

1084 DHS EMPLOYEE DISCIPLINE

I. Disclaimer

- (A) This policy creates no property interest or expectancy, nor does it alter the employment-at-will doctrine. Employment-at-will means that an employee may be terminated for any reason or no reason at all as long as the termination is not for any illegal reason. Nothing in this policy creates either an expressed or implied right or expectation of continued employment or contract.
- (B) The procedures described in this policy are mandatory, and the conduct and performance expectations are minimum requirements for all employees. However, nothing in this policy limits the establishment of workplace conduct or performance standards that are more specific, more rigorous, or both.
- (C) This policy is subordinate to federal laws and regulations and to the Arkansas Code and is to be interpreted and applied in a manner consistent with all relevant employment laws. This rule supersedes any existing policies or specific sections of existing policies that conflict with the terms of this policy.
- (D) If the employee's behavior otherwise warrants disciplinary action, a technical error in the administration of discipline that does not prevent establishing the employee's behavior by a preponderance of the evidence is not grounds for overturning the disciplinary action.

II. Behavior Expectations

- (A) **Job Performance:** employees are expected to perform all of their job duties in a diligent and competent manner, to work in a cooperative manner with their co-employees and supervisors, to maintain reliable and timely attendance, and to produce high quality work product.
- (B) **Compliance:** employees must comply with workplace policies, rules, and all job-related standards and requirements, including, laws, regulations, judicial and administrative decisions, agency interpretations, and all reasonable work-related instructions.

Violation of criminal law is non-compliance if it occurs on DHS property or while the employee is on duty, regardless of whether the violation is job-related. For purposes of this policy, a violation of criminal law may be established by a preponderance of the evidence. Conviction of a crime that occurred while the employee was off duty is non-compliance if one or more elements of the crime are relevant to the employee's job duties.

- (C) **Professionalism:** employees are expected to perform their jobs in a professional and courteous manner, even when provoked. Employees must conduct themselves in a manner that prevents all forms of impropriety, placement of self-interest above public interest, partiality, threats, favoritism, and undue influence. Employees must be alert to avoid even the appearance of misconduct, personal or financial gain, or conflict of interest.

- (D) Honesty and Integrity: DHS does not tolerate deceptive behavior, including, without limitation, misstatements of fact, failure to state complete facts, or fraud.
- (E) This list is not exhaustive. Any behavior that is contrary to the interests of DHS is subject to disciplinary action, including, but not limited to:
 - (1) failing to cooperate in any investigation conducted by DHS personnel (however, an employee may refuse to answer a question on the basis that the answer would expose the employee to criminal prosecution);
 - (2) failing or refusing to testify in an administrative hearing or legal proceeding at the request of the agency;
 - (3) accessing or using DHS data or information without authority;
 - (4) selling or attempting to sell any good or service while on duty;
 - (5) failing to report a job-related injury, accident, or property damage to the employee's supervisor;
 - (6) employees in designated positions or designated financial or information technology positions must immediately notify their supervisor when arrested for any offense and inform the supervisor regarding the outcome of the arrest (see DHS Policy 1080);
 - (7) gambling while on duty or on DHS property;
 - (8) possession, use, or transfer of DHS property without authorization;
 - (9) using tobacco, electronic cigarettes, or personal vaporizers that serve as a substitute for tobacco in any DHS motor vehicle, any DHS building, or within 25 feet of the entrance to a DHS building; and
 - (10) inappropriate or excessive use of DHS email or DHS internet. Excessive use means usage that interferes with job duties, responsiveness to job functions, or completing assigned tasks. If a supervisor suspects an employee of excessive or inappropriate use of email or internet because it is interfering with job duties or disrupting the work environment, then the supervisor may request an IT audit of the employee's internet use at work (go to DHS Share and click on "DHS Internal Affairs Reporting").

III. Administering Discipline Process

- (A) When a supervisor becomes aware of a possible failure to meet behavior expectations, the supervisor should initiate the disciplinary process by first making contact with his or her Human Resources (HR) Liaison, HR Director, or HR Director's designee. If the HR Liaison, HR Director, or HR Director's designee agrees that there exists a possible failure to meet

behavior expectations that, if true, would warrant disciplinary action, the supervisor should initiate a disciplinary investigation.

- (B) Unless valid reason exists for conducting the investigation differently, the disciplinary investigation should consist of the supervisor meeting with the employee, informing the employee of the allegations, and giving the employee a reasonable amount of time to submit a written response to the allegations.
- (C) After the employee has submitted a written response to the allegations, the supervisor should again meet the HR Liaison, HR Director, or HR Director's designee to determine the appropriate disciplinary action and to complete the DHS-1173. The HR Liaison, HR Director, or HR Director's designee should then contact OCC for approval of any termination, demotion, or suspension without pay prior to the DHS-1173 being delivered to the employee as designated in Section III (E).

Note: In order to encourage uniformity of discipline within divisions, supervisors are required to contact their division HR Liaison, HR Director, or HR Director's designee prior to making contact with the Office of Chief Counsel ("OCC") for advisement on personnel issues. All contact with OCC should come through the HR Liaison, HR Director, or HR Director's designee or at the direction of the HR Liaison, HR Director, or HR Director's designee.

- (D) Resignation after investigation initiated: If an employee resigns at any time after an investigation begins and the employee is being investigated for allegations that, if true, would result in that employee being ineligible for re-employment, the investigation shall continue to the point necessary to determine if the employee should be eligible for re-employment, using the criteria in Section VI. Persons who resign and are subsequently determined to be ineligible for re-employment shall be notified of the decision in the same manner as provided in Section III (E) for notification of disciplinary action.
- (E) Delivery of Notice: Employees must be notified of the disciplinary action using the DHS-1173, Notice of Disciplinary Action. If the employee refuses to sign the DHS-1173, another employee should witness. If possible, the DHS-1173 should be hand-delivered at the supervisor or employee's work location. If this option is unavailable or impractical, the employee may be notified by certified mail, and the return receipt is required. If the certified mail is returned as unclaimed, the DHS-1173 shall be sent by regular mail to the employee's last known address.
- (F) Determining appropriate disciplinary action: The appropriate disciplinary action shall be determined by the supervisor in cooperation with the HR Liaison, HR Director, or HR Director's designee based on the severity and impact of the failure to meet behavior expectations, the employee's disciplinary history, and other division objectives. An employee's past history of high performance ratings, past satisfactory job performance, and absence of prior disciplinary actions is not a defense to the administration of discipline and is inadmissible at any grievance hearing brought pursuant to DHS Policy 1086.

IV. Disciplinary Actions

- (A) Termination of employment.
- (B) Suspension without pay. (Under the Fair Labor Standards Act, special rules apply to the suspension without pay of exempt employees. As such, in order to ensure compliance with FLSA, all suspensions of exempt employees should be for at least five (5) consecutive days).
- (C) Demotion – reduction in salary, grade, or both.
- (D) Probation for the minimum amount of time necessary for a diligent employee to make satisfactory improvement but no longer than six (6) months.
- (E) Written Warning.
- (F) Documentation: All disciplinary actions must be documented on a DHS-1173 and delivered to the employee as designated in Section III (E). Terminations also require the completion of a DHS-1161 to be reviewed by the HR Liaison, HR Director, or HR Director's designee.

In addition to the above-mentioned disciplinary actions, supervisors are encouraged to make use of Non-disciplinary Counseling Statements (DHS Form-1131) and Performance Improvement Plans to improve employee performance and fix behavior issues before they require disciplinary action.

Note: Division HR Liaisons are encouraged to consult with OCC prior to taking any disciplinary action, and OCC must approve of any termination, suspension without pay, or demotion as well as the termination code if a termination occurred.

V. Removal from Duty Pending Investigation

- (A) If there is any reason to suspect that an employee may jeopardize the health or safety of any person or the integrity or public image of DHS, a person in the employee's supervisory chain may immediately relieve the employee from regularly assigned duty pending an investigation to be completed as provided in this policy.
- (B) If feasible, the employee shall temporarily assume other duties where the employee does not jeopardize the health or safety of any person or the integrity or public image of DHS. If such temporary assignment is not feasible, the employee shall be relieved of all duty. The employee shall remain off regularly assigned duty until either a decision is made not to discipline the employee or the disciplinary action is issued.
- (C) Employees relieved of regularly assigned duties or all duties are still on call for purposes of investigating his or her behavior.
- (D) Removal from regularly assigned duty pending investigation is with full pay and benefits, except for extra-help employees.

VI. Eligibility for Re-Employment

Persons terminated pursuant to this policy are permanently disqualified from re-employment if any of the following conditions are met:

- (1) The employee's violation jeopardized the health or safety of any person.
- (2) The employee's violation jeopardized the integrity or public image of DHS.
- (3) The employee engaged in work-related sexual misconduct or sexual harassment.
- (4) The employee engaged in work-related discrimination on the basis of race, age, sex, disability or genetic information, color, religion, or national origin.
- (5) The employee failed to return DHS property after termination.

Note: Employees terminated for violating DHS Policy 4002 are also permanently disqualified from re-employment.