of this record. This record may be placed in your personnel file or supervisor file, depending on Agency practice.

*(REMEMBER -"Documentation which reflects unfavorably on an employee shall not be placed in the personnel file without his/her knowledge.")*

2. Follow-up. Check the employee's progress against the expected change that you have worked out. A corrective action plan should be implemented in which the employee is informed of the performance expectations and regular meetings are scheduled in regular intervals where the supervisor and employee can review performance and corrections can be specified.

3. Close the record when the employee has made the change. Otherwise, hold your record as evidence for taking additional corrective action.

4. It is wise to keep your own supervisor adequately informed, even to the point of supplying a copy of your record of the session and reports of the follow-up actions.

The counseling session atmosphere and style will vary with employees, supervisors and the situations. Sometimes a more directive style may be needed to achieve the desired behavior from the employee. The employee may want or need clear-cut, direct advice from their supervisor, and may expect it. In all instances, however, the supervisor should make an effort to motivate the employee in a positive manner into productive behavior and to listen to what the employee has to say.

## ***Procedures for Implementing Investigatory Suspension***



Investigatory suspension is a different action than a disciplinary suspension.

An employee who is under investigation for, or charged with, criminal activity or who commits an offense which threatens the safety, health, or well-being of another person, or an offense of sufficient magnitude that the consequence causes disruption of work being performed or to be performed in the future, may be suspended with or without pay, pending outcome of an investigation or trial. If no immediate danger would result, before suspending an employee under this section, an agency head should attempt to verify information with the employee and should afford the employee an opportunity to refute the information or present mitigating evidence. If a meeting takes place, the agency head should notify the employee of the purpose of the meeting. Employees should be notified of the general nature of the investigation.

An employee who is found guilty through a court proceeding should not be compensated for the suspension period and may be dismissed. However, employees under the NAPE/AFSCME Labor Contract may only be placed on investigatory suspension without pay for six (6) workdays. In cases where the employee is charged with certain felonies the employee may be suspended without pay until the charges are resolved. If the employee is found not guilty or if no judicial action is taken, the employee may be restored by the agency based on relevant facts to his/her position and granted full pay and service credit for the period of suspension. If evidence in the agency's investigation or an outside investigation shows that disciplinary action should be taken, then the agency head should follow disciplinary procedures. Investigatory suspensions may be grieved by permanent employees.

## ***Procedures For Imposing Disciplinary Action***

Once an incident occurs or performance does not improve, the supervisor needs to make a determination as to whether or not the employee's action may be cause for discipline. If that decision is affirmative, the supervisor or appropriate agency designee should conduct a fair investigation into the alleged incident or action to determine if there has, in fact, been a violation of an agency rule or policy. If the results of the investigation show that there is substantial evidence showing that the incident/action occurred, the supervisor should initiate the disciplinary process.

1. The supervisor must prepare a written notice of proposed charges (also known as a written notice of allegations and/or pre-discipline letter). This letter to the employee notifies the employee that the supervisor has scheduled a meeting with the employee to discuss the allegations contained in the written notice of proposed charges.

The written notice of proposed charges should contain an explanation of the agency's evidence against the employee, a description of the incident involved and date/time of the occurrence. The notice should also include a direct reference to the rule or policy violated. When disciplining an employee who is covered by the NAPE/AFSCME Labor Contract, you must include a reference to the labor contract.

The time for the mitigation (pre-discipline) meeting should be set at least 24 to 48 hours after the employee receives the notice of proposed charges. The employee is entitled to representation at this type of meeting. Supervisors should be somewhat flexible in accommodating employee requests to reschedule the meeting so that a representative can be present.

2. The written notice of proposed charges should be either hand delivered to the employee or if the employee is absent from work, sent via certified mail.

3. Holding the mitigation/pre-discipline meeting:

A. Remember that this is the employee's opportunity to tell you about any mitigating circumstances the employee believes should be considered and to refute any of the evidence against him/her.

B. Have the personnel manager/human resource officer attend the meeting to observe and take detailed notes for your review. It is not advisable to hold these meetings one-on-one because notes from the meeting will help you make a determination regarding discipline, and it is difficult to listen attentively and take notes at the same time.

C. No pre-determination on the employee's guilt or innocence should be given at this meeting.



D. Avoid getting into a debate with the employee regarding the allegations. This is the employee's time to present information to you; not a time to ask the supervisor for justification for their actions or to debate with the supervisor.

E. If an employee or his/her representative becomes angry, threatening, or out of control, discontinue the meeting and call security if necessary.

4. After the mitigation/pre-discipline meeting, the supervisor should consider all of the evidence and the employee's statements regarding the charges. If discipline is to be imposed, it is very important that the severity of the disciplinary action be consistent with the offense committed.

After the supervisor considers all of the evidence and a determination has been made that discipline should be imposed, a written notice of disciplinary action should be given to the employee and a meeting held with the employee explaining the conditions, if any, related to the employee's performance or behavior.

The written notice of discipline advises the employee of the type of disciplinary action being administered, and if applicable, the time which will be allowed for the employee to improve performance. The notice should also contain a clear statement of the consequences (including dismissal) of future violations or failure to improve.

The employee should acknowledge receipt by signing the document. The employee's signature does not constitute agreement with the content of the document. If the employee refuses to sign, the supervisor and witness shall sign a notation of the employee's refusal on the document. A copy of the document shall be placed in the employee's personnel file, and the original should be given to the employee.

Discipline should only be imposed once for a specific incident. Further disciplinary action may be imposed for any subsequent incidents.

5. The employee, or former employee, shall have 15 workdays from the receipt of written notice to file a grievance.

6. If a decision is made that there is insufficient evidence supporting the need to take disciplinary action the employee should be informed of this fact.

## ***What are the Types of Disciplinary Actions That May be Taken?***

The type and extent of disciplinary action is governed by the nature, severity, and effect of the offense; the type and frequency of previous offenses; the period of time elapsed since a prior offensive act; and consideration of extenuating circumstances.

The following is a list of the types of disciplinary actions which may be imposed. More than one type of disciplinary action can be imposed for serious offenses, except where prohibited by labor contracts.

### **Written Warning**

Written warnings are issued when: (1) routine supervisory guidance and/or counseling has not acted to correct the behavior problem or; (2) when an infraction of a rule is serious enough to warrant a written warning. A written warning or reprimand is a disciplinary action more appropriate for violations of employee work rules, or employee performance due to "unwillingness" rather than "inability."

The employee should be given the original letter and informed that a copy has been placed in the official agency's personnel file.

A written warning may contain, but not necessarily be limited to, the following information:

1. A general statement of the problem, with factual statements of what the employee has done wrong, and the rules or standards violated.
2. Information regarding any previous discussions with the employee concerning the specific problem. This information should indicate the date, time, location, content and conclusion(s) reached regarding the previous meetings or disciplinary actions with the employee.
3. In the written warning you may include the name(s) of any person(s) who witnessed the violation and any warning(s) given to the employee. You should include the employee's statement regarding the problem, your own conclusions, the specific course of action you expect to be taken by the employee in the future, and a statement of any additional action that will occur if a violation of the rules or standards is repeated.

### **Disciplinary Probation**

Disciplinary probation can be a very effective form of discipline when employees are experiencing problems with job related performance. Through one-on-one counseling, supervisors monitor performance during a specified period of time and encourage employees to improve performance related problems. Disciplinary probation may be imposed for a period of up to six months, but may be extended to a total of one year. If

the employee is covered by the Personnel Rules, the disciplinary probation must be extended by the agency head. This is a designated time period during which the employee must improve identified deficiencies in their performance. Improvement standards and time frames are put into a written Performance Improvement Plan by the supervisor and a copy is given to the employee at the time they are placed on disciplinary probation.

The imposition of disciplinary probation requires that the supervisor make a concerted effort to meet regularly with the employee during the probationary period to assist them in improving performance. A supervisor's failure to meet with the employee on a regular basis and discuss improvements would make this type of discipline ineffective.

Employees covered by the Personnel Rules, on disciplinary probation cannot be promoted or granted merit increases. It is also critical that should the supervisor not see an acceptable improvement in performance during the probationary period, they should extend the probationary period prior to its expiration, or terminate the employee's employment prior to its expiration. Once an employee reaches the six month date when the probation expires, the supervisor cannot retroactively extend the probation.

Also, employees granted leave while serving disciplinary probation may have their probation extended by the number of days absent on leave, provided the employee receives notice of the extension prior to the expiration of disciplinary probation and provided that the employee was informed when he/she was placed on disciplinary probation that the probationary period was subject to being extended based upon the number of leave days the employee was absent.



### Suspension

The disciplinary action of suspension may be imposed when it is felt that less severe disciplinary action is not adequate or has not been effective. Suspension is an action by which a supervisor temporarily suspends an employee from employment with the State without pay by the State for a definite period of time. A written document informing the employee of suspension shall be dated and include the reason for the suspension without pay and the number of days of the suspension. If the employee is to be placed on disciplinary probation upon return from suspension, the employee shall be informed of this action on the document imposing the suspension.

During the suspension period employees on suspension shall not be granted vacation, sick, or holiday leave nor unused compensatory time off. The employee service date should also be adjusted by the number of calendar days absent during suspension.

If the suspension is later found to be unwarranted by the agency head, an Arbitrator, or the State Personnel Board, the employee will be restored to his/her position and granted full retroactive pay and service credit for the period of suspension.

### Demotion

Another measure occasionally used as a disciplinary action is demotion. With a demotion an agency head may demote an employee to a position with a lower minimum rate of pay. The employee's duties are changed to reflect the new classification. For Rules covered employees, upon demoting an employee for disciplinary reasons, an agency head reduces the employee's salary a minimum of 5%. Demoted employee salaries may be reduced no lower than the Hiring Rate of the new position classification. (Note: If the Rules covered employee's reduced salary is at the Hiring Rate, the employee's salary must be increased to the Minimum Permanent Rate within six months.)

The NAPE/AFSCME Labor Contract outlines the percentage reductions which apply to employees covered by this contract.

### Reduction in Salary Within Pay Line

Agency heads may reduce a non-exempt employee's salary within their classification's pay line as a disciplinary action.

### Dismissal

In some instances an agency may dismiss a permanent employee for cause at the end of a sequence of offenses. However, dismissal for cause may also be the first action taken in the case of more serious infractions. Employees may be dismissed for any of the reasons listed previously in this manual.

The notice of dismissal should be given to non-probationary employees two calendar weeks prior to the dismissal date. Exceptions to the two week notice requirement may be made in cases where the employee is dismissed for gross misconduct. Exceptions to the two week notice may be made when an employee is convicted of a felony; commits an offense which threatens the safety, health, or well-being of another person; or an offense of sufficient magnitude that the consequence causes disruption of work being performed or to be performed in the future. In cases which are considered gross misconduct, the employee shall not be entitled to two calendar weeks' notice of dismissal or two calendar weeks' pay in lieu of notice. Employees covered by the NAPE Labor Contract are not entitled to two weeks' pay in lieu of notice.

In cases where employees are dismissed for gross misconduct, remember to contact your personnel or payroll officer to determine how COBRA (the continuation of insurance) is affected by this type of termination.

Employees may be dismissed during disciplinary probation if they do not take positive action to correct the conditions which resulted in the disciplinary probation. The serving of disciplinary probation is not a prior requirement for dismissal. Employees dismissed during disciplinary probation have due process rights which entitle them to a written notice of allegations, mitigation meeting, and the issuance of a notice of dismissal.

## ***Records and Documentation***

Creation and maintenance of complete and accurate records are essential. Should an employee elect to appeal any disciplinary action, it is important that the agency have the necessary data to support the disciplinary action and that it is available in writing.

It is imperative to have documentation, or back-up information showing your reasons for taking disciplinary action regarding an employee's behavior. This information should include, but not be limited to, notes and memos of informal supervisory suggestions and guidance, counseling session records, and records of written warnings.

These documents should be specific in giving the details of work-related behavior problems. Information should include the date, time, place, witnesses, performance appraisals, records of counseling sessions, work records, and job descriptions.

### Documentation Checklist

- ✓ Did you record the documentation promptly, while your memory was still fresh?
- ✓ Have you indicated the date, time, and location of the incident(s) documented?
- ✓ Did you record the action taken or the behavior exhibited?
- ✓ Did you indicate the person(s) or work products involved?
- ✓ Have you listed the specific performance standards violated or exceeded?
- ✓ Have you indicated specific rules or regulations violated or surpassed?
- ✓ Did you record the consequences of the action or behavior on the employee's total work performance and/or the operation of the work unit?
- ✓ Have you been objective, recording observations and not impressions?
- ✓ Did you indicate your response to the action or behavior?
- ✓ Did you indicate the employee's reaction to your efforts to modify his or her behavior?

## ***Common Supervisory Mistakes***

Justifiable disciplinary actions are sometimes overturned as a result of an employee's appeal due to common mistakes made by the agency.

The following points outline possible reasons for a reviewing body to uphold employee appeals:

### **1. Failure to Specify the Charges**

The written notice of allegations used to notify the employee of the initiation of the disciplinary process and the notice of discipline must contain the following elements:

- a. Identification of the cause or reason for the action (specific behavior).
- b. Specific rules of the Nebraska Classified System Personnel Rules and Regulations, agency rules and regulations, labor agreement, or Nebraska Revised Statutes that the employee's action(s) may have violated.
- c. Specification of the employee's behavior that justifies the disciplinary action. This statement must detail the "who, what, when, where and how" of the employee's actions so there will be no difficulty in identifying each instance in supporting your cause of action.

### **2. Failure to Transmit Disciplinary Letters by Certified Mail or in person in a Timely Manner**

If a disciplinary action is imposed, the employee shall be advised in writing of the nature of the offense, the disciplinary action being administered, and if appropriate, the time allowed for improvement and the consequences of future violations or failure to improve. Disciplinary letters should always be sent by certified mail with a copy also sent by regular, First Class mail, or delivered in person with a signed receipt by the employee. In the case of a dismissal the written document should be given to employees two calendar weeks prior to the dismissal date except in cases of gross misconduct, where the employee may be terminated without being given a two-week notice or without being given two weeks' pay in lieu of notice.

### **3. Failure to Document Charges**

Too often, the only documentation indicating that a discharged, demoted, or suspended employee has been previously notified of less than satisfactory performance is in the disciplinary letter itself.

Except in extreme cases, the record must show that the employee has been previously advised of shortcomings and has been given an opportunity to improve performance.

#### 4. Inconsistent Documentation of Performance

Training, counseling, and written warnings are all important in the documentation process.

When disciplinary action is taken for causes which are normally documented over a period of time, such as incompetence, inefficiency, etc., the chances are good that the action will be reversed if performance ratings or evaluations consistently show the individual as "average" or better. This is particularly true if the ratings and evaluations cover the same period of time as the deficient work performance.

Frequently, performance ratings, promotional evaluations, and disciplinary correspondence do not reflect a consistent appraisal of the employee's performance.



#### 5. Supervisory Coercion and Harassment

Resignations and voluntary demotions agreed to by the employee under pressure or duress may be grieved. If the employee can show with documentation that such action was taken improperly, the employee may be reinstated to the original position.

#### 6. Failure to Allow an Employee to Tell Their Side of the Story and to Inform Them of Possible Disciplinary Action

When a supervisor receives information that indicates the possibility of administering disciplinary action, the employee should be given an opportunity to refute the information and give his or her side of the story. Prior to this meeting the supervisor should notify the employee as to the purpose of the meeting. Employees have the right to request to have a representative present with them at such a meeting.

#### 7. Failure to Exercise Consistent Disciplinary Action

The agency's practice in applying disciplinary actions is a critical consideration in determining disciplinary actions. If a work rule violation occurred previously under circumstances where the seriousness of the offense and the employee's record are the same, management should utilize the same option as was used previously or else have good reason for not doing so. However, if only the work rule broken is the same and if the violators differ significantly in terms of their prior disciplinary record, their length of service, or their job performance, then it is quite possible that different penalties will be appropriate.

### *Conclusion*

This has been developed to assist you in your supervisory responsibilities. The suggestions are based on the belief that it is most important for you to create and maintain conditions that make disciplinary actions rarely necessary.

Each individual employee and every working situation in the State of Nebraska is different. Agency's personnel policies and procedures also vary. The information that has been presented and your expertise and knowledge as a supervisor, should help you to more efficiently create and maintain an efficient and positive working environment on a day-to-day basis for the employees.

This is intended to give you, as a supervisor, some general guidelines on how to continue to lead your employees to high standards of performance and conduct as you work together to serve the people of the State of Nebraska.





*If you have any questions about any of the items covered in this publication, please contact one of the following staff members of the Administrative Services Department-Employee Relations Division:*

*William J. Wood (471-4106) [william.wood@nebraska.gov](mailto:william.wood@nebraska.gov)*

*Crystal Booker (471-8292) [crystal.booker@nebraska.gov](mailto:crystal.booker@nebraska.gov)*

*Gail Brolliar (471-4104) [gail.brolliar@nebraska.gov](mailto:gail.brolliar@nebraska.gov)*

Date March 2, 2010

To: Employee Name  
Position

From: Supervisor's Name

Subject: Notice of Allegations

It has been alleged that on February 26, 2010, at about 2:45 p.m., in your work area in the 501 building, you told a fellow worker, Jane Doe, that "Sam Jones continually lies to us employees and is incompetent." Sam Jones supervises you and Jane Doe. It is alleged that this statement was insubordinate and violated the following sections of the 2009-2011 Labor Contract between the State of Nebraska and NAPE/AFSCME, Local 61:

10.2. j. Failure to maintain appropriate working relationships with the public, employees, supervisors, or managers while on the job or when performing job related functions.

10.2.m. Acts or conduct which adversely affects the employee's performance and/or the employing agency's performance or function.

The allegation, if true, is just cause for imposing discipline under Section 10.1 of the 2009-2011 Labor Contract between the State of Nebraska and NAPE/AFSCME, Local 61. During your employment with the department, you received a copy of the Department of Administrative Services' Policies and Procedures Manual and were told to read the document and were told to review the NAPE/AFSCME Labor Contract electronically. You had notice through these documents that actions which were insubordinate or which adversely affected the functions of the Department of Administrative Services could result in discipline. Additionally, you were aware that your failure to maintain satisfactory working relationships with fellow employees could be an additional reason for discipline. The Department of Administrative Services' Policies and Procedures Manual lists offenses for which discipline may be taken, specifically in Section 14.04.

I have scheduled a meeting with you at (date & time) in the (room and location) to hear any reasons you wish to present that indicate that the acts alleged did not take place, or to hear mitigating circumstances which indicate that if the actions did take place, why discipline should not be imposed or why discipline lesser than that which would normally be imposed for such a violation, should be imposed. Also, present at the meeting with me will be (name) . You may, but are not required to, bring one representative of your choice to the meeting.

sj

June 18, 2010

Employee Name  
3937 Land Street  
Yourtown, Nebraska 68888

Dear Employee Name:

As we discussed yesterday, in the last two months, you have been late on three separate occasions, ranging from 10 minutes to 45 minutes. We have spoken about this problem previously on February 10th, April 5th, and June 4th. You agreed to arrive at work on time; however, your tardiness has failed to improve. Since our last conversation on June 4th, you have been late two times, including the occasion when you were 20 minutes late.

As I pointed out, your lateness creates problems for our department since others must cover for you. In addition, when you do arrive, others must bring you up-to-date about what they have done, thereby increasing the amount of time they lose from their own work.

You indicated that you would either join a new carpool or take an earlier bus in your effort to solve the problem. I trust that you will be able to follow through on these suggestions, since, except for the tardiness, you are a valued employee.

Therefore, it has been determined that the Department of Administrative Services has just cause to impose discipline under Section 10.1 of the 2009-2011 NAPE/AFSCME, Local 61, Labor Contract. You were on notice that such action violates the NAPE/AFSCME Labor Contract which includes the following provision:

10.2.i Repeated tardiness or unauthorized leave, including unauthorized departure from the work area.

After considering the information you provided at the pre-discipline meeting on June 16, 2010, and after reviewing my notes from the counseling sessions we have had, I am imposing the following disciplinary action in accordance with Section 10.1 of the 2009-2011 NAPE/AFSCME Labor Contract as I have determined that your actions violated Section 10.2.i. of the 2009-2011 Labor Contract between the State of Nebraska and NAPE/AFSCME, Local 61.

This letter will be considered a written warning about this matter. If the problem does not improve so that there is no tardiness during the next month you may be subject to further disciplinary action up to and including termination. We will meet one month from today, July 19, 2010, at 9:00 a.m., in my office, to review your attendance record. A copy of this letter will be placed in your personnel file.

I am hopeful that your punctuality will improve and that we can put this matter behind us. Section 22.7 of the NAPE/AFSCME Labor Contract provides that at the employee's request, records of disciplinary action shall be removed from the employee's personnel file after two years from the date the discipline was imposed.

Sincerely,

Ima Boss  
Supervisor

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

November 12, 2010

*Employee Name*

*Street*

*City*

Dear (*Employee Name*):

After our meeting on Tuesday, I reviewed all the information that was available in regard to the allegations stated in the November 5, 2010, written notice of allegations memo, and I considered the statements you made in our meeting on November 10, 2010. I determined that the Department of (*Agency*) has just cause to impose discipline under Section 10.1 of the NAPE/AFSCME, Local 61 Labor Contract. The following evidence supports the imposition of further discipline.

On October 15, 2010, you were given a written notice of allegations regarding your actions on October 1 and 13. A mitigation meeting was held with you and your representative on October 19, 2010, in which you were charged with workplace harassment.

You were found to have committed work place harassment and on October 21, 2010, you were issued a letter of discipline suspending you from work without pay for one day, October 22, 2010, and placing you on disciplinary probation for a period of six months. You were given a performance improvement plan outlining the standards for your conduct during this period. You were also notified that additional actions of this nature could lead to further discipline including termination. You were advised to have no further contact with C.B. other than that which was required through your assigned job duties.

On November 2, 2010, C.B. informed her supervisor, Ms. Evans that you had called her on November 1, 2010, and you wanted to know why she filed a complaint against you. C.B. indicated that you were very angry on the telephone and that you told her it would not be a good idea for her to make any more trouble for you. As a result of the conversation, C.B. felt threatened and is concerned for her safety.

When you were questioned by Ms. Evans regarding the phone call, you denied calling C.B. Because C.B. has a caller-identification system and a message recording system on her phone, the supervisor was able to verify that your number did appear on her phone on the date and time reported by C.B. and that C.B. had recorded the end of your conversation with her. Therefore, the evidence indicates that there was a call from your home to C.B. and the recorded voice sounds like yours.

At the mitigation meeting on November 10<sup>th</sup>, you had no explanation as to why your home phone number appeared on C.B.'s caller-identification system and you denied that the recorded call contained your voice. You indicated that even if you had made the call, what you do on your own time is your business. Because you could not provide any mitigation for this incident, I must conclude that you did violate my directive and have non-work related contact with C.B. in order to further harass or intimidate her.

You are currently serving a six month disciplinary probation period. One of the performance standards listed in your disciplinary probation performance improvement plan, was to maintain professional satisfactory relationships with co-workers. You were also ordered not to have any contact with C.B. for other than business related reasons. Your actions on November 1, 2010, are a direct violation of the probationary performance improvement plan and my order regarding contact with C.B. In addition, the tone of your conversation with C.B. involved a verbal threat.

*Employee Name*  
November 12, 2010  
Page 2

You had notice of the reasons for which you could be disciplined as you have a copy of the State's sexual harassment policy and the Department of (*Agency's*) Policies and Procedures Manual which includes a list of reasons for which discipline may be taken. You had also been advised to read the electronic version of the NAPE/AFSCME Labor Contract. There is sufficient evidence to find that your actions on November 1, 2010, violated the following provisions of the 2009-2011 Labor Contract between the State of Nebraska and NAPE/AFSCME, Local 61, and the identical work rules cited in the November 5, 2010, written notice of allegations:

10.2.b Failure or refusal to comply with a lawful order or to accept a proper assignment from an authorized supervisor.

10.2.m. Acts or conduct which adversely affects the employee's performance and/or the employing agency's performance or function.

I have considered the possibility of further progressive discipline in regard to your actions. However, because you were disciplined less than one month ago for sexual harassment and have failed to comply with a direct order from me not to have contact with C.B., I have no other option than to move to more severe discipline. As a result of the November 1, 2010, incident and your disciplinary probation status, you are hereby notified of your termination effective the close of business on November 12, 2010. I will assist you in collecting your personal belongings and will receive your building access card and office keys. Your final check will be mailed to you at your current address no later than November 30, 2010. If you have questions regarding the continuation of health insurance or other benefits, at your expense, please contact Sally Jones at 471-0000.

Sincerely,

Jack Lane  
Agency Head

Employee Signature: \_\_\_\_\_ Date \_\_\_\_\_

cc: Agency Personnel Office  
Personnel File

April 19, 2010

Employee Name & Address

Dear Employee:

In compliance with 273 NAC 14-004, Procedure for Imposing Disciplinary Action, of the Nebraska Classified System Personnel Rules and Regulations, this memorandum is to advise you that a mitigation meeting has been scheduled for Wednesday, April 20, 2010, at 9:00 a.m. in my office, located on the fifth floor of the Nebraska State Office Building in Lincoln. Your attendance at this meeting is required. During the meeting you will have the opportunity to present mitigation for your actions with regard to the allegations contained in this letter.

1. You were at least ten minutes late for work on the following days:

- March 5, 2010
- April 2, 2010
- April 9, 2010

2. On March 16, 2010, you left your work area to take your morning break. You did not return from your break until 25 minutes later. I was not aware of your location and because you were receiving phone calls from clients which needed immediate attention, I handled your responsibilities for the time you were absent from your work area.

3. On April 5, 2010, at approximately 10:30 a.m., I received a phone call from one of our customers complaining that you were rude and short with him on the phone when he called you to ask questions about the energy program.

These incidents indicate that there is sufficient evidence to charge you with a possible violation of the Nebraska Classified System Personnel Rules and Regulations:

273 NAC 14-003.03 Inefficiency, incompetence or negligence in the performance of duties.

273 NAC 14-003.09 Repeated tardiness or unauthorized leave, including unauthorized departure from work area.

273 NAC 14-003.15 Acts or conduct (on or off the job) which adversely affects the employee's performance and/or the employing agency's performance or function.

Ms. Peterson, my supervisor, and I will be present to hear anything you think we should know regarding the allegations prior to making a decision concerning whether or not disciplinary action may be taken. Disciplinary action could be taken as a result of your alleged conduct. A decision will not be made at the meeting, but will be made at a later date after Ms. Peterson and I have a chance to consider your input. Please feel free to bring representation to this meeting if you so desire.

Sincerely,

Supervisor

cc: Ms. Peterson  
Employee's personnel file

January 29, 2010

Mr. N. N. Jones  
123 No Street  
Unknown, NE 68888

Dear Mr. Jones:

After considering the mitigation you provided at our meeting yesterday, the following disciplinary action will be implemented in accordance with the Nebraska Classified System Personnel Rules and Regulations, 273 NAC 14-004. You will be suspended without pay for five days.

The evidence shows that you have violated 273 NAC 14-003.08 because of your continued absenteeism. You have been counseled twice; once on November 12, 2009, and again on December 15, 2009. On December 15, you were given a written warning which specifically stated that continued absenteeism would result in further discipline. This warning was given to you and a copy was placed in your personnel file. After receiving this written warning you were again absent, without authorization on December 18, 2009.

Your suspension will begin at 8:00 a.m. on Monday, February 1, 2010, and will continue through Friday, February 5, 2010. You will be expected to report for work at 8:00 a.m. on Monday, February 8, 2010, to your usual assigned work area.

It is the policy of our agency to terminate for continual abuse of work rules. Your absenteeism must be discontinued except for authorized leave, or additional discipline may be imposed, up to, and including termination.

If you have any questions or need clarification, please call me or Ms. Smith at 471-0000. A copy of this letter will be placed in your personnel file.

Sincerely,

Jane Smart  
Personnel Manager

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

cc: Personnel File

January 8, 2010

Ms. Jane Doe  
111 Noname Street  
Unknown, Nebraska 68888

Dear Ms. Doe:

You were placed on unpaid investigatory suspension on January 5, 2010, pending further investigation of the incident which occurred on January 2, 2010, regarding the suspected theft of a table from the conference room in the Personnel Office.

Our investigation has been completed, and the evidence shows that there is sufficient proof that you did, in fact, remove the table from the conference room for your personal use.

This action is a violation of the Nebraska Classified System Personnel Rules and Regulations, 273 NAC 14- Section 003.05 and 003.15. You are hereby notified of your termination effective at the close of business on January 8, 2010. Your final check will be mailed to you at your current address no later than January 22, 2010. Please contact Sally Jones at 471-0000 concerning continuation of your health insurance of other benefits, at your expense.

Sincerely,

Jack Lane  
Agency Head  
Unknown, Nebraska

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

cc: Agency Personnel Office