



Disciplinary Action Policy

Policy Number: PP 5-3

Effective Date: September 1, 2015

Approved By: Roger L. Stancil, Town Manager

POLICY

The Town shall provide a fair, effective, and consistent process to handle matters which may require disciplinary action. Discipline shall be respectful and equitable. Discipline measures shall be appropriate to the infraction and may include termination of employment.

Any disciplinary action taken in accordance with this policy must be for one or more of the following infractions:

- Unsatisfactory job performance
- Detrimental personal conduct.
- Negligence in performance of duties.

The Town of Chapel Hill shall provide a fair, clear, and useful tool to promptly notify employees when their job performance is below expectation, and to help employees improve and maintain satisfactory job performance before taking disciplinary action for unsatisfactory job performance.

This policy applies to all town employees except Department Heads and Assistant, Deputy, or Town Managers.

PURPOSE

Town employees agree that serving the community requires all employees to perform their job duties well and maintain a high standard of personal conduct and safety. A clear and consistent disciplinary process supports our shared values of Responsibility, Professionalism, Safety, Equity, Ethics and Communication. When an employee's conduct or performance is unsatisfactory or fails to meet expectations, corrective action may be taken using progressive discipline.

This policy provides employees with an opportunity to improve work performance that is below expectations; protects employees, the Town, and the public from harmful behavior; and maintains a safe, professional, and equitable workplace for all.

APPROVAL

Roger L. Stancil, Town Manager



Disciplinary Action Procedures

Policy Number: PP 5-3

Effective Date: September 1, 2015

Approved By: Cliff Turner, Human Resources Development Director

Disciplinary Action Procedures

These procedures are issued by the Director of Human Resource Development to implement the Disciplinary Action Policy, PP 5-3, issued by the Chapel Hill Town Manager. These procedures may be periodically updated.

A. How Time is Calculated:

1. The Town of Chapel Hill Code of Ordinances defines how timelines are computed for purposes of this process. Please refer to **Understanding Time Calculations for Conflict Resolution Processes (Appendix D)** for more information and specific examples. In most instances,
 - a) The timeline starts the day after the notice or action occurs
 - b) Timelines refer to calendar days except that:
 - i. Timelines do not start or end on a Saturday, Sunday or official Town Holiday
 - ii. Official Town holidays are excluded from the timeline count.

B. Delays and Extensions to the Timeline:

All parties may mutually agree in writing to modify any of the timelines governing this process. If delays occur attributable to the employee for whom discipline is being considered, then the Town cannot be held responsible for the timelines.

C. Before Taking any Disciplinary Action:

1. **HRD consulted:** Before taking any disciplinary action, the supervisor or Department Head shall discuss the proposed disciplinary action with the Human Resources Development Department (HRD). HRD can assist supervisors and Department Heads with investigating potential disciplinary action, reviewing precedent for taking (or not taking) disciplinary action, and developing disciplinary documents.
2. **Review of Documents and Documentation:** HRD will review any letter of disciplinary action, including a written warning, before it is discussed with and provided to the employee. Supervisors and department heads shall use the **Severe Disciplinary Action Checklist (Form 5-3 E)** to assist them in determining whether to proceed with severe disciplinary action against an employee.

D. Discipline Procedure for Unsatisfactory Job Performance:

1. Successive: Discipline for unsatisfactory job performance is successive. That means that an employee receives the minimum number of opportunities to correct and improve unsatisfactory performance as set out for each level of discipline.
2. When Discipline Can Occur: A Department Head may discipline any employee for unsatisfactory job performance at any time. The first step of discipline for unsatisfactory job performance is the issuance of a written warning.
3. HRD Review: HRD must review any written warning before it is provided to the employee.
4. Written Warning Checklist: The **Written Warning Checklist (Form 5-3 A)** is a tool to assist supervisors and managers in preparing and issuing a written warning. A written warning should be reviewed and signed by a member of the Department's senior management before being issued to the employee.
5. Performance Improvement Plans: An employee who has received a BELOW EXPECTATION rating may be placed on a Performance Improvement Plan (PIP) at any time during the evaluation year. Before being placed on the PIP, the employee must have received documented counseling regarding job performance. Should this occur, no discipline may take place until the employee has been given a written Performance Improvement Plan (PIP) and has failed to demonstrate the required correction through the PIP.
6. Prior Warning Not Required: It is not required that a written warning be preceded by a rating of BELOW ACCEPTABLE. **A written warning for unsatisfactory job performance can be issued at any time.** However, prior evaluations that are inconsistent with discipline for unsatisfactory job performance must be supplemented with additional information and documentation to support the disciplinary action. The **Written Warning Checklist (Form 5-3 A)** provides guidance to supervisors and managers regarding written warnings. HRD must be consulted before such action is taken.
7. Use of Leave during Disciplinary Suspension: An employee who is placed on disciplinary suspension without pay may not use any accrued leave balance during the period of suspension. The length of suspension is determined based on fairness, consistency, and applicable state and federal laws.
8. Disciplinary actions for unsatisfactory job performance may be taken as follows:
 - a) Written Warning - Before receiving a written warning for unsatisfactory job performance, the employee must have at a minimum:
 - i. A current unresolved incident of unsatisfactory job performance.

Managers may use the **Written Warning Template (Form 5-3 B)** for written warnings.

b) Suspension without pay or demotion for unsatisfactory job performance:

Before a department head may suspend an employee without pay or demote an employee for unsatisfactory job performance, the department head shall confer with the human resources department and review the situation and the recommended discipline.

Before being suspended without pay or demoted for unsatisfactory job performance the employee must have:

- a) At least one (1) prior active written warning, and
- b) A current unresolved incident of unsatisfactory job performance.

Before imposing either a suspension without pay or a demotion for unsatisfactory performance, the department head shall conduct a pre-disciplinary conference. An employee may choose to be represented at the pre-disciplinary conference by any person except a supervisory town employee. (Town of Chapel Hill Code of Ordinances Section 14-121)

c) Dismissal for unsatisfactory job performance.

Before a department head may recommend to the town manager that an employee be dismissed for unsatisfactory job performance, the employee must have:

- a) At least two (2) prior active written warnings; or
- b) One (1) active written warning plus a severe disciplinary action

Before making such a recommendation for dismissal to the town manager, the department head shall conduct a pre-disciplinary conference. An employee may choose to be represented at the pre-disciplinary conference by any person except a supervisory town employee. (Chapel Hill Code of Ordinances Section 14-122)

If the employee is terminated, the Town Manager or designee must also review and approve the dismissal before the action is taken.

E. Discipline Procedure for Detrimental Personal Conduct and Negligence in the Performance of Duties:

1. Not Successive: Discipline imposed for detrimental personal conduct or negligence in the performance of duties is not successive. That means that, depending on the severity of the occurrence, the employee's employment history with the Town, and previous actions with similar occurrences, the Town may impose severe disciplinary action up to and including dismissal without the requirement of any prior existing disciplinary action.

2. Use of Leave During Suspension: An employee who is placed on disciplinary suspension without pay may not use any accrued leave balance during the period of suspension. The length of suspension is determined based on fairness, consistency, and applicable state and federal laws.

3. Disciplinary actions taken for detrimental personal conduct or negligent performance of duties may be taken as follows:

a) Disciplinary Suspension without Pay or Demotion--Before a Town employee can be suspended without pay or demoted for an act of detrimental personal conduct or negligent performance of duties, there must be:

i. An unresolved incident AND

A pre-disciplinary conference, also known as a PDC.

b) Dismissal--Before a Town employee can be dismissed for an act of detrimental personal conduct or negligent performance of duties, there must be:

i. An unresolved incident AND

ii. A pre-disciplinary conference AND

iii. The Town Manager or designee must review and approve the dismissal.

F. Employee Representation:

1. Legal Representation—Employees may be represented by an attorney at any point during this process. An employee must inform the Town as soon as he/she has legal representation and provide contact information for the legal counsel. Employees are responsible for all cost related to representation. The Town does not provide legal or other representation for employees.

2. Other Representation—Employees may have non-legal representation as long as it is not a current supervisory Town employee. An employee should inform the Town if he/she wants the representative to attend the Pre-Disciplinary Conference.

G. Leave with Pay During an Investigation:

1. Imposed at any Time: An employee may be placed on a leave of absence with pay at any time, pending the outcome of an investigation into an incident or allegation which could possibly be a violation of Town Policy, municipal, state or federal laws.

2. Reporting Requirement: When an employee has been placed on administrative leave with pay for more than 30 days, the Department Head must inform the Town Manager and the Director of Human Resource Development. Department Heads are responsible for assuring compliance with this reporting requirement.

H. Leave without Pay During an Investigation:

1. Imposed at any Time: An employee may be placed on an unpaid leave of absence, to avoid undue disruption of work or danger to the employee, other persons, or property, as in the case of an employee who reports to work under the influence of alcohol or drugs.

2. Pay Reinstatement Provisions: If the pre-disciplinary conference (PDC) does not result in a decision to take severe disciplinary action, the employee will be paid retroactively for the period he/she was suspended.

I. The Pre-Disciplinary Conference (PDC):

Before the Town may impose severe disciplinary action in the form of demotion, suspension without pay, or dismissal on any basis, a pre-disciplinary conference (PDC) must take place. The conference is the employee's opportunity to provide information that the Town will consider in the disciplinary

Before the Conference:

The Department Head considering severe disciplinary action must:

1. Consult with HRD.
2. Complete a fact-finding investigation into the incident, if applicable.
3. Provide the employee with at least a 24 hour written notice of the PDC. The notice must tell the employee:
 - a) The type of severe disciplinary action being considered
 - b) The facts that led to the consideration of severe discipline
 - c) The conference time and location
 - d) Who may attend the conference

A template of a pre-disciplinary conference notice may be found at **APPENDIX A** and **Form 5-3 D**.

K. Attendance at the Pre-Disciplinary Conference:

1. Attendance Strongly Encouraged: The employee's attendance at the PDC is not mandatory, but it is the employee's opportunity to provide information that the Town will consider in its decision. If the employee chooses not to attend the PDC, the Department Head can proceed with making a decision regarding disciplinary action after considering the available facts.
2. Attendees: Persons in attendance at the pre-disciplinary conference include:
 - a) The employee
 - b) The Department Head or a designee
 - c) A representative of the Human Resources Development Department
 - d) At the employee's discretion, an employee representative or legal counsel.
3. Legal Representation: When an employee is represented by legal counsel the Town will also be represented by legal counsel. The Town and the employee will work together to reasonably accommodate scheduling needs so that legal representation for both parties is able to attend the PDC.

See the **Pre-Disciplinary Conference-Information for Managers (Appendix C)** for more information.

I. During the Pre-Disciplinary Conference:

1. Basic Procedure: During the conference the Department Head or department designee must give the employee:
 - a) An oral or written explanation of the type of severe disciplinary action under consideration, including the specific reasons for considering the severe disciplinary action
 - b) A summary of the information that is being used as a basis for considering severe disciplinary action.

- c) An opportunity to provide information and offer facts in support of the employee's case for consideration in the decision.

Consult the **Frequently Asked Questions—Disciplinary Process** and **The Pre-Disciplinary Conference: Information for Managers (Appendix C)** for more information.

M. After the Pre-Disciplinary Conference:

1. After the Conference: the Town department head will:
 - a) Complete the pre-disciplinary checklist and confer with HRD and Legal to review and consider the facts of the case
 - b) Make a decision on the recommended severe disciplinary action
 - c) Communicate the decision no earlier than the start of the next business day after the conference and no later than ten (10) days from the date of the pre-disciplinary conference.
2. Severe Discipline Imposed: If the Town's decision is to take severe disciplinary action, it must provide the employee with a letter setting out:
 - a) The specific reasons for the severe disciplinary action taken
 - b) The effective date of the severe disciplinary action
 - c) The employee's right to seek review of this action under the Town's grievance procedure the time limit for filing a Grievance
 - d) Information on the Town's grievance procedure
 - e) Information on how to contact the HRD Department for assistance and further information.
3. Notification Delivery: If possible, the letter should be personally delivered to the employee, with the employee signing an acknowledgement of receipt. The person delivering the letter can notate delivery if the employee refuses to sign the acknowledgement. A copy of the disciplinary decision letter may also be mailed to the employee via certified mail.
An example of a post-disciplinary conference decision letter may be found in **APPENDIX B.**

N. Timeline for Filing a Grievance about Severe Disciplinary Action:

The time line for filing a grievance for severe disciplinary action does not start until the employee receives a written notice of his/her rights to file a grievance. An employee has fourteen (14) days from the date he/she is

notified of the disciplinary decision to file a grievance. Grievances filed after the ending date of the filing period set out in the grievance procedure shall be dismissed and not processed.

Note: State law says that a dismissal letter is a public record, and must be provided to anyone who requests a copy of it. (North Carolina General Statute Chapter 160A-168(b) (11))

PROCEDURES
CONT.

O. Other Reasons for Disciplinary Action: Special Provision Regarding Credentials:

By statute, regulation, and Town policy, some duties assigned to Town positions may be performed only by persons who are duly licensed, registered, or certified as required by the relevant law or policy. These requirements are specified in the list of qualifications for classifications in the Town's Position Classification plan.

1. Employee Responsibility: Employees in such classifications are responsible for obtaining and maintaining current, valid credentials as required by law, rule, or regulation
2. Consequences for Failure to Comply: Failure to obtain or maintain the legally required credentials constitutes a basis for immediate dismissal without prior warning, consistent with dismissal for detrimental personal conduct or negligence in the performance of duties. A pre-disciplinary conference must be held prior to dismissal.

P. Falsification of Credentials or Work History:

1. Falsifying Credentials: Falsification of credentials or other documentation in connection with securing employment constitutes cause for severe disciplinary action
2. Discovery Prior to Offer of Employment: If the misrepresentation is discovered prior to an offer of employment, then the applicant shall be disqualified from employment.
3. Discovery after Offer of Employment: If the misrepresentation is discovered after an offer of employment, but prior to the employee's first day of work, then the employee may be terminated without holding a pre-disciplinary conference.
4. Discovery after First Day of Work: If the misrepresentation is discovered after the employee's first day of work, then the Town will conduct a pre-disciplinary conference prior to taking severe disciplinary action. The Town may take disciplinary action up to and including termination.

PROCEDURES
APPROVED BY

Cliff Turner, Human Resources Development Director



FORMS/
INSTRUCTIONS

Current forms can be found online or by contacting the **Town's Human Resource Development office.**

ADDITIONAL
CONTACTS

Human Resource Development 919-968-2700 or HR@townofchapelhill.org
Ombuds Office 919-265-0806 or Ombuds@townofchapelhill.org
Employee Assistance Program 1-800-326-3864

DEFINITIONS

- A. Current Unresolved Incident:** A current act of detrimental personal conduct, unsatisfactory job performance or negligence in the performance of duty for which no disciplinary action has previously been taken.
- B. Disciplinary Demotion:** An involuntary personnel action taken to discipline an employee that lowers the employee's salary within their current pay grade or places the employee in a position at a lower pay grade with or without lowering the employee's salary.
- C. Detrimental personal conduct:** behavior of such a serious nature that the functioning of the Town may be or has been impaired; the safety of persons or property may be or have been threatened; or the laws of any government may be or have been violated.

Examples of detrimental personal conduct include, but are not limited to:

1. Fraud or theft
 2. Conviction of a felony or the entry of a plea of nolo contendere thereto
 3. Falsification of records for personal profit, to grant special privileges, or to obtain employment
 4. Willful misuse or gross negligence in the handling of Town funds
 5. Willful damage or destruction to property
 6. Willful acts that endanger the lives and property of others
 7. Possession of unauthorized firearms or other lethal weapons on the job
 8. Brutality in the performance of duties
 9. Reporting to work under the influence of alcohol or drugs or partaking of such while on duty.
 10. Engaging in incompatible employment or serving a conflicting interest
 11. Request or acceptance of gifts in exchange for favors or influence
 12. Engaging in political activity prohibited by Town ordinance.
 13. Discourteous treatment of the public and/or other employees.
 14. Harassment of an employee or the public with threatening or obscene language and/or gestures
 15. Harassment of an employee(s) and/or the public, including youth participating in Town-sponsored activities, on the basis of sexual orientation, gender expression, gender identity, sex or any other protected class status
 16. Stated refusal to perform assigned duties or flagrant violation of work rules and regulations
 17. Disclosure of confidential information
 18. Absence from work after all authorized leave credits and benefits have been exhausted
 19. **Dismissal:** the involuntary separation of an employee from Town employment for disciplinary reasons or for failure to obtain or maintain required licenses or credentials. An employee may be dismissed for documented failure to achieve and maintain satisfactory performance as shown through the performance management system; for an unresolved incident of detrimental personal conduct; for an unresolved incident of negligence in the performance of duties; or for failure to obtain or maintain required licenses or credentials.
- D. Negligence in the performance of duty:** Failure to satisfactorily perform job requirements as set out in the job description, work plan, or as directed; and, the act or failure to act causes or results in:

DEFINITIONS (CONT.)

1. death or bodily injury or creates conditions that increase the chance for death or bodily injury to an employee, to members of the public, or to a person(s) or animal for whom the employee has responsibility; or,
2. the loss of or damage to Town property or funds that results in an adverse impact to the operations of the Town and/or the employee's work unit.

- E. Pre-Disciplinary Conference:** A pre-disciplinary conference is a meeting between a representative of the Town and the employee who may be subject to severe disciplinary action up to and including dismissal. This meeting is the employee's opportunity to provide any and all information he/she wishes to be considered by the Town prior to making a decision about imposing severe disciplinary action against the employee.
- F. Severe Disciplinary Action:** Disciplinary actions that result in suspension without pay, demotion, or dismissal. A written warning is not a severe disciplinary action. Severe disciplinary actions are not expunged and may be given consideration in a future disciplinary decision against an employee.
- H. Suspension without pay:** removal of the employee from the work place without pay. An employee may not use accrued leave if placed on suspension without pay.
- I. Unsatisfactory job performance:** Work-related performance that fails to satisfactorily meet job requirements as set out in the employee's job description, work plan, or as directed by the department head or his/her designee.
- J. Written Warning:** a written communication to the employee that the employee's job performance is below expectations. It is the first step in the process of disciplining an employee for unsatisfactory job performance. A written warning is active for a period of eighteen (18) months after being issued. After eighteen (18) months of satisfactory job performance as documented in performance management system by a satisfactory performance evaluation, the written warning shall not be used as the basis for any Human Resources action from that point forward.

RESPONSIBILITIES

- A. All Employees are expected to:**
1. Be aware of and fulfill expected work performance
 2. Interact with co-workers, managers, and the public in a respectful and responsible manner
 3. Adhere to Town policies
- B. All Supervisors/Managers are expected to:**
1. Advise employees of Town expectations for conduct and performance
 2. Manage employees effectively by providing ongoing feedback on work performance and conduct
 3. Supervise probationary employees and provide direction on corrective action during the probationary period
 4. Refer matters which may require disciplinary action to the Department Head.
 5. Maintain documentation in employees' personnel files Human Resource Development.

RESPONSIBILITIES

(CONT.)

C. All Department Heads are expected to:

1. Promptly inform and consult with Human Resource Development when infractions occur that could necessitate disciplinary action
2. Ensure that this policy is enforced in a fair and consistent manner in consultation with Human Resource Development
3. Conduct a pre-disciplinary conference when severe disciplinary action is being considered.
4. Report all employees on paid administrative leave for more than 30 days to the Town Manager and the Director of Human Resource Development.

D. All Human Resource Development staff members are expected to:

1. Advise and consult with supervisors/managers with respect to any disciplinary matter
2. Assist supervisors/managers in assuring that appropriate documentation is maintained in employees' personnel files.
3. Assist all employees in understanding policies and procedures related to the disciplinary process
4. Monitor process and timelines
5. Provide policy interpretation and guidance as needed, and especially before any severe disciplinary action is taken or recommended.

APPENDICES

- A. [Template: Pre-Disciplinary Conference Notification](#)
- B. [Template: Pre-Disciplinary Conference Decision](#)
- C. [Pre-Disciplinary Conference: Information for Managers](#)
- D. [Understanding Timeline Calculation for Conflict Resolution Processes](#)

F.A.Q.

1. I need some help understanding the process and my options. Who can help me?

Supervisors and Department Heads, Human Resource Development (HRD) staff, or the Town Ombuds can help you.

2. I'm told I am being investigated for an incident. What does that mean?

When an alleged incident is reported that may constitute a violation of Town policy, or state or federal law, the Town may conduct an investigation to find out facts related to the incident. Employees are required to cooperate with any investigation. Again, this investigation is to uncover facts, not to prove or disprove an allegation.

3. How long does an investigation take and who does it?

It depends on the specific circumstances. Some investigations are handled internally; others may be conducted by outside professionals.

While every effort is made to complete an investigation quickly, it is more important to conduct a thorough investigation. The primary purpose of all investigations is to uncover facts about the incident so that a fair and just decision can be made. Sometimes taking a little more time to conduct the investigation is the right choice, especially when the outcome of the investigation could result in severe disciplinary action. HRD can keep you advised as to the progress and current status of an investigation.

4. I have been placed on administrative leave. What is that?

Sometimes an employee is placed on administrative leave, with or without pay, pending the outcome of an investigation and/or Pre-Disciplinary Conference. The decision is made on a case- by- case basis based on the nature of the alleged policy violation(s). Benefits remain in effect for both types of leave.

F.A.Q.
(CONT.)

If the employee does not receive a disciplinary action, then the Town reinstates the pay for any time that the employee was on leave without pay.

5. I've been notified of a Pre-Disciplinary Conference. What is that?

A Pre-Disciplinary Conference, or PDC, is required before the Town can take disciplinary action against you. It is a meeting between you and Town management where the Town tells you about the allegations against you, what facts the Town has uncovered, and what disciplinary action is under consideration. You can then respond with any information that you want considered in the disciplinary decision.

You may have a representative at this conference, except that it cannot be a Town supervisory employee. If the representative is an attorney, then the Town's attorney will also attend.

HRD attends to ensure that policies, procedures, and state and federal laws are followed.

More information about the Pre-Disciplinary Conference can be found in the ***Disciplinary Policy*** and The

F.A.Q.
(CONT.)

SCOPE

As of September 1, 2015, this policy replaces and supersedes any previous Town policies, supplemental policies, handbooks, or unwritten policies or practices covering the same subject. Supplemental policies in compliance with this policy are referenced in Section XI below, Related Information.

RELATED
INFORMATION

- A. Town of Chapel Hill Code of Ordinances, Chapter 14, Article XII, Sections 14-111 through 14-14-125
- B. Grievance Policy PP 5-2

POLICY
HISTORY

This policy became effective September 1, 2015 and is based on the revisions to Chapter 14, Articles 11-14 of the Town of Chapel Hill Code of Ordinances passed by the Chapel Hill Town Council on June 8, 2015.

Modified December 18, 2015: Section G-2 to comply with current ordinance and establish reporting responsibility for administrative leave.

Revised: August 5, 2016 to align with Chapel Hill Code of Ordinances Section 14-121-122 regarding disciplinary actions for unsatisfactory job performance.

Revised: June 29, 2018 Modified Definition of Detention and Disciplinary Consequences to include...

SCOPE

This policy replaces and supersedes any previous Town policies, departmental policies, handbooks, or unwritten policies or practices covering the same subject. Departmental policies in compliance with this policy are referenced in Section XI below, **Related Information**.

POLICY HISTORY

Issued 09/01/2015
Revised and Reissued 08/05/2016