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ADVERSE ACTION, APPEALS, HEARINGS AND GRIEVANCES

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A9.130 DELEGATION OR AUTHORITY FOR DISCIPLINARY ACTIONS

1. Purpose. To comply with Section 76-45 HRS, Suspension and Section 76-46 HRS, Dismissals; Demotions concerning civil service employees.
2. Objective. To establish procedures for taking and processing disciplinary actions for civil service employees.
3. Applicability/Responsibility.
  - a. Disciplinary actions/procedures within this instruction apply to all civil service employees. Provisions contained in Title 14, Administrative Rules, Department of Personnel Services Section 12-4, Letter of Reprimand, Suspension, Involuntary Demotion, Disability Demotion, Dismissal and union contracts will be applicable. If civil service regulations are in conflict with the applicable contract, the provisions of the contract will prevail. Questions regarding the applicability of civil service regulations and contract provisions are to be referred to the University Personnel Management Office, Employee Relations and Development Section.
  - b. University officers and administrators who are identified below are authorized and responsible for taking disciplinary action as required.
    - 1) Suspensions (1-9 working days)
      - a) Deans of Colleges
      - b) Directors of Research Institutes
      - c) Provosts of Community Colleges
      - d) Directors of Administrative Organizations
      - e) Chancellors for Administrative Staff

- f) Vice President for Administration for Central Staff
- 2) Suspensions (10 or more working days), Demotions and Dismissals
  - a) Vice President for Administration
  - b) Director of Personnel (in absence of the Vice President for Administration)
- 4. Guidelines for Disciplinary Actions. Reasons for letter of reprimand, suspension, involuntary demotion, disability, demotion or dismissal may include, but are not restricted to the following:
  - a. Conviction for felony offense where such conviction is not inconsistent with the requirements of Section 831-3,1 HRS;
  - b. Violation of any of the provisions of the statutes dealing with public employment and of the Title 14, Administrative Rules, Department of Personnel Services;
  - c. Violation of any lawful department regulation or order, including any safety regulation or safety order, or failure to obey a lawful direction of a superior;
  - d. Intoxication or being under the influence of a controlled substance while on duty, except as may required by a licensed medical physician;
  - e. Offensive or disgraceful conduct or use of abusive language towards other officers or employees of the public;
  - f. Incompetency, inefficiency, or carelessness in the performance of duties;
  - g. Carelessness or negligence in the care or use of property of the State;
  - h. Habitual tardiness or frequent absence from duty without authority;
  - i. Failure to meet minimum efficiency standards in the performance of duties;
  - j. Unauthorized absence from duty; or

- k. Insubordination.
5. Procedure of Notification of Disciplinary Action.
- a. Suspension of less than 10 working days: The employee shall be notified in writing by the administrator taking the action setting forth the specific reasons for the actions and a statement of the employee's appeal rights. A copy of the notice of suspension shall be sent to the Director of the State Department of Personnel Services and the Director of Personnel, University of Hawaii, concurrently upon issuance of notice to the employee.
  - b. Suspension of 10 or more working days, demotions or dismissals:
    - (1) Recommendations for the above actions shall be sent to the University Personnel Management Office for review and forwarding to the Vice President for Administration. Notification to the Employee concerned will be processed by the University Personnel Management Office. A copy will be sent to the appropriate administrator.
    - (2) For dismissals, the "State of Hawaii Procedure for Contemplated Dismissal Action Against Civil Service Employees" (Attachment A) is to be followed to ensure that the employee to be dismissed is given an opportunity to meet with the appointing authority (Vice President for Administration or his designee) to respond to the specific charges/allegations. This meeting must be held prior to the effective date of the dismissal and may precede the filing for a grievance. Also, the Procedure (paragraph 5) provides an option to use a tape recorder during the meeting. However, if there is any objection regarding its use by either party, it should not be used.

STATE OF HAWAII  
PROCEDURE FOR CONTEMPLATED  
DISMISSAL ACTION AGAINST  
CIVIL SERVICE EMPLOYEES

The following procedure shall be followed when a dismissal action is contemplated against a regular civil service employee.

1. Conduct full investigation or fact-finding of the particular incident giving rise to the contemplated dismissal action. Whenever possible, this investigation should include discussions with the employee about the incident, act, or wrong-doing.
2. After the investigation /fact-finding, develop the details of the specific charges/allegations. In doing so, the "who, what, where, when, and how" aspects should be fully stated.
3. Based on the charges/allegations, the employee's past disciplinary record, the employee's past work record, and any mitigating circumstances, determine whether a dismissal action can be supported and recommended to the appointing authority.
4. Appointing authority decides whether a dismissal action should be taken. If a dismissal action will not be taken, this procedure need not be followed any further. If the decision is to dismiss:
  - a. Provide the employee with written notice (see example attached). The written notice must be given at least ten calendar days prior to the effective date of the dismissal action. Proof of service should be required, e.g., if delivered by mail, return receipt should be requested; or if hand delivered, employee should sign to verify that he has received the notice or the person delivering the notice should certify that he did deliver the notice. The written notice should contain:
    - (1) Date of dismissal action.
    - (2) Details of specific charges/allegations.
    - (3) References to any past disciplinary action which may be found in the employee's personnel file.
    - (4) Attach documentation if the documents illustrate

the misconduct for which the employee is being dismissed, e.g., false entries or omissions from required log-ins, non-attendance, etc. (Investigative reports are not considered as documents for this purpose).

- (5) Statement providing the employee with an opportunity respond to the charges on a specified date, time and place, and the name and telephone number of the person to be contacted to confirm the employee's attendance.
- (6) Notice of the employee's right to appeal the dismissal action through the applicable grievance/appeal mechanism.

- b. A copy of the written notice should be simultaneously sent to the exclusive representative (union) of the employee's bargaining unit and the director of personnel services.

5. If the employee appears for the scheduled meeting, keep a record (tape recording or minutes) of the meeting. (Upon request by the employee, a copy of the tape recording or minutes shall be furnished to the employee.) The employee may present witnesses, documents, etc. on his/her behalf at this meeting. Further, the employee may have a representative present at this meeting if he chooses to do so.

6. The meeting should be concluded with a statement to the effect that the dismissal will go into effect as scheduled, pending a judicious review of the employee's presentation. The employee will be notified only if the dismissal action is to be changed.

7. If the meeting results in a decision to modify the dismissal action, notify the employee as soon as possible. If written notice of the modification cannot be given prior to the dismissal date, the employee should be notified orally of the change, and a written notice issued soon thereafter. A copy of the written notice should be provided the exclusive representative of the employee's bargaining unit.

SAMPLE NOTICE TO EMPLOYEES

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear \_\_\_\_\_:

This is to inform you that you will be dismissed from your position as a \_\_\_\_\_ (class title) from the Department of \_\_\_\_\_, State of Hawaii, effective the close of business (date - provide at least 10 calendar days notice).

Reasons for this dismissal action are as follows:

(List each charge separately and provide a full explanation of each charge. State clearly what the employee did and/or did not do that was wrong. Provide the "who, what, when, where, and how" of the matter. Include any references to past attempts to correct the employee's misconduct. Include any other reasons used to justify the dismissal, including past misconduct of a different nature, (records of which are found in the employee's personnel file.)

Should you wish to respond to the charges contained herein, you may do so on \_\_\_\_\_ (date) , at \_\_\_\_\_ (time) , in the \_\_\_\_\_ (place) . If you intend to exercise this opportunity to respond to the charges above, please call \_\_\_\_\_ (name) at \_\_\_\_\_ (phone #) to confirm that you will be appearing on such date, time, and place specified.

Regardless of whether you exercise this opportunity to respond to the charges, you have the right to process a grievance in accordance with (the provision of the Unit collective bargaining agreement or the provisions of departmental grievance procedure or the civil service commission appeal procedure, as applicable).

Sincerely,

\_\_\_\_\_  
(person taking action)

cc: (applicable Union organization)

SAMPLE NOTICE TO EMPLOYEES

Department of Social  
Service & Housing  
June 1, 1985

John Doe  
12-345 Aloha Oe Drive  
Honolulu, Hawaii 96817

Dear Mr. Doe:

This is to inform you that you will be dismissed from your position as an Adult Corrections Officer from the Department of Social Services and Housing, State of Hawaii, effective the close business of business on July 1, 1985.

Reasons for this dismissal action are as follows:

On June 1, 1984, you were notified that sleeping on duty is a serious misconduct and that it would be cause for suspension on the first offense and dismissal for a second offense.

On January 28, 1985, you were observed to be sleeping on duty while assigned to Post #1; subsequently, you were suspended for ten working days because of this misconduct.

On May 15, 1985, at approximately 4:15 a.m., you were observed sleeping on duty at Post #1. You were observed to be leaning back in a chair with both feet on the desk, head tilted to one side, eyes closed, mouth open and making snoring-like noise. Captain Kamakawiwaole called out to you twice, but you failed to respond to his call. Captain Kamakawiwaole then had to shake you to awaken you.

This second offense of sleeping on duty is a very serious one. Your past record shows that in addition to the previous disciplinary action for sleeping on duty, you were also given a five-working day suspension in December 1984 for not making the required hourly bed checks of the inmates.

In consideration of the seriousness of this recent incident, and of your past disciplinary record, we have no other course but to dismiss you from service.

Should you wish to respond to the charges contained herein, you may do so on June 25, 1985, at 9:00 a.m. in Conference Room #2 of the Department of Social Services and Housing. If you intend to exercise this opportunity to respond to the charges above, please call Mr. Ed Nose at 543-6384 to confirm that you will be appearing on such date, time, and place specified.

Regardless of whether you exercise this opportunity to respond to the charges, you have the right to process a grievance in accordance with the provisions of the Unit 10 collective bargaining agreement.

Sincerely,

FRANKLIN Y.K. SUNN, Director  
Dept. of Social Services & Housing

cc: United Public Workers  
Director of Personnel Services