Administrative Policies and Procedures
Manual - 3215: Performance Improvement and Discipline

Authorized by RPM 6.3 ("Privileges and Benefits")
Process Owner: Vice President of Human Resources

1. General

Employees have a valuable and critical role in helping the University fulfill its mission. Supervisors should make reasonable efforts to train and support employees in understanding job requirements and assist employees in improving performance and addressing issues that negatively affect the workplace. The University encourages the use of progressive discipline, as described in Section 4 of this policy, in order to promote employee success. Other situations may be too serious to address with progressive discipline and warrant immediate actions. The University retains the right in accordance with applicable laws and University policies to determine the methods, means, and personnel required to maintain efficient operations. This includes the right to hire, promote, transfer, assign, and retain employees in positions within the University.

2. Applicability

For purposes of this policy, "employees" includes regular staff, contract, and term employees. This policy does not apply to temporary, on-call, or probationary employees. Please see UAP 3210 ("Recruitment and Hiring"), UAP 3200 ("Employee Classification"), and UAP 3225 ("Separation of Employment") for more information relating to these employee classifications. This policy also does not apply to individuals specifically appointed as faculty; undergraduate and graduate student employees, including School of Medicine house officers; and independent contractors.

2.1. Post-Probationary Employees

Post-probationary employees are those employees who have completed the appropriate probationary period. Post-probationary employees may be disciplined only for proper/just cause for misconduct (see Section 5). Supervisors should use progressive discipline, when appropriate, to resolve disciplinary problems involving post-probationary employees. Progressive discipline is discussed in Section 4.

2.2. Employees Hired on a Term Appointment

Certain employees hired into a position that is designated to run for a defined period of time are employed at the University on a term appointment. Post-probationary employees hired on a term appointment may be discharged only for proper/just cause (see Section 5) during the term appointment. However, the individual's employment will end as of the specified date, unless the supervisor notifies the employee that the appointment will be extended. Separation at the end of the original or extended term appointment shall not constitute discharge and does not require proper/just cause.

2.3. Contract Employees
Contract employees are administrators designated by the University President, who are hired on periodic employment contracts. Contract employees may be discharged only for proper/just cause (see Section 5) during the contract period; however, the University has the right not to renew these contracts when they expire. Terms, conditions, and notification requirements for employees hired under contract are described in UAP 3240 ("Contract Employees"). Additional language in individual contracts may apply. Supervisors normally use progressive discipline when resolving disciplinary problems involving contract employees during the term of the contract but may use higher levels of discipline dependent on the seriousness of the issues. Progressive discipline is discussed in Section 4. Separation at the end of the original or extended contract period shall not constitute discharge and does not require proper/just cause.

3. Responsibilities and Rights

3.1 Employees

Employees are responsible for following established University policies, procedures, and other applicable standards that pertain to their work. They should work in an efficient, competent, and cooperative manner and fulfill their job requirements. Prior to issues rising to the level of discipline, employees may seek informal services to help build communication and collaboration through the use of Ombuds Services. See UAP 3220 ("Ombuds Services for Staff"). Bargaining unit members may also refer to the appropriate collective bargaining agreement regarding their rights and responsibilities associated with the disciplinary action.

3.2. Supervisors

Supervisors should seek to achieve a productive, effective work environment by ensuring that each employee's job performance meets or surpasses expectations. Supervisors should make concerted efforts to ensure that employees understand job requirements and expectations; they should address problems that may impact performance in a timely, constructive, and corrective manner.

Although the University does not condone poor performance, it recognizes that good "coaching" can correct many performance deficiencies. Good performance management requires continuous feedback to employees. Supervisors should evaluate performance, identify shortcoming, and when appropriate require employee training to correct weaknesses. Supervisors should use a problem-solving approach to resolve performance problems and other issues negatively affecting the workplace.

3.3. Lateral Transfers and Demotions

When an employee is not suited to a specific position, a manager may wish to consider a lateral transfer to a different position that appears to be better suited to the employee. A lateral transfer may be appropriate when there is a comparable position open within the department and such a transfer is reasonably predicted to result in improved performance.

In cases of poor performance where an employee performed satisfactorily in a lower level position, a demotion may be appropriate if there is a lower level position open in the department. If so, this can be done with the employee's agreement or can be imposed by the manager after allowing an employee to respond to the concerns and considering the employee’s response. All demotions must be approved, in advance, by the Vice President (VP) for Human Resources (HR).

3.4. Resources for Employees

In dealing with performance problems, supervisors should seek assistance from their superiors and the assigned HR Consultant in the Division of HR. Following is a list of additional resources to which the supervisor can refer the employee to:-
4. Progressive Discipline

The University uses progressive discipline for employees, when appropriate. Progressive discipline is designed to allow an employee a reasonable opportunity to meet the requirements of the job, comply with applicable standards, and improve performance. “Performance” for purposes of this policy is used broadly and includes all aspects of being successful in a job.

Progressive discipline may not be appropriate in all instances, such as when health or safety is at risk or a crime has been committed. It does not bar a supervisor from imposing stronger discipline with the approval of the VP for HR, depending on the individual circumstances. Some violations are of such a serious nature that disciplinary action would lead directly to a final written notice or discharge with the approval of the VP for HR.

Progressive discipline may include the use of letters of corrective action, written warnings, final written notices, and discharge. Discipline should be administered equitably and consistently. See the HR website for tools to assist in ensuring appropriateness of actions. Depending on the nature of the matter, a supervisor may start progressive discipline at any appropriate point in the process. The following sections describe in detail the actions associated with the progressive discipline process.

During all levels of disciplinary action, supervisors should advise employees:

- of the nature of the problem and expectations;
- that they have an opportunity to provide an explanation for the problem;
- of any policies or rules violated;
- of the specific actions that should be taken to correct the problem, including any specific timeframes;
- that further disciplinary action up to and including discharge may occur should the problem persist; and
- that disciplinary action may be disputed through the applicable appeal process noted in Section 8.

Since the purpose of discipline is to provide employees with an opportunity to correct problems, when an employee has sufficiently corrected a problem and the supervisor is satisfied that it will not reoccur, subsequent performance evaluations should reflect the improved performance.

4.1. Letter of Corrective Action

The letter of corrective action is the lowest level of disciplinary action. It informs employees of the issues of concern and their supervisors’ and/or managers’ expectations. It is expected that such discussions will result in improved performance. A letter of corrective action is not documented in an employee's official personnel file maintained by the Division of HR. However, the supervisor shall maintain a record of any letter of corrective action in the departmental file. This document may be referred to in any further disciplinary action.

4.2. Written Warning
The written warning is the next level of disciplinary action and is used for more severe issues or for situations where issues have continued despite being given an opportunity to improve. A written warning is documented in the employee's official personnel file maintained by the Division of HR. After an employee has received at least two (2) positive performance evaluations, an employee may petition the applicable dean or director to have the written warning removed from the employee's official personnel file.

4.3. Final Written Notice

A final written notice is the third level of possible disciplinary action. It may be issued to an employee due to performance problems that have not been satisfactorily corrected through the use of prior discipline or for serious violations of policy, procedure, or other applicable standards. A final written notice requires approval, in advance, of the appropriate dean or director and the VP for HR.

4.4. Discharge

A discharge is a permanent involuntary separation of employment from the University for disciplinary reasons and is reserved for the most serious infractions or for continued issues that previously have been addressed but have not been corrected. Proposed discharges and final discharges must be approved, in advance, by the appropriate dean or director and the VP for HR. The manager must comply with the notice requirements listed in this section.

4.4.1. Notice of Contemplated Action for Discharge

The notice of contemplated action outlines the reasons for considering the employee’s discharge and must include all of the following points:

- The acts that the supervisor believes may constitute proper/just cause. These may include one (1) or more of the acts listed in this policy.
- A summary of the evidence against the employee.
- The required timeframes in accordance with Section 4.4.3.

4.4.2. Computation of Time

Notices shall be in writing and should be served in person, if possible. At the time of service, the employee should be asked to sign an acknowledgement of receipt. If the employee declines, the supervisor shall so note for the record. If the notice cannot be served in person, the notice may be sent by certified mail with a return receipt requested. The notice must be properly stamped and addressed to the last address provided by the employee. Service of the notice is complete when the notice is hand delivered or deposited with the United States Postal Service by certified mail with a return receipt requested. A copy of the notice will be sent to the Division of HR for placement in the employee's official personnel file.

Any time period required or allowed by this policy does not include the day of the action from which this time period begins to run. If the last day of the time period falls on a Saturday, Sunday, or holiday, the last day of the time period shall be the next working day.

4.4.3. Response to Notice of Contemplated Action

The employee or a representative of the employee's choosing may respond orally and/or in writing to the notice of contemplated action. Refer to the appropriate collective bargaining agreement regarding
representation for employees in positions covered under labor agreements. The response is served to the manager who signed the notice. If employees wish to meet with their managers to respond to notices of contemplated action, they must submit a written request for the meeting within seven (7) calendar days from receipt of the notice. As noted in this policy, the employee must respond orally and/or in writing within ten (10) calendar days from receipt of the notice of contemplated action. Any extension of time must be in writing and agreed upon by both the employee and the manager.

A copy of the response will be sent to the Division of HR for placement in the employee's official personnel file.

4.4.4. Notice of Final Action

After considering the employee's oral and/or written response, the manager shall decide on the final action, obtain approval by the VP for HR, and serve the employee with the written notice of final action. The notice of final action should be delivered within thirty (30) calendar days after receipt of the employee's response. Cases requiring further investigation may require additional time. If so, a letter will be sent to the employee noting the need for additional time. The notice of final action should include all of the following points:

- The final action to be taken.
- The acts constituting proper/just cause, which shall only include allegations specified in the notice of contemplated action.
- A summary of the evidence.
- A reply to the employee's response, if any.
- The effective date of the discharge.
- A statement of the appeal processes available to the employee.

A copy of the notice will be sent to the Division of HR for placement in the employee's official personnel file.

4.4.6. Exceptions

Exceptions to the normal steps of progressive discipline that are discussed above must be approved in writing and in advance by the VP for HR and the applicable executive vice president. In rare instances, and when warranted by special circumstances, a suspension may be approved as an exception.

5. Proper/Just Cause and Misconduct

Proper/just cause is generally significant or substantial misconduct relating to the employee's work that is inconsistent with the employee's obligation to the University that violates policy, procedure, or other standards. A list of examples that could constitute proper/just cause for disciplinary action based on misconduct is shown below, but is not an all-inclusive list.

- Assault or battery on another person.
- Attendance issues (unsatisfactory attendance including tardiness).
- Violation of departmental or University Policy on confidentiality, or the release of confidential information in violation of law.
- Conviction of a felony or misdemeanor, depending on the nature of the offense and applicability to the type of position the employee holds, consistent with the Criminal Offender Employment Act.
- Discrimination against an individual or creating a hostile work environment based on race, ethnicity, national origin, medical condition, gender, and other protected classes under state or
federal law. See UAP 2720 (“Prohibited Discrimination”) and UAP 2740 (“Sexual Misconduct”). All allegations of discrimination, including sexual harassment, must be referred to the Office of Equal Opportunity.

- Deliberate falsification or misrepresentation of information on employment applications or resumes, time cards/records, or other University records.
- Impairment in the workplace due to illegal drugs or alcohol or possession of such substances in the workplace in violation of UAP 3270 (“Suspected Impairment at Work”).
- Insubordination.
- Misappropriation or personal use of University funds, property, possessions, or resources.
- Incompetence, inefficiency, ineffectiveness, negligence (inability to perform the job according to expectations).
- Possession of or distribution of obscene or pornographic material unrelated to business needs or University research.
- Safety issues (violation of safety protocol).
- Sleeping on the job.
- Theft, embezzlement, or fraud. See UAP 7205 (“Dishonest or Fraudulent Activities”).
- Uncooperative, inappropriate, or unprofessional behavior.
- Violation of any University policy.
- Violence/threat of violence and stalking of individuals on the University campus. See UAP 2210 (“Campus Violence”).

6. Pay Status

Post-probationary and contract employees will remain on paid status at all times pending delivery of discipline. Post-probationary and contract employees may continue working or may be placed on administrative leave with pay pending completion of the investigative or disciplinary process. Requests for administrative leave must be sent to the HR Consultant. The VP of HR will coordinate with the respective executive vice president, who will approve or disapprove the leave. For more information, refer to Section 3.7. of UAP 3415 (“Leave With Pay”).

7. Required Approval by the Division of HR

Managers contemplating a final written notice, demotion, or discharge of any employee, including probationary and temporary employees, must consult with their HR Consultant before taking such action. Discharges and final written notices must also be approved through the department’s dean, director, or above and by the VP for HR.

8. Appeal Process

If a post-probationary employee who is in a non-bargaining unit position has been discharged, the employee is entitled to a peer hearing or arbitration upon request as described below. Employees whose position titles are covered under a collective bargaining agreement should review the relevant agreement.

8.1. Peer Hearing

Peer hearings are coordinated by the Main Campus Compliance Office and consist of a Peer Review Panel of three (3) uninvolved University employees who have no connection with the dispute, nor any interest in the outcome of the hearing. Members of the Peer Review Panel will be randomly selected from a pool consisting of all University employees.
The employee who was discharged and the management representative who discharged the employee will select the panel members from the randomly chosen names. An employee may choose arbitration, as noted below, in lieu of peer review.

8.2. Discretionary Review by President and Board of Regents

The University President and the Board of Regents reserve the discretionary authority to review all peer review decisions other than final and binding arbitration. The University President and the Regents will normally accept review only in extraordinary cases, such as those where proper procedures have not been followed, where the decision appears to be unsupported by the facts, or where the decision appears to violate University policy. If an appeal is accepted, it will first go to the University President. The Board of Regents has the discretion to review the University President's decision. Any appeal will be handled pursuant to the policies of the University President and Regents concerning discretionary reviews. See RPM 1.5 (“Appeals to the Board of Regents”).

8.3. Arbitration

If both parties agree in the case of an employee who is not covered by a collective bargaining agreement, the dispute may be submitted for final and legally binding arbitration instead of a peer hearing. Employees may request that an advisor of their choice be present at the arbitration. If arbitration is requested, the Main Campus Compliance Office will arrange for the arbitration as soon as reasonably possible. Arbitrators are non-UNM employees selected by mutual agreement from a pool of professional arbitrators. The procedures for filing for peer hearing or arbitration are in Exhibits A and B to this policy.

9. Resources

Exhibit A: Dispute Resolution Process Flowchart
Exhibit B: Peer Hearing Procedure