NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
343

IMPOSING CORRECTIVE/DISCIPLINARY ACTION

Supersedes: AR 343 (02/12/10); and AR 343 (Temporary, 11/25/13)
Effective Date: **Incorporated into AR 339 effective 10/13/14**

AUTHORITY

NRS Chapters 284 & 289; NRS 199.325; NRS 281.481; NAC 284.638 - 284.656; NAC 284.738 - 284.771, NAC 284.6561, 42 U.S.C. § 15601, *et seq.* and 28 C.F.R. § 115, NRS 388.122

RESPONSIBILITY

1. Appointing Authorities are responsible to ensure employee corrective/discipline measures are administered pursuant to this regulation, utilizing the appropriate state forms.

2. The Division of Human Resource Management is responsible for tracking state employee disciplinary actions, and maintaining disciplinary action documents in the employee's official state employee personnel records.

343.01 PURPOSE OF CORRECTIVE/DISCIPLINE MEASURES

1. Public employees have an affirmative duty to serve the public. The public trusts that the Department will operate within legal and procedural boundaries. Occasionally an employee will step beyond these boundaries, resulting in a misconduct and/or performance complaint. Each time an Appointing Authority adjudicates a complaint, the public trust is impacted.

2. When an allegation of misconduct and/or performance is Sustained, corrective or disciplinary action shall be applied.

3. Disciplinary action is intended to serve three purposes which are weighed carefully when making recommendations:

A. To modify the offending employees behavior.

B. To set expectations for other employees.

C. To assure the public that the Department strives to maintain its trust by holding employees

accountable.

4. The offending employee's Appointing Authority is generally the best person to review and recommend disciplinary action (s), that will best serve to modify that employee's behavior. However, the recommendation will be superseded if it does not set consistent expectations for all employees or fails to uphold the public trust.

343.02 GUIDELINES FOR SETTING EXPECTATIONS

1. A comprehensive list of DO's and DON'T's of employee conduct is not possible.

2. Training, education, actions, awards, and/or punishments are interrelated, not separate elements.

3. Supervisors are expected to continually reiterate the Department's philosophy, values, and expectations.

343.03 FAIRNESS AND CONSISTENCY

1. Employees are more accepting of discipline when it is imposed fairly and consistently.

2. Employees sometimes incorrectly equate fairness and consistency as synonyms; they are not.

   A. Consistency within a disciplinary system means holding every employee equally accountable for unacceptable behavior. Unacceptable behavior for one is unacceptable behavior for all, regardless of rank, status or tenure.

   B. Fairness within a disciplinary system means understanding the numerous circumstances that could contribute to the unacceptable behavior. **Disciplinary** recommendations should reflect a consideration of these circumstances. Thus, depending on a variety of factors, two employees accused of the same conduct could face differing consequences. If misunderstood, this might be viewed as unfair and therefore must be thoroughly explained to help employees recognize the difference.

343.04 GUIDELINES FOR SETTING CONSEQUENCES

1. The State and the Department have established Prohibitions and Penalties and their related consequences. Employee conduct is a dynamic issue, not a static one. New issues routinely arise over time and managers should be prepared to address them.

2. Disciplinary action should be progressive, i.e., except in cases of serious violations of law or regulations, less severe measures are applied first, after which more severe measures are applied only if the previous measures have failed to correct the deficiencies.

343.05 CAUSES FOR CORRECTIVE/DISCIPLINARY ACTION

1. The following prohibited activities constitute cause for Corrective or Disciplinary action.

A. Any act of commission and/or omission that constitutes misconduct.

B. Any activity that is incompatible with an employee's conditions of employment established by law or which violates a provision of the Nevada Administrative Code. This includes, but is not limited to, Nevada Administrative Code sections 284.650, 284.653, and 284.738 through 284.771.

C. Violations of any Department policy, rule, regulation, procedure or other directive.

D. Prohibited activities defined in the Department's Class of Offense Guideline, including all sub-categories listed under the following Headings:

(1) Absent without Leave

(2) Discharge of Firearm Due to Negligence

(3) Alcohol Abuse

(4) Narcotics/Drugs

(5) Criminal Misconduct

(6) Discourtesy

(7) Title VII Violations including, but not limited to:

a. Discrimination

b. Sexual Harassment

c. Hostile Work Environment

d. Retaliation

(8) Title I and Title V of the Americans With Disabilities Act, amended; Age Discrimination in Employment Act :

a. Discrimination

b. Harassment

c. Hostile Work Environment

d. Retaliation

(9) Dishonesty

(10) False and Misleading Statements

(11) Fraud in Securing Appointment

(12) Improper Political Activity

(13) Insubordination

(14) Misuse or Unauthorized Use of State Property

(15) Computer Usage Violations

(16) Neglect of Duty

(17) Sexual Misconduct

(18) Unauthorized Use of Force

(19) Unbecoming Conduct

a. Bullying

2. The Class of Offense Guideline delineates prohibited activities and ascribes a level of seriousness for each offense.

3. Administrative Regulation 339 is included in the employee's new hire packet, and reviewed during P.O.S.T. Academy and New Employee Orientation.

4. Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

343.06 CORRECTIVE ACTION

1. Pursuant to AR 341 (Employee Misconduct and Performance Adjudication), during the adjudication process following an official investigation, disciplinary action may not be issued by any Appointing Authority or designee without written adjudication concurrence from a Deputy Director.

2. Prior to an official investigation, except in PREA related matters, corrective action may be utilized to address situations requiring immediate corrective action.

A. Verbal/Written Counseling

(1) Supervisors should document and record all instances of verbal counseling in the supervisory record or on the performance card, to include the date, the nature of the counseling and the expected results.

(2) The employee should sign or initial the documentation. If the employee refuses to sign, the supervisor will document their record or the employee's performance card.

(3) Any confirming written communication should be between the employee involved and the supervisor. Authorized distributions exist only during official Inspector General or EEO investigations.

(4) May be utilized during the evaluation process when the employee's inappropriate conduct and behavior has not been corrected.

B. Letter of Instruction

(1) May be given to an employee when the employee's performance falls below standard or when the employee requires direction.

(2) Should be viewed as a dialog between the employee and the employer.

(3) May be utilized during the evaluation process when the employee's performance has not improved.

(4) Must be prepared on Department letterhead.

(5) Should be given to the employee promptly; however in cases of misconduct, the determination of imposition of corrective or disciplinary measures must wait for the outcome of an investigation.

(6) Should inform the employee of the specific deficiencies. If the employee violated a policy, procedure, and/or regulation, identify what they violated.

(7) Should identify what should have occurred.

(8) Should identify what the employer/supervisor will do to assist the employee in being successful.

(9) Do NOT include any language referring to further discipline.

(10) The supervisor should provide a copy of the Letter of Instruction to the employee. The employee should sign one copy which should be retained in the Supervisory File. This is NOT placed in their Official Human Resources personnel file.

(11) A signature from the Employee acknowledges receipt only; not an admission of wrongdoing.

(12) If the employee refuses to sign, note this on the Letter of Instruction.

343.07 WRITTEN REPRIMAND

1. During the adjudication process following an official investigation or the determination that a policy violation has occurred, corrective action may not be issued by any Appointing Authority or designee without concurrence from a Deputy Director.

2. In every instance, the Appointing Authority shall consult AR 339 for Class of Offense Guidelines and Chart of Corrective/Disciplinary Action to determine the appropriate Prohibition and Penalty for each Sustained allegation in order to arrive at the recommended Corrective/Disciplinary action.

A. Class 1 or 2 sustained offenses may result in the issuance of a Written Reprimand.

B. Class 3 sustained offenses for a 1st offense may result in a Written Reprimand dependent upon mitigating circumstances.

3. A Written Reprimand must be completed on the Written Reprimand form located on the Stewart shared drive.

A. The specific violations from the Prohibitions and Penalties shall be included.

4. The Written Reprimand shall be presented to the employee by the supervisor.

A. The employee's signature is acknowledgment of receipt, not an admission.

B. Should the employee refuse to sign, that refusal should be noted on the form, and a witness signature obtained.

5. Written Reprimands shall be forwarded to the Human Resources Division for inclusion in the employee personnel file.

343.06 SPECIFICITY OF CHARGES

1. During the adjudication process following an official investigation or the determination that a policy violation has occurred, corrective action may not be issued by any Appointing Authority or designee without concurrence from a Deputy Director.

2. In every instance, the Appointing Authority shall consult AR 339 for Class of Offense Guidelines and Chart of Corrective/Disciplinary Action to determine the appropriate Prohibition and Penalty for each Sustained allegation in order to arrive at the recommended Corrective/Disciplinary action.

3. When a suspension, demotion or dismissal is warranted, a Specificity of Charges (NPD-41) should be drafted, utilizing the appropriate format located on the Stewart Shared drive.

4. SET-UP SPECIFICITY FILE

A. Appointing Authorities shall maintain the Specificity of Charges and all attorney/client privilege documents in a Specificity file.

B. This file contains documents not maintained in the Human Resources file and are attorney/client privilege documents.

C. The Specificity File is considered a Confidential file and must be secured under lock and key.

D. Once the matter is closed, the Specificity File must be returned to the Department's Human Resources Specificity Coordinator for maintenance pursuant to the State of Nevada Records Retention Policy.

5. **HUMAN RESOURCES DIVISION REVIEW**

A. Upon completion of the draft Specificity of Charges it shall be forwarded to the Department's Human Resources Division Administrator via e-mail.

B. The Human Resources Specificity Coordinator will attach the employee's Human Resources and Training files for reviews, assign a tracking number, and return to the Appointing Authority via e-mail.

C. The Human Resources Specificity Coordinator shall ensure the tracking log is maintained for statistical purposes.

6. ATTORNEY GENERAL REVIEW

A. The Appointing Authority shall forward a letter to the Attorney General's office, requesting Deputy Attorney General (DAG) review. This letter shall be noted as Attorney/Client Privilege.

B. A full copy of the specificity of charges, all alleged regulations and/or operational procedures, and a copy of the Internal Affairs (IA) file shall be forwarded with the letter.

C. An Attorney General review should be concluded within 30 calendar days.

D. The Appointing Authority shall finalize the Specificity of Charges within 5 working days

after Attorney General review.

7. SERVICE

A. The Specificity of Charges shall contain documentation to provide the employee with sufficient notice regarding the facts which support the proposed disciplinary suspension, demotion, or dismissal.

B. The Specificity of Charges must also include the applicable administrative regulations, operational procedures, NAC, and NRS.

C. The Appointing Authority shall sign the Specificity of Charges as the person recommending action. The signature of approval is that of the Deputy Director or designee.

D. Based on the date of service, an effective date of discipline and a pre-disciplinary hearing shall be set.

(1) The pre-disciplinary hearing should be scheduled with an independent party no lower than the rank of Appointing Authority or designee.

(2) The effective date shall be no sooner than ten (10) working days from the date of service, not counting the date of service.

(3) The pre-disciplinary hearing date shall be no sooner than seven (7) working days from the date of service, not counting the date of service.

E. Working day for the purpose of discipline means Monday to Friday, inclusive, excluding holidays.

F. Classified Employees may be suspended without pay in any increment of working days not to exceed 30 calendar days.

G. Exempt Classified Employees may only be suspended without pay in increments of one or more full workweeks, not to exceed 30 calendar days.

H. The Appointing Authority or designee shall present the employee with the Specificity of Charges.

(1) The employee should be presented with the Specificity of Charges in person whenever possible. When this is not possible the procedure outlined in NAC 284.656, shall be followed.

I. The employee shall be provided with a full copy of the Specificity of Charges and all attachments.

J. The original Specificity of Charges shall be maintained in the Specificity file.

K. The pre-disciplinary hearing date and the effective date shall be tracked.

8. PRE-DISCIPLINARY HEARING

A. A copy of the Specificity of Charges should be forwarded to the assigned Pre-Disciplinary Hearing Officer.

B. The Pre-Disciplinary Hearing is an opportunity for the employee to make a presentation in defense of their position.

C. This hearing shall be electronically recorded.

D. The Pre-Disciplinary Hearing officer shall render a written report after the conclusion of the hearing and shall be at least 1 working day prior to the effective date of discipline.

E. This report and electronic recording should be forwarded to the appropriate Warden/Division Head for inclusion in the Specificity File.

9. PREPARATION OF FINAL LETTER

A. After conclusion of the pre-disciplinary hearing and prior to the effective date of discipline, the Appointing Authority shall prepare the final letter which imposes the disciplinary action and notifies the employee of their appeal rights.

B. A copy can be provided to the employee, but the original shall be sent via certified mail, and must be mailed prior to the effective date of discipline.

10. FINAL DOCUMENTATION

A. The Human Resources Specificity Coordinator shall ensure the final Specificity of Charges and all attachments, the pre-disciplinary hearing report, and the final letter are included in the employee Human Resources/Personnel file.

B. The Human Resources Specificity Coordinator shall ensure a final copy of the documents as noted in 9.A. shall be provided to the Office of the Attorney General.

C. The Human Resources Specificity Coordinator shall log an entry on the Specificity Log.

11. The Appointing Authority shall ensure that disciplinary action is imposed.

12. APPEAL

A. The State Division of Human Resource Management Hearing Clerk will notify the

Department's Human Resources Division Administrator when an appeal has been filed. The appeal will be logged on the Specificity Log and forwarded to the appropriate Appointing Authority.

B. Appointing Authorities shall work directly with the Attorney General's office in preparation for the Department of Administration, Division of Human Resources Management Appeal hearing.

C. Appointing Authorities will represent the Department, at the Department of Administration, Division of Human Resources Management Appeal Hearing.

APPLICABILITY

1. This AR does not require an Operational Procedure.

2. This regulation requires an audit.

Director

12/20/13
Date