## Course Description

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MODULE 3: DISCIPLINARY ACTIONS

COURSE DESCRIPTION

This 1-day module will include information on how to take legal disciplinary actions, and an overview of the Civil Service rules regarding appeals and what an agency should know to win a Civil Service appeal.

OBJECTIVES

- Implement techniques to prevent formal disciplinary actions
- Review State Civil Service rules, State laws, and Federal laws that pertain to the appeals process
- Demonstrate an appeals hearing

MANAGING EMPLOYEE PERFORMANCE

Supervisors should communicate their expectations for good and poor performance with each employee. Having these conversations early and often motivates employees and reinforces positive work behaviors. As you’ll see, when it comes to disciplinary action, communication is essential. Employees have won several appeals because there was not enough communication between the supervisor and employee.

Onboarding

Onboarding is a continuous process for familiarizing someone with a new task, process, or environment. As employees seek to adjust into their role, they should have an understanding how their duties support the organization’s mission and vision.

Notes:
Coaching Difficult Conversations

Coaching is a process that designates the proper time for learning and development thus resulting in improved performance. Supervisors and employees are encouraged to meet one-on-one frequently to discuss an employee’s performance toward goals.

When an employee is not performing as discussed, it is the supervisor’s responsibility to communicate expectations and guide the employee through developing the skills they need. Additionally, it is the supervisor’s responsibility to take action based on objective facts and document their action. With documentation remember:

- Quality is more important than quantity.
- Give enough facts so that a full picture of the incident(s) and your decisions is clear.

Activity: Coaching Difficult Discussions

Read over each work scenario. As a group, discuss the scenario and answer the questions that follow. Record your answers in the space below.

<table>
<thead>
<tr>
<th>What would you say to the employees?</th>
<th>What actions would you take?</th>
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APPOINTING AUTHORITY

An Appointing Authority is the agency, department, board, or commission and the officers and employees thereof authorized by statute or by lawful delegated authority to make appointments to positions in State Service.

Statutory Appointing Authority

The person given power to appoint employees to positions in the State Service by the state constitution or the Executive Reorganization Act - Title 36 of La. Revised Statutes.

Lawfully Delegated Appointing Authority

A person given Appointing Authority by someone with Appointing Authority by an authentic act.

Authentic Act - written act executed before a notary and two witnesses.

RESIGNATIONS

A resignation is a separation from employment at the employee’s request. They can be either oral or written, but if oral, they should be documented by the person who received the resignation.

A resignation becomes effective on the date and time specified by the employee. However, once the Appointing Authority accepts the employee’s resignation, it cannot be modified or withdrawn by the employee without the Appointing Authority’s approval.

After the employee receives their pre-deprivation/Loudermill notice that his or her dismissal has been proposed, the resignation must be coded as a resignation to avoid dismissal.

The commission or referee will rescind a resignation if it was involuntary. This means it was obtained by fraud, duress, coercion, mistake, or other vices of consent. Giving the employee the option of resigning or moving through the dismissal proceedings is not considered coercion.
Non-Permanent employees are those classified employees that are on temporary contract. These include all employees on WAE, probationary, or job appointments. They, along with unclassified employees, are at-will employees.

They may be separated at anytime without cause, as long as laws prohibiting discrimination and the Civil Service Rules are not violated. They have no property right to their jobs, so no legal formalities are required for disciplinary actions or separations. Non-Permanent employees are usually not disciplined; they are simply separated.

“At-Will” -

Property Right -
Permanent employees have a property right to their jobs. They can only be disciplined for “cause expressed in writing,” and their Due Process rights must be respected. What Due Process means for each step will be laid out as we move through the process.

Permanent employees also have the right to appeal any adverse action against them to the State Civil Service Commission. Upon appeal, the burden of proof of both cause and impairment will fall on the Appointing Authority.

**Cause -**

**Burden of Proof -**

**Impairment -**

Notes:
NON-DISCIPLINARY REMOVALS

A removal is the separation from employment of a permanent employee for non-disciplinary reasons. There is legal “cause”, but unlike disciplinary actions, the cause is not the employee’s fault, or the underlying cause is not work-related. All permanent employees must be given Due Process to remove them.

<table>
<thead>
<tr>
<th>Five Grounds for Non-Disciplinary Removals</th>
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</tbody>
</table>

DID YOU KNOW? There are no adverse effects for non-disciplinary removals, like there are for dismissal.

Notes:
## Non-Disciplinary Removals

<table>
<thead>
<tr>
<th>Five Grounds for Non-Disciplinary Removals</th>
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</thead>
<tbody>
<tr>
<td>Exhaustion of sick leave</td>
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<tr>
<td>An employee may be removed when on the date that the pre-deprivation letter is mailed or hand-delivered, he/she has less than 8 hours of sick leave, and is unable to perform the essential functions of their job due to illness or medical disability.</td>
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<tr>
<td>Excessive unscheduled absences—occurs when an employee is absent from work without having obtained approved leave prior to the absence.</td>
</tr>
<tr>
<td>An employee may be removed after being given written notice that his/her attendance requires improvement, and a copy of CSR 12.6, when the employee has seven or more <strong>unscheduled absences</strong> during any consecutive twenty-six week period. The employee must be given written notice each time he/she incurs a sixth unscheduled absence during any consecutive twenty-six week period.</td>
</tr>
<tr>
<td>Failure to obtain a necessary license, commission, etc.</td>
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<tr>
<td>An employee may be removed for their failure to obtain a license, certification, commission, accreditation, etc. that is legally required for the job, or if they lose said item for non-work related conduct. E.g. A classified attorney is disbarred for conduct with a private practice client. Possession of a license to practice law is a minimum qualification for that position, so they may be separated.</td>
</tr>
<tr>
<td>Having multiple state jobs</td>
</tr>
<tr>
<td>An employee may be removed if they are employed by multiple state agencies, which is causing overtime issues, and they refuse to resign from one of the jobs. Only the agency that is being forced to pay overtime may separate the employee.</td>
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<tr>
<td>Cause for Dismissal, but not fault</td>
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<tr>
<td>An employee may be removed if there is cause for dismissal, but it is not their fault. E.g. A classified employee abandons their job after a hurricane because their house flooded and they cannot afford to move back.</td>
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</tbody>
</table>
Discipline is narrowly defined by State Civil Service. It can be summed up in just four different actions that an agency can take: Suspension Without Pay, Reduction in Pay, Involuntary Demotion, and Dismissal. All other actions are not considered discipline. E.g. Improvement Letters, Detail to Special Duty, ‘Needs Improvement’ on a PES evaluation, etc. are not disciplinary actions and may only be appealed to the commission under certain circumstances.

All permanent employees being disciplined must be given Due Process, and the disciplining agencies must establish cause, impairment, and that the discipline is commensurate with the offence for the discipline to be upheld upon appeal.
# Module 3: Disciplinary Actions

## Types of Discipline

<table>
<thead>
<tr>
<th>Suspension Without Pay</th>
<th>Reduction in Pay</th>
<th>Involuntary Demotion</th>
<th>Dismissal</th>
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</thead>
<tbody>
<tr>
<td>The temporary exclusion of the employee from employment for disciplinary reasons.</td>
<td>The temporary or permanent reduction of an employee's individual pay rate for disciplinary reasons where the employee remains at work in the same job.</td>
<td>A change a position in one job to a position in another job in a pay grade with a lower maximum for disciplinary reasons.</td>
<td>The termination of an employee's employment for disciplinary reasons.</td>
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</tbody>
</table>

**Did You Know?** Dismissal comes with additional adverse consequences outlined in the Civil Service Rules. They are as follows: Loss of eligibility for non-competitive reemployment; Loss of eligibility for former pay rate earned; Loss of right to restoration of annual and sick leave balances; Name removed from a department preferred reemployment list; Rejection of application for employment by the Director or agency; Cancellation of eligibility for employment by the Director.

**Notes:**

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<th>Note 1</th>
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<td>Note 4</td>
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<td>Note 5</td>
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<td>Note 6</td>
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</tbody>
</table>

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Severity of Discipline

The discipline imposed must be Commensurate with the offense. Generally, the more severe the impairment to the state service caused by the employee's conduct, the more severe the discipline.

Other factors you should consider include:

- Whether the agency has previously disciplined the employee.
- Whether the agency has 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.

The Civil Service Commission and its referee’s have a duty to decide whether the discipline imposed by the agency is commensurate with the employee’s dereliction, so a penalty that is too severe will be reduced on appeal.

Notes:

Activity: Levels of Discipline

Review the description of the case. As a group, answer the questions below.

1. What is the employee’s offense?
2. What level of discipline, if any, does that offense warrant if it proves to be true? Why?
3. What is the “impairment to the orderly operation of state service”? How would you argue it?
4. What are you next steps as a supervisor?
**MODULE 3: DISCIPLINARY ACTIONS**

**Suspension Pending Investigation**

The temporary exclusion of the employee from employment while the agency conducts an investigation. It is a tool that may be used during the investigation and preparation of a disciplinary action, but it is not a disciplinary action itself. A suspension pending investigation is with pay, as opposed to a disciplinary suspension, which is without pay.

**Grounds**

An employee can be orally suspended when the Appointing Authority suspects that the employee has engaged in conduct that, if confirmed, will warrant discipline AND the employee’s continued presence at work during the investigation and subsequent proceeding is contrary to the best interest of the state.

**Requirements**

The agency must tell the employee they are being suspended with pay and the general nature of the conduct being investigated. Details reasons for the suspension do not have to be given. The suspension can only be appealed if the employee alleges there was discrimination or a rule violation.

**Length**

A suspension pending investigation cannot exceed two hundred and sixty hours.

**What if you need more time?**

1. 

2. 

3. 

**Did You Know?** An employee’s annual leave may not be reduced below two hundred and forty hours. If the employee is on enforced annual leave for more than thirty days, the employee must be given written reasons explaining why the employee is on enforced annual leave. These reasons must be rationally related to a governmental interest.
MODULE 3: DISCIPLINARY ACTIONS

SUSPENSION PENDING CRIMINAL PROCEEDINGS

Suspension pending criminal proceeding is not a disciplinary action, but is a suspension without pay that lasts until the criminal case is resolved. An agency can only use this action with State Civil Service Commission approval.

Grounds

An employee can be orally suspended when the appointing authority suspects that the employee has engaged in conduct that, if confirmed, will warrant discipline AND the employee’s continued presence at work during the investigation and subsequent proceeding is contrary to the best interest of the state.

Requirements

The Appointing Authority must request the suspension pending criminal proceedings from the Commission in writing. The request must include documentation that an indictment or bill of information has been filed, and it must explain:

1. 

2. 

3. 

Employee Response

An employee is entitled to a reasonable opportunity to respond to any request by an agency to place them on suspension pending criminal investigation. The Commission will provide the employee with a copy of the agency’s request and give them time to respond before approving the suspension.

Did You Know? The Commission expects the agency to pursue every alternative before requesting approval for a suspension pending criminal proceedings. This includes: detailing or reassigning the employee to another position; changing the employee’s duty station or shift; enforced annual leave; suspension pending investigation; etc.
CRAFTING THE PRE-DEPRIVATION LETTER

The Pre-Deprivation Letter, also called the Loudermill letter, after the Supreme Court case Cleveland Board of Educ. v. Loudermill that established it, is a required part of Due Process. It informs the employee of your intended action before you take it, the factual basis for and description of the evidence supporting your action, and gives them a reasonable opportunity to respond before you take the action.

Intended Action -

Factual Basis -

Reasonable Opportunity to Respond -

Signature -

Activity: Fact Building

Review the case and all of the documents related to it. As a group, develop a list of facts one would include in a Pre-Deprivation Letter. Be specific. You will be asked to present your facts to the class.

After recording your facts on the Pre-Deprivation Letter template, answer the following questions:

1. Are there other things that you would like to know that the documents do not cover? List your questions.
2. How would you go about finding additional information?
### Parts of the Pre-Deprivation Letter

<table>
<thead>
<tr>
<th>Intended Action</th>
<th>You must inform the employee which disciplinary actions you are considering. You may not increase the discipline beyond what is stated in the Pre-Deprivation letter without first rescinding the action. A good fallback option is “up to and including dismissal,” as this covers all possible actions you could take.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Factual Basis</td>
<td>A statement of all the facts detailing an action (i.e. all the facts surrounding the incident that created cause for dismissal. It shall be included in the Pre-Deprivation letter. You shall not add additional facts after sending the letter to the employee. If you want to add facts, you have to rescind the action and start over. If your facts are not sufficiently specific the action can be reversed upon appeal. Ensure you answer the who, what, when, where, and why of each fact while documenting employee conduct or investigating incidents.</td>
</tr>
<tr>
<td>Reasonable Opportunity to Respond</td>
<td>The employee must be given a reasonable opportunity to respond to your proposed disciplinary action before they are imposed. What a reasonable opportunity is depends heavily upon the situation.</td>
</tr>
<tr>
<td>Signature</td>
<td>The letter must be signed by someone with Appointing Authority.</td>
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**Notes:**

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MODULE 3: DISCIPLINARY ACTIONS

DELIVERING THE PRE-DEPRIVATION LETTER

You have two options for delivering the letter: hand and mail delivery. What are some things you need to consider when choosing each method of delivery?

<table>
<thead>
<tr>
<th>Hand Delivery</th>
<th>Mail Delivery</th>
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Reasonable Response Time

When crafting a pre-deprivation letter, you must give the employee a reasonable opportunity to respond.

How long is a reasonable opportunity?

1. It depends heavily on when the employee is furnished with the letter. Generally, giving the employee seven or more days after they received the letter to respond would almost always be considered reasonable, and giving the employee less than three days to respond would almost always be unreasonable. This means that if you were to mail the letter to the employee, the earliest you should set their response deadline is ten calendar days after you mail it.

2. This does depend on the length of the letter. If you gave an employee a letter with over one hundred pages of facts and allegations attached, you should afford that employee more time to read and respond to the letter than usual.

Did You Know? You should always err on the side of caution with Due Process. It is easier to accept a late response than start the process from the beginning.
CONSIDERING EMPLOYEE RESPONSES

When you receive an employee’s response, you must ensure that the Appointing Authority who signed the pre-deprivation letter reads it. If the employee is able to prove that they did not, the action will be overturned on a procedural defect.

If the employee alleges additional facts or other pertinent information, it should be investigated before moving forward with discipline. Once again, not investigating any additional information is a procedural defect, and can lead to your discipline being overturned.

If an employee admits to additional misconduct in their response to the pre-deprivation letter, you can only include that information by rescinding that pre-deprivation letter and then issuing a new letter with the additional alleged conduct documented in the factual basis of that letter.

CRAFTING THE FINAL DISCIPLINARY LETTER

The final disciplinary letter and pre-deprivation letter should have almost identical content. Complete the sentences to identify major differences between them.

- Instead of ‘proposing’ the action, you are ________________________________

- If the employee responded, you should ________________________________

- You must be specific about ________________________________

- Instead of the response deadline, you must give ________________________________

- You must include a notice stating the employee’s ________________________________ including the ___________________________ and where they can find ________________________________.

You will still need to include the entire factual basis stated in the pre-deprivation letter, and the Appointing Authority must sign the action.
DELIVERING THE FINAL DISCIPLINARY LETTER

You have two options for delivering the letter: hand delivery and mail delivery. You don’t have to give a reasonable opportunity to respond, only notice of the impending action. This means that the effective date of the action may not be before the letter is delivered to the employee.

Notes:

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RESCINDING A FORMAL ACTION

If you decide to no longer move forward with a formal action against an employee, you may attempt to rescind the action. Rescinding the action reverses all it affects, and allows you to essentially hit reset on the entire process. It is most useful when you find procedural defects in your action.

Common Procedural Defects

__________________________________________________________

__________________________________________________________

__________________________________________________________

__________________________________________________________

__________________________________________________________
Requirements to rescind an action

You have a procedural defect, and now you want to rescind the action. What you need to do depends on how far along you are in the disciplinary process.

Before the action becomes effective...
If you find a procedural defect before the effective date of the formal action, then the Appointing Authority may rescind the action under their own power.

After the action becomes effective, before the appeal...
If you find a procedural defect after the effective date of the formal action, but before the employee appeals the formal action, then you can rescind the action with the Director of State Civil Service’s Approval.

After the appeal...
If you find a procedural defect after the employee appeals the formal action, then you can rescind the action with the approval of a Referee or the State Civil Service Commission. The Agency may be liable for Attorney’s fees at this point.

Did You Know? Rescinding an action after its effective date restricts you from increasing the discipline the second time around. If you had to ask someone else to rescind the action, you cannot increase the level of discipline.

Notes:

Appeals

Once the discipline has been imposed, the typical disciplinary process is complete. From here we move into the appeals process.

Unless you are the agency’s attorney, you will not be involved in the day to day handling of the appeal. You may, however, be called on to be a witness at an appeals hearing, so it is important to have a general understanding of the process.
MODULE 3: DISCIPLINARY ACTIONS

APPEALS

Who can file an appeal?

✓ Permanent classified employees who have been subjected to disciplinary action or non-disciplinary removal.

✓ Classified state employees, with or without permanent status, who have been discriminated against in any employment action or decision based on their political or religious beliefs, race, or sex; or adversely affected by a violation of the Civil Service rules and/or Article X of the Louisiana Constitution.

✓ Classified state employees, with or without permanent status, who have been disciplined in a manner that violates a Civil Service Rule or Article.

Notes:

Deadlines for filing appeals

Employees must file their appeal with the Appeals Division of State Civil Service within thirty days of the receipt of the disciplinary or removal letter, unless one of the following is true:

• The agency failed to give the employee a disciplinary letter, or gave it to her/him late. She or he will then have thirty days to appeal after she/he first learned that the action occurred.

• The agency failed to include the required notice of the employee’s right of appeal. She or he will then have thirty days to appeal after she/he first receives her/his right of appeal notice from the agency.

• The disciplinary letter is amended, corrected, modified, etc. The employee then has thirty days to appeal from the receipt of the final revised letter.

For actions other than disciplinary actions and removals, employees must file their appeals within thirty calendar days of when the employee learned that the actions had occurred.
Did You Know? No appeal can be filed more than 365 days after the effective date of the action, whether or not the employee knew about the action.

All appeals must be received by State Civil Service or postmarked by the U.S. Post Office by the due date. An employee filing a grievance within his or her agency does not stop the clock.

If the last day to file is a post office holiday, it is still the last day. There are no extensions.

State Civil Service accepts appeals by fax to (225) 342-8078, or by email to SCS_Appeals@la.gov.

**Appeals**

Prehearing Procedures

**Show Cause** - a notice to the employee that the referee requires additional information to prevent dismissal of the appeal prior to a hearing

**Notice to Agency of Potential Defects in Appeal** - referee requires additional information showing the agency complied with Civil Service Rules and Due Process guarantees in disciplining the employee. Failure to do so results in the employee winning without a hearing.

**Attorney’s Fees** - the award can be up to $1500 in cases where the referee finds the agency acted unreasonably.

Notes:
Disciplinary actions can be reversed by referees for many reasons, but most often they fall into one of the four following categories:

**Procedural Errors**
Procedural errors occur when you do not provide Due Process. If the violation is found on appeal, the disciplinary action will be overturned.

**Lack of Evidence**
This means that did not prove the facts, and/or you cannot link the cause to an impairment of state service.

**Did not Prove Charges**
This means you did not convince the referee that the facts you presented were more likely than not true.

**Penalty Problems**
Penalty issues can arise from prior agency actions, or referees deciding that the discipline is not commensurate with the conduct. Some common issues are:

**Condonement**

**Disparate Treatment/Discrimination**

**Double Jeopardy**

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**Did You Know?** Condoning the action may prevent the Appointing Authority from later taking action based on the misconduct. Condonement by someone other than the Appointing Authority does not affect discipline.

The employee must be truly similarly situated for the defense to apply. Differences in offense, degree of culpability, disciplinary record, employee performance, etc., can justify different treatment.
Did You Know? Double Jeopardy only applies if the first action was a disciplinary action: i.e. a suspension without pay, reduction in pay, demotion, or dismissal. Reversal on procedural defect before the Referee decides the appeal is not subject to Double Jeopardy.

Activity: Mock Trial

Read all case documents to prepare for your role in the case.

Hearings

Tips from current State Civil Service referees.

Notes:

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