

SECTION 7 DISCIPLINE

7.1 AUTHORITY TO TAKE DISCIPLINARY ACTION Supervisory Supervisor and managerial personnel have the responsibility and obligation to take whatever disciplinary actions are deemed necessary, in the best interests of the County.

7.2 PROGRESSIVE DISCIPLINE It is the County's policy that, as a general rule, discipline is progressive in nature, beginning with the least severe action necessary to correct the undesirable situation, and increasing in severity if the condition is not corrected. However, instances might occur when a disciplinary action, including dismissal, is appropriate without first having imposed a less severe form of discipline. The circumstances surrounding an offense, such as the severity of the misconduct, the number of times it has occurred, and any previous counseling, and the employee's disciplinary history, will suggest what action should be taken. The conduct at issue in a prior discipline need not be similar to the conduct involved in a subsequent discipline to serve as the basis for progressive discipline.

7.3 FORMS OF DISCIPLINARY ACTION

7.3.1 ORAL REPRIMAND An oral reprimand is generally used for minor offenses or to correct minor faults in an employee's performance. An oral reprimand is not grievable and not subject to the notice and hearing requirements of this section.

7.3.2 WRITTEN REPRIMAND A written reprimand may be issued by a supervisor for an offense of a more serious nature which requires more formal action than an oral reprimand. The written reprimand shall become a part of the employee's Human Resources file. A written reprimand is not grievable and not subject to the notice and hearing requirements of the applicable section of this handbook.

7.3.3 SUSPENSION A suspension may be ordered for an offense of a more serious nature or for repeat of a minor offense. An employee may be suspended for a period not to exceed thirty (30) working days. During a suspension, an employee will not be paid or accrue leave. Each suspension shall be recorded and filed in the employee's Human Resources file.

7.3.4 DEMOTION An employee may be demoted for an offense of a more serious nature or for repeat of a minor offense. The employee may be demoted to a lesser position for which the employee is otherwise qualified. When demoted, the employee will receive a decrease in compensation commensurate with the new position. Each demotion will be recorded and filed in the employees Human Resources file.

7.3.5 DISMISSAL An employee may be terminated for an offense of a more serious nature or for repeat of a minor offense.

7.4 GROUNDS FOR DISCIPLINARY ACTION A classified employee or a term employee, if the probationary period has been served, may only be suspended, demoted, or dismissed for just cause which is any behavior relating to the employee's work that is inconsistent with the employee's obligation to the County. Just cause includes, but is not limited to, the following:

7.4.1 Negligent or inefficient performance

- Unsatisfactory or negligent performance of duties
- Insubordination
- Continued violation of safety practices
- Failure to cooperate with fellow employees
- Failure to adhere to the established work schedule
- Failure to obtain prior authorization to work overtime
- Failure to meet or maintain job qualifications, as set forth in the job description, including failure to maintain a valid driver's license
- Sleeping on duty (except for approved sleep time for Fire personnel)
- Any other behavior that justifies discipline under this category

7.4.2 Tardiness/Absenteeism

- Abuse of sick leave
- Unauthorized absence from work, including tardiness
- Failure to abide by time frames for sick calls
- Any other behavior that justifies discipline under this category

7.4.3 Careless, negligent or improper use of County property, equipment or funds

- Falsifying official documents or records
- Theft or vandalism of County property
- Unauthorized use or possession of County property or equipment
- Operating a County vehicle or equipment in a negligent, reckless or tortious manner
- Unauthorized disclosure of confidential information from County records or documents set forth by applicable state laws
- Falsification, destruction, or unauthorized use of County records, reports, or other data belonging to the County
- Unauthorized or fraudulent manipulation of time records or other County records
- Operation of a County vehicle or equipment while under the influence of a controlled substance or intoxicant

- Inappropriate use of IT resources
- Any other behavior that justifies discipline under this category

7.4.4 Improper Conduct

- On the job conduct toward the public or employees that causes discredit to the County
- Personal conduct which impairs the employee's ability to perform his or her duties or causes discredit to the County
- Conflict of interest which results in private gain to the employee or detriment to the County
- Threatening or harassing an employee, an Elected Official or anyone doing business with Santa Fe County
- Consumption, possession, or distribution of alcohol or drugs on the job, or reporting to work under the influence of alcohol or drugs
- Accepting a bribe or consideration given with the intent to influence the performance of duty
- Use of official position or authority for personal profit or advantage
- Bribery or coercion of, or attempting to bribe or coerce an employee or Elected Official
- Influencing, or attempting to influence, a Hearing Officer, other than through established grievance procedures
- Failure to cooperate in an investigation
- Distributing of literature, vending, soliciting, or collecting contributions while on the job and on County premises, or assisting with the same, without prior authorization of the County Manager
- Unauthorized possession of a weapon on the job site
- Fighting or other disruptive behavior in the workplace
- Gambling during work hours
- Any other behavior that justifies discipline under this category

7.4.5 Violation of any federal or state law including all civil right statutes.

7.4.6 Conviction of a misdemeanor or felony.

7.4.7 Violation of this *County of Santa Fe Human Resources Handbook*, department-specific procedures, or a professional code of ethics followed by those in the same profession as the employee.

7.5 CLASSIFICATIONS THAT ARE INELIGIBLE TO GRIEVE OR APPEAL ANY DISCIPLINARY ACTION A probationary, at-will, or casual employee in a temporary position or an employee in a term position who has not completed the probationary

period may be disciplined at any time without notice, or the right to appeal or grieve any disciplinary actions.

7.6 The County Manager may approve administrative leave pending disciplinary action.

7.7 DISCIPLINARY PROCESS The following procedures apply when a supervisor proposes to suspend, demote, or dismiss a classified employee or an employee in a term position who has completed the probationary period.

7.7.1 DELIVERY OF CORRESPONDENCE For the purposes of the disciplinary process, the County will make an effort to hand-deliver any documentation, or correspondence related to the disciplinary process including but not limited to disciplinary action forms, memos, documents and correspondence and will be considered served immediately upon delivery. In cases where hand delivery is not practical, such materials will be mailed priority, certified return receipt requested and will be considered served on first date of attempted delivery by the U.S. Postal Service. For the purpose of this Section, days mean workdays to include Monday through Friday and not to include holidays or time when the County Administrative Offices are closed.

7.7.2 NOTIFICATION OF PROPOSED DISCIPLINARY ACTION To initiate the suspension, demotion, or dismissal of a classified employee or an employee in term status who has completed the probationary period, the employee's supervisor will serve a Notice of Proposed Disciplinary Action to the employee within (15) fifteen working days of becoming aware of the incident that describes the basis for the proposed action, or within fifteen (15) working days of completion of an investigation. A copy of the notification of proposed disciplinary action shall be submitted simultaneously to the Human Resources Division. The Notice of Proposed Disciplinary Action will describe the conduct, actions, or omissions that form the basis for the proposed disciplinary action, give a general explanation of what evidence the County has, and will include the date, time and place of the pre-determination hearing.

7.7.3 PRE-DETERMINATION HEARING The employee shall be given an opportunity to respond to the recommended discipline at a pre-determination hearing. The pre-determination hearing shall be recorded by the use of electronic recorder. The employee's immediate supervisor, Division Director, and Department Director/Elected Official or designee, and a representative from the Human Resources Division shall be present at the predetermination hearing. The employee has the right to have a representative of his or her choice during the hearing. Pre-determination hearings will be held within five (5) working days from the date of hand delivery or certified mailing of the proposed discipline. The pre-determination hearing is not an evidentiary hearing, but an opportunity for the employee to present his or her side of the situation. It is a check against mistaken decision, a determination of whether there are reasonable

grounds to believe that the charges against the employee are true and support the proposed action.

7.7.4 DECISION ON DISCIPLINARY ACTION Following the pre-determination hearing, within five (5) working days the Department Director shall submit his or her recommendation to the Human Resources Director. The decision on disciplinary action following the predetermination hearing shall be made in writing by the Human Resources Director or designee and hand-delivered to the employee if the employee is not on leave within seven (7) working days or post-marked within seven (7) working days of the predetermination hearing. The decision shall specify whether the proposed disciplinary action will be upheld, reduced or eliminated. The decision shall describe the conduct, actions or omissions that form the basis for the disciplinary action and shall specify when the disciplinary action will be effective.

7.7.5 APPEAL OF DISCIPLINARY ACTION If the employee or past employee wishes to appeal the disciplinary action, he or she shall submit a written appeal to the County Manager within five (5) working days from the date he or she was served with the decision on the disciplinary action. The County Manager will review all pertinent information and will either confirm, modify, or reject the disciplinary action. The County Manager may request additional information or documentation before rendering a decision. The County Manager will render a decision within seven (7) working days from the date of receipt of the appeal.

7.8 POST-DETERMINATION HEARING

7.8.1 Filing a request - An employee or person who has exhausted all administrative remedies afforded by the County has the right to request a post determination hearing before a hearing examiner selected by the County.

7.8.2 A request for a post-determination hearing must be in writing and filed with the Human Resources Director within ten (10) calendar days from the issuance of final action. A copy of the notice of final action and a statement of the grounds for the request must accompany the request.

7.8.3 Hearing Officer - The County will select a Hearing Officer deemed capable of providing a fair and impartial hearing to the person or employee. The costs of the hearing officer shall be shared equally by the County and the employee or person requesting the hearing.

7.8.4 The Hearing Officer shall set a hearing date no more than ninety (90) days from the receipt of the request for a post-determination hearing. The hearing shall be recorded.

7.8.5 The employee may represent him or herself or designate a person who is not an employee of the County to represent him or her. The department Director or Elected Official initiating the disciplinary action must be represented at the hearing. The employee and the Department or Elected Official may each choose to have an attorney as a representative at the hearing.

7.8.6 Oral evidence shall be taken only under oath or affirmation. The Hearing Officer has the power to administer oaths, subpoenas, witnesses and compel the production of documents pertinent to the hearing.

7.8.7 As a condition of employment, employees may be required to appear as witnesses in hearings. Refusal by an employee to testify in an appeal hearing is grounds for disciplinary action. The hearing shall be conducted in an orderly and informal manner without strict adherence to the rules of evidence that govern proceedings in the courts of the State of New Mexico. However, in order to support a decision, there must be a residuum of legally competent evidence to support a verdict in a court of law. Irrelevant immaterial or unduly repetitious evidence shall be excluded.

7.8.8 The hearing examiner shall control the conduct of all parties and all other persons present in the hearing. The hearing examiner may, under the appropriate circumstance; (1) remove any person from the hearing room; (2) close the hearing to the general public; (3) exclude all witnesses until they are called to testify; (4) continue the hearing to a later time and date; and (5) take any other action the Hearing Officer determines is necessary to insure orderly proceedings and conduct a fair and impartial hearing.

7.8.9 The Department's or Elected Official's representative will present its evidence first.

7.8.10 Each party shall have the right to:

- a. make opening and closing statements;
- b. call and examine witnesses and introduce exhibits;
- c. cross-examine witnesses;
- d. impeach any witnesses; and
- e. rebut any relevant evidence

7.8.11 The hearing officer may take administrative notice of those matters in which courts of this state may take judicial notice.

7.8.12 An employee or person who files a request for a hearing and refuses to appear or participate in the appeal process forfeits the right to continue the appeal.

7.8.13 The hearing officer will render a decision within thirty (30) calendar days from the final date of hearing. The hearing officer shall determine if there was just cause for the

disciplinary action. However, the hearing officer shall not substitute his or her discretion for that of the employer.

7.8.14 Judicial Review - Any party that is adversely affected by a final decision of the hearing officer may seek judicial review of the decision by filing a petition of for writ of certiorari in the District Court. The District Court reviews the hearing officer's decision for arbitrariness capriciousness, lack of substantial evidence, or non conformance with the law.