



DEPARTMENT OF HEALTH SERVICES
HUMAN RESOURCES POLICY & PROCEDURE

TITLE: 502 - DISCIPLINE

DATE ISSUED: DECEMBER 2, 2012

DATE REVISED: N/A

502.01 INTRODUCTION

The Department of Health Services (DHS) Discipline policy applies to all employees and contractors. It is intended to establish uniform procedures and standards for administering employee discipline.

Discipline involves the use of consequences to influence employees to change unacceptable behavior. The employer must occasionally implement such consequences to ensure efficient services to clients and/or the public.

502.02 DEFINITIONS

Confidentiality Directive: is a management order directing an employee not to discuss an investigation with others. This directive is appropriate when the alleged conduct involves highly confidential or sensitive matters, maintaining the independent memory of witnesses or where there may be threats or intimidation of witnesses. **Note: Before a confidentiality directive can be given, the employing unit must consult with and receive authorization from BHR Employment Relations.**

Due Process: is a concept whereby an accused employee is (1) allowed to know the facts supporting a finding that a violation of work rules or policy did occur; and (2) is given an opportunity to defend him/herself. Failure to maintain due process in disciplinary situations may result in management's action being overturned upon later review by an outside party (e.g., hearing examiner).

Just Cause: is a standard applied to determine whether management is appropriately enforcing its work rules. Just Cause includes the concepts that the employee was forewarned; a fair and objective investigation was conducted; the investigation produced substantial evidence or proof of guilt; rules, orders, and penalties were applied evenhandedly without discrimination; and, the discipline was reasonably related to the seriousness of the offense and the employee's past record.

Oddsden Warning: is a statement made by management during an investigatory interview advising the employee that anything s/he says may or may not be used against him/her in any subsequent criminal proceeding. **Note: Before the Oddsden Warning can be given, the employing unit must consult with and receive authorization from BHR Employment Relations.**

Progressive Discipline: is a concept that applies progressively more severe consequences for repeated infractions of work rules to help an employee correct unacceptable conduct. Sometimes, a work rule violation is so flagrant that progressive discipline would be inappropriate and a higher level of discipline, up to and including discharge, is the only acceptable option.

502.03 POLICY

When an employee commits a violation of a DHS work rule, his/her actions may be determined to warrant disciplinary action.

DHS has established two disciplinary tracks: [Attendance \(DHS Policy 401\)](#) and [Misconduct \(DHS Policy 501\)](#). Discipline generally follows the appropriate track listed below. In some circumstances, the seriousness of a transgression may warrant skipping steps to a higher level of discipline, up to and including termination.

Discipline is based on Just Cause, which among other things requires that an employee have forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct. In some cases, an employee's transgressions are so serious that the employee should already be expected to know that the conduct is punishable, for example theft or assault of a co-worker. In other cases, issuance of a policy or directive – for example, the DHS Work Rules or Attendance Policy – serves as forewarning. In some cases, however, the employee may reasonably not have known that the employee's behavior was punishable. In those cases, the employee should be warned about the rule or expectation and the possible consequences for violations. The warning may be given verbally, through a written work directive, or already established by DHS work rule.

Letters of discipline shall be filed in the employee's personnel file and may not be removed unless authorized by court order, settlement of a civil service appeal, or other legal action.

1) Attendance Progressive Discipline Track

The DHS progressive disciplinary system for attendance violations involves the following steps leading up to discharge:

- First Step: Written reprimand
- Second Step: Written reprimand in-lieu of a one (1) day suspension*
- Third Step: Written reprimand in-lieu of a three (3) day suspension*
- Fourth Step: Five (5) day suspension without pay
- Fifth Step: Discharge

*Discipline at the second and third steps will be in the form of a written reprimand, but will carry the same weight and effect of a suspension for progressive discipline purposes.

2) Misconduct Progressive Discipline Track

The DHS progressive disciplinary system for misconduct involves the following steps leading up to discharge:

- First Step: Written reprimand
- Second Step: One (1) day suspension without pay*
- Third Step: Three (3) day suspension without pay*
- Fourth Step: Five (5) day suspension without pay
- Fifth Step: Discharge

Discipline will be progressive and cumulative from the first violation until a rolling 12-month period has been free of work rule violations in the appropriate track. The 12-month period is measured from the date of the most recent violation that resulted in discipline. *Note:* If the 12-month period is interrupted by a formal leave of absence, the leave of absence will extend the 12 month period.

Discipline at the second and third steps for exempt employees will be in the form of a written reprimand in lieu of suspension in order to maintain the exempt status of employees under the [Fair Labor Standards Act \(FLSA\)](#). These letters will carry the same weight and effect of a suspension for progressive discipline purposes.

All discipline equal to a five day suspension and termination must be reviewed by BHR Employment Relations.

502.04 ROLES AND RESPONSIBILITIES

(1) Secretary and Deputy Secretary

- Have full authority to administer discipline in accordance with this policy, up to and including the termination of all employees.

(2) Division Administrators

- Have authority to administer discipline in accordance with this policy, except that the termination of employees with permanent status must be approved by the Secretary or Deputy Secretary.

(3) Facility Directors

- Have full authority to administer discipline in accordance with this policy, up to and including the termination of all employees.

(4) Bureau of Human Resources Employment Relations Section

- Provide consultation on disciplinary matters to DHS supervisors and review five (5) day suspensions and terminations.

502.05 INVESTIGATIONS

When a possible infraction of a work rule occurs, the supervisor or other designated management representative will immediately investigate to establish the facts. All relevant facts must be gathered, but the process must also be fair and objective. An investigation may involve multiple witnesses and more than one interview to gather all necessary facts. If the facts of a violation are already well-documented or known by the supervisor, an investigatory interview may not be necessary (e.g., when the facts of tardiness or absenteeism are known).

Any actual, or appearance of, harassment, intimidation or entrapment of an employee could result in the disciplinary action being overturned at a later date by an outside reviewer (e.g., hearing examiner).

(1) Scheduling the Investigatory Interview

An investigatory interview may be scheduled verbally or in writing, including e-mail, to the employee. The employee should be clearly informed of the purpose, date, time and location for

the meeting and that s/he has the right to have a representative present. Refer to the [sample Investigatory Meeting Letter](#).

The employer will give a minimum 24 hour notice to allow employees time to obtain a representative of their choosing. Time needed beyond 24 hours to obtain a representative will be at the discretion of management. Reasonable judgment should be used when scheduling investigatory interviews. If the employee requests a representative, it is the employee's responsibility to coordinate the representative's attendance. The management representative should conduct the meeting with another manager present to take notes.

(2) Conducting the Investigatory Interview

Management conducts and directs the interview, and asks the questions as part of an information gathering effort. This is not an opportunity for the employee or the representative to interview management. Management should not give any opinions or conclusions and should not bargain or negotiate. Management does not have to respond to the representative's questions unless they are for the purpose of clarification.

Employees who refuse to answer should be informed that they must provide accurate and complete information under DHS work rule #7, and that refusal could be considered insubordination subject to discipline.

NOTE: Use of the confidentiality directive or the Oddsen warning requires BHR Employment Relations approval.

(3) Role of the Representative during the Investigatory Interview

The employee may have a representative at this meeting. The role of the representative is to help present the employee's version and relevant facts and ensure that the employee's rights are not abridged. The representative may ask questions in order to clarify responses or help understand management's questions.

The representative does not have the right to interfere, obstruct or disrupt the interview meeting. The representative may ask questions of the employee, however, management can ask the representative to wait until management has finished questioning the employee. The representative should not be allowed to speak for the employee.

502.06 PRE-DISCIPLINARY MEETING

If the investigation produces convincing evidence that there is just cause for disciplinary action, the designated management representative will schedule and conduct a pre-disciplinary meeting with the employee. The employee may have a representative at this meeting. At this meeting management representatives present the findings of the investigation and tentative conclusion that disciplinary action is warranted. The employee is then given an opportunity to demonstrate why disciplinary action should not be taken. The pre-disciplinary meeting must be conducted **prior to making a final decision on any disciplinary action.**

(1) Scheduling the Pre-Disciplinary Meeting

Prior to the meeting, the employee must be given specific written notice of the charge(s) and an explanation of the employer's evidence so that the employee can provide a meaningful response and an opportunity to correct factual mistakes in the investigation and to address the type of

discipline being considered. The letter must also include the date, time and location for the meeting and indicate the right to have a representative present. Refer to [Sample Pre-disciplinary Meeting Letter](#).

The employer will give a minimum 24 hour notice to allow employees time to obtain a representative of their choosing. Time needed beyond 24 hours to obtain a representative will be at the discretion of management. Reasonable judgment should be used when scheduling pre-disciplinary meetings. If the employee requests a representative, it is the employee's responsibility to coordinate the representative's attendance. The management representative should conduct the meeting with another manager present to take notes.

(2) Conducting the Pre-Disciplinary Meeting

In order to maintain due process, a verbal or written summary of the evidence upon which management based its tentative conclusions is presented to the employee and representative at this meeting. The employee and representative are then given the opportunity to refute management's findings and introduce additional facts or evidence not considered by management, including any extenuating circumstances for management to consider in making a final decision.

If the pre-disciplinary hearing does not produce evidence which would alter the just cause determination, management concludes the meeting and proceeds with the imposition of disciplinary action. If the employee and representative introduce relevant new evidence or questions, further investigation by management may be required before a determination on the disciplinary action can be made.

(3) Role of the Representative during the Pre-Disciplinary Meeting

The employee may have a representative at this meeting. The role of the representative is to assist the employee in refuting management's findings and in presenting additional facts or evidence not considered by management. The representative may also assist the employee in introducing any extenuating circumstances.

The representative does not have the right to interfere, obstruct or disrupt the meeting.

502.07 SELECTING AND ADMINISTERING THE APPROPRIATE DISCIPLINE

If, after completion of the investigatory interview and pre-disciplinary meeting, management determines that there is just cause for taking disciplinary action, action should be taken accordance with the appropriate progressive discipline track specified in 502.04. Disciplinary action must be commensurate with the offense committed, taking into consideration the employee's length and quality of service, history of previous related infractions and consistent with actions taken against other employees in similar situations. In addition, any action taken should not be more severe than what is necessary to induce the employee to correct his/her behavior.

Disciplinary actions are to be communicated to employees in writing as soon as possible after the decision has been made. Refer to the [Sample Disciplinary Letter](#).

All discipline equal to a five day suspension and termination must be reviewed by BHR Employment Relations.

502.08 DOCUMENTATION

For each investigation, form [F-00196 - Employee Investigation Summary](#) should be completed and used as the cover sheet for all material used to document the completed investigation. The management representatives should document management's questions and the employee's responses and note all major points covered.

Examples of documentation during the investigatory interview include, but are not limited to:

- personnel and other business records such as timesheets or performance records
- written complaints filed by citizens or patients/inmates
- witness statements; photographs
- emails
- notices to employees including management directives, e-mail, policies and rules
- IT Network reports

Such proceedings should not be recorded by either party because of the potential "chilling effect" on the free flow of information, the possibility of alteration, and the problem of admission as evidence.

NOTE: The employee may make a written request to receive factual investigatory evidence and/or documents from management after disciplinary action has been imposed. Management must provide these documents within 20 calendar days of receipt of the request, unless an extension is obtained through mutual agreement. Management should not provide documents that contain comments, opinions or discussion material (e.g., the Employee Investigation Summary form).

In limited situations, legitimate and substantial interests of confidentiality and privacy may exist that require protection for informants or witnesses, whether employees or the public. In those situations management must consult with BHR and the Office of Legal Counsel to determine what information should be redacted and how the redaction should be handled. If documents are redacted, the employee shall be advised that the materials were redacted and why.

502.09 EMPLOYEE ASSISTANCE PROGRAM

In cases of chronic absenteeism or other misconduct involving a violation of DHS work rules, it is possible that an employee is experiencing personal problems (e.g., alcohol or drug dependency, marital, emotional) which are affecting behavior and performance on the job. If progressive discipline is going to be imposed, information regarding the Department's Employee Assistance Program (EAP) should be provided to the employee. A document that provides information on this employee resource should be attached to disciplinary letters. ([Sample of EAP Information](#))

Personal problems or use of EAP are not reasons for postponing or setting aside appropriate disciplinary action. Employees are expected to meet and maintain norms and standards of conduct and performance related to the job. If just cause exists for disciplinary action, then appropriate action should be taken.

502.10 PROBATIONARY EMPLOYEES

- (1) **Employees serving an original probationary period:** A work rule violation that would result in a written reprimand or a disciplinary suspension by a permanent employee should normally result in termination of an employee serving an original probationary period. During probation, the new employee should demonstrate the ability to respond to ongoing supervision and counseling,

including verbal warnings. If the new employee does not respond to direction, the employee should be terminated.

- (2) **Employees serving a permissive or promotional probationary period:** A work rule violation committed by an employee serving a permissive or promotional probationary period may result in either progressive discipline or termination of the employee depending on the specific nature of the infraction.

BHR Employment Relations should be consulted when considering disciplinary action against a probationary employee. For information regarding the status of employees dismissed during a probationary period, please consult ER-MRS 13, Wis. Admin. Code.

502.11 CONTRACTORS, PROJECT, AND LIMITED TERM EMPLOYEES

Contractors and project and limited term employees cannot earn permanent status and are not subject to the same disciplinary process described in this policy for permanent employees. The BHR Employment Relations section should be consulted when considering disciplinary action for contractors and project and limited term employees.

502.12 REFERENCES

[Chapter 230, Wis. Stats.](#)

[Chapter ER 46, Wis. Adm. Code](#)

[Chapter ER-MRS 13, Wis. Adm. Code](#)

502.13 ADMINISTRATIVE INFORMATION

This policy was created on December 2, 2012 to establish a consistent and uniform discipline policy across DHS. This policy supersedes all previous DHS discipline policies. Where it is in conflict with other departmental policies or procedures on attendance, this policy shall govern.

502.14 ATTACHMENTS

[Sample Investigatory Interview Letter](#)

[Sample Pre-disciplinary Meeting Letter](#)

[Sample Disciplinary Letter](#)

[EAP Information to Attach to All Disciplinary Letters](#)