EMPLOYEE PERFORMANCE IMPROVEMENT AND DISCIPLINE: GUIDELINES FOR SUPERVISORS

I. Introduction

The University of Maine System requires that employees maintain a standard of performance and conduct that contributes to the continuing excellence and orderly and efficient operation of the University. Employees are expected to consistently meet the established performance and conduct standards for their positions. These guidelines have been created to assist supervisors in addressing issues of unsatisfactory performance and misconduct by the employees whom they supervise.

“Misconduct” is conduct or behavior, whether by act or omission, that interferes with or adversely affects in any way the orderly or efficient operation of the University. It includes, but is not limited to, any violation of laws, rules, regulations or policies, whether written or unwritten; inappropriate or unprofessional interpersonal behavior; unsatisfactory work performance that is caused by other than lack of capacity or ability; and off-duty or off-premises behavior which adversely affects the employment relationship.

Nothing contained in these guidelines is intended to alter the at-will employment relationship between the University and its non-represented employees or to alter or affect the terms of any collective bargaining agreement. These guidelines are for guidance purposes only and do not create legally enforceable contractual rights. The University reserves the right to change or eliminate these guidelines at any time for any or no reason. Failure to follow these guidelines will not create claims based upon failure to meet standards of procedural due process beyond any that may be mandated by state or federal law.

Complaints regarding discrimination or discriminatory harassment are covered by the University’s Equal Opportunity Complaint Procedure. If a supervisor becomes aware of a discrimination or discriminatory harassment concern regarding an employee’s behavior, the supervisor should consult with the Equal Opportunity Officer. The Equal Opportunity Officer and the supervisor will discuss the situation and together decide how to proceed.

When these guidelines refer to consultation with the System Office of Human Resources, labor relations staff in the System Office, or University Counsel, the university Human Resources office is normally responsible for initiating the consultation.
II. **Progressive Discipline**

A. **General**

Disciplinary or corrective action for unsatisfactory job performance or misconduct is generally imposed on a progressive basis and in consultation with the university Human Resources office and labor relations staff in the System Office of Human Resources and, as needed, with University Counsel. The extent of disciplinary or corrective action will depend upon all of the facts and circumstances available, such as: the nature of the misconduct; any previous misconduct or performance issues by the employee; years of service; and previous discipline imposed. Steps in the progressive discipline process may be repeated or omitted if the facts and circumstances dictate. For instance, an oral or written warning may not be appropriate if the situation involves an incident of serious misconduct, even where there has been no previous misconduct or discipline.

If a supervisor notices work-related behavior problems, he or she should bring them to the employee’s attention. When such communication takes place before disciplinary action is initiated, it may often be enough to correct the problem. Employees and supervisors are encouraged to consult with Human Resources staff in order to help solve the problem.

Before initiating progressive discipline, a supervisor should consider the following issues:

- Have an accurate, comprehensive job description, clearly identified performance expectations and adequate training been provided to the employee?

- Are the standards of performance and rules of conduct being applied fairly? How have other employees who have engaged in the same conduct been treated?

- Have you communicated with the employee regularly regarding performance expectations and conduct? Have written records been made and maintained of any previous counseling or warnings?

- Does the university have a written rule or policy regarding the conduct? Has the employee been provided with a copy of the rule or policy?

B. **Disability Issues**

Anytime that discipline involving an employee is being considered due to poor job performance, a review should be conducted to determine whether the
employee may have a disability that is affecting job performance. If the supervisor has reason to believe that a disability may be involved, the supervisor should ask the employee if an accommodation is needed. If no disability exists or if there is a disability but it is not affecting job performance, the university may proceed with the disciplinary process, beginning with the initiation of a performance improvement plan. If an employee’s disability is affecting the performance of non-essential functions of the job, a reasonable accommodation should be made to enable the employee to perform these functions, or the functions should be eliminated from the job. If a disability makes an employee unable to perform essential functions of the job even after all possible accommodations have been considered, the university must reassign the employee to a vacant position if the employee is qualified for the job and the job is available within a reasonable amount of time. If no job is available for which the employee is qualified, the university may proceed with the termination or non-reappointment process.

*It is essential to consult with the Equal Opportunity Officer if discipline of an employee with a disability is being contemplated.*

**C. Oral Warning**

The initial step in the application of progressive discipline is usually the oral warning. The supervisor must meet with the staff member to discuss the specific unsatisfactory performance or misconduct and outline the appropriate corrective action. Any time that a supervisor meets with an employee and it is possible that discipline may result from that meeting, the supervisor must inform the employee of the employee’s right to be accompanied by another person. A non-represented employee may have another employee present; an employee whose position is covered by a collective bargaining agreement may bring a union representative to the meeting. The supervisor should keep a written record that an oral warning has been given and what corrective action was discussed with the staff member. A copy of this document should be provided to the employee and placed in the official personnel file.

**D. Written Warning**

The next step in the disciplinary process after an oral warning is usually the written warning. The supervisor, in consultation with a representative of the university Human Resources office and System labor relations staff, initiates a written warning and a discussion with the employee. The written warning document to the staff member specifies:

- The specific unsatisfactory performance or misconduct;
- The corrective action to be taken by the staff member. In the case of corrective disciplinary action for poor job performance, the supervisor
should, in consultation with Human Resources, develop a performance improvement plan for the employee;

- Notice that continued unsatisfactory performance or misconduct may result in further disciplinary action, including termination of employment.

When the staff member is given the written warning, the supervisor should discuss the problem with the staff member. The written warning must indicate that a copy has been placed in the employee’s personnel file, and the supervisor forwards a copy to the university Human Resources office for inclusion in the personnel file. Any additional steps required by the applicable collective bargaining agreement must be taken.

E. Suspension without Pay

If unacceptable performance or misconduct continues or recurs, the supervisor, in consultation with the university office of Human Resources and the labor relations staff in the System Office, schedules and conducts a hearing (referred to as a due process, pre-disciplinary, or fact-finding hearing). The supervisor sends the employee a written advance notice of the hearing stating the general nature of the performance or conduct concerns to be addressed, the date the hearing will be held, and a represented employee’s right to bring a union representative or a non-represented employee’s right to be accompanied by another employee. The purpose of the hearing is to afford the employee an opportunity to hear the evidence gathered and to respond to that evidence.

After the hearing, the supervisor considers any information provided by the employee. If, on consulting with the university human resources office, the supervisor determines that a suspension without pay is warranted, the supervisor should give the employee a letter which describes:

- The time period and terms of the suspension;

- The specific unsatisfactory performance or misconduct;

- The corrective action to be taken by the employee. In the case of corrective disciplinary action for poor job performance, the supervisor should, in consultation with Human Resources, develop a remediation plan for the employee;

- Notice that continued unsatisfactory performance or misconduct may result in termination of employment.

Note: The length of the suspension period should be determined in consultation with the university Human Resources office, labor
relations staff in the System Office, and, as needed, University Counsel. The length of the suspension should be based on the severity of the misconduct, the length of suspensions imposed for similar misconduct, and other relevant factors. Normally a suspension should not exceed five (5) days for classified employees. The maximum length of suspension for professional employees and faculty is decided on a case-by-case basis depending upon the severity of the performance or conduct problem.

When the employee is given the suspension letter, the supervisor should discuss the problem with the employee. The written warning must indicate that a copy has been placed in the employee’s personnel file, and the supervisor forwards a copy to the university Human Resources office for inclusion in the personnel file.

**F. Termination**

Subsequent to the suspension, if the employee’s performance or conduct is still unacceptable, the supervisor, in consultation with the university Human Resources office and labor relations staff in the System Office, schedules and conducts a hearing (referred to as a due process, pre-disciplinary, or fact-finding hearing). The supervisor sends the employee a written advance notice of the hearing stating the general nature of the performance or conduct concerns to be addressed, the date the hearing will be held, and a represented employee’s right to bring a union representative or a non-represented employee’s right to be accompanied by another employee. The purpose of the hearing is to afford the employee an opportunity to hear the evidence gathered and to respond to that evidence.

After the hearing the supervisor considers any information provided by the employee. The decision whether to terminate is based on a review of the facts and circumstances, the documentation, the employee’s response, and whether University policy regarding progressive discipline has been followed. Upon review, if the decision is made to terminate, the supervisor should give the employee a letter outlining the reason for the termination and the effective date of the termination. The termination letter is prepared in consultation with the university Human Resources office and labor relations staff in the System Office and must be reviewed by University Counsel. The termination letter must indicate that a copy has been placed in the employee’s personnel file, and the supervisor forwards a copy to the university Human Resources office for inclusion in the personnel file.
III. Special Circumstances

These guidelines do not apply to situations involving serious misconduct, including, but not limited to, physical violence, insubordination, misappropriation of funds, harassment, and discrimination. It is imperative that the supervisor contact the university Human Resources office, labor relations staff in the System Office, and University Counsel in such cases.

In addition, the university Human Resources office should contact the System Office of Human Resources and University Counsel in the event of any of the following:

- Upon receipt of a formal complaint that will be investigated;
- Before placing an employee on leave with or without pay prior to discipline or pending an investigation;
- If any party to an investigation engages an attorney;
- Once the investigation plan has been developed;
- Prior to interviewing the subject of the complaint; and
- When the investigator’s draft report has been completed (but before the report is issued).

IV. Represented Employees

With regard to discipline of University employees who are covered by a collective bargaining agreement, supervisors must comply with any specific terms in the appropriate contract article.

Office of Human Resources
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