

August 2010

ADVERSE ACTION, APPEALS, HEARINGS AND GRIEVANCES

Page 1 of 12

A9.130 PROCEDURES FOR TAKING DISCIPLINARY AND DISCHARGE
ACTIONS FOR CIVIL SERVICE AND NON-CIVIL SERVICE
EMPLOYEES

1. Purpose.

To ensure that permanent and temporary civil service and non-civil service members and employees serving an initial probationary appointment who are disciplined or discharged from State service are treated in an orderly and uniform manner.

2. Objective.

To provide guidance and establish procedures in accordance with the applicable collective bargaining agreements for taking and processing disciplinary and discharge actions due to misconduct. It is not intended that this Administrative Procedure, A9.130, be cited as the authority for any disciplinary action. It serves as a guide when contemplating or taking any disciplinary or discharge action.

3. Definitions as Used in this Administrative Procedure.

- a. "Appointing Authority" for the purpose of this Administrative Procedure includes Vice Presidents, Chancellors or the System Director of Human Resources.
- b. "Director" means positions determined by the Board of Regents where use of the title is specifically authorized.
- c. "Discipline" means an action taken by an appointing authority or a designee against an employee with proper cause or just and proper cause (refer to applicable collective bargaining agreement) for misconduct or for any infraction or violation of a statute, policy or rule.

- d. "Discharge" means an action taken by a Vice President, a Chancellor, or the System Director of Human Resources or a designee (see also, 4.c.) to involuntarily separate an employee from State service due to misconduct.
- e. "Misconduct" means improper or inappropriate behavior. Examples of misconduct for the purpose of this procedure are provided in section 6.a.
- f. "Mitigating circumstances" means conditions which justify reducing the severity of the discipline.
- g. "Non-civil service member" means an employee serving a temporary appointment outside of the list (TAOL) or an 89-day appointment.
- h. "Permanent civil service member" means an employee who has met all requirements for membership in civil service under Chapter 76-1 and 76-27, Hawai'i Revised Statutes (HRS).
- i. "Probationary appointment" means an appointment period which is a test of the employee's qualifications for the position. Upon successful completion, the employee earns civil service status in the position for which the probationary appointment was completed.
- j. "Progressive discipline" is the application of increasingly severe penalties if an offense is repeated.
- k. "Temporary civil service member" means an employee whose position has a not-to-exceed, NTE, date and who has successfully completed an initial probationary period.

4. Applicability/Responsibility.

- a. The procedures included in this instruction shall apply to permanent and temporary civil service and non-civil service members under the jurisdiction of the Department of Human Resources Development (HRD).
- b. Appropriate provisions contained in the HRS, collective bargaining agreements (CBAs) or Hawai'i Administrative Rules (HAR) shall be applicable. If civil service rules, policies and/or procedures are in conflict with the applicable CBA, the provisions of the agreement shall prevail.
- c. Vice Presidents, Chancellors, and the System Director of Human Resources (hereinafter, appointing authority) are responsible for taking appropriate disciplinary and discharge actions as required. Further delegation may be granted at the discretion of the appointing authority, however, authority for taking suspension and discharge actions may be delegated no further than to Deans and Directors. Deans and Directors may further delegate authority to administer oral and written reprimands. All delegations shall be reported to the System Director of Human Resources.
- d. The appointing authority or a designee should contact their respective human resources representative (HRR) for guidance when contemplating disciplinary or discharge actions.

5. Disciplinary and Discharge Actions.

- a. An employee may be disciplined or discharged for misconduct.
- b. A disciplinary or discharge action may, for example, be due to a violation of a statute, a provision of the employee's collective bargaining agreement, a rule or policy, misconduct, or other reason.
- c. The statutory authority for a discharge action is pursuant to Chapter 76-46, HRS.

NOTE: This Administrative Procedure is a guideline and is not to be cited as the authority for any disciplinary or discharge action.

6. Discipline or Discharge for Misconduct.

a. Examples of situations that may result in discipline, up to and including discharge, for misconduct include, but are not limited to:

- 1) Insubordination;
- 2) Unauthorized absences from work;
- 3) Offensive or inappropriate conduct, use of abusive language or profanity towards others;
- 4) Harassment, mentally or physically abusing/assaulting others, fighting or criminal behavior;
- 5) Tardiness;
- 6) Sleeping on the job;
- 7) Careless, inappropriate or negligent use or maintenance of State property;
- 8) Dishonesty, theft, fraud, vandalism, sabotage;
- 9) Intoxication or being under the influence of a controlled substance while on duty, (follow the applicable procedures in the Hawai'i Government Employees Association Memorandum of agreement (MOA) and United Public Workers MOA and bargaining units 1 and 10 agreements on drug and alcohol testing);
- 10) Distribution of controlled substance(s); or
- 11) Violation of a safety regulation or safety order, etc.

b. Permanent civil service members.

- 1) Disciplinary and discharge actions are to be taken in accordance with provisions of the applicable CBA and shall not be retaliatory or discriminatory.
- 2) For discharge actions, the employee shall be given written notice at least ten (10) calendar days prior to the effective date of the discharge. Refer to Attachment A.
- 3) In addition, for disciplinary or discharge actions follow applicable sections of Attachment A. For example, #9 ensures that employees who are being discharged are provided an opportunity to meet with the appointing authority or a designee to

respond to the specific charges/allegations. This pre-discharge meeting must be held prior to making a final discharge determination.

- c. Temporary civil service members, non-civil service members and employees serving an initial probationary appointment.
 - 1) For disciplinary or discharge actions the appointing authority or a designee is responsible for ensuring that the action taken is not retaliatory or discriminatory.
 - 2) For discharge actions, the employee shall be given written notice at least ten (10) calendar days prior to the effective date of the discharge. The notice shall contain the reasons for the discharge and the date of the discharge. If the employee is a bargaining unit member, include a statement that they may contact their union agent. If the employee is not a bargaining unit member, include a statement that they may file an internal complaint in accordance with the provisions of Administrative Procedure A9.140.
 - 3) For temporary employees, a discharge action due to the end of the appointment period or not-to-exceed (NTE) date is not considered disciplinary in nature.

NOTE: The provision for a pre-discharge meeting, see 6.b.3. above, is not applicable for temporary civil service or non-civil service employees, i.e. only permanent civil service employees are entitled to a pre-discharge meeting.

7. References

- a. Chapter 76, Hawai'i Revised Statutes, Civil Service Law
- b. Chapter 78, Hawai'i Revised Statutes, Public Service
- c. Chapter 92F, Hawai'i Revised Statutes, Uniform Information Practices Act
- d. Executive Order 03-01 (regarding employees excluded from collective bargaining)

- e. University of Hawai'i, Executive Policy E9.112, Delegation of Authority for Personnel Actions
- f. University of Hawai'i Administrative Procedure A9.140, Internal Complaint Procedure for Civil Service Employees and Complaints Related to the Civil Service System
- g. Title 14 (Department of Human Resources Development), Hawai'i Administrative Rules, Chapter 13.01, Internal Complaint Procedure
- h. Department of Human Resources Development Policies and Procedures 702.003, Separation from Service (Section B. Discharge from Service)
- i. Department of Human Resources Development Policies and Procedures 501.002, Department - Directed Leave

Attachments

Attachment A - Procedure for Contemplated Disciplinary or Discharge Action Due to Misconduct Against Permanent Civil Service Members

Attachment B - Sample Discharge Notice

Attachment A

PROCEDURE FOR CONTEMPLATED
DISCIPLINARY OR DISCHARGE ACTION DUE TO MISCONDUCT AGAINST
PERMANENT CIVIL SERVICE MEMBERS

The following procedures will be followed when a disciplinary or discharge action due to misconduct is contemplated against a permanent civil service employee. For disciplinary or discharge action against temporary and non-civil service employees the appointing authority or a designee should consult with their respective Human Resources Representative. Note: If civil service rules, or policies and procedures are in conflict with the applicable CBA, the provisions of the CBA shall prevail.

1. Disciplinary and discharge actions shall be considered confidential with the exception of the provisions in Chapter 92F-14 (B), HRS, Significant privacy interest; examples. Notwithstanding the foregoing, disciplinary actions are to be taken, to the extent possible, in private.
2. Disciplinary or discharge actions may not be for reasons that are retaliatory or discriminatory. Therefore, the appointing authority or a designee is responsible for ensuring that a thorough and fair investigation or fact-finding of the particular incident giving rise to the contemplated disciplinary or discharge action is completed in a timely manner. The investigation shall include an opportunity for the employee to respond to the allegation(s).
3. During the investigation/fact-finding, the details of the specific charges/allegations should be documented. In doing so, the "who, what, where, when, and how" aspects should be fully stated.
 - a. When an investigation of charges against an employee is pending and the employee's presence at the workplace is deemed to be detrimental to the conduct of the investigation or the operations of the workplace, the appointing authority or a designee may place the employee on leave of absence with or without pay pending investigation, in accordance with the applicable collective bargaining agreement.

- b. For situations not covered by other leaves available in the applicable collective bargaining agreement where the appointing authority believes that the presence of the employee at the worksite may be disruptive to normal operations or detrimental to the University, to the health and safety of the employee, other employees, or the general public, a request may be made for department-directed leave in accordance with HRD Policies and Procedures 501.002, Department-Directed Leave.
- 4. Based on the charges/allegations, findings of the investigative report, employee's past disciplinary record, employee's past work record, and any mitigating circumstances determine whether a disciplinary or discharge action can be supported and taken by the appropriate appointing authority or a designee. Progressive discipline, if appropriate, is applied for permanent civil service employees:
 - a. If an offense is repeated, increasingly severe discipline is issued.
 - b. Progressive discipline may be adjusted and the employee may be suspended or discharged, as applicable.
- 5. If no disciplinary or discharge action results, the appointing authority or a designee notifies the employee in writing that the investigation has concluded and that no further action will result. If appropriate, notify the complainant in writing that appropriate action was taken.
- 6. If it is determined that discipline is appropriate, the appointing authority or a designee provides the employee with written notice in accordance with provisions of the applicable CBA.
- 7. If discharge is appropriate, the appointing authority or a designee provides the employee with written notice in accordance with provisions of the applicable CBA. Refer also to Attachments B and C. The written notice must be issued at least ten (10) calendar days prior to the effective date of the discharge action (refer to #11, below). Confirmation of delivery is highly recommended.
- 8. The written notice of discipline or discharge by the appointing authority or a designee shall include the

following information (also, refer to the applicable Article or Section in the appropriate CBA):

- a. Date of disciplinary action or effective date of discharge action.
 - b. Details of the specific reason(s) for the discipline or discharge.
 - c. References to any past similar disciplinary action(s) found in the employee's personnel file retained in the Civil Service section in the OHR (ensure that the derogatory materials used are in compliance with the provisions in the Article or Section on personnel file of the applicable CBA.)
 - d. For discharge actions of permanent civil service members, include a statement indicating that the employee will be provided an opportunity to attend a pre-discharge meeting with the appointing authority or a designee, to respond to the charges on a specified date prior to the effective date of the discharge. The date, time, place, name and telephone number of the person to contact to confirm the employee's attendance shall be provided. Also, refer to #9 through #11 below.
 - e. A statement that the employee may consult with the union on the matter, or file an internal complaint in accordance with A9.140, if not a union member.
 - f. A copy of the written notice will be simultaneously sent to the OHR for placement in the employee's personnel file and the appropriate union, as applicable.
9. When discharge is contemplated for a permanent civil service employee, he/she must be offered an opportunity for a pre-discharge meeting with the appointing authority or a designee. At the pre-discharge meeting, the employee may present witnesses, documents, etc., on his/her behalf. Further, the employee may have a union or other representative present at this meeting if he/she so chooses. It is the employee's responsibility to advise their representative of the time, date and place of the meeting.

10. At the conclusion of the meeting, the employee should be advised by the appointing authority or a designee that they will be notified in writing of the result after a thorough review of the facts and documents presented at the pre-discharge meeting and prior to the effective date of discharge.
11. After the meeting, if the decision is to modify the discharge action, the appointing authority or a designee will notify the employee in writing as soon as possible. If written notice of the modification cannot be given prior to the discharge date, the employee shall be advised that the effective date of the discharge action will be postponed to allow further review of the matter. (As such, it may be prudent to issue the written notice to discharge with more than the required minimum ten (10) calendar days to avoid having to postpone the effective date of discharge). Also, inform the employee of an approximate date whereby the appointing authority or a designee will render its decision. The employee must be advised of the decision in writing, prior to the effective date of the discharge action.
12. Provide a copy of this written notice to the employee's union, if applicable, and the OHR for placement in the employee's personnel file.

Attachment B

SAMPLE DISCHARGE NOTICE

(Edit letter to conform to reason for discharge and type of employee)

Employee's Name (Date)
Employee's Address

Dear _____:

This is to inform you that in accordance with Section 76-46, Hawai'i Revised Statutes, Discharges; demotions, we are proceeding with your discharge from employment as a class title, from the Campus, effective at the close of business date (provide at least 10 calendar days notice).

Explain the reason(s) for the discharge action. Provide the specific reasons(s) and a full explanation of each reason. State clearly what the employee did and/or did not do that was inappropriate or wrong. Include the "who, what, when, where, and how" of the matter. Also, reference past attempts (training, discipline, etc.) to correct the employee's inappropriate behavior or misconduct. Indicate any other reasons used to justify the discharge. For example, any past similar disciplinary action(s) found in the employee's personnel file which is retained in the Civil Service section in the OHR, etc.

[Include for permanent civil service employee:] In accordance with the Department of Human Resources Development's Policies and Procedures 702.003, Separation from Service, we are providing you an opportunity to respond to this discharge action. Should you wish to respond to the charges contained herein, you may do so on day of week, date, at time, in the location. If you intend to exercise this opportunity to respond to the reason for your discharge, please call me at phone # to confirm that you and/or your representative will be appearing as scheduled. If we do not hear from you by this date, we will conclude that you have declined to attend the scheduled meeting and will proceed with your discharge. It is your responsibility to advise your representative of the date, time, and place of this meeting.

[Include if bargaining unit member:] Regardless of whether you exercise this opportunity to respond to the charges, you have the right to consult with your union regarding this matter.

Sincerely,

(VP/Chancellor)
(School/College/Program)

c: applicable union, if bargaining unit member
School/College/Program Human Resources Representative
OHR, Employee's Personnel File

Attachment C

SAMPLE DISCHARGE NOTICE TO EMPLOYEE

Mr. John Doe
12-345 Aloha Oe Drive
Honolulu, Hawai'i 96817

August 27, 2010

Dear Mr. Doe:

The purpose of this letter is to inform you that in accordance with Section 76-46, Hawai'i Revised Statutes, Discharges; demotions, we are proceeding with your discharge from employment as an Office Assistant III, SR 08, from the Ni'ihau Community College, because of your continued use of the State car for personal business. The discharge action will be effective at the close of business on Thursday, September 30, 2010.

Previously, on July 1, 2009, you were notified that unauthorized use of the State car to pick up your child to transport him home is inappropriate use of State equipment and constitutes misconduct. Then, on October 6, 2009, you picked up your son using a State car and were suspended for one (1) working day. Subsequently, on November 25, 2009, January 15, 2010, and May 13, 2010, you again used the State car to pick up your son and were suspended for three (3), ten (10) and twenty (20) working days, respectively. Most recently, on July 7, 2010, it was found that you used the State car to pick up your son to take him to the baby sitter. You admitted to the investigator that you lied when you said that you had received an emergency call from the school that your son was sick. (See enclosed fact finding/investigative report).

The seriousness of this recent incident and your past disciplinary record were considered in the decision to discharge you from service.

In accordance with the Department of Human Resources Development's Policies and Procedures 702.003, Separation from Service, you may respond to the charges contained herein, on Thursday, September 2, 2010, at 9:00 a.m., in the Ni'ihau Community College conference room #2. Please call me at 900-2222 to confirm that you and/or your representative will be appearing as scheduled. If we do not hear from you by this date, we will conclude that you have declined to attend the scheduled meeting and will proceed with your discharge. It is your responsibility to advise your representative of the date, time, and place of this meeting. Regardless of whether you exercise this opportunity to respond to the charges, you have the right to consult with your union regarding this matter.

Sincerely,

Mary Mahalo, Chancellor
Ni'ihau Community College

c: Terri Yaki, HGEA Union Agent
Hannah Helpyu, HRR, Ni'ihau Community College (w/o enclosure)
OHR, Employee's Personnel File (w/o enclosure)