

Office of Labor Relations


Implementing the 1B.1 Decision

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Decision-maker's Responsibilities

- Reviews investigative report
- Decides if misconduct occurred
- Determines appropriate action
- Implements appropriate action
- Participates in appeal and/or grievance process

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Who Makes the Disciplinary Decision?

Someone who:

- Accepts the responsibility
- Lacks bias or ill-will
- Has the authority (direct or delegated)
- Will be able to testify and is a good witness

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Analyzing the Investigation Report

- Read the allegation or complaint to see what the report should cover
- Review the elements of the offense
- Read the report 3 or 4 times
- Do the facts in the report completely support each element of the offense? (if not, send it back)
- Are there inappropriate conclusions in the report? (if yes, send it back)

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Analyzing the Investigation Report

- Are the witnesses, complainant and the accused credible? Is there corroborating evidence for their accounts?
- How did they react or behave after the incident?
- Did they talk to others or write about the conduct soon after it occurred?
- Has the accused been found to have engaged in similar behavior?

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Reviewing the Investigative Report

Determine if additional steps should be taken before making a decision

- Additional investigative measures
- Request additional information, e.g., written response from complainant and or respondent
- Meeting complainant, respondent or other involved individuals

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Meeting Complainant, Respondent or Others

- Tennesen Notice
- Non-Bargaining Unit Employee Representation Rights
 - May be accompanied by a support person
- Bargaining Unit Employee Representation Rights (AKA Weingarten Rights)
 - Per Collective Bargaining Agreement (CBA)

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Meeting Complainant, Respondent or Others

Weingarten Rights

- Is the bargaining unit employee being questioned in connection with an investigation which could lead to discipline of that employee?
- If so, the employee has a right to union representation
- Check CBA representation rights provisions

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Deciding if Misconduct Occurred

- Did discrimination or harassment occur in violation of Policy 1B.1?
- Did other misconduct occur?

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Deciding if Misconduct Occurred

Burden of Proof

- 99% Beyond a reasonable doubt (criminal court matters)
- 75% Clear and convincing evidence (civil court matters)
- 51% Preponderance of evidence; e.g., more likely than not (most public institutions)
- <51% Good faith in investigation/reasonable conclusion (most private employers)

* Check the relevant CBA

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Deciding if Misconduct Occurred

Gather all information and highlight the important points

What do the important points show or prove?

- If not relevant, put it aside.
- If relevant, is it credible?

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Determine Appropriate Action

- Take corrective action for 1B.1. violations
- Refer non-1B.1 work problems or student misconduct to appropriate resource
- Complainant's preference is informative but not controlling

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Determining Appropriate Action

- Action must be sufficient to:
 - Ensure harassment will stop and not recur
 - Send clear messages that policy is meaningful and applies to everyone
- Factors
 - Severity of conduct
 - Degree of harm to complainant and others
 - Has the conduct potentially created a class of complainants?
 - Has offender a history of alleged behavior?

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Determine Appropriate Action

- Progressive (or corrective) discipline is designed to correct an employee's behavior so that the misconduct does not occur or is not repeated
- For egregious acts of misconduct, progressive discipline need not be strictly followed
- Review CBA disciplinary provisions

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Determine Appropriate Action

Just Cause

- Did employee know and understand the consequences of violating the rule or standard?
- Was the violated rule or standard reasonable?
- Was the pre-disciplinary investigation fair and objective?
- Did the investigation result in proof of violation of the rule or standard?
- Was employee treated consistently with similarly situated employees?
- Was the penalty appropriate for the offense?

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Determine Appropriate Action

Penalty Assessment Factors

- Aggravating Circumstances
- Mitigating Circumstances

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Risk Assessment Prior to Taking Disciplinary Action

- Has the employee engaged in protected or concerted activity?
- Is the employee on or recently taken a job protected leave?
- Is the employee a member of a protected class?
- Has the decision maker made inappropriate statements about the employee?

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Determine Appropriate Action Employee

Non-disciplinary options

- Informal process (supervisory coaching, training, letter of expectation, alternative dispute resolution)
- Reassignment or administrative leave

Types of progressive discipline*

- Oral reprimand
- Written reprimand
- Suspension (with or without pay)
- Vacation reduction per CBA (e.g., MAPE, MMA, MSUAASF)
- Demotion
- Discharge

*Check the relevant CBA

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Determine Appropriate Action

Students

Non-disciplinary options

- Informal process (coaching or counseling, training, alternative dispute resolution)

Types of progressive discipline

- Verbal warning
- Suspension
- Expulsion

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Implement Appropriate Action

Components of Disciplinary Letter

- Level of discipline
- Reason(s) for discipline
- Past warnings and/or discipline the employee has received
- Opportunity for Loudermill meeting, when appropriate

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Implement Appropriate Action

Components of Disciplinary Letter – cont'd.

- Corrective action required of employee
- Referral to EAP, if your practice
- Consequences of failure to measurably improve
- Employee's appeal rights

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Implement Appropriate Action

Distribution of disciplinary letter

- Employee
- Personnel file
- Union? Check CBA

Service of disciplinary letter in person or via mail

- Check CBA if certified mail required

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Implement Appropriate Action

Follow up to Discipline (by supervisor)

- Work with employee to correct deficiencies
- Give employee a written plan of correction? It should be specific and include a timetable for improvement.
- Monitor employee's progress
- Document changes or continued problems
- Follow up with EAP referral, if your practice

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Available Appeal Processes

Procedure 1B.1.1 part 8

and/or

Collective Bargaining Agreement

and/or

Veteran's Preference Hearing (classified discharge
and demotion only)

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THANK YOU

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