



The examples and best practices listed here are illustrative only, and are intended only for use as general advice. An appeal decision is the product of applying the Civil Service Rules, Article and Constitutional principles of Due Process to the unique facts of each case. Accordingly, these FAQ's and the HR Handbook do not predict or guarantee a particular result.

Q. What is cause?

A. Conduct that impairs the efficient and orderly operation of the public service. Conduct includes any act, omission, element of behavior, or element of performance. Cause also includes the concept that the punishment should fit the offense.

Q. Why is cause required for employees with permanent status?

A. Because the state constitution provides: "No person who has gained permanent status in the classified state ... service shall be subjected to disciplinary action except for cause expressed in writing." [La. Const. Art. X, § 8(A)]

Q. Why is this language significant?

A. Language like this gives the employee a property right in continued employment.

Q. What is significant about a property right?

A. The state constitution provides "No person shall be deprived of ... property, except by due process of law. (La. Const. Art. I, § 2)

Q. What is due process of law?

A. Due process does not have a fixed content: the courts decide what process is due in a given situation. Due process can change. The rules in Chapter 12 represent the current due process requirements for disciplining and removing permanent classified employees.

Q. What is impairment?

A. The actual or potential harm the employee's conduct caused to an agency's operations.

Q. What are examples of impairment?

A. Conduct: absence during hurricane preparations at a museum.
Impairment: potential loss of state valuables; task took longer because employee was not there to help.

Conduct: writing threatening remarks on a shared office calendar.
Impairment: made co-worker fearful and unwilling to work in the same office with the employee.

Conduct: corrections officer leaving another officer alone with a high-risk inmate.
Impairment: the other officer was injured and other officers had to leave their posts to render aid.

Conduct: refusal to obey a direct order.
Impairment: undermines managerial authority.

Conduct: a police officer violating the law.

Impairment: casts doubt on the credibility of the police to enforce the law.

Conduct: abuse of sick leave.

Impairment: agency is short-handed; work is not completed.

Conduct: falsifying job application.

Impairment: undermines hiring process and employee's credibility.

Conduct: persistent refusal to perform duties.

Impairment: supervisors had to set aside duties to deal with employee.

Conduct: disregarding agency policy.

Impairment: hinders supervisors' ability to enforce policy.

Q. What factors should the agency consider in determining the severity of the penalty?

A. Primarily, the severity of the impairment. Other factors include whether the agency had previously disciplined the employee, whether the agency had previously counseled or reprimanded the employee for the same or similar conduct, the employee's length of service, the agency's usual penalty for the same conduct.

Q. What is more severe: a suspension or an equivalent reduction in pay?

A. The reduction in pay. With a suspension, the employee does not incur the expenses of getting to and from work.

Q. What is cumulative discipline?

A. Using prior disciplinary action to enhance the penalty for the current conduct. This is "the straw that broke the camel's back" concept. After previous discipline, the employee continues to engage in unacceptable behavior, showing he is unwilling or unable to conform to the agency's requirements.

Q. Can the current agency consider discipline imposed by a previous agency-employer for purposes of cumulative discipline?

A. Yes. *Chatman*, CSC Docket No. S-14329.

Q. What is "double jeopardy"?

A. For civil service purposes, it means that an agency cannot discipline an employee twice for the same offense.

Q. Is it "double jeopardy" for an agency to impose leave without pay for an unapproved absence and then discipline the employee for failing to follow the time and attendance policy?

A. No. By imposing leave without pay, the agency avoids paying someone who did not work and was not on approved leave. The disciplinary action is for violating agency policy.

Q. When an agency rescinds an action or loses an appeal due to a procedural defect, is it "double jeopardy" to take another action based on the same conduct?

A. No. However, after an employee has served a penalty, the agency may not impose a more severe penalty for the same conduct.

Q. What is a procedural defect?

A. Lack of appointing authority, failure to provide notice of proposed action and an opportunity to respond, failure to provide prior written notice, failure to provide detailed reasons.

Q. When an agency loses an appeal after the Commission or Referee decides the case based on the charges or when an agency settles an appeal, is it “double jeopardy” to take another action based on the same conduct?

A. Yes.

Q. What if an agency realizes that the penalty was too lenient?

A. Before the action becomes effective, the agency can rescind the action under Rule 15.10. Once the effective time and date of the action occur, the agency cannot impose a more severe penalty for the same offense.

Q. What is the difference between “double jeopardy” and “cumulative discipline”?

A. “Double jeopardy” prevents an agency from disciplining an employee twice for the same act. For example, if an agency suspends an employee for 176 work hours for causing a disturbance at work, the agency cannot change its mind and dismiss the employee for creating the same disturbance. “Cumulative discipline” allows the agency to consider prior discipline when deciding the penalty to impose when the employee commits another act of misconduct. For example, if an agency imposed a 4% pay reduction for missing deadlines on three projects and then imposed a 6% pay reduction for being unprepared for a conference presentation, the agency would probably be upheld if it dismissed the employee the next time he engaged in disciplinable conduct.

Q. What is condonement?

A. When an appointing authority knows about the misconduct but consciously decides not to take action or addresses the misconduct with a non-disciplinary measure. Condoning the action may prevent that appointing authority from later taking action based on the misconduct.

Q. Does condonement by someone who is not an appointing authority prevent an appointing authority from taking action?

A. No.

Q. Does giving an employee a “Successful” or better rating prevent the appointing authority from taking action for conduct that occurred during the rating year?

A. Usually, no. The appointing authority will often be unaware of the conduct until after the evaluating supervisor issued the rating. However, when a rating specifically praises an employee for a particular project or compliments the employee for timely work, the agency is poorly situated to later criticize that project or complain that the employee failed to meet deadlines.

Q. If an appointing authority condoned conduct in the past but no longer wants to do so, what should he or she do?

A. Issue a memo or policy announcing that the conduct will no longer be tolerated and will be grounds for discipline.

Q. When does a charge become stale?

A. There is no defined line; it depends on the facts of the case.