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<b>Progressive Discipline</b>	<b>ACA Standards: 2-CO-1C-01, 5-ACI-3D-14, 4-ACRS-7E-10, 4-APPFS-3E-15, 4-APPFS-3E-16, 4-APPFS-3E-17</b>		
<b>Scott Crow, Director</b> <b>Oklahoma Department of Corrections</b>		<b>Signature on File</b>	

## **Progressive Disciplinary Procedures**

(Revision-02 dated 06/14/2022) The Oklahoma Department of Corrections (ODOC) established the following procedures to ensure a safe and productive work environment through the prompt application of appropriate discipline that is equitable and suitable for the offense considering the circumstances and which provides a limited due process. [Civil Service Rule 260:130-27-1] (2-CO-1C-01, 4-APPFS-3E-16)

(Revision-02 dated 06/14/2022) These procedures are intended to provide discipline which is consistent, impartial, and predictable while preserving the flexibility to respond with varying penalties, if justified. [Civil Service Rule 260:130-27-3]

Discipline, in general, is applied progressively; however, progressive and consistent discipline does not preclude the use of more severe disciplinary responses to serious infractions, nor does it require it be applied without regard for individual differences such as length of service, performance record, position or other mitigating or aggravating circumstances. (4-APPFS-3E-16)

(Revision-02 dated 06/14/2022) Prolonged, serious or repetitive job performance deficiencies will also be documented in the performance evaluation and during periodic reviews in accordance with [OP-110225](#) entitled “Performance Management Process.” Such evaluations will be used for current or former state employees in decisions regarding promotions, appointments, demotions, performance pay increases, and discharges. (74 O.S. § 840-4.17) The appointing authority can make decisions regarding demotions and discharges on current state employees with or without the performance evaluations, if deemed necessary.

Referrals to the Employee Assistance Program (EAP) for treatment or counseling, in addition to a disciplinary response, may be appropriate under certain conditions and employee participation in treatment or counseling may serve to mitigate a disciplinary response.

For the purpose of this procedure, the term “facility head” will apply to wardens and community corrections centers administrator and the term “unit head” will apply to unit administrators and probation and parole administrators.

### **I. Step One: Employee Engagement**

Employee engagement is the first step of progressive discipline and may include steps of warning, discussion, corrective interview, coaching, counseling, oral reprimand, or a Letter of Concern. For purposes of the Merit Protection Commission, employee engagement will be equivalent to informal discipline.

A. General Guidelines

The goal of employee engagement is to bring potential problems to an employee's attention before they escalate.

1. Documentation regarding employee engagement progressive discipline will be maintained in the employee's disciplinary file maintained by the facility's/unit's human resources office.
2. A copy of any written disciplinary action will be provided to the employee.

B. Content (See "Example/Letter of Concern" ([Attachment A](#), attached))

Employee engagement progressive discipline should notify employees of:

1. The nature of the problem which is cause for the employee engagement and the steps which must be taken to resolve the problem; and
2. The consequences of repeated infractions, and/or continuing deficient performance or conduct.

II. Step Two: Disciplinary Actions with Complaint Rights

Progressive discipline actions with complaint rights include letters of reprimand, suspensions without pay, and involuntary demotions. (5-ACI-3D-14, 4-ACRS-7E-10)

A. General Guidelines

1. Absent aggravating conditions, the second step of progressive discipline will be disciplinary actions with complaint rights and will take place after employee engagement.
2. (Revision-02 dated 06/14/2022) Discipline action documentation will include a citation of any other discipline which was used in the decision to administer disciplinary actions with complaint rights. Supervisors are prohibited from considering incidents that occurred longer than four years prior to an offense in order to move to a higher level of discipline except where the prior incidents involving the following types of conduct:

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- a. Criminal activity;
  - b. Sexual misconduct and/or harassment;
  - c. Discriminatory behavior and/or harassment;
  - d. Threats or acts of violence against employees in the workplace; and
  - e. Drug and/or alcohol use or abuse on the job.
- 3. (Revision-02 dated 06/14/2022) The employee will be provided a copy of any disciplinary document at the time the disciplinary action is taken. (Civil Service Rule 260:130-27-4). Discipline documents will be provided to an employee in person. In the event that an appointing authority is not able to provide the documents in person, the appointing authority will provide these documents through acceptable means to include certified restricted delivery mail and electronic mail.
- 4. All written reprimands, suspensions without pay, and involuntary demotions will be forwarded to the office of the General Counsel for review prior to issuance.
- 5. (Revision-02 dated 06/14/2022) No discipline will be effective prior to the date delivered to the employee.
- 6. (Revision-02 dated 06/14/2022) A copy of all discipline actions with complaint rights will be forwarded to the chief administrator of Human Resources or designee.
- 7. Documentation of actionable discipline will be maintained in the employee's disciplinary file. The disciplinary file will be maintained by the facility's/unit's human resources office with the personnel file and will be available for review by the employee.
- B. (Revision-02 dated 06/14/2022) Causes for Discharge, Suspension without Pay and Demotion (4-ACRS-7E-10, 4-APPFS-3E-17)
  - 1. (Revision-02 dated 06/14/2022) A state employee may be disciplined for:
    - a. Misconduct;
    - b. Insubordination;
    - c. Inefficiency;
    - d. Drunkenness;

- e. Inability to perform the duties of the position in which employed;
- f. Willful violation of Statutes, Rules or Procedure;
- g. Conduct unbecoming a public employee;
- h. Conviction of a crime of moral turpitude; or
- i. Any other just cause

C. Discipline for Failure to Comply with State Income Tax Laws

Upon receipt of notice from the Oklahoma Tax Commission (OTC) that an employee has failed to comply with state income tax laws, 68 O.S. § 238.2 requires that the appointing authority commence disciplinary action.

All disciplinary action required by 68 O.S. § 238.2 and [OP-110215](#) entitled "Rules Concerning the Individual Conduct of Employees" will adhere to the following guidelines:

1. (Revision-02 dated 06/14/2022) The chief administrator of Human Resources or designee will notify the appropriate facility/unit head and provide instructions regarding the appropriate disciplinary action. The disciplinary action will be maintained according to this procedure.
2. If the notification is the employee's third notification as a state employee, regardless of which agency the employee was employed by at the time of the first and second notices, the employee's wages will be garnished pursuant to statute.

The OTC has sole responsibility for identifying employees that are not in compliance with state income tax laws and making notification of their respective tax status to the ODOC.

3. All discipline will comply with all statute, rules, and these procedures concerning the discipline of state employees.
4. Disciplinary actions will reference the provisions of 68 O.S. § 238.2 and the notice received from the OTC.
5. The facility/unit head will forward a copy of all discipline actions as a result to the chief administrator of Human Resources or designee.

III. Written Reprimand

A. Guidelines

1. Letters of reprimand may be issued to all state employees if warranted by circumstances.
2. Employees will be provided an opportunity to respond in writing to the written reprimand by submitting a "Written Response to Discipline" ([Attachment D](#), attached). Any "Written Response to Discipline" ([Attachment D](#), attached) made will be attached to the written reprimand. The written reprimand and any "Written Response to Discipline" ([Attachment D](#), attached) will be maintained in the employee's disciplinary file by the facility's/unit's human resources office.
3. Reprimands may be issued by a supervisor within the employee's chain of command with the approval of the facility/unit head.

B. Content (See entitled "Example/Written Reprimand" ([Attachment B](#), attached))

A written reprimand will contain:

1. The date of the written reprimand;
2. The statute, rule, policy, practice, or procedure regarding work performance or conduct which was violated;
3. A statement of the act or incident (or omission) which is the cause or reason for the written reprimand;
4. A citation of any employee engagement or previous disciplinary actions which were used in the decision to administer the written reprimand;
5. Steps which can be taken to resolve the problem;
6. The consequences of repeated infractions and/or continuing deficient performance or conduct;
7. A statement of the employee's right to file a complaint with the Civil Service Division, may respond in writing and have that response filed with the reprimand; and
8. A copy of the Civil Service Division's complaint petition.

IV. (Revision-01 dated 02/14/2022) Suspension Without Pay

(Revision-02 dated 06/14/2022) (Revision-01 dated 02/14/2022) This discipline applies to all state employees, except those designated as trial period, temporary employees or those employees exempt from the provisions of the Civil Service Act.

A. Guidelines

1. Employees may be suspended without pay in accordance with this procedure. Employees will be suspended without pay in full work week intervals, unless the suspension is imposed for a violation of workplace conduct rules. (29 CFR 541.602) The facility/unit head will take possession of the employee's badge and assigned weapon during any period of suspension.
2. The employee will be provided an opportunity to respond in writing to the suspension without pay by submitting a "Written Response to Discipline" ([Attachment D](#), attached). Any "Written Response to Discipline" ([Attachment D](#), attached) will be attached to the suspension without pay.
3. The suspension without pay and any "Written Response to Discipline" ([Attachment D](#), attached) will be filed in the employee's disciplinary file maintained by the facility's/unit's human resources office with the personnel file.

B. Content (See "Example/Suspension Without Pay State Employee," ([Attachment C](#), attached))

A suspension without pay will contain:

1. The date the employee was informed of the suspension without pay;
2. The statute, rule, policy, practice, or procedure regarding work performance or behavior which was violated and cause for the suspension without pay;
3. A statement of the act, incident, or omission which is cause or reason for the suspension without pay;
4. A citation of any employee engagement or disciplinary actions which were used in the decision to administer the suspension without pay;
5. Effective date, the total number of days, and date(s) of the suspension without pay;
6. Steps which can be taken to resolve the problem;
7. Consequences of repeated infractions and/or continuing deficient performance or behavior;
8. A statement of the employee's right to file a complaint with the Civil Service Division;

9. A copy of the Civil Service Division's complaint petition.

V. Suspension Without Pay (Under 57 O.S. § 510.B)

A. Guidelines

1. (Revision-01 dated 02/14/2022) The agency director, as represented by the facility/unit head or local appointing authority, may suspend without pay any employee for an indeterminate number of days pending a hearing and final determination of any state or federal felony charge. The facility/unit head will take possession of the employee's badge and assigned weapon during any period of suspension.
2. This action does not represent, or take the place of, any final disciplinary action that may be taken following disposition of the charges. The final disciplinary action taken must be in accordance with the provisions of this procedure and other applicable statutes and rules.
3. In the event the charges are found without merit or not sustained in a court of law, the employee will be reinstated with pay and benefits; however, this does not preclude the facility/unit head from proceeding with a final disciplinary action based on the circumstances.
4. In the event the charges are substantiated, the facility/unit head will proceed with a final disciplinary action unless a forfeiture of employment has occurred.

B. Content

(Revision-01 dated 02/14/2022) Suspensions without pay (under 57 O.S. § 510.B) will be administered in accordance with the provisions of Section IV. above except that the suspension period will be for an indeterminate number of days pending disposition of the charges. The documentation will state the beginning date of the suspension, and cite the reason for suspension as pending felony charges.

VI. (Revision-01 dated 02/14/2022) Involuntary Demotion

(Revision-02 dated 06/14/2022) (Revision-01 dated 02/14/2022) This discipline applies to all state employees except those designated as trial period, temporary employees or employees exempt from the Civil Service Act.

A. Guidelines

1. The employee will be provided an opportunity to respond in writing to the involuntary demotion. Any response will be attached to the



written involuntary demotion.

2. The involuntary demotion and any response will be filed in the employee's disciplinary file maintained by the facility's/unit's Human Resources office with the personnel file.

B. Content (See example "Example/Demotion State Employee" ([Attachment E](#), attached))

1. The date the employee was informed of the involuntary demotion;
2. The statute, rule, policy, practice or procedure regarding work performance or behavior which was violated and cause for the involuntary demotion;
3. A statement of the act, incident or omission which is cause or reason for the involuntary demotion;
4. A citation of any employee engagement or previous disciplinary actions which were used in the decision to administer the involuntary demotion;
5. The effective date of the involuntary demotion and the job level and pay;
6. Steps which can be taken to resolve the problem;
7. Consequences of repeated infractions and/or continuing deficient performance or behavior;
8. A statement of the employee's right to file a complaint with the Civil Service Division; and
9. 9. A copy of the Civil Service Division's complaint petition.

VII. Step Three: Ending the Employee/Employer Relationship (4-ACRS-7E-10)

A. Guidelines

Aggravating and mitigating circumstances will be considered when assigning a level of discipline. Based on relevant circumstances, a single incident may justify a higher level of discipline including ending the employee/employer relationship through termination.

(Revision-02 dated 06/14/2022) All terminations will be forwarded to the office of General Counsel for review before issuance.

B. (Revision-01 dated 02/14/2022) Termination During the Trial Period

The employment of any state employee may be terminated at any time during the trial period without the right of complaint as set forth in Civil Service Rule 260:130-19-31.

1. Letters of termination during the trial period will contain the following information: (See example "Example/Trial Period or 5% Exempt Termination," [Attachment G](#), attached)
  - a. A statement that employment is terminated and the effective date;
  - b. A statement that the action is being taken "for the good of the service" or a brief explanation of the job-related reasons for the action (appointing authorities will consult with the office of the General Counsel prior to listing any job related reasons);
  - c. Any instructions for the return of agency property; and
  - d. A statement that the employee may provide a written response for placement in the personnel file.

C. (Revision-01 dated 02/14/2022) Terminations

(Revision-01 dated 02/14/2022) This applies to all employees except those who are in a trial period or those designated in the 5% of executive staff. Following notice and opportunity to respond and in accordance with these procedures, an employee may be terminated.

1. (Revision-01 dated 02/14/2022) Employees will be provided a notice of proposed termination and given time to make a written response. (See "Example/Notice of Proposed Termination and Opportunity to Respond" ([Attachment H](#), attached)). (4-APPFS-3E-15)
  - a. The date the employee was informed of the proposed termination;
  - b. A statement that termination is the proposed discipline;
  - c. A statement that the employee has five business day to make a written response to determine if any mitigating factors should reduce the proposed discipline to a lower level;
  - d. The statute, rule policy, practice, or procedure regarding work performance or conduct which was violated and is the reason for the proposed action;
  - e. A description of the specific acts or omissions which are grounds for the proposed termination; and

- f. A summary of evidence which supports each of the stated grounds for the proposed termination. The notice will contain sufficient explanation to permit the employee to prepare a response to the allegations. No documents or “evidence” will be attached to the notice.
2. (Revision-01 dated 02/14/2022) Notice may be skipped if after consultation with the office of General Counsel a determination is made that based on the evidence of performance or conduct violation no mitigating factor would prevent the termination.
3. (Revision-01 dated 02/14/2022) Terminations will contain the following information: (See example “Example/Termination Letter State Employee” ([Attachment F](#), attached))
  - a. The date the employee was informed of the termination;
  - b. The statute, rule, policy, practice or procedure regarding work performance or behavior which was violated and cause for the termination;
  - c. A statement of the act, incident or omission which is cause or reason for the termination;
  - d. A citation of any previous disciplinary actions which were used in the decision to administer the termination;
  - e. Effective date of the termination;
  - f. A statement of the employee’s right to file a complaint with the Civil Service Division; and
  - g. A copy of the Civil Service Division’s complaint petition.

#### VIII. Retention/Confidentiality/Distribution of Disciplinary Documents

All disciplinary documents will be retained in the employee’s disciplinary file maintained by human resources with the employee’s personnel file and treated as confidential except that any final disciplinary action which results in the loss of pay will be treated as an open record in accordance with 51 O.S. § 24A.7.

Employees will be served with the disciplinary action at the time the disciplinary action is taken. A copy will be placed in the disciplinary file and a copy provided to the chief administrator of Human Resources.

#### IX. Suspension with Pay

- A. (Revision-02 dated 06/14/2022) Suspension With Pay [Civil Service Rule 260: 130-19-8]

1. An employee may be suspended from duty with pay for:
  - a. Internal investigatory purposes;
  - b. (Revision-02 dated 06/14/2022) Pending for cause drug test results; or
  - c. To undergo fit-for-duty examination.
2. Process
  - a. Initial request for suspension with pay and requests for extensions of suspension will be routed through the office of the General Counsel for initial review and approval by submitting a "Suspension with Pay Review and Request for Continuance" ([Attachment J](#), attached). After review and approval of legal and other authority as necessary, the employee will be advised the dates and times that the suspension will begin and end. A suspension with pay may be canceled or interrupted at any time and the employee ordered to return to work.
  - b. The suspension with pay period should be for 20 days. Upon request and approval from the chief of Staff it may be extended an additional 20 days. Any additional extensions beyond 40 days will require the approval of the agency director.
3. Notice

The employee will be informed in writing of the beginning and ending dates and times of the suspension with pay, the requirement to be available during working hours and which will specify what working hours the employee is to be available, and any additional reporting requirements. The facility/unit head will take possession of the employee's badge and assigned weapon during any period of suspension.
4. If the employee was suspended with pay for investigatory purposes and is cleared, the employee's personnel records will be fully cleared and every reasonable effort made to fully clear any related external records.
5. If the allegations against the employee are confirmed, in whole or in part, a suspension with pay in accordance with this section will not preclude an appointing authority from taking disciplinary action in accordance with Oklahoma Law and rules.

X. Additional Personnel Actions Which Are Not Discipline

The following personnel actions are not discipline and are not subject to the requirements outlined for discipline within these procedures:

A. Termination upon Conviction or Plea of Guilty or Plea of Nolo Contendere to a Felony Offense

Any state employee who is found guilty, pleads guilty or nolo contendere to a felony will forfeit employment immediately upon entering such plea and will vacate the employment held. (51 O.S. § 24.1.F.)

B. Leave Without Pay/Unauthorized Absence

(Revision-02 dated 06/14/2022) Employees may request approval for leave without pay with proper authorization or may be placed on unauthorized absence for any absence from work without proper authorization in accordance with Personnel Administration Rule 260:25-15-47.

C. Office Inventory

The office, workspace, and property of any employee who transfers, terminates, is discharged from employment, or on leave or suspension pursuant to an agency investigation is subject to inventory.

D. Modification of Work Assignment

(Revision-02 dated 06/14/2022) (Revision-01 dated 02/14/2022) Employees may be provided temporary work assignments, including when there is a pending investigation or disciplinary action.

E. (Revision-02 dated 06/14/2022) Cooling Off Period

To prevent violence in state government workplaces without abridging the rights of state employees ODOC can authorize paid administrative leave as a cooling-off period up to 32 hours in a 12-month period (74 O.S. §840-2.20).

XI. Distribution

A. Employees

1. All employees will receive a copy of this procedure at initial enrollment and any time revisions are made.
2. An "Acknowledgement of Receipt" ([Attachment K](#), attached) will be used to acknowledge employee receipt and filed as documentation in the personnel file.

XII. Statistical Reporting Requirement

(Revision-01 dated 02/14/2022) The Central Human Resources unit will maintain statistical information regarding the number and nature of disciplinary actions. The report will identify, for the fiscal year, the number of disciplinary actions taken, by type of discipline, and the pay band, gender and race of each employee receiving disciplinary action with complaint rights.

XIII. (Revision-01 dated 02/14/2022) References

Policy Statement P-110100 entitled "Uniform Personnel Standards"

OP-110215 entitled "Rules Concerning the Individual Conduct of Employees"

OP-110225 entitled "Performance Management Process"

OP-110235 entitled "Hiring and Promotional Procedures"

OP-110305 entitled "Overtime Pay and Compensatory Time"

(Revision-02 dated 06/14/2022) Personnel Administration Rule 260:25-15-47

(Revision-02 dated 06/14/2022) Civil Service Rules 260:130-27-1; 260:130-27-3; 260: 130-19-8; 260:130-19-31

29 CFR § 541.602

51 O.S. § 24.A.7.

51 O.S. § 24.1.A.

51 O.S. § 24.1.F.

57 O.S. § 510.B.

62 O.S. §34.301.

68 O.S. § 238.2.

XIV. Action

The executive/senior staff members are responsible for compliance with this procedure.

The chief administrator of Human Resources is responsible for the annual review and revisions.

Any exception to this procedure will require prior written approval from the agency director.

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This procedure is effective as indicated.

Replaced: OP-110415 entitled "Progressive Disciplinary Procedures" dated August 27, 2019

Distribution: Policy and Operations Manual  
Agency Website

<u>Attachments</u>	<u>Title</u>	<u>Location</u>
<a href="#">Attachment A</a>	"Example /Letter of Concern"	Attached
<a href="#">Attachment B</a>	"Example/Written Reprimand"	Attached
<a href="#">Attachment C</a>	"Example/Suspension Without Pay State Employee"	Attached
<a href="#">Attachment D</a>	"Written Response to Discipline"	Attached
<a href="#">Attachment E</a>	"Example/Demotion State Employee"	Attached
<a href="#">Attachment F</a>	"Example/Termination Letter State Employee"	Attached
<a href="#">Attachment G</a>	"Example/Trial Period or 5% Exempt Termination"	Attached
<a href="#">Attachment H</a> (Revision-01 dated 02/14/2022)	"Example/Notice of Proposed Termination and Opportunity to Respond"	Attached
<a href="#">Attachment J</a>	"Suspension with Pay Review and Request for Continuance"	Attached
<a href="#">Attachment K</a>	"Acknowledgement of Receipt"	Attached
<a href="#">Attachment A</a>	"Job Family Level Guide"	<a href="#">OP-110305</a>