

## **1084.0.0 EMPLOYEE DISCIPLINE**

1084.0.1 This establishes the Department of Human Services (DHS) rules regarding disciplinary measures and is applicable to all employees.

1084.0.2 Discipline applied by supervisors should be aimed at improving employee conduct. Conduct is defined as actions or lack of actions by employees related to work rules, policies, procedures, office mission, or safety.

1084.0.3 Only supervisors who have completed supervisor training provided by the DHS Office of Finance & Administration (OFA) Staff Development or THE COURSE provided by the Department of Finance and Administration will be allowed to take disciplinary action against an employee without first obtaining the written approval of a higher level supervisor who has completed the training. The failure of a supervisor to attend mandatory supervisor training will be immediately reported to the DHS Director by OFA, Staff Development Unit Manager.

### **1084.1.0 Disclaimer**

Nothing in these rules and regulations shall alter the employment-at-will relationship between the employees and DHS. Any agency error that is trivial, formal, or merely academic and does not prejudice the substantive rights of an affected party will be deemed harmless error and shall not be grounds for overturning the agency decision.

### **1084.2.0 Types of Discipline**

1084.2.1 The following levels of discipline may be applied:

- A. Written warning recorded in the employee's file.
- B. Suspensions without pay or demotion. (For exempt employees under the Fair Labor Standards Act, a five-day minimum suspension is required.)
- C. Termination.

**NOTE:** Demotion may be used as an alternative to suspension or termination or in combination with suspension.

1084.2.2 Impact on future discipline – For purposes of progressive discipline, written warnings will be considered for 24 months after the action was documented. Suspensions and demotions will be counted for progressive discipline purposes for a period of 48 months after the action was documented.

### **1084.3.0 Points accumulation**

1084.3.1 Employees are also subject to discipline for the accumulation of disciplinary points. The accrual of points will be determined as follows:

- Written Warning = 3 points
- Suspension = 6 points
- Demotion = 8 points

1084.3.2 Points for each disciplinary action will be counted for one year after the disciplinary action was documented on a Form DHS-1173, Notice of Disciplinary Action.

1084.3.3 Any employee who accrues 13 or more disciplinary points within a 12-month period will be terminated.

### **1084.4.0 All Pertinent Information Should be Gathered**

When supervisors become aware of possible conduct violations, they should take steps to gather any information not already known to them that is necessary to decide if discipline is required and what level of discipline is appropriate. (**Note:** See paragraph 1084.6.1)

### **1084.5.0 Temporary Removal from Duty Assignment Pending Investigation**

1084.5.1 Any employee whose alleged actions or behavior have the potential to be an immediate or direct threat to public health or safety or might threaten the safety of a child, client, or co-worker, or which might impede an investigation shall be temporarily removed from his or her duty assignment pending a review of the allegations by the employee's division director/designee. This action shall not be construed as an indication of wrongdoing by the removed employee, but is imposed to allow adequate time to conduct an investigation.

1084.5.2 The division director/designee shall determine the length of time during which the employee will be temporarily removed from duty and shall arrange for the employee to temporarily assume other duties not involving direct contact with children or clients. A change of work location or residential campus may also be made, if appropriate under the circumstances. If circumstances require that the employee is to be sent home, the employee will be placed on call, with pay, during normal work hours, and be immediately available to participate in the investigation.

### **1084.6.0 Employee Interview**

1084.6.1 An Employee Interview must be conducted prior to disciplinary action. The supervisor will schedule a formal interview with any employee facing possible disciplinary action and assure the employee knows the purpose of the interview.

1084.6.2 The supervisor and employee will meet within five (5) working days of the supervisor's determination that disciplinary action may be warranted. The supervisor will provide all

known facts to the employee and allow the employee an opportunity to refute the information or identify any extenuating factors. During the meeting the employee may provide, in written form, additional information or names of persons who may have relevant information.

- 1084.6.3 A determination of whether disciplinary action will be taken must be made within five (5) working days following the interview. The need for an extension of this time frame will be documented. A written notice will be provided to the employee and will explain the cause for the delay and provide a date that the determination will be made.
- 1084.6.4 If disciplinary action is warranted, the supervisor must follow guidelines outlined in this policy and DHS 1085, Minimum Conduct Standards for DHS Employees.
- 1084.6.5 If disciplinary action is not warranted, the supervisor must immediately notify the employee.
- 1084.6.6 Supervisors must attempt a telephone conference with employees unable or unwilling to meet with them. (Example: the employee has abandoned his/her job, is physically unable to travel, or has been prohibited from entering the workplace.) Unsuccessful attempts to discuss the proposed disciplinary action with the employee must be documented.

#### **1084.7.0 Factors to Consider in Determining Level of Discipline**

- 1084.7.1 Once the supervisor has determined that a disciplinable act has occurred he or she should determine the appropriate level of discipline by considering the following factors:
  - A. Whether the employee knew or should have known that the behavior could result in discipline. Laws, written departmental, divisional and institutional policies, work practices, memos, and posted notices shall be considered proof that an employee knew or should have known any matters discussed in the document and that discipline could result from disobeying any directives contained in the document or reasonably implied by its contents.
  - B. Whether a reasonable employee in similar circumstances would realize the behavior would be inappropriate or improper.
  - C. Whether the behavior disrupted work or interfered with services to customers.
  - D. Whether the behavior resulted in an increased risk of legal liability by the Department and the perceived seriousness of the risk.
  - E. Whether the behavior endangered the safety of the employee, co-workers or customers and the level of risk involved. Endangerment is presumed if the behavior violates a safety law or rule.
  - F. Whether the behavior was intentional in nature.
  - G. Whether the employee has reasonable explanation for his or her behavior or presents other mitigating circumstances.

- H. The employee's work history.
- I. Any other factors the supervisor considers relevant.

1084.7.2 After considering the above factors the supervisor should document his or her findings and select the level of discipline that equates to the seriousness of the offense. The DHS-2813, Disciplinary Investigation Checklist, should be completed if the supervisor is considering termination.

#### **1084.8.0 When a Specific Level of Discipline is Set by Policy**

Some departmental or divisional policies may set a specific level of discipline for certain offenses, if so the recommended level of discipline must be considered as the minimum discipline unless mitigating circumstances can be documented.

#### **1084.9.0 Applying Discipline**

1084.9.1 The discipline should be applied immediately, consistently and impartially. The employee must be warned of the consequences of repeated offenses in writing. After an appropriate initial level of discipline has been selected, the principles of progressive discipline should be followed for subsequent offenses. (i.e., the next level of discipline should be applied for the next substantially similar offense and continue sequentially thereafter, unless aggravating or mitigating circumstances can be demonstrated for the subsequent offenses.) Employees must be notified of the disciplinary action using DHS-1173, Notice of Disciplinary Action. If the employee refuses to sign the DHS-1173 another supervisor should act as witness and it should be documented in writing.

1084.9.2 If the severity of the offense, the frequency of unrelated offenses, the employee's overall work record, and other relevant factors warrant termination, the employee will not be eligible for re-employment for a period of two (2) years from the date of discharge. In cases of extreme violations of conduct, the employee will not be eligible for re-employment with DHS.

#### **1084.10.0 Effective Date of Disciplinary Action**

If the decision to discipline results in suspension without pay or termination, the effective date of such action will be the date the decision is made, and will not be backdated to the date the employee was removed from his or her duty assignment pending investigation.

**NOTE:** All suspensions and terminations must be approved by the division director/designee.

### **1084.11.0 Grievance Submission**

Following the imposition of disciplinary action, an employee has five (5) working days from the date of notification of the disciplinary action to submit a grievance statement to the Employee Relations Office (ERO).

### **1084.12.0 Conflicting Policies Superseded**

This rule supersedes DHS 1084, Employee Discipline, dated August 30, 2002, and any existing policies or specific sections of existing policies that conflict with the terms of this policy.

### **1084.13.0 Originating Section/Department Contact**

Office of Finance and Administration  
Human Resources/Support Services Section  
Policy and Administrative Program Management  
P.O. Box 1437/Slot Number W403  
Little Rock, AR 72203-1437  
Telephone: 682-5835