



West Virginia Department of Transportation Policy: **Disciplinary Action**

Issued by the Secretary of Transportation

Policy No: DOT 3.32

Issue Date: 06/07/2019

Revised: 09/02/2022

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1.0 PURPOSE

The purpose of this policy is threefold:

1. This provides guidelines for managers and supervisors in exercising their responsibilities in recommending and administering disciplinary action,
2. This informs employees about agency expectations regarding employee work performance, conduct, the disciplinary process, and expectations.
3. This provides a process by which employees' work performance and conduct is managed.

2.0 SCOPE

This policy includes procedures applicable to all West Virginia Department of Transportation (WVDOT) employees, of all classifications excluding the Parkways Authority. These procedures supersede all prior procedures and memorandums on this subject.

3.0 DEFINITIONS

- 3.1 **Agency:** Any authority, bureau, commission, or Division, or similar cabinet subpart of the WVDOT.
- 3.2 **Agency Head:** Chief executive officer of any agency.
- 3.3 **Demotion(s):** A change in the status of an employee from a position in one job classification to a position in a lower job classification as measured by compensation range, minimum qualifications, or duties, or a reduction in an employee's pay to a lower rate in the compensation range assigned to the classification.
- 3.4 **Dismissal:** An involuntary separation of employment of a classified employee initiated by an Agency Head for any reason specified in the Administrative Rule or for good cause; involuntary separation of employment of a classified-exempt employee with or without cause.
- 3.5 **Employee:** A person who lawfully occupies a position in a WVDOT agency and who is paid a wage or salary and who has not severed the employee-employer relationship.
- 3.6 **Gross Misconduct:** Improper behavior of any WVDOT employee of such severity or so pervasive as to imply a willful disregard of the agency's interest or a wanton disregard of standards of behavior which the employer has a right to expect of its employees.

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- 3.7 **Human Resources or Human Resources Division:** Is the central office of the Department of Transportation and the Division of Motor Vehicles responsible for employee relations, hiring, training, discipline, and training.
- 3.8 **Job Abandonment:** The unauthorized absence from work under such conditions as to be synonymous with resignation.
- 3.9 **Organization:** A hiring unit within the WVDOT such as a district or division .
- 3.10 **Organization Manager:** The person responsible for the operation and management of a hiring unit.
- 3.11 **Permanent Employee:** Any classified employee who has completed the probationary period prescribed for the job classification, or any classified-exempt employee who was hired to fill a position for an unlimited period of time, notwithstanding the agency's right to terminate the employee for cause or at the employee's will.
- 3.12 **Probationary Employee:** An employee in the first six calendar months of employment for permanent employees hired from a WVDOT certified register. During this period, there is a possibility for non-retention due to unsatisfactory performance.
- 3.13 **Progressive Discipline:** Increasingly severe disciplinary action for continuing poor work performance or conduct, or for more severe misconduct. See Appendix A. Progressive discipline may be applied, but is not required, depending on the circumstances.
- 3.14 **Supervisor:** The first level of management responsible for the oversight, workflow, and control of a unit within an organization.
- 3.15 **Suspension:** Action taken by an agency to temporarily relieve an employee of their duties and place the employee in unpaid status.
- 3.16 **Temporary Employee:** Employment exempt from the classified service for a period generally not to exceed 1,000 work hours per 12-month period.

4.0 STANDARDS OF WORK PERFORMANCE AND CONDUCT

4.1 GENERAL

- A. The Secretary, Commissioner, Deputy Secretary, Deputy Commissioner, State Highway Engineer, Division Directors, District Managers, and all other leadership roles are responsible for ensuring the following policy is implemented consistently and correctly.
- B. All Division Directors, District Managers, and all other leadership roles have the responsibility to ensure this policy is applied in a fair, equitable manner to all employees. Each disciplinary action taken is to be documented appropriately.

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- C. Immediate supervisors are responsible for appropriately documenting performance problems and notifying higher management that disciplinary action is needed.
- D. The goal of this progressive discipline policy is to correct behavior and redirect employees toward improved job performance and conduct. Job performance and conduct are to comply with all applicable procedures, policies, processes, rules, and statutes.

4.2 **STANDARDS OF WORK PERFORMANCE AND CONDUCT**

The WVDOT expects its employees to meet certain standards of work performance and conduct regardless of the type of work or unit to which they are assigned. These standards include, but are not limited to, the following information and examples.

- A. Possession of the required qualifications for a job and the ability to satisfactorily perform the job skills after a fair training period.
- B. Regular attendance, including promptness in reporting to work and appropriate use of leave, meal, and break time.
- C. Maintenance of high standard of personal conduct and courtesy in dealing with the public, fellow employees, subordinates, supervisors, and officials.
- D. Compliance with accepted safe working procedures.
- E. Compliance with working rules, policies, procedures, regulations, and laws that apply to all WVDOT employees.
- F. Avoidance of detrimental behavior, outside activity, employment, or interests that may interfere with work performance or conduct, or that may create a conflict of interest.
- G. Careful, diligent use and safeguarding of all state properties, facilities, equipment, and records; and use of the same for designated or approved uses only.
- H. Performance of assigned duties in accordance with the standards and instructions given by an appropriate supervisor.
- I. Observance of and respect for the chain of command.
- J. Refusal to engage in insulting, abusive, threatening, offensive, defamatory, harassing, or discriminatory conduct or language and prompt reporting of the same to the appropriate authority.
- K. Cooperation and assistance as required in agency audits and investigations, and in all aspects of legal proceedings in which the agency is or may become involved.

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4.3 ORGANIZATIONAL

Each organizational unit within the WVDOT has the responsibility of maintaining appropriate work performance and conduct standards and discipline in accordance with this policy. Any working rules and procedures established within the organizational units shall be consistent with the policies and aims stated herein. Any question that may arise as to whether an organizational working rule or procedure is consistent with this policy should be addressed to the HR Division.

5.0 DISCIPLINARY ACTION

5.1 TYPES OF DISCIPLINARY ACTION

- A. Verbal Reprimand
- B. Written Reprimand
- C. Suspension:
 - a. For Cause
 - b. Suspension Pending Outcome of Investigation
 - c. Suspension Pending Outcome of Criminal Proceedings
 - d. Immediate Verbal Suspension
- D. Demotion
- E. Dismissal

5.2 SUPERVISORY ACTION

An employee's organizational manager or designee has the authority to impose a verbal reprimand or to recommend any other form of disciplinary action and impose an immediate verbal suspension after receiving approval from the HR Division. HR will consult with the Employment section, Legal Division as needed.

5.3 DUE PROCESS

Regardless of the type of disciplinary action taken, the employee will be granted due process. Under the law, due process depends upon the severity of the penalty imposed. The essential elements of due process for a permanent WVDOT employee are notice, opportunity to respond, and the opportunity to file a grievance. This policy is not intended to grant employees additional due process rights or protections other than those to which they are entitled by law.

5.4 PROCEDURES

- A. **Organizational and Supervisory Responsibility:** Supervisors are responsible for ensuring that there is valid reasoning and proof for the disciplinary actions they take or recommend. In all cases, disciplinary action should be taken promptly and as soon as reasonably possible after the supervisor or other organizational manager becomes aware of the employee's offense. It is the responsibility of supervisors to administer discipline so that similarly situated employees are treated consistently and

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fairly.

Supervisors are responsible for completing appropriate forms for each disciplinary action and maintaining disciplinary action records. It is the organizational manager's responsibility to ensure that records of disciplinary action are complete and accurate, that the necessary information and notices are provided to employees, and that the proper forms are used.

- B. **Progressive Discipline:** A single serious performance issue or instance of misconduct may warrant immediate drastic action, including dismissal. Less serious performance issues or instances of misconduct may be handled on the basis of "progressive discipline", which is intended to allow the employee an opportunity to improve and meet the expected standards of work performance or conduct. Discipline is progressive when an employee is not subject to immediate dismissal for an initial offense but is given a lesser penalty. The initial penalty could be a verbal reprimand, a written reprimand, a demotion, or a suspension. The imposition of a more severe penalty is warranted when there is insufficient improvement in work performance or conduct; there is a failure to sustain improved work performance or conduct; or there is persistent failure to meet the expected standards of work performance or conduct.
- C. **Disciplinary Process:**
1. An HR Division representative must be involved in the process continuously, from the beginning and will provide advise throughout the process. Discuss with the employee and document the facts and circumstances surrounding the employee's work performance or conduct issue. Speak with relevant witnesses, including the employee, and gather relevant information including signed witness statements. The immediate supervisor or direct management personnel is often initially investigating the issue. The HR Division will determine whether a formal investigation is needed.
 2. Define the nature, type, and severity of the employee's work performance or conduct issue.
 3. Review the employee's prior disciplinary actions, if any. Determine whether prior disciplinary actions are the same or similar to the current work performance or conduct issue or whether they are indicative of a persistent failure to meet the expected standards of work performance or conduct.
 4. Determine the appropriate disciplinary action considering the following:
 - a. The underlying facts and circumstances.
 - b. The nature, type, and severity of the issue.

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- c. The employee's overall work performance and conduct.
 - d. The relationship, if any, between the employee's job duties and responsibilities and the current work performance or conduct issue, including but not limited to fiduciary and supervisory responsibilities.
 - e. The employee's tenure with the agency.
 - f. The Standards of Work Performance and Conduct set forth in Section 3.2 of this policy (not applicable to probationary employees), and
 - g. Precedent established by similar situations.
5. When determining the appropriate disciplinary action, consult the following when appropriate or applicable:
- a. The organization's HR representative, along with Legal Division must review all information surrounding disciplinary action.
 - b. The organization's personnel specialist in the HR Division.

Principles of progressive discipline, including:

- Severity of infraction,
 - Time intervals between offenses,
 - Whether there has been a measurable sustained improvement in the employee's work performance or conduct, and
 - Whether the employee has demonstrated a persistent failure to meet the expected standards of work performance and conduct.
6. Complete the necessary paperwork.
- a. Recommendation for suspension, demotion, or dismissal is to be discussed and all documentation is required to be reviewed with the HR Division and Legal Division prior to issuing the RL-544 to the employee as discussed in Section 5.4, subsection 10 below. The HR Division will make the final determination of the appropriate action.
 - b. RL-544, Notice to Employee of Warning/Disciplinary Action/Criminal Investigation/Suspension, including the following:
 - The facts and circumstances surrounding the employee's work performance or conduct issue.
 - The nature, type, and severity of the issue.

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- Identification of prior disciplinary actions, if any, taken in response to similar performance or conduct issue or that suggest a persistent failure to meet the expected standards,
 - The recommended discipline.
 - The date by which any response must be received by the employee's Agency Head or designee.
 - The time frame and mechanism for the employee's response.
 - The names of relevant witnesses; and
 - Attach relevant supporting documentation and reference such supporting documentation in the RL-544.
- c. RL-546, Employee's Verification of Disciplinary Action, complete general fields.
7. Provide employee with information about the proposed disciplinary action.
- a. Hold a confidential predetermination meeting with the employee, including a third-party witness.
- Review the full details on the RL-544 and inform the employee of their opportunity to respond and of the proper mechanisms and time period for doing so, as indicated on RL-544.
 - Sign the form and fill in the date of delivery and ask the employee to sign and date the form, acknowledging its receipt. Signing the form does not constitute an employee's agreement.
 - Provide the employee with a copy of the fully executed RL-544.
- b. If the employee is unavailable, provide the employee with a copy of the RL-544 by Certified Mail, Return Receipt Requested.
- c. If, upon consultation with HR Division, immediate removal from the workplace is warranted, the employee must be given verbal notice regarding the basic facts and circumstances surrounding the employee's work performance or conduct issues; the nature, type, and severity of the issue; and the recommended disciplinary action to be taken. Written confirmation of the verbal notice must be sent by certified mail return receipt requested within **three working days**.
- d. An Agency Head or supervisor will require that the employee to immediately vacate the workplace whenever the recommendation under consideration is dismissal. Both the dismissal and requiring the employee to immediately vacate the workplace, must be reviewed by the HR Division prior to

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providing written notice (RL-544) to or having any meeting with the employee. The HR Division will provide guidance regarding mechanisms and payroll provisions for such action.

8. If the employee responds in person, encourage the employee to write their comments on Form RL-546 and to sign and date the same; in the alternative, summarize the employee's comments on the RL-546 and ask the employee to sign and date the form. An employee's timely response, on form RL-546 or otherwise, must be considered before a reprimand is imposed or before any other form of disciplinary action is in fact recommended to HR Division.
9. Documentation of a verbal reprimand may be kept only in the supervisor's administrative file. In the case of a written reprimand, distribute the remaining copies of the RL-544 and its attachments, and the RL-546 or any other written employee response as follows:
 - One copy to the District or Division personnel file.
 - One copy to the HR Division.
10. In the case of a recommended suspension, demotion, or termination, submit all documentation to the HR Division and the Legal Division for review and approval. Upon completion of the review, the HR Division will prepare a letter notifying the employee of the final disposition of the recommended action. The letter must be either hand delivered or sent by certified mail to the employee address on file.
 - a. If the letter is hand delivered, a copy of the letter is to be signed and dated by the employee in acknowledgement of receipt of the letter.
 - If the employee refuses to acknowledge receipt by the employee's signature, the server should witness the service of the letter, and the refusal of the employee to acknowledge receipt.
 - The server should note on the copy that the letter was given to the employee in person and that the employee refused to sign in acknowledgement of receipt. The server and any third-party witness should both attest to this statement by affixing their signatures to the copy.
 - b. If the letter is sent by certified mail, the return receipt card must be made a part of the documentation.

6.0 ENFORCEMENT & AUTHORITY

- 6.1 Disciplinary action may be recommended or taken by organization managers in accordance with this policy whenever an employee fails to adhere to expected standards of work performance and conduct.

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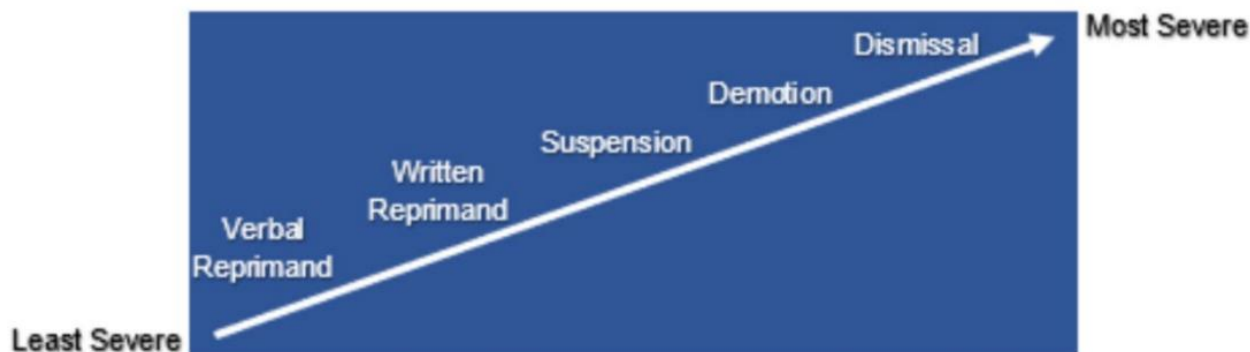
- 6.2 An agency may dismiss an employee for job abandonment who is absent from work for more than three consecutive workdays or scheduled shifts without notice to the agency of the reason for the absence or approval for the absence as required by established agency policy.
- 6.3 Progressive discipline procedures vary when the cause of discipline is gross misconduct.
- 6.4 Temporary employees may be dismissed at the agency's discretion.

7.0 RELEVANT MATERIALS/DOCUMENTS

- 7.1 [Form RL-544](#) Notice to Employee: Warning/Disciplinary/Criminal/Suspension
- 7.2 [Form RL-546](#) Employee's Verification of Disciplinary Action

8.0 APPENDICES

Appendix A Progressive Discipline Illustration



9.0 CHANGE LOG

February 21, 2020 –

- Formatted per policy and procedure work group. No significant changes.

November 1, 2021 –

- Reformatted policy to DOT.
- Added definitions.
- Deleted unnecessary provisions and examples.
- Reworded some sections for clarity.
- Generally revised policy using more specific language to reflect current procedures.

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September 2, 2022 –

- General formatting and added definitions.

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Approved by:



Jimmy D. Wriston, P.E.

Secretary of
Transportation
Commissioner of
Highways



Date

*The Secretary of the West Virginia Department of Transportation or the Commissioner of Highways may, pursuant to the authority vested with the Secretary and Commissioner in W. Va. Code §5F-2-2, §17-2A-1 *et seq.*, and §17-2-1 *et seq.*, waive the requirements of this policy if the circumstances, in the Secretary or Commissioner's sole discretion, warrant such action.