
CHAPTER 11

ADVERSE ACTION PROCEDURES

STATEMENT OF POLICY

This chapter sets forth the guidelines and procedures by which the appointing authority may suspend, demote, or dismiss a permanent employee.

11.000 COVERAGE

This chapter shall apply to all permanent classified employees.

11.100 SCOPE

For the purpose of this chapter, the term "dismissal" shall not be interpreted to include:

- A. Actions taken by the appointing authority or Director referenced in the Chapter on RESIGNATION AND TERMINATION; or
- B. Action taken by the appointing authority in the termination of services of an original probationary employee.

11.200 EMPLOYEE DISCIPLINE

11.201 General Provisions

A. Responsibility for Discipline

The appointing authority derives its authority and responsibility for employee discipline under the provisions of Section 4105, Title 4, of the Guam Code Annotated. Agency management has the responsibility to remove or

demote to another position on a fair and equal basis, any employee in the classified service whose conduct or capacity is such that his removal or demotion will promote the efficiency of government service.

B. Delegation of Authority

The appointing authority may delegate responsibility for administration of day-to-day discipline to its line management, to include such actions as oral admonitions, letters of reprimand, and the recommendation of adverse actions.

11.202 Job Protection Procedures in Employee Discipline Actions

A. All levels of supervision and management, share the responsibility for strict adherence to employee's job protection rights and considerations including:

1. Informal counseling at the first indication that an on-the-job or personal problem is affecting the employee's job performance.
2. A reasonable opportunity for the employee to correct inadequate performance including providing specific training to the employee to improve the level of his job performance, or to correct unacceptable habits or practices, such as tardiness or lack of attention to work requirements.
3. The right to reply to the notice of a proposed adverse action that may result in a suspension, demotion, or dismissal.
4. The right to reply to the notice of a proposed adverse action and careful consideration of any reply.
5. The right to appeal to the Civil Service Commission as provided in the CSC Rules and Regulations relative to Demotion, Suspension, Dismissal and Appeal of Adverse Actions.

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- B. Agency heads are accountable for assuring that each supervisor and manager has received orientation and training on the government's basic intent that discipline shall be a method for correcting people in such a way as to produce satisfactory job performance. The use of discipline in a punitive matter is inconsistent with the government's concept of discipline as an opportunity to provide constructive correction.

11.300 ADVERSE ACTION PROCEDURES

11.301 General Requirements

- A. An employee must be given the final notice and statement of the charges, pursuant to Title 4, Guam Code Annotated (GCA) Section 4406, no later than 60 days after management knew, or should have known the facts or events which form the alleged basis for the adverse action.
- B. An employee covered by the Adverse Action Procedures may be suspended for not more than 30 work days as the result of a single adverse action, nor may an employee be suspended for more than a total of 60 work days in a calendar year, as the result of multiple adverse actions taken by any one department or agency. Employees on a 24 hour on and 24 hour off employment basis, shall not be suspended for more than 10 work days, or an equivalent of 240 work hours as a result of a single adverse action, nor may suspension be more than a total of 20 work days (480 work hours) in a calendar year as a result of multiple adverse actions.
- C. Copies of the adverse action rules and appeal procedures should be made available upon request by the employee.

11.302 Definition

- A. **Suspension** - The temporary removal of an employee from his position with loss of pay as a disciplinary measure.

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- B. **Demotion** - The involuntary reduction in status of an employee for disciplinary reasons from a position which he occupies in a specific class, to a position in another class, where the maximum rate of pay is less than the maximum rate of pay for the class which he had held, or a reduction to a lower salary step in the same class.
 - C. **Dismissal** - The termination of an employee for any authorized cause of adverse action.
 - D. **Days** - Refers to calendar days unless otherwise specified.

11.303 Authorized Causes for Adverse Action

A department/agency head may remove an employee for such misconduct which affects the efficiency of the service. The authorized causes for adverse actions include, but are not limited to the following:

- A. Fraud in securing appointment.
- B. Refusal or failure to perform prescribed duties and responsibilities.
- C. Insubordination.
- D. Intoxication while on duty or the unauthorized possession, use or sale of alcohol on duty or while on government premises.
- E. Unlawful use, possession, or sale of illicit drugs.
- F. Unauthorized absence.
- G. Conviction for a crime.
- H. Discourteous treatment to the public or other employees.
- I. Political activity prohibited by law.
- J. Misuse or theft of government property.

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- K. Refusal to take and subscribe to any oath or affirmation which is required by law in connection with employment.
 - L. Acts prohibited by Section 9102, 4 GCA relating to strikes against the government.
 - M. Acts of prohibited discrimination to include sexual harassment.
 - N. Failure to comply with the Drug-Free Workplace Program.
 - O. Other misconduct not specifically listed.

11.304 Employees Covered

All employees in the classified service are covered by these rules, except the following:

- A. Contract employees whose contracts are not renewed upon expiration.
- B. Probationary employees serving original appointment.
- C. Employees on limited-term, temporary, seasonal, intermittent, part-time, provisional, or only for a specific project.
- D. Employees who are exempt by law or other legal authority from the jurisdiction of the Civil Service Commission with regards to adverse actions.

11.305 Adverse Action Covered

- A. These rules apply to the following adverse actions:
 - 1. Suspension
 - 2. Demotion (disciplinary action)
 - 3. Dismissal

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- B. The use of any combination of the adverse actions listed for the same offense is prohibited.

11.306 Notice of Proposed Adverse Action

An employee against whom adverse action is sought is entitled to immediate written notice stating any and all reasons, specifically and in detail, for the proposed action. The written notice must make it clear that it concerns only proposed action and not a matter already decided. A copy of such action shall be filed by the department/agency head with the Department of Administration and CSC.

11.307 Employee's Answer

An employee is entitled to seek reconsideration of the proposed adverse action by answering any charges within 10 days after receipt of the notice; the answer may be made orally, in writing, or both. The department/agency head shall be available to meet with the employee at the designated date and time. The department/agency head may designate a committee to hear the employee's answer. The employee may be represented by a person of his choice. The department/agency head must consider the employee's answers to the charges in the proposed adverse action notice. If the employee fails to answer during the notice period, the employee's inaction shall be construed as an answer, and the department/agency head may proceed with the adverse action upon expiration of the notice period.

11.308 Suspension During Notice Period

- A. An employee against whom adverse action is proposed, must be retained in active duty status during the notice period; however, in an emergency situation, an employee may be immediately suspended during the notice period, under the following conditions:

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1. The continued presence of the employee may interfere with the efficient operation of the department/agency, or the health or safety of the employee or others.
 2. Suspension is necessary to eliminate the possibility of deliberate damage to equipment, property or important documents.
 3. The employee's absence without authorized leave prevents the issuance of notice of proposed adverse action and the department/agency's attempt to contact the employee was unsuccessful.
- B. Suspension under this section is a separate adverse action and is appealable to the Commission within 20 days of the effective date of the immediate suspension. A copy of the notice of immediate suspension shall be filed with the Civil Service Commission not later than the next working day following the effective date of the suspension.
- C. If the Commission sustains the department's action in suspending the employee during the notice period, the number of days of suspension under this section shall be considered part of the final disciplinary penalty and in no case, shall the final days of suspension be more than 30 work days.

11.309 Leave Pending Investigation

In cases requiring investigation of allegations against an employee involving misappropriation of public funds or property, mistreatment of persons in a government institution or acts which constitute a crime, the department head may authorize the employee an administrative leave of absence with pay for up to 20 work days. The administrative leave may be terminated by the department head by giving the employee 24 hours written notice.

11.310 Employment Status During Imprisonment

- A. An employee who is incarcerated pending disposition of a case by the court, and who does not have accrued annual leave, may be granted leave without pay at the discretion of the department/ agency head.
- B. When the employee is released from incarceration or imprisonment, the department/agency head shall determine whether the employee will return to duty, or whether to take adverse action against an employee so imprisoned. Nothing in this Section shall preclude the department/agency head from taking adverse action against an employee during imprisonment.

11.311 Final Notice of Adverse Action

- A. An employee is entitled to written notice of the department's decision within 10 days after receipt of the employee's answer to the charge(s). The decision shall be made by the department/agency head and shall be delivered to the employee at, or before the time the action will be made effective. The notice shall be in writing; be dated; state the specific facts found upon which such action is based; inform the employee of his right to appeal to the Commission; and, inform the employee of the time limit of 20 days within which an appeal may be submitted as provided in Section CSC-100(c) of the Civil Service Commission Hearing Procedures for Adverse Action Appeals.
- B. In the event the appointing authority cannot locate the employee, the Notice of Proposed Adverse Action and/or Notice of Final Adverse Action shall be sent, certified mail, to the employee's last known address.
- C. Copies of the final notice of adverse action shall be filed by the department with the Commission not later than the next work day following the effective date of the action. A copy of the final notice shall be filed with the Department of Administration.

11.312 Appeal to the Civil Service Commission

The Hearing Procedures for Adverse Action Appeals adopted by the Civil Service Commission shall be applicable for all Adverse Action Appeals proceedings.

11.313 Service of Proposed and Final Notices of Adverse Action

The Proposed and Final Notices of Adverse Action shall be personally served upon the employee. In the event the appointing authority cannot locate the employee, after reasonable efforts have been made to locate the employee, service of the Proposed or Final Notices may be made by leaving the Notice at the employee's dwelling or usual place of abode with some person of suitable age and discretion residing therein, or by mailing the Notice to the employee at the last known address. Service by mail is complete upon mailing.

11.400 GUIDELINES FOR DISCIPLINARY OFFENSES AND PENALTIES

11.401 General Provisions

- A. The list that follows is not intended to cover every possible type of offense. Penalties for offenses not listed will be prescribed by the department head.
- B. Many of the items listed on this schedule combine several offenses in one statement, connected by the word "OR". Usage of the word "OR" in a charge makes it non specific. Use only the items which describe the employee's actual conduct and leave out parts which do not apply.
- C. Penalties for disciplinary offenses will, in general, range from the minimum penalty to the maximum indicated. In unusual circumstances, depending on the gravity of the offense, the past record, and the position of the employee, a penalty outside the general range may be imposed.
- D. Suspension penalties on this schedule apply to work days and holidays.

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- E. Depending on the gravity of the offenses, dismissal proceedings may be instituted against an employee for any number of offenses committed. A greater penalty may be imposed for any offense if the circumstances justify greater penalty.
 - F. In as much as a reprimand is not an adverse action under these rules, a management official need not apply the Adverse Action Procedures. The penalty of reprimand is included in the schedule of penalty to provide certain flexibility for management's discretion to institute progressive disciplinary action against an employee or group of employees.
 - G. Reprimands shall not remain in an employee's personnel file for more than one year.

11.402 Range of Penalties for Stated Offenses

(Reprimands - Suspensions - Dismissals)

* In as much as a reprimand is not an adverse action under these rules, a management official need not apply the Adverse Action Procedures. The penalty of reprimand is included in the schedule to institute progressive disciplinary action against an employee or group of employees. Reprimands shall not remain in an employee's personnel file for more than one year.

NATURE OF OFFENSE	1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
A. Unauthorized absence.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
B. Falsifying attendance record for oneself or another employee.	Reprimand*	Suspension	Suspension	Suspension	Suspension	Dismissal
C. Leaving job to which assigned at any time during working hours without proper permission.	Reprimand*	Suspension	Suspension	Suspension	Suspension	Dismissal
D. Unexcused or unauthorized absence on one or more scheduled days of work or assigned overtime.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
E. Unexcused tardiness.	Reprimand*	Suspension	Reprimand*	Suspension	Suspension	Dismissal
F. Actual or attempted theft of government property or the property of others.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
CONDUCT						
A. Criminal, dishonest, infamous or notoriously disgraceful conduct adversely affecting the employee/employer relationship (on duty or off duty).	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal

CONDUCT (con't.)	1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
B. Disobedience to constituted authorities, or deliberate refusal to carry out any proper order from any supervisor having responsibility for the work of the employee; insubordination.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
C. Disorderly conduct; fighting threatening or attempting to inflict bodily injury to another; engaging in dangerous horseplay, or resisting competent authority.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
D. Disrespectful conduct; use of insulting, abusive, or obscene language to or about other personnel.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
E. Falsification, misstatement, or concealment of material fact in connection with any official record.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
F. False testimony or refusal to testify in an inquiry, investigation or other official proceedings.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
G. Knowingly making false or malicious statements with the intent to harm or destroy the reputation of authority, or official standing of individuals or organizations.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
H. Gambling or unlawful betting during working hours.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
I. Promotion of gambling on government premises.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal

CONDUCT (con't.)	1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
J. Willful damage to government property or the property of others.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
K. Engaging in prohibited acts covered in Section 9102 of 4 Guam Code Annotated.	Suspension	Dismissal	Dismissal			
(Penalty shall be imposed pursuant to Section 9103, 4GCA.)						
DISCRIMINATION						
A. Discriminating against an employee or applicant because of race, color, religion, sex, national origin, age, disability, creed, political affiliation or marital status or other prohibited discriminatory practices.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
INTOXICANTS						
A. Reporting for duty or being on duty under the influence of intoxicants, unauthorized possession of or attempting to bring intoxicants on government premises.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
B. Reporting for duty while under the influence of a narcotic or dangerous drug, or use of same on government property or on duty.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
C. Unauthorized sale or transfer of narcotic or dangerous drug on government property or during duty hours.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal

PERFORMANCE		1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
		MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
A.	Careless workmanship resulting in spoilage or waste of materials or delay in production.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
B.	Covering up or attempting to conceal defective work; removing or destroying same without permission.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
C.	Failure or delay in carrying out orders, work assignments or instructions of superiors.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
D.	Loafing, wasting time, or in-attention to duty.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
E.	Sleeping on duty where life or property is endangered.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
F.	Unauthorized use or possession of, loss of or damage to government property or the property of others.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
SAFETY							
A.	Failure to observe precautions for personal safety posted rules, signs, written or oral safety instructions, or to use protective clothing or equipment.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
B.	Violation of safety regulations which endangers life or property.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
C.	Endangering the safety of or causing injury to personnel through carelessness.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal

SAFETY (con't.)	1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
D. Failure to observe no smoking regulations or carrying matches in restricted areas.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
E. Violating traffic regulations, reckless driving on government premises, or improper operation of government motor vehicles.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal

**11.500 CIVIL SERVICE COMMISSION HEARING PROCEDURES FOR ADVERSE ACTION APPEALS
(COVERING SUSPENSIONS, DEMOTIONS, DISMISSALS)**

(SEE APPENDIX A)