

NOTICE OF PROPOSED REGULATION AMENDMENT

Date: September 18, 2020

REGULATION TITLE:

Disciplinary Actions – University Support
Personnel System

REGULATION NO.:

UCF-3.0191

SUMMARY OF REGULATION AMENDMENT: This regulation, which sets out certain disciplinary concepts related to USPS employees, is amended to implement provisions of the university's new Title IX Grievance Policy, which was adopted to comply with recent Federal Title IX regulations. First, language is added to clarify that in cases involving Title IX Sexual Harassment appropriate discipline will be determined through the procedures of the Title IX Grievance Policy. Second, Title IX Sexual Harassment, as defined in the new Title IX regulations, is added as a standard of conduct the violation of which may lead to disciplinary action.

AUTHORITY: BOG Regulation 1.001

NAME OF PERSONS WHO INITIATED PROPOSED REGULATION AMENDMENT:

Maureen Binder, Associate Vice President and Chief Human Resources Officer

COMMENTS CONCERNING THE PROPOSED REGULATION AMENDMENT SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. The comments must identify the regulation you are commenting on.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION AMENDMENT IS:

Regulations Administrator
4365 Andromeda Loop N.
Millican Hall, Suite 360
Orlando, FL 32816-0015
Phone: (407) 823-2482
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FULL TEXT OF THE PROPOSED REGULATION AMENDMENT:

UCF-3.0191 Disciplinary Action - ~~USPS~~University Support Personnel System.

(1) Scope and Purpose.

- (a) This regulation applies to all University Support Personnel System ~~(USPS)~~ employees of the university with regular status. The provisions of this regulation

are subject to applicable provisions of collective bargaining agreements. Employee discipline is an action that is to be undertaken with care, objectivity, and with full consideration of the rights and interests of both the employee and the university.

- (b) The university subscribes to the principle of the use of discipline to correct employee conduct and behavior. Such discipline will normally be issued in a progressive manner, dependent upon the facts and circumstances of each case. Penalties will be imposed, dependent upon the seriousness of the offense and any aggravating or mitigating circumstances, or as otherwise required by law.
- (c) Probationary Employees: The probationary period shall be a working-test period. USPS employees must successfully complete a probationary period upon initial hire before they earn regular status; USPS employees must also complete a probationary period upon rehire to a USPS position. For purposes of discipline, regular status refers to an employee's status in the USPS and not a specific position.
 - Employees serving a probationary status in the USPS appointment may be dismissed during this probationary period without the use of the standards set forth in this regulation and without the right of appeal.

(2) Guidelines on Employee Discipline. The immediate supervisor has the primary responsibility for taking or requesting disciplinary action against an employee, but should consult with their higher level leadership. Human Resources has the responsibility of providing guidance to the various departmental units with regard to the administration of disciplinary actions and for assuring that they are accomplished in accordance with USPS regulations, university policies and guidelines, and any applicable collective bargaining agreement. In cases involving Title IX sexual harassment as defined in University Regulation 3.001, appropriate discipline will be determined by the decision-maker following a live hearing according to the procedures located in the University's Title IX Grievance Policy, UCF 2-012; such discipline will then be administered by the appropriate supervisor and in keeping with other applicable university procedures.

(3) Delegation of Authority. Discipline may only be administered by the supervisor who has been delegated the authority to do so. This delegation of authority varies with the severity of the disciplinary action and is identified in the following table:

Disciplinary Action	Authority
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Oral Reprimand	Employee's immediate supervisor or higher-level supervisor
Written Reprimand	Employee's immediate supervisor or higher-level supervisor with the approval of the department head
Suspension, Discharge	The dean, director or department head shall arrange for a review of the proposed action by the Chief Human Resources Officer, or his/her designee. If the proposed action is approved, the Chief Human Resources Officer, or his/her designee, will implement the suspension/discharge.

(4) Types of Disciplinary Action.

- (a) Oral Reprimand – Involves a discussion between the supervisor and the employee regarding the infraction with an emphasis on correcting the employee's behavior. A written confirmation of an oral reprimand shall be kept in the employee's local departmental file.
- (b) Written Reprimand – For more serious or repeated cases of infractions, the supervisor, with approval of the second level supervisor, will counsel the employee as to the correct and expected behavior as well as record the circumstances of the violation in memorandum form, giving the original to the employee and maintaining a copy in either the local departmental file or noting that a copy will be sent to the employee's official personnel file housed in Human Resources. Written reprimands resulting from an official university investigation must be submitted to the official personnel file housed in Human Resources.
- (c) Suspension – The suspension of an employee shall normally be based on the recommendations of the supervisor and shall be subject to the approval of the dean, director or department head and the Chief Human Resources Officer or his/her designee to ensure consistency of action throughout the institution. The Chief Human Resources Officer or his/her designee will issue all suspensions. A written reprimand in lieu of suspension represents a suspension level disciplinary action, but one where the action is documented as a reprimand and the employee continues to work and collect wages.
- (d) Discharge – When less severe actions fail in correcting an employee's job-related behavior, or when the offense requires immediate separation from employment, a discharge action should be taken. The supervisor shall normally recommend the

action, and it shall be subject to the approval of the dean, director or department head and the Chief Human Resource Officer or ~~his/her~~ designee, who shall issue the discharge. If authorized by the Chief Human Resources Officer or ~~his/her~~ designee, an employee may be placed on administrative leave with or without pay pending an investigation, which may be continued between the notice of proposed disciplinary action and the date of final action. Employees who are discharged for disciplinary reasons will not be eligible for rehire.

(5) Standards for Disciplinary Actions. Included herein are standards for the administration of disciplinary actions for various types of offenses. The following list is not all-inclusive, and the disciplinary action selected for a particular offense will be chosen based on the facts of the specific situation taking into consideration any extenuating circumstances. Decisions regarding disciplinary action, including the level of discipline to impose, will consider the employee's prior disciplinary record excluding: any written reprimand that is more than two years old and any oral reprimand that is more than one year old. Such reprimands will not be used for escalating the level of disciplinary action but can be referenced as background. Suspensions and written reprimands in lieu of suspension can be used indefinitely, with no time limit whatsoever. These standards do not preclude the imposition of more or less severe penalties depending upon all circumstances surrounding a particular incident.

- (a) Absence Without Authorized Leave. The failure to secure approval for an absence from work during the established shift or work period. Included under this standard are absences that are not reported to management in accordance with departmental or university guidelines.
 - 1. First occurrence: Written reprimand.
 - 2. Second occurrence: Suspension.
 - 3. Third occurrence: Discharge.

Provided, however, that the failure to secure approval for an absence of two or more consecutive days shall be considered a second occurrence; and the failure to secure approval for an absence of three or more consecutive days shall be considered a third occurrence. This standard shall also apply to employees who fail to return to work as specified in an approved leave of absence.

- (b) Abuse of Sick Leave. Falsification by an employee of a notification of absence due to personal illness, injury or exposure to contagious disease.

1. First occurrence: Suspension or discharge.
 2. Second occurrence: Discharge.
- (c) Possession or Use of a Deadly Weapon or a Dangerous Material. Possession or use of firearms, fireworks of any description, explosives, chemicals which are disruptive, explosive, or corrosive in nature, or any weapon other than a common pocket-knife.
1. First occurrence: Suspension or discharge.
 2. Second occurrence: Discharge.
- (d) Damage or Destruction of University Property or Equipment. The actual or attempted damage, destruction, or careless operation of university property or equipment which may or may not result in personal injury. (If personal injury does result, more severe discipline may be imposed.) Sabotaging equipment or facilities will result in discharge.
1. First occurrence: Written reprimand to discharge.
 2. Second occurrence: Suspension or discharge.
 3. Third occurrence: Discharge.
- (e) Conduct Unbecoming a Public Employee. Any act or acts on or off the job, that renders an employee ineffective within the university, discredits the university, affects the ability for acceptance by others, or poses a threat to the safety and well-being of the university community. Such conduct includes, and is not limited to, use of position, authority, or access to university confidential information to attempt to benefit themselves or others; any act or acts inconsistent with university values; failing to uphold the standards of honesty, integrity, and impartiality; or any prohibited act or acts set forth in the university's *Prohibition of Discrimination, Harassment and Related Interpersonal Violence Policy*.
1. First occurrence: Written reprimand to discharge.
 2. Second occurrence: Discharge.
- (f) Conviction of a Misdemeanor or Felony. When an employee is convicted of a misdemeanor or felony as a result of a crime committed on or off the job and that conviction results in a negative effect on the employee's ability or availability to perform the duties of the job whether immediate or in the future.

1. First occurrence: Suspension or discharge.
 2. Second occurrence: Discharge.
- (g) Absenteeism. The university has a right to expect that employees will be available to perform work with a reasonable degree of regularity and to conduct their personal business using accrued leave without the need to resort to the use of approved leave without pay or unscheduled absences. If there is a pattern of absence by the employee, such as consistent absence on the day preceding or following the employee's regular days off, absence on the same day of each week or each month, or absences that occur with such frequency as to constitute a hardship on the office/department, these absences may be considered excessive.
1. First occurrence: Oral reprimand.
 2. Second occurrence: Written reprimand.
 3. Third occurrence: Suspension.
 4. Fourth occurrence: Discharge.
- (h) Tardiness. The failure to report to work at an established time at the beginning of the work shift, or the late return to work at the established time after lunch or rest period.
1. First occurrence: Oral reprimand.
 2. Second occurrence: Written reprimand.
 3. Third occurrence: Suspension.
 4. Fourth occurrence: Discharge.
- (i) Falsification of Records. The misrepresentation or omission of any facts, whether verbal or written, with the intent to defraud or otherwise mislead.
1. First occurrence: Written reprimand to discharge.
 2. Second occurrence: Discharge.
- (j) Fighting. A physical assault on or against another person.
1. First occurrence: Written reprimand to discharge.
 2. Second occurrence: Discharge.
- (k) Horseplay. Actions which are intended to be mischievous or prankish rather than malicious. If personal injury results, more severe disciplinary action up to and including suspension or discharge will be considered on the first occurrence.

1. First occurrence: Oral reprimand.
 2. Second occurrence: Written reprimand.
 3. Third occurrence: Suspension.
 4. Fourth occurrence: Discharge.
- (l) Insubordination. The unwillingness or refusal to comply with a direct order or any established work assignment of the immediate supervisor or higher-level supervisor. This includes, but is not limited to, the refusal to carry out an assignment, refusal to work overtime, willful delay in carrying out an assignment, refusal to comply with a university-mandated fitness for duty evaluation and/or reasonable suspicion drug test, or responding with defiance to a reasonable work order or assignment issued by the immediate supervisor or higher level supervisor.
1. First occurrence: Suspension.
 2. Second occurrence: Discharge.
- (m) Leaving Work Station Without Authorization. The unauthorized absence by an employee from the work station or duty location during the established work period or the leaving of a work station for a lunch or rest period without being properly relieved where that station must be maintained during such period.
1. First occurrence: Written reprimand to suspension.
 2. Second occurrence: Suspension.
 3. Third occurrence: Discharge.
- (n) Loafing. The continued idleness or non-productiveness during working hours which diverts the employee from performing assigned tasks. This includes wasting time, engaging in idle talk or gossip, conducting personal business, or using business phone or computers for personal reasons.
1. First occurrence: Oral reprimand to written reprimand.
 2. Second occurrence: Written reprimand to suspension.
 3. Third occurrence: Suspension to discharge.
 4. Fourth occurrence: Discharge.

- (o) Misuse of University or University Controlled Property or Equipment. The unauthorized use of any university or university-controlled property or equipment for any reason other than for official university business.
 - 1. First occurrence: Written reprimand to discharge.
 - 2. Second occurrence: Discharge.
- (p) Neglect of Duty. Carelessness in omission of, or inattention to, the performance of assigned duties and responsibilities resulting in a negative consequence to the department. Negligence is synonymous with carelessness and signifies lack of care, caution, attention, diligence, or discretion.
 - 1. First occurrence: Written reprimand to discharge.
 - 2. Second occurrence: Discharge.
- (q) Abuse of Intoxicants. Being under the influence of, being in possession of, the sale of, or the distribution of any controlled substances or illegal drugs while on duty; or violating the University's Drug-Free Workplace/Drug-Free Schools Policy. (This provision does not extend to prescribed use of prescription medications.)
 - 1. First offense: Suspension to discharge.
 - 2. Second offense: Discharge.
- (r) Rudeness to Students, Staff or the Public. Impolite, discourteous, unprofessional, or uncooperative language or actions towards students, staff, or the public.
 - 1. First occurrence: Oral reprimand.
 - 2. Second occurrence: Written reprimand.
 - 3. Third occurrence: Suspension.
 - 4. Fourth occurrence: Discharge.
- (s) Sexual Harassment. Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of employment, (2) submission to or rejection of such conduct by an individual is used as basis for employment or personnel decisions, or (3) when such conduct has the purpose or effect of substantially interfering with performance of work or creating an intimidating, hostile, or offensive working environment as determined by the university's Office of Institutional Equity.

1. First occurrence: Written reprimand to discharge.
2. Second occurrence: Discharge.

(t) Title IX Sexual Harassment. Title IX Sexual Harassment is a form of sex discrimination specifically defined under Title IX regulations. Title IX Sexual Harassment is defined as conduct on the basis of sex that occurs in a University education program or activity against a person located in the United States and that satisfies one or more of the following: (i) An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo); (ii) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity (i.e., hostile environment); or (iii) Sexual assault, dating violence, domestic violence, and stalking (as defined by the Jeanne Clery Act).

1. First occurrence: Written reprimand to discharge.
2. Second occurrence: Discharge.

(ut) Sleeping While on Duty. The failure of an employee to remain awake while on duty during the established work shift.

1. First occurrence: Suspension.
2. Second occurrence: Discharge.

(v†) Use of University equipment or work time to view pornography or explicitly nude images for non-business reasons.

1. First occurrence: Suspension to discharge.
2. Second occurrence: Discharge.

(w‡) Theft or Stealing. The unauthorized taking of any property or service.
First occurrence: Discharge.

(x‡) Threatening and/or Abusive Language. The use of language which is threatening, profane, vulgar, or abusive.

1. First occurrence: Written reprimand to discharge.
2. Second occurrence: Discharge.

(y*) Violation of Safety Practices. The failure to adhere to or follow established safety rules or requirements. This includes the failure to report an accident of an employee

involving personal injury, failure to wear safety equipment, and the performance of any unsafe action.

1. First occurrence: Written reprimand to discharge.
2. Second occurrence: Discharge.

(~~zy~~) Willful Violation of a Provision of Law or Board of Governors or University Regulation. The deliberate failure to abide by Board of Governors or University Regulations or to follow the statutes governing employment by the State of Florida. This may include, but is not limited to giving or accepting a bribe, discrimination in employment, or illegal campaigning.

1. First occurrence: Written reprimand to discharge.
2. Second occurrence: Discharge.

(~~az~~) Strike or Concerted Activity. Instigating or supporting in any manner a strike. A strike is defined by Florida Statute as: The concerted failure of employees to report for duty; the concerted absence of employees from their positions; the concerted stoppage of work by employees; the concerted submission of resignations by employees; the concerted abstinence in whole or in part by any group of employees from the full and faithful performance of the duties of employment with a public employer [such as the University] for the purpose of inducing, influencing, condoning, or coercing a change in the terms and conditions of employment or the rights, privileges, or obligations of public employment, or participating in a deliberate and concerted course of conduct which adversely affects the services of the public employer; the concerted failure of employees to report for work after the expiration of a collective bargaining agreement; and picketing in furtherance of a work stoppage. The term “strike” shall also mean any overt preparation, including but not limited to, the establishment of strike funds with regard to the above activities.

First occurrence: Discharge.

Authority: BOG Regulation 1.001. History—New 1-10-82, Amended 10-26-82, 12-29-88, Formerly 6C7-3.191, Amended 3-2-94, 4-23-03, 7-26-04; Formerly 6C7-3.0191, Amended 6-11-09, Amended 1-24-19, _____-20.

