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

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Process Owner: Vice President of Human Resources

1. General

Employees play a valuable and critical role in helping the University fulfill its mission. Supervisors have a responsibility to train and support each employee in understanding job requirements and to assist employees in improving performance and addressing issues that negatively affect the workplace. Employees should be treated with dignity and respect. In turn, providing quality programs and services requires cooperation by employees and adherence to established policies, procedures, regulations, practices, and high standards of job performance. In an effort to maximize the contribution of every employee, the University has adopted this policy on performance management.

The University encourages a supportive problem-solving approach to performance problems, but the University recognizes that misconduct, violation of policies and procedures, and continued performance problems may require disciplinary action. The University normally uses the use of progressive discipline process described in Section 4, herein, as described in Section 4 of this policy, in order to promote employee success. Other situations may be too serious to address misconduct and continued performance problems. Progressive discipline is intended to be corrective, not punitive in nature. It is designed to provide employees with notice of deficiencies and an opportunity to improve. However, some violations of policies and procedures, or continued negative behavior or performance may be of such serious nature that immediate suspension or discharge may be appropriate actions. The University retains the right in accordance with applicable federal and state laws and Regents' policies to determine the methods, means, and personnel required to maintain efficient operations. This includes the right to hire, promote, transfer, assign, and retain staff employees in positions within the University.

2. Applicability

For purposes of this policy, "employees" include 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 Medical School of Medicine house officers; and independent contractors are not subject to this policy.
2. Employee Responsibilities and Rights

Employees are responsible for following established University policies, procedures, regulations, and practices. They shall work in an efficient, competent, and cooperative manner and fulfill their job requirements. An employee's right with respect to disciplinary actions and discharge differ for the various classifications as described below. Employees who disagree with any disciplinary action taken may seek resolution under the "Dispute Resolution Policy" Policy 3220, UBP or the appropriate collective bargaining agreement.

2.1. Temporary and On-Call Employees

Temporary and on-call employees may be released from employment with or without cause.

2.2. Probationary Employees

Probationary employees are those employees who have not completed the appropriate probationary period as defined in "Recruitment and Hiring" Policy 3210, UBP or the appropriate collective bargaining agreements. Probationary periods will only be extended in accordance with Section 7 of Recruitment and Hiring" Policy 3210, UBP. All extensions must be approved by the Vice President for Human Resources.

Probationary employees may be separated from employment with or without cause. However, supervisors should make reasonable efforts to train and work with probationary employees to achieve satisfactory performance. Refer to "Separation of Employment" Policy 3225, UBP for notice requirements.

2.3.2. Post-Probationary Employees

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

2.4.2. 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 under a term appointment agreement. Post-probationary employees hired on a term appointment may be suspended or discharged only for proper/just cause (discussed in Section 5, herein) 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.

2.43. Contract Employees

Contract employees are administrators designated by the University President, who are hired on periodic employment contracts. Contract employees may be suspended or discharged only for proper/just cause (discussed in Section 5, herein) 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 "Contract Employees" Policy 3240, UBP.
term of the contract, supervisors should 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 herein. Separation at the end of the original or extended contract period shall not constitute discharge and does not require proper/just cause.

3. **Supervisor** 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 appropriate concerted efforts to ensure that employees understand job requirements and expectations, and supervisors; they should address problems that may impact on performance in a timely, constructive, and corrective manner.

Although the University does not condone poor performance, however, it recognizes that good "coaching" can correct many performance deficiencies. Good performance management requires continuous improvement feedback to employees. Supervisors should evaluate performance, identify shortcomings, and plan when appropriate require employee training needed to correct any 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 supervisor manager may wish to consider a lateral transfer to a different position, which may appear 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. Since a demotion results in a salary reduction, if so, this can only 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 are encouraged to seek assistance from their superiors and the assigned Human Resources Consultant in the Division of Human Resources before beginning the disciplinary process. Following is a list of additional resources to which the supervisor can be used, as appropriate.

- their superiors (especially their chair, dean, or director);
- refer the University Office of Ombuds/Dispute Resolution (DR) Services (refer to "Dispute Resolution Policy" Policy 3220, UBP); or
  - the Ombuds Services for Staff; refer to UAP 3220 ("Ombuds Services and Dispute Resolution for Staff");
  - University Counseling, Assistance, and Referral Service (CARS); or
  - the Employee and Organizational Development Department in the Division of Human Resources; or (EOD)
- the University Office of Equal Opportunity.

When performance problems continue or employee misconduct is of a serious nature requiring discipline, the actions described in Section 4, herein may be appropriate. The objective of the following corrective actions is to seek to return the employee to positive productive performance.

4. Progressive Discipline

The University of New Mexico uses progressive discipline for post-probationary regular, term, or contract employees, when appropriate. Progressive discipline is designed to allow an employee a reasonable opportunity to meet the requirements of the job, comply with University policies, procedures, practices, applicable standards, and regulations, and allow the employee an opportunity to 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, and is. It does not a bar to a supervisor from imposing stronger discipline with the approval of the Vice President for Human Resources, depending on the individual circumstances. Some violations (listed in Section 5) could lead directly to suspension, final written notice or discharge with the approval of the Vice President for Human Resources.

Progressive discipline actions may include the use of oral letters of corrective action, written warnings, final written warnings, suspension notices, and/or discharge. Discipline should be administered equitably, and consistently, and progressively. See the HR website for tools to assist in ensuring appropriateness of actions. Depending on the nature of the performance problem, misconduct, or violation of policy matter, a supervisor may start progressive discipline at any appropriate point in the process. The following sections describe in detail the actions used in this progressive discipline process.

4.1. Oral Warning

The primary objective of oral warning(s) should be to advise the employee that there is a performance problem or the employee has violated policies or procedures and to tell the employee what he or she can do to restore satisfactory performance. During all levels of disciplinary action, supervisors should advise employees:

- It is expected that such discussions will result in improved performance. The supervisor should advise the employee:
The supervisor must make it clear to the employee that this is an "oral warning." An oral warning is not documented in the employee's official personnel file, maintained by the Division of Human Resources. However, the supervisor shall maintain a record of any oral warnings given which should be referred to in any further disciplinary action taken.

4.2 Written Warning

A written warning provides the employee with a written explanation of the events leading to the warning, an explanation of any applicable rules, and any subsequent information that can help the employee improve the identified performance problem. The supervisor must make it clear to the employee that this is a "written warning" and that if the employee does not improve performance to a satisfactory level within the time frames listed more serious disciplinary action will take place. A written warning is documented in the employee's official personnel file maintained by the Division of Human Resources. The written warning should include:

- the nature of the problem, including reference to any earlier oral warning(s);
- the policies or rules violated (if any);
- the specific action to be taken by the employee and/or supervisor to correct the problem, including specific time frames, if appropriate;
- a statement that further disciplinary action, up to and including discharge, could occur should the problem persist; and
- a statement that disciplinary action may be disputed according to the provisions of "Dispute Resolution Policy" Policy 3220, UBP or the appropriate collective bargaining agreement through the applicable appeal process noted in Section 8.

Since the purpose of discipline is to help 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 three (3) 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. Suspension Final Written Notice

A suspension-final written notice is a temporary involuntary separation of employment, without pay, for possible disciplinary action. It may be issued to an employee due to performance problems that have not been satisfactorily corrected through the use of oral and written warnings, prior discipline or for misconduct or serious violations of policy or procedures. Suspensions range from one (1) work day up to thirty (30) work days, depending on the seriousness of the problem. The supervisor must comply with the notice requirements listed in Section 6, herein, and should inform the employee in writing that the suspension is a disciplinary action and that discharge could occur should the problem persist, or other applicable standards. A suspension-final written notice requires approval, in advance, of the cognizant appropriate dean or director and the Vice President VP for Human Resources HR.

4.4. Discharge

A discharge is a permanent involuntary separation of employment from the University for disciplinary reasons. Discharges are 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 cognizant appropriate dean or director and the Vice President VP for Human Resources HR. The supervisor manager must comply with the notice requirements listed in Section 6, herein, this section.

5. Proper/Just Cause

Proper/just cause is any behavior significant or substantial in nature relating to the employee's work that is inconsistent with the employee's obligation to the University. A list of examples that constitute proper/just cause is shown below for guidance only, and is not considered as an all inclusive list.

- Assault or battery on another person.
- Conviction of a felony or misdemeanor where the provisions of the Criminal Offender Employment Act apply, depending on the nature of the offense and the type of position.
- Creating a hostile working environment.
- Discrimination, including sexual harassment.
- Falsification (deliberate) or omission of information on employment applications or resumes, time cards/records, or other University records.
- Illegal drugs and alcohol - violation of the University's "Policy on Illegal Drugs and Alcohol."
• Incompetence.
• Inefficiency.
  • Insubordination.
• Intoxication on the job.
  • Misappropriation or personal use of University funds, property, possessions, or resources.
• Misconduct.
• Negligence.
• Performance which continues to be inadequate after reasonable time has been allowed to correct it.
  • Possession of or distribution of obscene or pornographic material unrelated to business needs or University research.
• Theft or fraud.
• Uncooperative behavior.
• Confidentiality – violation of confidentiality or the release of confidential information.
• Violation of University policies.

6. Notice Requirements

6.4.4.1. Notice of Contemplated Action for Discharge

To initiate a suspension or discharge of a post-probationary regular, term, or contract employee, the dean, director, or department head must serve the employee with written notice of the contemplated action. Suspensions and discharges require approval of the cognizant dean or director and the Vice President of Human Resources prior to issuing a Notice of Contemplated Action. This notice outlines the reasons for Human Resources' consideration of the employee's discharge and must include all of the following points:

• Cite the acts which the supervisor believes may constitute proper/just cause. These may be any one (1) or more of the acts listed in Section 5. herein this policy.
• Give a summary of the evidence against the employee.

• Specify the contemplated action.
• State that the employee has ten (10) calendar days from receipt of the notice to respond orally or in writing to the contemplated action.

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

• The required timeframes in accordance with Section 4.4.3.
4.4.2. Computation of Time

Notices

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 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.

6.3. Computation of Time

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.

6.4.4.3. 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 supervisor who signed the notice. If the employee wishes to meet with their manager to respond to the notice of contemplated action, they must submit a written request for the meeting within five (5) work seven (7) calendar days from receipt of the notice. As noted in Section 6.1. herein 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 supervisor.

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

6.4.4.4. Notice of Final Action

After considering the employee's oral and/or written response, the supervisor 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 shall 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 any disciplinary action.

A statement that the employee may request within two (2) weeks of receipt of the Notice of Final Action that the DR Coordinator review the action according to the provisions of "Dispute Resolution Policy" Policy 3220, UBP.
• A statement of the appeal processes available to the employee.

A copy of the notice will be sent to the Division of [Human Resources](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 completion of the disciplinary action process, with the exception of a suspension (Section 4.3. herein) approved by the Vice President for Human Resources. An employee 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 Policy 3415, UBP").

7. Required Approval by the Division of Human Resources

Managers contemplating the suspension, demotion, or discharge of any employee, including probationary and temporary employees, must consult with the Vice President for Human Resources before taking such action. Whenever prior consultation is not practical because of reasons perceived to be of such an urgent or serious nature, the employee must be placed on administrative leave with pay until the case can be discussed with the Vice President for Human Resources, 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