

UCMERCED

Human Resources



Progressive Disciplinary Guidelines

This guide is intended as a reference for anyone who manages the performance of others. This guide provides useful information and step-by-step guidelines about the UCM performance management process. To supplement the information found here, it is helpful to attend the Performance Management training courses offered by Human Resources.

Table of Contents

Introduction.....	3
Effective Documentation	3
Probationary Period.....	3
Disciplinary Actions.....	3
Verbal (Oral) Warning.....	3-4
Written Warning.....	4-5
Suspension without Pay.....	5
Reduction of Pay within a Class.....	5
Demotion to a Lower Classification.....	5-6
Dismissal.....	6
Non-Disciplinary Actions.....	7
Plan of Improvement.....	7
Counseling Meetings/Letters of Information	7
Retention Period.....	7
Seven Test of Just Cause	8-9
Proof of Service.....	10

Introduction

University of California, Merced employees are expected to meet performance standards and behave appropriately in the workplace. Corrective action is a process of communicating with the employee to improve unacceptable behavior or performance after other methods such as coaching and performance appraisal have not been successful. If the employee has not made an improvement or if the behavior/unsatisfactory performance persists, corrective action may be appropriate. Corrective action **must** be executed in consultation with an Employee Relations Representative.

Effective Documentation

Many supervisors are not rigorous enough about documenting employee performance issues. Then, when the supervisor decides it would be best to terminate the employment relationship, the absence of sufficient documentation can pose risks that were otherwise avoidable. A good documentary record of performance issues can sometimes help avoid a lawsuit altogether.

Oftentimes, an employee who is underperforming but is motivated to succeed can turn their performance around if the employee understands what they are doing wrong and how to improve. If the employee takes it seriously and works on correcting the performance or behavior, a valuable employment relationship can be saved. Discussions about performance along the way are critical to the employee's success. And documenting those discussions, along with writing accurate and timely performance reviews, will protect the University later if the employee is terminated for failing to meet the employer's expectations.

Probationary Period

Remember to utilize an employee's probationary period wisely. If an employee is consistently late during the probationary period and you've addressed the issue several times, but the employee continues to be late – is the behavior going to improve after the probationary period? It's appropriate to release an employee during the probationary period for substandard performance/behavior. You must contact an Employee Relations Representative to assist you in developing a written notice to the employee, and to guide you thru the process. Please note: Per Labor Law, you must have the employee's final pay check on the date of termination. UCLA processes the payroll for our campus and because of that payroll processors' at UC Merced need at least 72 hours notice to order a final check (Please keep that in mind).

Disciplinary Actions

The intent of any disciplinary action is to guide the employee to correct their performance or behavior by identifying the problems, causes and solutions, not to punish the employee. In general, corrective action should be progressive, i.e., beginning with the lowest severity action before actions of more severity are taken. Any formal corrective or disciplinary action must follow the principles of "Just Cause". After establishing that corrective or disciplinary action is warranted, use some or all of the following steps:

1. Verbal (Oral) Warning

The supervisor should:

- ✓ Schedule a meeting with the employee to ensure privacy;
- ✓ Make notes about what they want to say in advance;

- ✓ If applicable, encourage the employee to have Union Representation Present;
 - ❖ Remember that the employee has a right to representation*.
 (*Weingarten Rights guarantee an employee the right to Union representation during an investigatory interview. These rights were established by the Supreme Court in 1975 in the case of *NLRB vs. Weingarten, Inc.*)
- ✓ State clearly that they are issuing an oral warning;
- ✓ Be specific in describing the unacceptable performance or behavior;
- ✓ Remind the employee of the acceptable standards or rules. If they are available in writing, they should be provided to the employee;
- ✓ State the consequences of failure to demonstrate immediate and sustained improvement: Further disciplinary action may be the result;

2. Written Warning

If the supervisor gave an oral warning and the unsatisfactory performance or behavior endures, a written warning may be warranted. Written warning letter(s) must be approved by an Employee Relations Representative before issuance.

A written warning must include:

- ✓ Who is to be disciplined
- ✓ Why the discipline – violation of policies, procedures or rules.
- ✓ What type of discipline is being applied. State clearly at the outset of the letter that it is a written warning, **and cite** the appropriate personnel policy or contract provision.
- ✓ When the act occurred. Include the date(s), time, witnesses, and documentation(s). Describe the performance problem(s) or work rule violation(s) in very specific detail.
- ✓ Explain the expectations regarding behavior and/or performance.
- ✓ How the problem impacts business operations.
- ✓ Previous Warnings - Outline previous steps taken to acquaint the employee with the issue and attach copies of the documents that are referred to.
- ✓ Consequences – Clarify that if the employee doesn't demonstrate immediate and sustained improvement, the consequence may be further disciplinary action, up to and including dismissal.
- ✓ Note the appropriate policy or contract provision for the employee's right to a written response.
- ✓ A copy of the warning letter must be forwarded to Human Resources to be placed in the employee's personnel file.

If applicable, a Plan of Improvement should be attached to a letter of warning. *(Please refer to Plan of Improvement, Pg. 5)*

3. Suspension without Pay

A suspension may be the next step in the progressive disciplinary process after a written warning(s). A suspension without pay prevents an employee from working and is without pay for one or more days.

The letter should:

- ✓ State that the action is a suspension without pay.
- ✓ Inform the employee of the number of days they will be suspended with the beginning and ending dates.
- ✓ Describe the problem, the previous corrective measures, and the impact of the continued behavior or performance.
- ✓ State the supervisor's expectations and the consequences of failure to improve.
- ✓ Notify the employee of their appeal rights, if appropriate.
- ✓ Attach Proof of Service Form (if applicable)
- ✓ Provide Union Representation (if applicable)

Depending upon the contract or personnel program the employee is covered by, a letter of intent to suspend may be required, which provides the employee with the right to appeal the intended action to the next higher management level before the action is implemented. Contact your Employee Relations Representative as well as the appropriate policy or contract for more information. A template letter may be requested from your Employee Relations Consultant.

4. Reduction of Pay within a Class

This alternative is normally used when a supervisor does not wish to remove the employee from the work site, but serious discipline is appropriate. Contact your Employee Relations Consultant for more information regarding this corrective action.

5. Demotion to a Lower Classification

This action involves moving an employee to a lower level position, and may be temporary or permanent. Demotion may be appropriate in cases of inadequate performance of responsibilities at a particular level, rather than violation of work rules. It should be based upon a reasonable expectation that the employee will perform successfully in the lower classified position. Contact your Employee Relations Consultant for more information regarding this action.

6. Dismissal

This action may be appropriate after performance counseling and progressive corrective action have failed to get the employee to correct the problem(s). Contact your Employee Relations Consultant for more information regarding this action.

Non-Disciplinary Actions

Plan of Improvement

A plan of improvement is a pre-discipline approach that provides the employee the opportunity to show that they can do the job – 100% accountability placed on employee. It is a structured process that identifies how the employee will accomplish certain tasks and assists the employee to become successful. A plan of improvement can become part of other documents that are used to determine if any further adverse action needs to be taken.

Counseling Meetings/Letters of Information

- ❖ Employees do not have the right to representation during counseling meetings since these sessions are not disciplinary actions.
- ❖ Letters of information (also known as counseling memos or summaries of conversation) are not considered disciplinary nor are they grievable or arbitrable. These letters should summarize your conversations and include specific incidents and clear expectations. The tone of your counseling meeting and the letter of information should not sound like a reprimand. Again, the purpose is to provide coaching and expectations and to document your conversation.
- ❖ The following wording **should not** be included in letters of information, “Failure to meet these requirements will result in further disciplinary actions, up to and including dismissal.” This wording will make the letter disciplinary. You may take disciplinary action when other methods such as counseling, performance appraisal, or issuance of letters of information have not been successful. In cases of serious misconduct, you may choose to proceed straight to disciplinary action. However, you **must** consult with an Employee Relations Representative before proceeding.
- ❖ Unions are not copied on letters of information

Retention Period for Informational and Discipline Letters

Generally, records of corrective action shall be destroyed after two consecutive years during which there has been no further similar or related corrective action.

Counseling memoranda (Letters of Information) and/or written records of discussion, in and of themselves, are not discipline and are not required to be removed from the personnel file. However, many contracts state that upon the employee’s written request, counseling memoranda and/or written records of discussion will be removed from the employee’s personnel file(s) if there have been no other such memoranda relating to or disciplinary action on the same or similar issue(s) for a two-year period.

Refer to the appropriate contract or policy for more specific information. Applicable Bargaining Agreement will stipulate retention period for disciplinary documents. Length varies depending on the Agreement.

Seven Tests of Just Cause

The University's personnel policies and collective bargaining agreements refer to disciplinary or corrective action as a consequence of an employee's misconduct or failure to perform satisfactorily. They do not provide a definition of just or proper cause for taking such action. Over the years, the opinions of arbitrators in discipline cases have established a set of guidelines or criteria to be applied to the facts of each case, commonly known as the Seven Test of Just Cause.

1. Adequate Warning

Did the employee receive adequate notice of the work rule or performance standard and the possible consequences of failure to comply?

- ✓ Policies
- ✓ receipts for departmental handbooks

2. Reasonable Rule or Work Order

Is the rule or order reasonably related to the orderly, efficient, and safe operation of the business?

- ✓ Cannot be inconsistent with collective bargaining agreement(s).
- ✓ Cannot be arbitrary or capricious.
- ✓ Must be reasonably related to business necessity

3. Sufficient Investigation

Did you conduct an investigation before making a decision about taking disciplinary or corrective action?

- ✓ Must be thorough; consider all evidence, pros & cons.
- ✓ Must be timely:
 - Should be completed expeditiously.
 - Occurs before discipline imposed.
- ✓ Give accused opportunity to respond
- ✓ Allow union representation.

4. Fair Investigation

Was your investigation fair and objective? Have you looked only for evidence to support your theory of what happened?

- ✓ Is management looking at the situation more closely than when the same or similar infractions occurred?
- ✓ Producing evidence that the infraction was treated lightly in the past places the burden on the employer to show why the employee is being closely observed now.

5. Proof

During your investigation, did you find clear, substantial proof of misconduct or of a performance discrepancy?

- ✓ Level of proof is normally “substantial evidence.”
- ✓ Greater proof required for more serious allegations.

6. Equal Treatment

Have you dealt with your employees equally, without discrimination? Have similar-situated employees received the same discipline?

- ✓ Rules must be applied even-handedly & without discrimination.
- ✓ Rules must be applied justly.

7. Appropriate Discipline

Is the discipline you propose to take reasonably related to the seriousness of the problem?

- ✓ Must be fair, not arbitrary & capricious, or based on emotional response.
- ✓ Factor in length of service, prior performance history, and previous progressive discipline.

Proof of Service

What is Proof of Service and When is it Used?

A Proof of Service is a method of verifying that a document has been transmitted to an individual, union, or an individual's representative. A Proof of Service may be required under certain provision of a collective bargaining agreement or the Personnel Policies for Staff Members (PPSM).

Who Signs a Proof of Service?

- ❖ The signature on the Proof of Service cannot be a party to the subject matter of the document. In other words, the supervisor signing the discipline letter cannot sign the Proof of Service.
- ❖ The signature to the Proof of Service should not be a bargaining unit employee or a subordinate of the individual to whom the document is addressed.

Proof of Service by Personal Delivery

When delivery is to be made by personal presentation, the person who will actually deliver the document(s) should complete the "Proof of Service – PERSONAL DELIVERY" form and hand the document to the addressee. Some points to remember:

- ❖ The individual who signs the Proof of Service must actually hand the document to the addressee.
- ❖ A copy of the Proof of Service form should be attached to copies of the transmitted document that will be retained in the department.

Proof of Service by Mail Delivery

When delivery is by United States Mail, the person who is going to mail the document fills out the "Proof of Service – MAIL DELIVERY" form and mails it with the document. Some points to remember:

- ❖ The envelope should be addressed to the employee's last known address.
- ❖ The person signing the form should place the document(s) in the envelope, including a copy of the Proof of Service, seal it, affix sufficient US Postage to insure First Class delivery, and deposit the envelope in a United States Postal Service (USPS) deposit box before the last scheduled pickup on the date the Proof of Service is signed.
- ❖ A copy of the Proof of Service form should be attached to copies of the transmitted document that will be retained in the department.

Where Do I Find the Proof of Service Form?

Both forms can be found on our Human Resources website at: <http://hr.ucmerced.edu/labor-and-employee-relations/forms-letter-templates>