



POLICY AND PROCEDURES

Discipline

I. PURPOSE

The New Mexico Department of Finance and Administration’s Discipline Policy and Procedures (“Policy”) provides Employees with the process and purpose for Disciplinary Action to correct Employee’s performance or behavior that is below acceptable standards, or contrary to the DFA interests or missions. This Policy provides instruction to apply Disciplinary Action to solve performance or behavior problems, pursuant to 1.7.11 of the New Mexico Administrative Code (“NMAC”).

II. POLICY

- A. Employees must be aware of and abide by this Policy;
- B. Employees must not engage in Prohibited Conduct; and
- C. Prohibited Conduct may result in Disciplinary Action.

III. DEFINITIONS

- A. **“Disciplinary Action”** means any action taken by an Agency to influence change in an Employee’s performance or behavior to the expected standard, including Formal Disciplinary Action, Informal Disciplinary Action, and Progressive Disciplinary action, including but not limited to, letters of reprimand, suspensions, demotions, and dismissal. “Disciplinary Action” includes any punitive action taken by a supervisor to influence positive change in an employee’s performance or behavior to the expectation stated in classification description.
- B. **“Formal Disciplinary Action”** means a disciplinary action that results in a loss in pay, classification, or dismissal. Within the classified service these actions are suspensions,

demotions, or dismissals. All formal disciplinary actions result in a personnel action that becomes part of the permanent record.

- C. **“Informal Disciplinary Action”** means a disciplinary action that does not result in loss in pay, classification, or loss of job. The most common informal disciplinary action is an oral reprimand.
- D. **“Just Cause”** includes but is not limited to inefficiency; incompetency; misconduct; negligence; insubordination; performance which continues to be unsatisfactory after the Employee has been given a reasonable opportunity to correct it; absence without leave; any reasons prescribed in 1.7.8 NMAC; failure to comply with the provisions of the SPO Rules or the DFA Policies.
- E. **“Progressive Disciplinary Action”** means a range from an oral or written reminder to an oral or written reprimand, to a suspension, demotion, or dismissal. There are instances when a Disciplinary Action, including dismissal, is appropriate without first having imposed a less severe form of discipline.
- F. **“Prohibited Conduct”** means (i) engaging in acts of insubordination, including, but not limited to: refusing to follow or failing to respond to a supervisor’s instructions concerning a legal job-related matter; (ii) engaging in deliberate or careless conduct that endangers the safety of the Employee or other Employees, including, but not limited to, provoking or instigating a fight or assaulting another individual on state property; (iii) engaging in malicious or dangerous pranks, practical jokes, or horseplay; (iv) excessive tardiness or absenteeism; (v) failing to report to work without giving advance notice to the Employee’s supervisor or appropriate manager; (vi) failing to report to work punctually, at the assigned time, or failing to be at the proper workstation, ready for work as scheduled, or leaving an assigned work area without proper authorization; (vii) gambling on state property; (viii) inattentiveness to work responsibilities, neglect of job duties, or pursuit of personal projects during work hours without authorization from appropriate supervisor(s); (ix) intentionally falsifying or altering any the DFA record or report, including, but not limited to: an application for employment, a medical report, a production record, a time record, a financial record, an absentee report, personnel record, or a requisition, shipping, or receiving report; (x) intimidating, abusing, threatening, or coercing another individual while on duty or on state property; (xi) knowingly admitted an unauthorized person or persons into any locked, unauthorized, or restricted area of the DFA; (xii) possessing or consuming controlled substances while on duty; (xiii) reporting to work under the influence of alcohol or controlled substances; (xiv) making statements or performing actions related

to Sexual Harassment, Harassment, or Retaliation; (xv) sleeping while on duty; (xvi) smoking in prohibited areas; (xvii) theft, intentional destruction, or defacing of state property or the property of another Employee; (xviii) using abusive language; (xix) vending, soliciting, or collecting contributions on state property without prior authorization; (xx) violating state or federal law; (xxi) violating the Supervisory Chain or chain of command for operational issues; and (xxii) violations of any of the DFA policies, including but not limited to, the DFA Code of Conduct and Harassment Policies. *This is not an exhaustive list of behaviors subject to Disciplinary Action.*

IV. PROCEDURES FOR DISCIPLINE

A. Informal Discipline Proceedings:

1. **Oral Reprimand.** Oral reprimand is an Informal Disciplinary Action and may be used to respond to or prevent Prohibited Conduct. If a supervisor decides to issue an oral reprimand for Prohibited Conduct, then the following steps must be taken:
 - a) Provide a date and time to meet with the Employee. The meeting place should provide privacy with no interruptions.
 - b) Provide the Employee with the information specific to the failure to perform or violation of this Policy.
 - c) Provide the Employee with the expected performance or behavior.
 - d) Provide a timeframe for correcting the performance or behavior, and follow-up session.
 - e) Inform the Employee of the consequences if expectations are not met within the stated time frame.
 - f) Document the session with all items covered and provide a copy to the Employee.

2. **Letter of Concern.** Letter of Concern is an Informal Disciplinary Action and may be used to prevent or respond to Prohibited Conduct. If a supervisor decides to issue a letter of concern regarding Prohibited Conduct, then the Letter of Concern must provide:
 - a) A date and time to meet with the Employee.
 - b) The meeting place should provide privacy with no interruptions.
 - c) Information specific to the failure to perform or violation of DFA policies.

- d) Description of expected performance or behavior.
- e) A timeframe for correcting the performance or behavior, and follow-up session.
- f) Consequences if expectations are not met within the stated time frame.
- g) Employee is to sign acknowledgement of receipt of the letter of concern and provide a copy.

B. Formal Discipline Proceedings.

1. After using Informal Discipline Proceedings, Formal Discipline Proceedings may be used to correct Prohibited Conduct.
2. Formal Discipline Proceedings include the use of Progressive Disciplinary Action or alternative methods to resolve conflicts or improve Employee performance or behavior will be used wherever appropriate.
3. Formal Discipline Proceedings shall be documented and filed in the confidential portion of the Employee's personnel file. If the Employee separates from the DFA while a formal Disciplinary Action is pending, any Disciplinary Action documentation issued to date shall be filed in the confidential portion of the Employee's file and treated as Confidential Information.
4. If the Employee refuses to sign an acknowledgment of receipt of Disciplinary Action or notice of administrative leave, such refusal could subject the Employee to further Disciplinary Action.

C. Just Cause. An Employee who has completed probationary status required by Subsection A of 1.7.2.8 NMAC and is in career status may be suspended, demoted, or dismissed only for just cause which is any behavior relating to the Employee's work that is inconsistent with the Employee's obligation to the DFA.

D. Probationary, Emergency, or Temporary Status Employees. Employees that are under probation, emergency or temporary status may be demoted, suspended, or dismissed effective immediately without right of appeal. The written notice shall advise the Employee of the conduct, actions, or omissions which resulted in the demotion, suspension, or dismissal.

E. Administrative Leave Pending Disciplinary Action. The DFA may authorize administrative leave for a period of up to 160 consecutive work hours during a

Disciplinary Action proceeding or investigation. Administrative leave more than 160 consecutive work hours must be approved by the SPO Director.

F. Employees in Career Status:

1. **Written Reprimand.** Written reprimand is a Disciplinary Action proceeding, which transitions from the informal Disciplinary Action to a formalized Disciplinary Action proceeding. Written reprimands shall be filed in the confidential portion of the Employee's file and treated as Confidential Information. The written reprimand will provide the Employee, in written memorandum format, with the following:
 - a) specific dates and times of performance shortfalls or violations of policy which clearly articulate the incident or event.
 - b) specific failures or violations, and references with a citation from regulation, rule, or policy which govern Employee performance, behavior, or expectations. The Growth Development Plan should be attached.
 - c) timeframes to correct the failure with specific expectations and/or results.
 - d) time of follow-up session.
 - e) consequences for not meeting the expectation, result, or meeting the timeframe.
 - f) An acknowledgment signature line for the Employee to sign.
 - g) Signature line for the supervisor and Employee.
 - h) Signature line for if witness, if necessary. A witness may be present to take notes of the meeting or session.

2. **Notice of Contemplated Action.** To initiate the suspension, demotion, or dismissal of an Employee in career status and an employee in term status who has completed the probationary period, a notice of contemplated action will be served to the Employee. The notice of contemplated action will describe the conduct, actions, or omissions which form the basis for the contemplated Disciplinary Action. The notice will provide a general explanation of the evidence, and the right of the Employee to inspect and obtain copies of any documentary evidence relied upon. The notice will specify what the contemplated action is and will state that the Employee has eleven (11) calendar days to respond in writing to the notice or request an opportunity for an oral response. When the notice of contemplated action is served by mail, the Employee receiving service shall have three (3) additional calendar days in which to file a response.

3. **Response to Notice of Contemplated Action.** A representative of the Employee's choosing may respond in writing to the Notice of Contemplated Action on behalf of the Employee.

If there is a request for an oral response to the Notice of Contemplated Action, DFA shall meet with the Employee within eleven (11) calendar days of a request for an oral response, unless the Employee and DFA agree in writing to an extension of time. A representative of the Employee's choosing may represent the Employee.

The purpose of the oral response is not to provide an evidentiary hearing but is an opportunity for the Employee to present his or her side of the story. It is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to believe that the charges against the Employee are true and support the proposed action.

4. **Notice of Final Action.** If an Employee does not respond to the Notice of Contemplated Action, then the DFA shall issue a Notice of Final Action within eleven (11) calendar days following the response period.

If an Employee has filed a written response or has been provided an opportunity for oral response, then the DFA shall issue a Notice of Final Action no later than eleven (11) calendar days from the date of receipt of the response. The Notice of Final Action shall:

- a) Specify the final action to be taken, which may be upholding the contemplated action, a lesser form of discipline than contemplated, or no Disciplinary Action.
- b) Describe the conduct, actions, or omissions which form the basis for the Disciplinary Action, which may not include all allegations not included in the Notice of Contemplated Action.
- c) Provide a general explanation of the evidence possessed by the DFA.
- d) Specify when the Disciplinary Action will be effective, which must be at least 24 hours from the time of service of the Notice of Final Action.

e) Inform the Employee of his or her right to appeal.

V. Appeal.

- A. An Employee not covered by a collective bargaining agreement may appeal a final Disciplinary Action to the board by delivering a written statement of the grounds for appeal to the SPO Director at 2600 Cerrillos Road, Santa Fe, New Mexico 87505 no later than thirty (30) calendar days from the effective date of the final Disciplinary Action; the Employee must submit a copy of the notice of final Disciplinary Action with the notice of appeal.

- B. An Employee who is covered by a collective bargaining agreement may either appeal the final Disciplinary Action to the board as stated above or make an irrevocable election to appeal to an arbitrator pursuant to collective bargaining agreement.

VI. REVIEW AND APPROVAL

This Policy is effective upon the signature of the DFA Cabinet Secretary, below.



Wayne Propst, **Cabinet Secretary**

12.29.23

Date

**APPENDIX A
ACKNOWLEDGMENT AND AGREEMENT FORM**

I, _____, acknowledge that I have received a copy of the New Mexico Department of Finance and Administration’s (“DFA”) Discipline Policy (“Policy”), effective upon the signature of the DFA Cabinet Secretary.

Further, I acknowledge that I have read this Policy and understand and agree with the Policy’s contents, including all associated duties and responsibilities of Employees. Moreover, I understand and agree with the Disciplinary Action connected to the duties and responsibilities of Employees, as outlined in the Policy.

By signing this *Acknowledgment and Agreement Form*, I affirm that: (1) I will abide by the incumbent duties and responsibilities of Employees, as provided in the Policy and (2) that Disciplinary action may in fact be taken in the absence of my compliance with this Policy.

Print Name

Date

Signature