

# Chapter 12: Discipline; Corrective Actions; Separations

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## Overview

Organizations have legitimate and reasonable rights: the right to expect employees to be on time; to attend regularly; to put in a full day's work; to be mentally and physically prepared for the tasks at hand; to respond positively to direction; to learn the job at hand and the jobs to come; to adapt to change; to get along well with customers, supervisors, and fellow employees; to know and to follow the rules and procedures; and to meet the technological and ethical standards of the enterprise. In other words, the employee must fit into the culture of the organization – which is not too much to ask of anyone who draws a paycheck. Most people do fit in. However, when they do not, the need arises to confront the difference between what is expected and what is delivered.

Discipline is not an end in itself but – along with specific instruction, performance standards, counseling, and supervisory plans – is a tool to shape the employee's behavior to conform to the best interests of public service. The good manager will accompany discipline with further direction about what he expects of the employee and an offer to improve or to leave state service. Separation is appropriate when the employee has demonstrated a lack of fitness for further service and may be used without any prior action against the employee, but most often results from a failure of one or more attempts to reshape the employee's behavior.

Chapter 12 rules contain a large number of resources available to Human Resources staff, agency attorneys and administrators such as Frequently Asked Questions (FAQs), sample forms and templates on just about every rule contained in the chapter. Links are provided to these aids and are provided from the job aids back to the rule that it references.

## HR Impact

Chapter 12 focuses on how to discipline and remove permanent employees in the classified service. Adverse actions against employees who have attained permanent status in the classified service are governed by [Article X, Section 8\(A\)](#) of the state constitution and [Chapter 12](#) of the Civil Service Rules. HR professionals must understand the concept of cause, due process, appointing authority, disciplinary actions, non-disciplinary separations, and resignations so that they can provide guidance and consultation to state managers and appointing authorities when addressing employee performance and conduct. Human Resources staff, along with agency counsel, is responsible for implementing the appointing authority's decisions in accordance with the Civil Service Rules.

## Rule-By-Rule Review

### Rule 12.1 Authority to Discipline, Remove, and Separate

This rule empowers the appointing authority to discipline, remove, or separate employees under his jurisdiction. Every action authorized by Chapter 12 must be taken by an appointing authority. If an action is challenged in an appeal, the agency must prove that the person who took the action had appointing authority. Otherwise, the action will be reversed and the employee will be awarded back pay and possibly attorney's fees. For further information and examples, refer to [Job Aids and Resources](#) for FAQs, sample forms and sample letters.

There are different types of appointing authorities. They are:

- **Statutory Appointing Authority** – The person in the agency given the power to appoint employees to positions in the state service by the state constitution or a state statute. It is important for each governmental entity to know its statutory appointing authority, and if in doubt, seek legal counsel to determine who has that authority.
- **Delegated Appointing Authority** – The statutory appointing authority can legally delegate his authority in a number of ways.

### Rule 12.2 Separation of Non-Permanent Employees; Cause Required to Discipline or Remove Permanent Employees

(a) An appointing authority may separate a non-permanent employee at any time. This means an appointing authority may separate a probationary, job appointment or classified WAE employee at any time.

(b) An appointing authority may discipline or remove a permanent employee for cause.

**NOTE:** [Article X, Section 8\(A\)](#) of the Louisiana Constitution provides that no person who has gained permanent status in the state classified service be subjected to disciplinary action except for cause expressed in writing. Cause is defined in Civil Service [Rule 1.5.2.01](#) and the source of this definition is years of court decisions interpreting the Civil Service Rules and Article. For further information and examples, refer to [Job Aids and Resources](#) for FAQs, sample forms and sample letters.

### Rule 12.3 Discipline; Restrictions

(a) Discipline includes only: suspension without pay, reduction in pay, involuntary demotion and dismissal. Any other measures taken such as improvement letters, leave without pay, PES evaluations, denial of performance adjustments etc., are not disciplinary actions, but are used to address and correct misconduct and/or substandard performance.

(b) A suspension without pay cannot exceed 176 work hours, except under Rule 12.5 or as ordered or agreed to under [Chapter 13](#) or [Chapter 16](#).

(c) A reduction in pay cannot reduce an employee's pay below minimum wage or below the pay range minimum. This means that appointing authorities need to ensure that the reduction in pay they are imposing does not reduce the employee's overall rate of pay below the minimum of the range for that period.

**NOTE:** A sample calculation for reducing pay has been included in the Job Aids & Resources section link to this job aid. Additional help may be obtained by contacting your State Civil Service Consultant. For further information on Discipline, refer to [Job Aids & Resources: FAQs – Discipline](#).

## **Rule 12.4 Emergency Suspensions [Repealed 7/9/08]**

### **Rule 12.5 Suspension Pending Criminal Proceedings**

(a) CSR 12.5 allows an appointing authority, with prior approval from the Commission, to suspend a permanent employee without pay pending the resolution of criminal proceedings against the employee. An indictment or bill of information must have been filed against the employee for conduct that would be cause for dismissal, and the appointing authority must be unable to obtain sufficient information to dismiss the employee. For further information, refer to [Job Aids and Resources: FAQs – Suspension Pending Criminal Proceedings](#).

(b) The appointing authority's request for approval of a suspension under this rule must explain why the conduct would be cause for dismissal, why the employee cannot be allowed to work in any capacity, and why sufficient information to initiate dismissal proceedings cannot be obtained.

(c) This rule requires the Commission to provide a copy of the appointing authority's request to the employee, and allow the employee a reasonable opportunity to respond before approving a suspension under this rule.

(d) This rule requires the permanent employee suspended under this rule to receive written notice before the time the suspension begins. This notice must comply with Rule 12.8 to the extent possible.

### **Rule 12.6 Non-disciplinary Removals**

(a) A removal is not the same thing as a dismissal. A dismissal is a disciplinary action; a removal is not. This rule allows for an employee to be **non-disciplinarily removed** under certain circumstances. Further information on removal can also be found in [Job Aids & Resources: FAQs – Removal](#). The grounds for removal under this rule are as follows:

1. An employee may be non-disciplinarily removed when, on the day he is considered to have been given pre-removal notice under Rule 12.7, he has less than eight (8) hours of sick leave and is unable to perform the essential functions of his job due to illness or medical disability.
2. An employee may be non-disciplinarily removed when he has seven (7) or more unscheduled absences during any consecutive twenty-six week period. The employee must first have been given written notice that his attendance requires improvement and a copy of this rule. The employee must also be given written notice each time he incurs a sixth unscheduled absence. An unscheduled absence occurs when an employee is absent from work without having

obtained approved leave prior to the absence. Agencies may, but are not required to, further define an unscheduled absence by agency policy, e.g. a requirement that leave be approved by the close of business the day before the absence. Under Rule 12.6, approval of leave, after the fact, to cover an unscheduled absence shall not prevent the absence from being considered unscheduled, and a continuous absence for the same reason is one unscheduled absence, regardless of its duration.

3. An employee may be non-disciplinarily removed when the employee, because of conduct that is not work related, fails to obtain or loses a license, commission, certificate or other accreditation that is legally required for him to hold his job. "Legally required" means required by state law, job specifications in the Classification Plan, or otherwise ordered by the State Civil Service Commission. For example, a Registered Nurse 1 is required by the job specifications to have a nursing license; thus, the license is "legally required" under Rule 12.6(a)3.
4. An employee may be non-disciplinarily removed when the employee holds more than one position in the state service and the multiple employment causes an employing agency to be liable for overtime payments under the Fair Labor Standards Act and, after having been provided the opportunity to do so, the employee has refused to resign from one of the positions.
5. An employee may be non-disciplinarily removed when there is cause for dismissal, but the cause is not the employee's fault.

(b) When an employee is removed under this Rule, the adverse consequences of [Rules 6.5\(c\)](#); [22.4\(d\)](#); [23.16\(a\)4](#); [23.13\(b\)](#); [11.18\(b\)](#) and [17.23\(e\)4](#) shall not apply.

### **Rule 12.7 Notice of Proposed Action; Employee's Opportunity to Respond**

This rule requires the appointing authority to provide oral or written notice of the proposed action, the factual basis for the action and a description of the evidence supporting the proposed action when he proposes to discipline or remove a permanent employee. The appointing authority must also allow the employee a reasonable opportunity to respond.

### **Rule 12.8 Written Notice to Employee of Discipline or Removal**

When an appointing authority decides to discipline or remove a permanent employee, the employee must be given written notice of the action being taken before the time the action becomes effective. The written notice must:

(a) state what action (suspension, reduction in pay, demotion, dismissal, or removal) is being taken and the date and time the action will become effective; and

(b) describe in detail the conduct supporting the action (who, what, when, where, why, and how) and

(c) contain the following notice: "You have the right to appeal this action to the State Civil Service Commission within 30 calendar days following the date you receive this notice. The appeal procedure is contained in Chapter 13 of the Civil Service Rules, which is available from the Department of State Civil Service or your Human Resource office."

**IMPORTANT:** Further information is available in [Job Aids and Resources: FAQs – Notice of Proposed Action; Employee's Opportunity to Respond](#).

### **Rule 12.8.1 Giving Written Notice**

Under this rule, written notice is considered given:

- (a) when it is hand delivered to the employee or
- (b) when it is hand delivered to a person of suitable age and discretion who resides with the employee or
- (c) on the 7th calendar day after it was mailed with correct postage to the employee's most recent address furnished in writing or electronically to the agency's human resource office.

### **Rule 12.9 Improvement Letters**

- (a) An appointing authority may issue letters (such as warnings, counseling, coaching, reprimands, supervisory plans, etc.) to attempt to improve an employee's conduct.
- (b) An employee may respond in writing to an improvement letter. The employee's response must be attached to each copy of the letter kept by the agency.
- (c) If the same or similar conduct recurs, an improvement letter can be used to support the severity of future discipline, but only if the letter advised the employee that the letter would be used for this purpose and advised the employee of his right to respond.
- (d) An improvement letter is not discipline, is only appealable under [Rule 13.10\(b\) or \(c\)](#), and may not be included in any publicly accessible personnel record until used to support future discipline.

### **Rule 12.10 Suspension Pending Investigation**

- (a) This rule authorizes an appointing authority to suspend an employee, with pay, during an investigation and subsequent administrative proceedings. If the appointing authority suspects a permanent employee has engaged in conduct that would warrant disciplinary action or removal, and that employee's continued presence at work during the investigation would be contrary to the best interests of the state service, this rule may be used to suspend the employee with pay. The employee must be told that he is being suspended and the general nature of the conduct being investigated.

**NOTE:** The employee remains "on the clock" during business hours and is not on leave. The employee is therefore subject to supervisory directives such as reporting requirements, coming in for investigative interviews, etc.

- (b) This rule provides that a suspension pending investigation must be with pay and cannot exceed 260 hours. Enforced compensatory or annual leave cannot be used during this 260-hour period.

(c) [Repealed effective 7/9/08]

(d) A suspension pending investigation is not a disciplinary action and is only appealable under [Rule 13.10\(b\) or \(c\)](#).

## **Rule 12.11 Resignations**

(a) This rule defines when an employee's oral or written resignation becomes effective. An oral resignation must be documented by the person receiving it.

(b) This rule says that once an appointing authority accepts a resignation, an employee may not withdraw or modify the resignation unless the appointing authority agrees.

(c) This rule requires that a resignation be reported as a resignation to avoid dismissal if the employee resigns after receiving notice that his dismissal has been proposed.

## **Job Aids and Resources**

### **CSR 12.1 Authority to Discipline, Remove, and Separate**

- [FAQs – Appointing Authority](#)
- [Delegation of Full Authority](#)
- [Delegation of Partial Authority](#)
- [Delegation with Reservations and Prohibitions Against Re-Delegation](#)
- [Delegation of Authority for Improvement Letters](#)
- [Delegation with Order of Succession](#)

### **CSR 12.2 Separation of Non-Permanent Employees; Cause Required to Discipline or Remove Permanent Employees**

- [FAQs – Separation of Non-Permanent Employees](#)
- [Template – Letter Separating a Non-Permanent Employee](#)
- [FAQs – Cause, Severity, Double Jeopardy, Condonement](#)

### **CSR 12.3 Discipline; Restrictions**

- [FAQs – Discipline](#)
- [La. R.S. 42:1414 – State, district, parish, ward, and municipal employees; termination for conviction of a felony](#)
- [La. R.S. 24:523 – Notification to the Legislative Auditor and District Attorney](#)

## **CSR 12.5 Suspension Pending Criminal Proceedings**

- [FAQs – Suspension Pending Criminal Proceedings](#)
- [Template – Letter to Request Approval for Suspension Pending Criminal Proceedings](#)
- [Questionnaire for Suspension Pending Criminal Proceedings](#)
- [Template – Letter Suspending Employee Pending Criminal Proceedings \(assumes delivery by mail\)](#)

## **CSR 12.6 Non-disciplinary Removals**

- [FAQs – Removal](#)
- [Template – Notice that Attendance Requires Improvement \(assumes hand delivery\)](#)
- [Template – Notice of Sixth \(6th\) Unscheduled Absence \(assumes hand delivery\)](#)

## **CSR 12.7 Notice of Proposed Action; Employee's Opportunity to Respond**

- [FAQs – Notice of Proposed Action; Employee's Opportunity to Respond](#)
- [Template – Notice of Proposed Action](#)

## **CSR 12.8 Written Notice to Employee of Discipline or Removal**

- [FAQs – Written Notice to Employee of Discipline or Removal](#)
- [Template – Proposed Dismissal \(assumes delivery by mail\)](#)
- [Template – Proposed Discipline \(assumes hand delivery\)](#)
- [Template – Proposed Removal Under Rule 12.6\(a\)1 \(assumes delivery by mail\)](#)
- [Template – Proposed Removal Under Rule 12.6\(a\)2 \(assumes hand delivery\)](#)
- [Template – Proposed Removal Under Rule 12.6\(a\)3 \(assumes hand delivery\)](#)
- [Template – Proposed Removal Under Rule 12.6\(a\)4 \(assumes hand delivery\)](#)
- [Template – Proposed Removal Under Rule 12.6\(a\)5 \(assumes delivery by mail\)](#)
- [Template – Discipline/Removal Letter](#)
- [Template – Suspension Letter \(assumes hand delivery\)](#)
- [Template – Reduction in Pay Letter \(assumes delivery by mail\)](#)
- [Template – Demotion Letter \(assumes hand delivery\)](#)
- [Template – Removal Letter under 12.6\(a\)1 \(assumes delivery by mail\)](#)
- [Template – Removal Letter under 12.6\(a\)2 \(assumes delivery by mail\)](#)
- [Template – Removal Letter under 12.6\(a\)3 \(assumes hand delivery\)](#)
- [Template – Removal Letter under 12.6\(a\)4 \(assumes hand delivery\)](#)
- [Template – Removal Letter under 12.6\(a\)5 \(assumes delivery by mail\)](#)

### **CSR 12.8.1 Giving Written Notice**

- [FAQs – Giving Written Notice](#)
- [Template – Documentation of Hand Delivery](#)
- [Template – Documentation of Domiciliary Service](#)

### **CSR 12.9 Improvement Letters**

- [FAQs – Improvement Letters](#)
- [Template – Warning Letter](#)
- [Template – Reprimand Letter](#)
- [Template – Supervisory Plan \(hand delivered and discussed with employee\)](#)

### **CSR 12.10 Suspension Pending Investigation**

- [FAQs – Suspension Pending Investigation](#)

### **CSR 12.11 Resignations**

- [FAQs – Resignations](#)
- [Template – Documentation of Oral Resignation](#)
- [Template – Acceptance of Resignation](#)

### **CSR 15.10 Fixing Mistakes and Rescinding Personnel Actions**

**NOTE:** The method for fixing mistakes in any action taken under Chapter 12 is found in Civil Service Rule 15.10. The FAQs and template are found here in Chapter 12 Job Aids & Resources as well as Chapter 15 Job Aids & Resources.

- [FAQs – Fixing Mistakes](#)
- [Template – Request to Rescind/Modify an Action](#)