

## **R477. Human Resource Management, Administration.**

### **R477-11. Discipline.**

#### **R477-11-1. Disciplinary Action.**

(1) Agency management may discipline any employee for any of the following causes or reasons:

- (a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards, standards of conduct and workplace policies;
- (b) work performance that is inefficient or incompetent;
- (c) failure to maintain skills and adequate performance levels;
- (d) insubordination or disloyalty to the orders of a superior;
- (e) misfeasance, malfeasance, or nonfeasance;
- (f) any incident involving intimidation, physical harm, or threats of physical harm against co-workers, management, or the public;
- (g) the employee no longer meets the requirements of the position;
- (h) conduct, on or off duty, which creates a conflict of interest with the employee's public responsibilities or impacts that employee's ability to perform job assignments;

(i) failure to advance the good of the public service, including conduct on or off duty which demeans or harms the effectiveness or ability of the agency to fulfill its mission;

(j) dishonesty; or

(k) misconduct.

(2) Agency management shall consult with DHRM prior to disciplining an employee.

(3) Any disciplinary actions of career service employees shall be governed by principles of due process and Section 67-19-18. The disciplinary process shall include each of the following, except as provided under Subsection 67-19-18(4).

(a) The agency representative notifies the employee in writing of the proposed discipline, the reasons supporting the intended action, and the right to reply within five working days.

(b) The employee's reply shall be received within five working days in order to have the agency representative consider the reply before discipline is imposed.

(c) If an employee waives the right to reply or does not reply within the time frame established by the agency representative or within five working days, whichever is longer, discipline may be imposed in accordance with these rules.

(4) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any career service exempt employee not subject to the same procedural rights, by imposing one or more of the following forms of disciplinary action:

(a) written reprimand;

(b) suspension without pay up to 30 calendar days per incident requiring discipline;

(c) demotion as defined in Rule R477-1, reducing the employee's current actual wage, as determined by the agency head; or

(d) dismissal in accordance with Section R477-11-2.

(5) If agency management determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, under Subsection 67-19-18(4), pending an investigation and determination of facts:

(a) paid administrative leave; or

(b) temporary reassignment to another position or work location at the same current actual wage.

(6) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(7) Imposed disciplinary actions are subject to the grievance procedure for career service employees, except under Section 67-19a-402.5.

#### **R477-11-2. Dismissal or Demotion.**

An employee may be dismissed or demoted for cause under Subsection R477-10-2(2)(e) and Section R477-11-1, and through the process outlined in this rule.

(1) A probationary employee or career service exempt employee may be dismissed or demoted for any or for no reason without right of appeal, except under Sections 67-21-3.5 and 67-19a-402.5.

(2) No career service employee shall be dismissed or demoted from a career service position unless the agency head or designee has observed the following procedures.

(a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.

(b) The employee shall have up to five working days to reply. The employee shall reply within five working days for the agency head to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee. This meeting shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.

(i) At the meeting the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.

(ii) The employee may present documents, affidavits, or other written materials at the meeting. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected, or controlled under Section 63G-2-3.

(d) Following the meeting, the employee may be dismissed or demoted if the agency head finds adequate cause or reason.

(e) The employee shall be notified in writing of the agency head's decision. The reasons shall be provided if the decision is a demotion or dismissal.

#### **R477-11-3. Discretionary Factors.**

When deciding the specific type and severity of agency action, the agency head or representative may consider the following factors:

(1) consistent application of rules and standards;

(a) the agency head or representative need only consider those cases decided under the administration of the current agency head because decisions in cases prior to the administration of the current agency head are not binding upon the current agency head and are not relevant in determining consistent application of rules and standards;

(b) in determining consistent application of rules and standards, the disciplinary actions imposed by one agency may not be binding upon any other agency and may not be used for comparison purposes in hearings wherein the consistent application of rules and standards is at issue;

- (2) prior knowledge of rules and standards;
- (3) the severity of the infraction;
- (4) the repeated nature of violations;
- (5) prior disciplinary/corrective actions;
- (6) previous oral warnings, written warnings, and discussions;
- (7) the employee's past work record;
- (8) the potential of the violations for causing damage to persons or property;
- (9) the strength of the evidence of conduct;
- (10) dishonesty or failing to disclose relevant information;
- (11) the effect on agency operations, including:
  - (a) how the wrongdoing relates to the employee's job duties;
  - (b) the potential of the conduct to adversely affect public confidence in the agency;
  - (c) the potential of the conduct to adversely affect morale and effectiveness of the agency;
- (12) willful or intentional conduct; or
- (13) likelihood of recurrence.

**KEY: discipline of employees, dismissal of employees, grievances, government hearings**

**Date of Enactment or Last Substantive Amendment: July 1, 2020**

**Notice of Continuation: April 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-3**