

**STATE OF OHIO  
ADJUTANT GENERAL'S DEPARTMENT  
2825 West Dublin Granville Road  
Columbus, Ohio 43235-2789**

**MEMORANDUM**

TO: State of Ohio Employees and Supervisors

FROM: Major General Mark E. Bartman, The Adjutant General *MS 26 Feb 16*

DATE: 29 February 2016

SUBJECT: WORK RULES - State Employee Discipline

**REFERENCES:**

- Ohio Revised Code Chapter 124 (Personnel Exempt from Collective Bargaining)
- Ohio Administrative Code Chapter 123: 1-47-01
- OCSEA/AFSCME Contract Article 24 (Collective Bargaining Personnel Only)
- Table of Penalties for State Employees - attached for reference

**SCOPE:**

This policy applies to all state employees of the Ohio Adjutant General's Department as listed:

- Classified state of Ohio positions (exempt and collective bargaining)
- Unclassified state of Ohio positions must meet the same expectations and follow the same policies as state of Ohio classified positions. However, unclassified service appointments are made at the discretion of the appointing authority and the incumbent may be removed, suspended, or reduced at the pleasure of the same authority. Pre-discipline meetings and State Personnel Board of Review appeals do not apply to unclassified positions.

**GENERAL:**

Employees shall abide by all directives, rules, and policies of the Adjutant General's Department as well as all local, state, and federal laws.

Disciplining an employee who violates rules, policies, and directives of the Adjutant General's Department or the Ohio Revised Code, is necessary, if order and efficiency are to prevail in the work place. The objective of imposing discipline is to correct undesirable behavior that adversely impacts the mission of the Adjutant General's Department.

It is of equal importance that disciplinary action shall be for just cause and shall be administered fairly and consistently throughout the organization within the guidelines set herein. The suggested discipline outlined shall also be commensurate with the offense, taking into account the severity of the violation and mitigating circumstances, as well as previous discipline. The Adjutant General's Department is dedicated to the policy of corrective, progressive discipline. Disciplinary action should be imposed with the intent of giving the employee the opportunity to correct his/her behavior so long as the discipline is commensurate with the offense. If the behavior is not

This memorandum supersedes State Employee Procedure Letter # 22, dated November 7, 2011

corrected, discipline should become increasingly severe, up to and including removal. Certain offenses warrant severe discipline to include removal on the first offense.

The infractions included in this directive and the enclosed Table of Penalties are not intended to be all-inclusive. It is likely that many other types of infractions may occur. The infractions listed are intended to be representative examples of activities that will warrant immediate corrective action. Informal counseling and work instruction are not considered disciplinary action and are to be used to direct the work force, as well as to place employees on notice of improper behavior.

In general, it is the philosophy of the Adjutant General's Department to offer and encourage the use of the Employee Assistance Program (EAP), where appropriate. The EAP is not considered disciplinary action.

## **RESPONSIBILITIES**

Supervisors are responsible for the appropriate and consistent application of the work rules, policies, procedures, and directives of the Ohio National Guard and/or laws of the state of Ohio. Supervisors are also responsible for initiating the request for disciplinary action as soon as they are aware of a potential situation.

Employees are responsible for complying with and adhering to all work rules, policies, procedures, and directives of the Adjutant General's Department and/or laws of the state of Ohio. Employees are expected to conduct themselves in such a manner that their activities both on and off duty will not adversely affect their ability to perform their duties.

Employees are expected to report to their immediate supervisor violations of policy, procedure, and/or law particularly when such violations would adversely impact the mission, public trust, or safety of the Adjutant General's Department.

Employees must obtain and maintain all requirements for their position. This requirement includes but is not limited to a valid driver's license (when required by the position), Common Access Card (CAC), a favorable background check and/or security clearance (NACI or as required by the Adjutant General, classification specification, or the federal government). Court-ordered occupational driving privileges are NOT a driver's license and any suspension of driving privileges imposed administratively or by a court is to be reported as discussed below.

Illegal conduct on the part of any employee, whether on or off duty, is not only unlawful but reflects on the integrity of the Adjutant General and betrays public trust. In the event any Adjutant General's Department employee is convicted of any felony or degreed misdemeanor, or is required to be a defendant in any court action, that employee must notify his chain of command immediately. Failure to immediately notify the chain of command will subject the employee to potential disciplinary action. Conviction of a felony is cause for removal from employment with the Adjutant General's Department.

## **Procedures**

Discipline shall be progressive in nature. Each violation of policy or procedure will move the disciplinary process to the next step. Discipline shall be imposed per the Table of Penalties

attached, beginning with a written reprimand for minor violations and progressing with each violation. Disciplinary action need not begin at a written reprimand for a major violation.

The determination of whether a violation is minor or major is a management decision and based upon the circumstances surrounding the violation, as well as the nature of the violation.

### **Definitions**

1. Counseling: A discussion with the employee to notify him/her of a potential disciplinary situation. The supervisor should discuss the problem with the employee, offer advice, and assistance/suggestions on how to best resolve the problem. Supervisors may document the counseling session through memoranda, email, or notation in the employee's file.
2. Formal Disciplinary Action: Consists of written reprimands, suspensions, working suspensions, and removals. Exempt employees may also be demoted. No such action will be taken regarding suspension, removal, or reduction without review and coordination with the State Human Resource Manager. Any action involving removal, suspension, or reduction will be processed in accordance with Section 124:34, Ohio Revised Code or Article 24, OCSEA contract.
  - a. **Written reprimand:** A written reprimand for violation of rules and regulations of the Adjutant General's Department. The reprimand is prepared and signed by the immediate supervisor and presented to the employee. The supervisor will identify the offense, the proper course of behavior, and the consequences of future actions. The employee is required to acknowledge receipt of the written reprimand with their signature.
  - b. **Working Suspension:** Used in lieu of suspension for violation of rules and regulations of the Adjutant General's Department. A working suspension has the same effect as a suspension without pay for purposes of progressive discipline, however, the employee is required to report to work as scheduled and is paid for hours worked.
    - i. A minor working suspension is a one (1) day suspension
    - ii. A medium working suspension is a two (2) to four (4) day suspension
    - iii. A major working suspension is a five (5) day suspension
  - c. **Suspension:** A temporary removal from duty, without pay, imposed by the appointing authority due to a violation of rules and regulations of the Adjutant General's Department.
    - i. A minor suspension is a one (1) day suspension
    - ii. A medium suspension is a two (2) to four (4) day suspension
    - iii. A major suspension is a five (5) day suspension
  - d. **Demotion:** Non-bargaining unit employees may be reduced in pay and position for violation of Ohio Revised Code 124.34.

- e. **Last Chance Agreement:** In some cases it may be appropriate to offer the employee a last chance. This agreement may accompany disciplinary action and is intended to make employees aware that any subsequent violations of the Adjutant General's Department's policy, procedure, and/or directives will result in the removal of the employee from his/her position. Most last chance agreements will be in effect for a period of thirty-six (36) months from the date the notice was signed. The last chance agreement is not mandatory nor is it an additional step required prior to an employee being removed from service. Last chance agreements may be offered and/or developed by management, the employee, or the employee representative.
  
- f. **Removal:** An involuntary termination from duty with the Adjutant General's Department imposed by the appointing authority for recurring infractions or a serious breach of the rules and regulations or a combination of both.

Bargaining unit employees are entitled to union representation during all phases of the disciplinary process. Exempt employees are entitled to representation of their choice, if requested, during all phases of the disciplinary process.

For major breaches in proper behavior, policy, or procedure, the principles of progressive corrective disciplinary action may not be appropriate. An employee may be disciplined immediately, without progression, based on the seriousness of the offense. Due process shall always be provided except for those serving in unclassified positions. Disciplinary action shall be commensurate with the offense(s).

### **Administration of Disciplinary Action**

For purposes of consistency and to assure the policies of the Adjutant General's Department are being implemented properly, supervisors who are contemplating disciplinary action must first contact the State Human Resource Office for guidance.

Timely discipline is a key to the corrective effect of disciplinary action. All efforts should be made to issue disciplinary action within a reasonable timeframe when an employee has violated policy/procedure/directives.

1. **Written Reprimands:** Notices of written reprimands must be delivered to the employee in memorandum form and a copy provided to the State Human Resource Division (NGOH-SHRD) for inclusion in the individual's official personnel file. Any written reprimands not on file at NGOH-SHRD may be determined to be unusable for future discipline cases. At the time the individual is presented a written reprimand, he/she must be asked to sign the following statement which must appear at the bottom of the letter.

"I \_\_\_\_\_ have received a copy of this written reprimand on \_\_\_\_\_.  
(Employee's name) (Date)

My signature does not imply that I agree with the content, it only verifies receipt of the letter."

If the employee refuses to sign for the reprimand, another exempt employee may be called in to witness the fact that the employee refused to sign the reprimand, but was provided a copy. Refusal to sign should then be annotated on the agency's copy.

All records relating to written reprimands issued after the effective date of this policy shall cease to have any force and effect and will be removed from an employee's personnel file twenty-four (24) months after the date of the written reprimand if there has been no other discipline imposed during the past twenty-four (24) months.

2. **Suspensions:** See OCSEA contract for collective bargaining members. For exempt employees, while no limit is set by statute on the length of suspensions, first time suspensions are normally treated as a minor suspension, subsequent suspensions are normally treated as a medium suspension, and major suspensions respectively. For all suspensions the following procedure applies except for unclassified employees:

a. Supervisors must first contact the State Human Resources Office (NGOH-SHRD) for guidance. Prior to disciplinary charges being determined, it may be necessary to conduct an investigation into the event leading up to the violation. Bargaining unit employees have a right to be represented by a union steward during this investigation. Once the facts have been gathered and documented, the supervisor must forward a copy of the charges and requested discipline, through channels, to the State Human Resources Manager requesting that a pre-discipline meeting be scheduled before a hearing officer. The hearing officer is often outside of the employee's chain of command.

The person charged with the offense will be directed to appear before the pre-discipline hearing officer. Exempt employees may be accompanied and assisted by anyone of his/her choice, collective bargaining employees may be accompanied by a union steward or officer. The union and/or the employee shall be given the opportunity to ask questions, comment, refute, or rebut the charges.

b. The employee may, in writing, waive the pre-discipline meeting, which shall be scheduled no earlier than three (3) days following the notification to the employee.

c. The reasons for the requested discipline and the possible form of discipline must be identified in the pre-discipline notice letter.

d. The pre-discipline officer will submit a timely, written recommendation with supporting rationale and documents to the Adjutant General or his/her designee through the State Human Resources Division (NGOH-SHRD) for action.

e. The State Human Resources Manager will review the recommendation for completeness and compliance with Chapter 124 of the Ohio Revised Code and

Article 24 of the OCSEA Contract and then forward to the Adjutant General or his/her designee for final determination.

3. **Removals/Terminations:** Same sequence of events as described above for suspension.
4. **Removal of Disciplinary Actions:** All records relating to written reprimands issued after the effective date of this policy shall cease to have any force and effect and will be removed from an employee's personnel file twenty-four (24) months after the date of the written reprimand if there has been no other discipline imposed during the past twenty-four (24) months. All records of other disciplinary actions (non-verbal reprimands) issued after the effective date of this policy, will be removed from an employee's file under the same conditions as written reprimands after thirty-six (36) months if there has been no other discipline imposed during the past thirty-six (36) months.
5. Appeals. Employees may waive their right of appeal in exchange for a lesser penalty provided that the waiver is knowingly and intelligently submitted.
  - a. Personnel exempt from collective bargaining:
    - i. Written reprimand – Non-appealable
    - ii. Suspension – (Three days or less) Non-appealable
    - iii. Working suspension – Non-appealable
    - iv. Suspension – (Four days or more) Appealable to the State Personnel Board of Review for classified employees
    - v. Removals/terminations – Appealable to State Personnel Board of Review for classified employees
  - b. Collective Bargaining employees – See OCSEA contract Article 25.

Adjutant General's Department  
Progressive Disciplinary Guidelines  
For State Employees

29 February 2016

The following is a list of specific infractions which constitute unacceptable behavior or inefficient service for employees of the Adjutant General's Department. These infractions are violations of departmental policy, the Ohio Revised Code, the Ohio Administrative Code, or other laws governing civil service employees and/or citizens of the state of Ohio. An employee who commits such infraction(s) shall be subject to the appropriate disciplinary action(s). This list is not all inclusive nor are the recommended actions herein absolutely mandated. They will serve as guidelines only. The agency and the collective bargaining agreement state that discipline must be progressive. Each time an employee commits any infraction, discipline is to be imposed at the next higher level. The supervisor should consider offering the Employee Assistance Program (EAP) for employees who are consistently unable to abide by these guidelines. Before any removal, EAP may be offered to the employee and discipline held in abeyance pending successful completion of the EAP unless the infraction is so serious that removal is necessary. When the employee agrees, a written last chance agreement shall be signed by the employee, his/her union representative and the supervisor. The administration reserves the right to determine the recommended discipline at any step depending on the severity of the infraction. Finally, the department will comply with the Governor's Illegal Activities policy, requiring that illegal activities be appropriately reported and criminally investigated if outside authorities so determine. Employees have no right to personnel actions in lieu of criminal prosecution.

Note: These guidelines are provided as an aid to supervisors in order to assure proper implementation of discipline. It may be appropriate to impose greater or lesser levels of discipline in specific cases depending on the severity of the offense. Supervisors may issue one or more written reprimands before progressing to suspension/removal. Progressive discipline may be used for unrelated violations.

## DISCIPLINARY GUIDELINES

<u>Violations</u>	<u>1st</u>	<u>2nd</u>	<u>3rd</u>
<b>1. Neglect of duty</b>			
a. Major (endangers life, property or public safety)	Suspension or Removal	Removal	
b. Minor (other)	Written Reprimand	Suspension	Removal
c. Carelessness with agency information (e.g., mail, complaints, files). The levels of discipline may increase greatly depending on the severity of impact of the action.	Written Reprimand or suspension	Suspension or removal	Removal
d. Work production/Failure to meet work standards and/or comply with performance improvement plans	Written Reprimand	Suspension	Removal
e. Sleeping on Duty	Written Reprimand	Suspension	Removal
f. Failure to comply with OSHA safety regulations (including wearing employer provided Personal Protective Equipment)	Written Reprimand	Suspension	Removal
g. Failure to timely renew CAC	Suspension	Removal	
<b>2. Insubordination</b>			
a. Refusal to carry out work assignment	Written Reprimand or Suspension	Suspension	Removal
b. Willful disobedience of direct order by a supervisor	Suspension	Removal	
c. Violation of agency work rules or policies	Written Reprimand or Suspension	Suspension	Removal
<b>3. Use of alcohol/drugs</b>			
a. Possession of alcohol and/or illegal drugs on Adjutant General's Department property	Suspension or Removal	Removal	
b. Consumption of alcohol and/or illegal drugs during regular work hours (while on duty)	Suspension or Removal	Removal	
c. Destruction of or causing danger to life, property, or public safety	Removal		
d. Refusal to submit to a properly ordered drug or alcohol test. (Shall constitute an act of insubordination)	Suspension or Removal	Removal	
<b>4. Unexcused Absence</b>			
a. Leaving work area without permission of supervisor	Written Reprimand	Suspension	Removal
b. Extending break or lunch period without authorization	Written Reprimand	Suspension	Removal

<b>Violations</b>	<b>1st</b>	<b>2nd</b>	<b>3rd</b>
c. Unexcused tardiness or leaving work early	Written Reprimand	Suspension	Removal
d. Absent without leave less than 1 day	Written Reprimand	Suspension	Removal
e. Absent without leave 1 day	Written Reprimand or Suspension	Suspension	Removal
f. Absent without leave 2 days	Suspension	Removal	
g. Absent without leave 3 days or more (with no contact, considered job abandonment)	Removal		
h. Failure to return from an approved leave of absence	Suspension or Removal	Removal	
<b>5. Dishonesty</b>			
a. Falsification of any employment document, including timesheet, employment application, medical evaluations, and expense reports	Suspension or Removal	Removal	
b. Misuse of approved leave	Written Reprimand	Suspension	Removal
c. Unauthorized use or abuse of sick leave	Written Reprimand	Suspension	Removal
d. Misuse of FMLA leave	Written Reprimand	Suspension	Removal
<b>6. Theft/Misuse of State/Federal Property</b>			
a. Theft in office	Removal		
b. Misuse of state funds	Suspension or Removal	Removal	
c. Carelessness with tools, keys, CAC, and equipment	Written Reprimand	Suspension	Removal
d. Destruction, damage and/or theft of state property, property of visitors to state facilities, or property of other employees	Suspension or Removal	Removal	
e. Misuse of state-issued credit cards, including telephone cards	Suspension or Removal	Removal	
f. Misuse of state-owned computers, telephones, vehicles, and other state property	Written Reprimand	Suspension	Removal
g. Misuse, removal, or disclosure of confidential material to unauthorized individuals	Suspension or Removal	Removal	
h. Misuse of Department of Defense computer and/or network	Written Reprimand, Suspension or Removal	Suspension or Removal	Removal
<b>7. Failure of Good Behavior</b>			
a. Making false, abusive, inflammatory, or obscene statements toward or concerning another employee, supervisor, or a member of the general public	Written Reprimand or Suspension	Suspension or Removal	Removal

<b>Violations</b>	<b>1st</b>	<b>2nd</b>	<b>3rd</b>
b. Unethical, immoral, or indecent conduct	Written Reprimand or Suspension	Suspension or Removal	Removal
c. Discourteous and/or rude treatment of an employee or manager	Written Reprimand or Suspension	Suspension or Removal	Removal
d. Discourteous and/or rude treatment of a customer	Written Reprimand or Suspension	Suspension or Removal	Removal
e. Threatening, striking, or other act of physical violence toward a fellow employee, management, or the public	Suspension or Removal	Removal	
f. Involvement in "horseplay"	Written Reprimand	Suspension	Removal
g. Acts of discrimination or insult on the basis of race, color, sex, age, religion, national origin, handicap, or sexual preference	Written Reprimand	Suspension	Removal
h. Posting or displaying abusive material, using insulting language, or displaying inappropriate conduct toward another employee or general public	Written Reprimand or Suspension	Suspension or Removal	Removal
i. Accepting bribes; misuse of position for personal gain	Removal		
j. Excessive use/abuse of leave, including pattern abuse	Written Reprimand	Suspension	Removal
k. Harassment, including sexual	Suspension or Removal	Removal	
l. Appearance of impropriety	Written Reprimand, Suspension or Removal	Suspension or Removal	Removal
m. Unauthorized possession, distribution, or use of weapons or contraband while on duty	Removal		
<b>8. Felony Conviction</b>	Removal		
<b>9. Violation of the Ohio Revised Code, Rules, Policies, Contracts</b>			
a. Participation in an illegal strike	Removal		
b. Participation in a work stoppage strike, sit out, or any other activity that would interfere with the operations of the Adjutant General's Department (exempt employees only)	Suspension or Removal	Removal	
c. Violation of safety rules, policies, or directives	Written Reprimand or Suspension	Suspension or removal	Removal
d. Engaging in political activities as prohibited by section 124.57 of the ORC	Suspension or Removal	Removal	
e. Failure of supervisor to discipline employee(s) as provided in this policy (exempt employees only)	Written Reprimand	Suspension	Removal