

# Montana Supreme Court

## Judicial Branch

# DISCIPLINE HANDLING GUIDE

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## **Resources:**

Judicial Policy #202 is available for reference at <http://courts.mt.gov/hr/policies> .

Additionally, Human Resources is available to assist supervisors with all aspects of discipline and documentation. Human Resources has draft letters for each step in the discipline process.

## **Purpose of Discipline:**

The true purpose of the disciplinary process is to notify employees of a deficiency in the employee's conduct or performance with the intent of helping the employee improve that deficiency. When supervisors properly notify employees of a deficiency and provide guidance to correct that deficiency, employees oftentimes become successful and productive employees for the Judicial Branch.

Supervisors should provide clear guidance and expectations to help employees correct their deficiencies. If, after being given proper notification of deficiencies and guidance to correct those deficiencies, the employee still fails to improve her/his performance or conduct, then the supervisor is expected to continue through the progressive discipline steps until the situation is resolved. Supervisors are encouraged to work with Human Resources through all steps of the discipline process to ensure fair and equitable treatment of all employees and to reduce the Judicial Branch's potential liability.

This guide is not applicable to employees who are on probation. Probationary employees can be terminated without following the progressive discipline steps, but deficiencies in a probationary employee's performance and/or conduct should be identified and probationary employees should still be afforded the opportunity to correct those deficiencies, when possible.

## **Steps to Progressive Discipline:**

Typically, there are six steps to progressive discipline. Each step should be used to provide the employee with a reasonable opportunity to correct a deficiency. The steps to progressive discipline are:

1. Counseling – talking to the employee about a deficiency. (informal discipline)
2. Verbal Warning – telling the employee that she/he is being warned about her/his deficiency. Oftentimes, employees are given a Letter of Expectations at this point

to clearly identify the supervisor's expectations of the employee. (informal discipline)

3. Written Warning – A formal discipline letter warning the employee of the deficiency. This letter is placed in the employee's file in Human Resources. (formal discipline)
4. Suspension without Pay – The employee is notified in writing that he/she is being suspended without pay. The employee cannot use accrued sick leave, annual leave, or comp time. This letter is placed in the employee's personnel file in Human Resources. (formal discipline)
5. Termination of Employment – The employee is notified in writing that her/his employment is terminated. This letter is placed in the employee's personnel file in Human Resources. (formal discipline)

Other options are available in the progressive discipline steps. One option is demotion. If an employee does not have the skills necessary to be successful in his/her position, the employee can be demoted to another position that better fits his/her skill sets instead of progressing through the discipline steps. Demotion would be considered "formal discipline."

Each step in the progressive discipline process may be used. Exceptions will occur and steps in the progressive discipline process can be skipped when an employee commits a serious violation of branch rules, policies, or expectations. Serious violations that can result in first offense termination of employment include, but are not limited to, violence, threats of violence, theft, or being under the influence of alcohol, drugs, or prescription medication.

### **Informal and Formal Discipline:**

Counseling sessions with employees and verbal warnings are considered informal discipline because no reference to those discipline actions appear in the employee's personnel file. Supervisors can, and should, maintain documentation of these discipline steps in their "supervisor notes" so those actions can be referenced if formal discipline is necessary in the future. After meeting with the employee to discuss the deficiency, supervisors should follow up with an email to the employee detailing the expectations that were discussed in the counseling session or with the verbal warning.

Any discipline that will result in a letter being placed in the employee's personnel file in Human Resources is considered "formal discipline." An employee must be given proper Due Process before discipline letters can be placed in their personnel file. Counseling

sessions and verbal warnings are informal discipline and do not require Due Process. Written warnings, suspensions, demotions, and terminations are formal discipline and require Due Process.

Supervisors are encouraged to maintain supervisor files on each employee to document positive and negative performance issues. Supervisor files are not considered formal discipline because that documentation is not placed in the employee's personnel file in Human Resources.

### **Due Process:**

When supervisors are considering formal discipline (written warning, suspension, demotion, or termination) proper notification needs to be given to the employee to notify her/him of the deficiency prior to any decision on discipline. Proper notification is accomplished through Due Process letters. Supervisors should provide employees with a letter describing the alleged deficiency and specifics for the situation including: dates; times; case numbers; statements the employee allegedly made; or employee actions that are considered deficient in either performance or conduct.

In the Due Process letter, supervisors should also detail prior attempts that have been made to correct the employee's deficiency, if any, including dates of those corrective actions.

The employee should be afforded reasonable time to respond to the allegations. Normally, employees are given five working days to provide a response in order to allow the employee enough time to gather the necessary information and to provide a written response. The Due Process letter needs to have the due date for the employee's response clearly identified.

Human Resources can assist supervisors with Due Process letters to ensure proper formatting and content.

### **Just Cause:**

Just Cause is "reasonable, job-related grounds for taking a disciplinary action based on failure to satisfactorily perform job duties, or disruption of agency operations."<sup>1</sup> Supervisors must have Just Cause to impose formal discipline on an employee. For that

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<sup>1</sup> Definition provide by Department of Administration *Discipline Handling Guide*.

reason, once the employee provides a response to the allegations, the supervisor must take the response into consideration along with all other relevant information to determine if discipline is warranted and, if so, what level of discipline.

If the employee provides a reasonable explanation to show they were not deficient in their actions and there is no evidence to contradict the employee's explanation, then supervisors should not impose discipline on the employee. If the supervisor has supporting information that contradicts the employee's response, the supervisor must consider all information to determine if discipline is warranted and the level of discipline necessary to correct the deficiency. If the employee fails to provide a response by the date and time specified in the letter, the supervisor should make a determination on the level of appropriate discipline based on the information available to him/her.

Supervisors should maintain good documentation of all information relating to the alleged deficiency. That documentation should contain identifying information such as names, dates, quotes, and all relevant information.

In order to meet the requirements of Just Cause, supervisors need to show that the employee violated a policy, rule, performance requirement, or standard of employment AND the employee knew about the policy, rule, performance requirement, or standard of employment. This is the reason for progressive discipline and documentation. Documentation of the informal discipline steps proves the employee was notified of the deficiency and her/his failure to meet the job expectations before formal discipline occurs.

### **Administrative Leave:**

If an employee commits a serious violation of policy, procedure, or expectation and termination of employment is being considered, the employee shall not be terminated without proper Due Process. The employee can be placed on paid administrative leave pending completion of the investigation into his/her deficiency.

In these situations, supervisors must meet with the employee as soon as possible and provide the employee with a letter notifying the employee that she/he is being placed on paid administrative leave. The letter must notify the employee that he/she is not to enter the work building or access any electronic records, email, or programs without prior approval from the supervisor. The letter should also notify the employee that any acts of retaliation against anyone involved in the complaint would be a serious violation of branch policy and will result in termination of employment.

Human Resources must assist supervisors with administrative leave letters to ensure proper content and essential information is included in the letter.

### **Sending Employees Home:**

In certain circumstances, employees can be sent home, but supervisors must contact Human Resources before taking this action. Employees can be sent home in situations where the employee is displaying violent or threatening behavior or appears to be under the influence of alcohol, drugs, or prescription medication. The next working day, the employee should either be allowed to return to work or be placed on paid administrative leave pending completion of the investigation into the incident.

In situations where employees display violent or threatening behavior or appear to be under the influence, those employees shall still be given their Due Process rights and a fair investigation into the incident shall occur prior to a final decision on the level of discipline to ensure there was not a medical reason for their actions that could mitigate the discipline level.

It is critical that when an employee is being sent home because he/she is displaying symptoms of being under the influence that the employee not be allowed to drive themselves home. Someone else must provide transportation for the employee. Supervisors can provide the transportation or a friend, family member, or a cab can be called for the employee.

If the employee is acting in a manner that is highly unusual for the employee, then medical personnel must be called to assess the employee's medical status.

### **Corrective Action:**

The level of discipline should be determined by the severity of the deficiency and prior attempts to correct the deficiency. A mistake made for the first time should start at the lowest level of the progressive discipline steps (counseling). Each subsequent mistake by the same employee should be given the next level up in the progressive discipline steps. Again, in situations where an employee commits a serious violation of policy, procedure, or expectations, progressive discipline steps can be skipped, but supervisors are encouraged to work with Human Resources in these situations to determine the proper level of progressive discipline.

When determining the appropriate level of discipline, supervisors must take into account how they handled similar situations that occurred previously. When circumstances are similar, discipline levels should be similar, if not identical. Complaints of discrimination and unfair business practices can occur when two employees receive different levels of discipline for similar deficiencies. Supervisors should work with Human Resources to ensure their actions are consistent with Judicial Branch practices.

When an employee is notified of the discipline being taken with her/him, whether it be counseling, letter of expectation, verbal warning, written warning, or suspension, the employee must be notified of how her/his deficiency can be corrected and specific expectations the supervisor has for that employee's performance and conduct. Human Resources is available to assist supervisors with identifying proper corrective action for employees.

### **Discipline Situations Involving Employees with Disabilities:**

Situations involving discipline of employees with disabilities must be handled in compliance with state and federal discrimination laws. The Americans with Disabilities Act (ADA) places enormous responsibilities on supervisors in these situations. For that reason, supervisors are strongly encouraged to contact the Court Services/Human Resources Director for guidance in situations involving disciplining employees who have a disability.

If, while in the process of discipline, an employee notifies his/her supervisor of a disability, the supervisor should continue with the discipline process for that deficiency as long as the supervisor truly had no knowledge of the disability. Once the discipline has been completed for that situation, the supervisor must discuss possible accommodation options for the employee. If the supervisor did have knowledge of a disability, then that information must be considered before any discipline decision is made. It is essential that supervisors take into consideration the possible need for an accommodation for the employee. If the employee needs an accommodation to properly perform his/her job, then that accommodation must be made prior to imposing any discipline on the employee.

Due to the complexity of these situations and the potential liability for the Branch, supervisors should contact Human Resources or the Court Services/Human Resources Director for guidance.

**Documentation:**

Supervisors are responsible for proper documentation of employee performance and conduct. Supervisors are encouraged to maintain employee files for each of their employees to detail positive and negative performance and conduct issues. Notes should include approximate dates and enough information to allow supervisors to remember the situation. Documentation should be maintained to support decisions determining levels of progressive discipline.

Supervisors should keep documentation on counseling sessions and verbal warnings. The documentation should record the date, an explanation of the employee's deficiency, and the corrective action taken.

**Confidentiality:**

Supervisors shall maintain strict confidentiality in personnel matters, including discipline. Employees should not be subjected to discipline in open areas where coworkers or the public are likely to overhear. All personnel and discipline documentation must be kept in a manner that protects its confidentiality.