

Effective: February 18, 2020
Reviewed: February 6, 2020
Office: Human Resources
Topic No.: 250-012-011-j



Department of Transportation

DISCIPLINARY ACTIONS

AUTHORITY:

Sections 20.23(3)(a) and 334.048(3), Florida Statutes (F.S.)

REFERENCE:

Sections 110.107, 110.201(2), 110.227, 110.403(1)(a), 110.604, and Part III of Chapter 112, F.S.; and Rules 60L-34.0071(3)(f), 60L-32, 60L-36, -and 60L-40, Florida Administrative Code (F.A.C.), and FDOT Employee Handbook.

STATEMENT OF POLICY:

It is the policy of the Florida Department of Transportation (Department) to establish a disciplinary process.

SCOPE:

This procedure applies to all Department employees.

PROCEDURE:

1. THE PURPOSE OF DISCIPLINE IS TO:

- Correct improper and unacceptable conduct;
- Safeguard a wholesome and productive work environment;
- Maximize employee productivity; and
- Ensure a consistent, effective, and efficient administration of the Department's workforce and resources.

2. TYPE OF DISCIPLINARY ACTIONS BY EMPLOYEE CLASS

It is the responsibility of each manager or supervisor who is authorized to take disciplinary action to ensure that such action is appropriate. To achieve this objective, every proposed disciplinary action must be first discussed with and approved by a Department Director level employee, or designee, the Department's Human Resources Office (HRO), and the Office of the General Counsel (OGC). **Only after this process is followed, completed and approved will HRO provide notification to the manager or supervisor that they may meet with the employee to issue the disciplinary action.**

The Department performs an array of functions and delivers a variety of different services and products. Some employees perform routine tasks in a safe office environment, while others may engage in unpredictable situations under demanding circumstances. Breach of a particular standard in one context might be less serious, while in another it might result in the loss of life or property. Ultimately, the Department has the primary authority and responsibility for managing the conduct of its employees. If the Department deems it necessary to discipline an employee for performance or conduct violations, the Department may impose appropriate discipline up to and including dismissal, taking into account the individual facts and circumstances.

2.1 Career Service employees who have **not** satisfactorily completed a one-year probationary period in current position, may be disciplined up to and including dismissal.

2.2 Career Service employees who have attained permanent status in their current position (satisfactory completion of a one-year probationary period) may be disciplined *for cause only*, which shall include, but not be limited to the ***Disciplinary Standards*** contained in ***Rule 60L-36.005, F.A.C.***

2.3 Employees in the Senior Management Service (SMS) and Selected Exempt Service (SES) serve at the pleasure of the Secretary of Transportation (agency head) and are subject to suspension, dismissal, reduction in pay, demotion, involuntary transfer, or other personnel actions at the Secretary's discretion without the right of appeal.

2.4 The types of disciplinary actions applicable to all employees include:

- Written Reprimand
- Suspension
- Demotion and/or Reduction in Pay
- Involuntary Transfer
- Dismissal

3. AUTHORITY FOR DISCIPLINARY ACTIONS

3.1 Career Service Employees: The Secretary hereby delegates to the managers and supervisors listed below the authority to take disciplinary actions involving Career Service

employees after receiving approval from HRO, as described above. The HRO is available for direction and assistance.

A. Any Selected Exempt Service (SES) supervisor may take the following action within their area of responsibility:

- Written reprimand.

B. Any Traditional SES manager who reports directly to a director or higher level manager of the Department (contact HRO for clarification) may take the following actions within their area of responsibility:

- Written Reprimand
- Suspension up to and including a two work week suspension
- Dismissal of any subordinate probationary Career Service or Other Personal Services (OPS) employee

A Traditional SES manager, or designee, may act as Conference Officer for Predetermination Conferences for suspension up to two work weeks.

C. Any Senior Management Services (SMS) manager of the Department may take the following actions within their area of responsibility:

- Written Reprimand
- Suspension
- Involuntary Transfer
- Demotion and/or Reduction in pay
- Dismissal of any subordinate OPS or subordinate Career Service employee

An SMS Manager, or designee, may act as Conference Officer for Predetermination Conferences for suspensions and dismissals.

3.2 SES and SMS: Any discipline or discharge action involving an SMS employee or Traditional SES employee who reports directly to a director or higher level manager of the Department must be taken by the Secretary except as delegated below. The HRO is available for direction and assistance.

A. The Assistant Secretaries, and the Chief of Staff are delegated the authority to discipline, and dismiss SES employees within their respective areas of authority.

B. The District Secretaries and Turnpike Enterprise Executive Director are delegated the authority to discipline, and dismiss Non-Traditional SES employees within their respective areas of authority.

3.3 All settlement agreements resolving adverse personnel actions must be reviewed by the Director of Human Resources and OGC or their designees, prior to making any oral or written commitment.

3.4 No decision or agreement may contain a provision authorizing the concealment of information relating to a disciplinary action or other adverse employment decision from a personnel file. A disciplinary action or other adverse employment decision may be marked '**not valid**' and reversed, but it cannot be physically removed from the employee's official personnel file unless so ordered by a court.

4. ADMINISTERING DISCIPLINE

4.1 JOB RELATED DETERMINATION

The *Disciplinary Standards* contained in **Rule 60L-36.005, F.A.C.** generally address offenses (violations) that occur while employees are at work and are considered job related. However, certain offenses may occur while employees are on their own time or away from the job which may adversely affect the employee's job performance or the Department's ability to carry out its mission.

4.2 EMPLOYEE COUNSELING

In cases involving inadequate work performance, the employee may be counseled and given an opportunity to correct his or her behavior or performance prior to applying discipline.

Employee counseling is not a disciplinary action; nor is it a required prerequisite to a disciplinary action. It may however, be the most appropriate way to handle a minor job-related problem. Refer to **Section 9, Employee Counseling Sessions** below for guidance.

4.3 EMPLOYEE ASSISTANCE PROGRAM

When the employee's performance or conduct on or off the job appears to require professional counseling or assistance, the employee may be referred to the Employee Assistance Program (EAP). This may be done independently or in conjunction with employee counseling or discipline. Contact the Human Resources Manager in your local HRO or the Employee Relations Manager in Central Office for guidance.

4.4 INVESTIGATORY INTERVIEW

A. An investigatory interview (disciplinary investigation) is used by the manager or supervisor to determine whether the employee committed the alleged violation. The purpose of the disciplinary investigation should be explained to the employee at the beginning of the meeting.

B. An employee who has attained permanent status in the Career Service in their current position and is covered by a collective bargaining (union) agreement may request union

representation to be present only to advise and assist the employee during any disciplinary investigation interview. Contact the Human Resources Manager in your local HRO or the Employee Relations Manager in Central Office for guidance.

4.5 ADMINISTRATIVE LEAVE FOR FORMAL INVESTIGATION

When an employee is under formal investigation by the Department for an alleged violation of a rule or statute for which dismissal is a penalty and the employee's absence from the work location is essential to the investigation, the employee may be placed on paid administrative leave by the Secretary of Transportation, or designee. Such use of paid administrative leave must also be in accordance with the provisions of **Rule 60L-34.0071(3)(f), F.A.C.**

All requests for use of administrative leave must be submitted through the local HRO who will notify Central HRO. Central HRO will ensure required information is reported in compliance with the rule.

4.6 DETERMINING CAUSE

Disciplinary action of a Career Service employee, who has satisfactorily completed a one-year probationary period in their current position, must only be taken "**for cause**". Managers and supervisors are responsible for identifying instances of unacceptable behavior and for taking appropriate action. Before taking corrective action, managers and supervisors must have evidence that the employee failed to comply with a standard or expectation. The supervisor or manager (delegated disciplining authority) should review the alleged violation of the **Disciplinary Standards** to determine the following:

- A. Prior Notice - Were the **Disciplinary Standards** contained in **Rule 60L-36, F.A.C.** made available to the employee? Was the employee aware of the specific policies and procedures relating to the alleged violation? In cases of poor performance, was the employee aware of the performance standards or expectations?
- B. Reasonably Related Requirements - Are the work standards, procedures or rules, under which the employee may be disciplined, related to the employee's job?
- C. Proof of Misconduct - Was the alleged violation investigated? Did the findings establish that the **Disciplinary Standards** were violated and/or that performance standards were not followed?
- D. Appropriateness of Proposed Discipline - Is the severity of the proposed disciplinary action reasonably related to the seriousness of the offense.
- E. Timeliness of Proposed Discipline - Supervisors and managers are expected to make a good faith effort to initiate any disciplinary action within sixty (60) calendar days of actual knowledge of the event giving rise to the disciplinary action.

4.7 NOTIFICATIONS REQUIRED FOR CAREER SERVICE EMPLOYEES

A. Once it has been determined that discipline against the employee is necessary, it is important to ensure the applicable procedure is followed and the employee is properly notified. A Career Service employee's appeal and review rights differ depending on whether the employee has attained permanent status in his or her current position.

1. Although probationary employees have no administrative recourse to disciplinary actions, such actions should be handled in a manner consistent with Department practice. Probationary employees, who have failed to meet their performance standards and are dismissed during their probationary period should be advised that they "failed to satisfactorily complete the probationary period" and the "action is not appealable to the Public Employees Relations Commission nor grievable under any collective bargaining (Union) contract." Note that such action must be taken while the employee is still serving the probationary period.
2. Promoted Probationary Employees – A Career Service employee who is serving a probationary period in a position to which he or she was promoted may be removed from that promotional position at any time during the probationary period for failure to meet performance standards. The employee must be returned to his or her former position, or a comparable position, if such a position is vacant. If such a position is not available, the delegated disciplining authority shall make a reasonable effort to retain the employee in another vacant position before considering dismissal. Such reasonable efforts to retain the employee in another vacant position must be documented and retained as a part of the appointment or dismissal paperwork, whichever is appropriate. This subsection does not apply to terminations for violations of the Department's Disciplinary Standards of Conduct.
3. Permanent Employees - Any Career Service employee who has permanent status in his or her current position must be notified of the disciplinary action in writing. The employee must also be notified of the applicable review or appeal rights.

5. WRITTEN REPRIMANDS

A written reprimand is the least severe type of disciplinary action, and as such, its use should be compatible with the severity of the violation. The primary purpose of a written reprimand is to officially notify and inform the employee:

- Of specific performance issues and /or violations of the ***Disciplinary Standards*** in writing;
- That such performance or behavior is unacceptable; and
- That more severe disciplinary action may result if the performance issues are not resolved and/or the violation recurs.

5.1 PREPARATION

If it is determined by the supervisor or manager that an employee's conduct and/or performance warrants an official written reprimand, with the approval of a Department Director level employee or designee or higher, the delegated disciplining authority shall consult with his or her local HRO to prepare the official written reprimand:

A. Concisely relay or provide an account of the facts and corresponding dates giving rise to the violation and/or poor performance;

B. Communicate precisely what corrective action(s) he or she is required to take;

Once written, the supervisor or manager will submit the proposed document to HRO for review and discussion, approval by the OGC, and final approval by the Director of Human Resources, or designee.

5.2 MEETING

The meeting with the employee shall be conducted in private and the manager/supervisor shall verbally inform the employee that he or she is receiving an official written reprimand. The employee shall be given the opportunity to read the official written reprimand in the manager's or supervisor's presence. The manager or supervisor and the employee may discuss any points of the written reprimand which are not clear to the employee (Refer to **Section 9.2 Conducting an Employee Counseling Session**).

The employees understanding of the contents of the written reprimand and the expected corrective action required on the employee's part should be confirmed by the manager or supervisor. Further, the manager or supervisor should verbally state that a recurrence of a similar or future violation may result in more severe disciplinary action. The manager or supervisor shall provide the employee with the signed original written reprimand and ensure that a copy is forwarded to the appropriate HRO for inclusion in the employee's official personnel record.

6. SUSPENSION, REDUCTION IN PAY, DEMOTION, INVOLUNTARY TRANSFER OR DISMISSAL OF CAREER SERVICE EMPLOYEES

6.1 SUSPENSION

Suspension is a more severe type of disciplinary action than a written reprimand and its use must be compatible with the severity of the violation. A suspension may be administered as the next step following a written reprimand or as the appropriate discipline for the first occurrence of a serious violation of the **Disciplinary Standards**. Consult HRO to ensure consistency with Department practices in the level of suspension proposed.

"Suspension" is defined as a disciplinary action taken by the Department against an employee to temporarily relieve the employee of his or her duties and place him or her on leave without pay, per **Section 110.107, F.S.** Only employees covered by American Federation of State,

County and Municipal Employees (AFSCME) may opt to have leave deducted in lieu of suspension without pay.

Any suspension of an employee must be in blocks of full work days or work weeks. Employees covered by AFSCME who have leave deducted in lieu of serving a suspension without pay will have a suspension action reflected in People First.

6.2 REDUCTION IN PAY

"Reduction in Pay" is defined as a discretionary action taken by the Department that reduces an employee's base rate of pay when such reduction is not required by **Rule 60-L, F.A.C.** A Career Service employee with permanent status in their current position may receive a reduction in pay as a form of disciplinary action.

The following actions shall **not** constitute a reduction in pay:

- Removal of salary additives;
- Actions to correct overpayments resulting from erroneous application of the **Florida Statutes**, legislative appropriation, **Rule 60L-32.0013, F.A.C.**, and Department pay procedures; or
- Salary adjustments agreed to in lieu of a workforce reduction.

6.3 DEMOTION

"Demotion" is defined as changing the classification of an employee to a broadband level having a lower maximum salary; or the changing of the classification of an employee to a broadband level having the same or a higher maximum salary but a lower level of responsibility, per **Section 110.107, F.S.** This type of disciplinary action may be used to remove an employee from their broadband level when:

- The employee fails to meet performance standards;
- The employee seriously diminishes his or her own work effectiveness or productivity, or the Department's ability to carry out its programs; or
- Other reasons constituting cause.

A. For specifics regarding how to document the employee's unsatisfactory level of work, supervisors should contact his or her District HRO Manager and/or the Employee Relations Manager.

B. Upon demotion, an employee's base rate of pay cannot exceed the maximum of the salary range for the broadband level to which the employee is being demoted. Decreasing the employee's base rate of pay to the maximum of the pay range of the lower broadband level shall not constitute a "reduction in pay."

6.4 INVOLUNTARY TRANSFER

“Transfer” is defined as moving an employee from one geographical location to a different geographical location more than 50 miles from the employee’s current work location, per **Section 110.107(32), F.S.** A Career Service employee with permanent status in his or her current position may be involuntarily transferred to a different geographic location of more than 50 miles as a form of disciplinary action, in accordance with **Section 110.227(5)(a), F.S.**

6.5 DISMISSAL

“Dismissal” is defined as a disciplinary action taken by the Department against an employee resulting in termination of his or her employment, per **Section 110.107(6), F.S.** **Dismissal** is the most severe type of disciplinary action that may be imposed on an employee. Dismissal may be imposed as next step following lesser form(s) of discipline or as the appropriate discipline for the first occurrence of a very serious violation of the **Disciplinary Standards.**

7. COMPONENTS OF A SUSPENSION, REDUCTION IN PAY, DEMOTION, INVOLUNTARY TRANSFER OR DISMISSAL ACTION

There are three components to disciplinary actions involving a Career Service employee with permanent status in his or her current position:

- Notice of Intent Letter;
- Predetermination Conference; and
- Final Action Letter

Each of these components has specific statutory and collective bargaining requirements, including time frames and procedures. All of the requirements must be followed when administering a suspension, reduction in pay, demotion, involuntary transfer, or dismissal action.

Career Service employees who do **not** have permanent status in their current positions serve at the pleasure of the Secretary and are subject to suspension, reduction in pay, demotion, involuntary transfer, or dismissal actions at the discretion of the Secretary, or designee. Such disciplinary actions are exempt from the notice requirements of this procedure and the provisions of **Section 110.227, F.S. and Chapter 120, F.S.**

7.1 GENERAL REQUIREMENTS

If the supervisor or manager determines that an employee's failure to abide by the **Disciplinary Standards** warrants a suspension, reduction in pay, demotion, involuntary transfer, or dismissal action and extraordinary circumstances do **not** exist (refer to **Section 8,** below), the delegated disciplining authority shall ensure the following:

- A. The ***Intent Letter*** includes all of the requirements listed in **Section 7.2, *Intent Letter Process***
- B. If requested by the employee, the Predetermination Conference is scheduled and held prior to the proposed disciplinary action;
- C. The employee's response, or lack of response, is considered prior to the final decision;
- D. No additional charges are added to the ***Final Action Letter*** that were not included in the ***Intent Letter***;
- E. The Department's ***Final Action Letter*** is hand-delivered or sent to the employee by certified, return receipt mail; and
- F. Compliance with the provisions of **Section 110.227(5), F.S.**, and all of the appropriate sections of this procedure.

7.2 INTENT LETTER PROCESS

- A. Except in extraordinary situations (Refer to **Section 8, *Suspension or Dismissal in Extraordinary Situations***), the employee shall receive written notice of the proposed suspension, reduction in pay, demotion, involuntary transfer, or dismissal action no less than 10 calendar days prior to the date the proposed disciplinary action is intended to be taken.
- B. The written notice shall consist of an ***Intent Letter***, (as provided by your local HRO) and any attachment(s), and must be:
 - 1. Delivered personally to the employee who must sign and date acknowledging receipt of the notice. If the employee refuses to sign and date the receipt, a witness to the refusal shall sign and date the receipt. If the supervisor or manager is unable to meet with the employee in person, the ***Intent Letter*** may be mailed to the employee at his or her last known home address by certified return receipt mail. A mailed notice shall constitute full and complete notice even if the mail is refused or ignored by the employee.
- C. The ***Intent Letter*** must be from and signed by the supervisor, manager or designee, who is proposing the disciplinary action.

7.3 TIME PERIOD BETWEEN THE *INTENT LETTER* AND THE EFFECTIVE DATE OF ACTION

During the period of time between the date the ***Intent Letter*** is received by the employee and the effective date of the action (a minimum of ten (10) calendar days), the employee shall be expected to perform his or her usual duties without disrupting fellow employees, other persons, or the Department's activities.

If it is highly desirable or necessary that the employee not continue to perform the same duties in the same location during this period, the delegated disciplining authority, or designee, may temporarily assign the employee to other duties and/or work location as appropriate. If a temporary assignment is not a viable option, the employee may be placed on approved leave (special compensatory, compensatory, or annual) if the employee has sufficient leave credits available and notice is provided to the employee. This action cannot be taken unless first approved by the HRO.

7.4 PREDERTIMINATION CONFERENCE PROCESS

A **Predetermination Conference** is held only if requested, preferably in writing, by the employee within five (5) working days of his or her receipt of the **Intent Letter**. If requested, the **Predetermination Conference** must be held in accordance with the following procedural requirements:

- A. The employee must be provided with the opportunity to appear before the delegated disciplining authority (Refer to **Section 3 Authority for Disciplinary Actions**) who is authorized to make the final decision regarding the proposed disciplinary action, or a designated representative. The delegated disciplining authority shall, hereinafter, be referred to as the "Conference Officer."
- B. The Conference Officer shall convene the **Predetermination Conference** at the time and place he or she establishes. The employee shall be given at least 24 hours prior notice (oral or written) unless an extraordinary situation exists or a shorter notice is mutually agreed upon.
- C. At the beginning of the **Predetermination Conference**, the Conference Officer shall:
 1. Identify himself or herself, the employee, and all other parties to the conference;
 2. Inform all parties that the purpose of the **Predetermination Conference** is to provide:
 - The employee with an opportunity to respond to the proposed disciplinary action before a final decision is determined;
 - The employee with an opportunity to refute or present additional information about the violation(s);
 - The Department with an opportunity to reevaluate its position after reviewing the information presented by the employee; and
 - The Department with an opportunity to affirm or alter the proposed disciplinary action as may be warranted.
 3. Inform the employee that if he or she chooses not to respond, the Department will proceed on the basis of the best information it is able to obtain without such response; and

4. If the Conference Officer is **not** the delegated disciplining authority, inform the employee that the Conference Officer will submit all of the information offered by the employee to the person who is the delegated disciplining authority.

D. The ***Predetermination Conference*** is informal and is not an evidentiary hearing. The employee may bring an attorney or qualified representative to assist or advise him or her. However, discovery, cross-examination, and similar legal procedures are not permissible.

E. The employee must be allowed to submit relevant information, orally, in writing, or both.

F. At the conclusion of the ***Predetermination Conference***, the Conference Officer will inform the employee that the Department will promptly decide and notify the employee whether or not the proposed disciplinary action will be taken.

G. If the Conference Officer is a designated representative and not the delegated disciplining authority, the Conference Officer shall promptly furnish all of the information submitted by the employee during the conference to the delegated disciplining authority after the conclusion of the ***Predetermination Conference***.

7.5 NOTICE OF LEAVE ADJUSTMENT OPTION FOR COVERED AFSCME EMPLOYEES

The District HRO shall inform the covered AFSCME employee of his or her right to elect to serve the suspension or to have a leave adjustment made in accordance with the AFSCME contract.

7.6 FINAL ACTION LETTER (NOTICE) PROCESS

A. If the employee chooses not to request a ***Predetermination Conference***, or it is determined after the conference is held and the information provided by the employee is considered, to proceed with the proposed suspension, reduction in pay, demotion, involuntary transfer, or dismissal, the employee must be promptly notified in writing of such decision by personal delivery or by certified return receipt requested mail.

B. If the outcome of the ***Predetermination Conference*** changes the proposed suspension, reduction in pay, demotion, involuntary transfer or dismissal, the employee shall be notified in writing of the change and the justification for making the change. The employee must be promptly notified in writing of the decision by personal delivery or by certified return receipt requested mail.

C. Personal (hand) delivery is highly recommended in order to document the exact date of the employee's receipt of the ***Final Action Letter (Notice)***. The employee must sign for receipt or the receipt must be witnessed. Notice may also be sent via certified return receipt requested mail. Mailed notice shall constitute full and complete notice.

8. SUSPENSION OR DISMISSAL IN EXTRAORDINARY SITUATIONS

8.1 *Section 110.227(5)(b), F.S.*, recognizes that an employee may be suspended or dismissed without the ten (10) days prior notice but only under extraordinary circumstances. Such incidences must be limited to extraordinary circumstances or situations where the retention of a Career Service employee who has attained permanent status in his or her current position, would:

- A. Result in damage to State property;
- B. Result in injury to the employee, a fellow employee, or other person; or
- C. Be detrimental to the best interest of the State.

8.2 The Department and the delegated disciplining authority must be able to substantiate that, prior to such suspension or dismissal of a Career Service employee with permanent status in his or her current position, the employee was provided with:

- A. Written or oral notice of such action;
- B. Evidence of the reasons or charges; and
- C. An opportunity to rebut the charges prior to effecting the suspension or dismissal action. If the delegated disciplining authority is unable to hear the employee's rebuttal, he or she must delegate this responsibility to a lower-level manager or supervisor in writing.

8.3 If the employee's rebuttal is insufficient to alter the intended disciplinary action, the employee shall be provided with a ***Final Action Letter*** that is hand delivered to the employee by the delegated disciplining authority, or designee, or that is sent by certified return receipt requested mail. The ***Final Action*** letter should conform to the content and attachment requirements contained in section ***7.6 Final Action Letter (Notice) Process***, and include the reason(s) for using the extraordinary situation provisions.

8.4 Managers and supervisors must immediately notify and consult with the Director of Human Resources, or designee, for any emergency situations prior to taking action. The content of any resulting suspension or dismissal letter is critical and must be reviewed by the Director of Human Resources, or designee, and the Office of General Counsel prior to issuing such notice.

9. EMPLOYEE COUNSELING SESSIONS

Employee counseling is intended to be constructive and conducted with the primary purpose of assisting the employee with correcting an identified problem. Employee counseling is **not** considered a disciplinary action nor is it a required prerequisite to a disciplinary action (Refer to ***Section 4.2 Employee Counseling***).

9.1 DOCUMENTING AN EMPLOYEE COUNSELING SESSION

Prior to conducting an employee counseling session, the manager or supervisor should:

- A. Consult with the District Human Resources Manager or the Employee Relations Manager about the issues to be addressed with the employee.
- B. The manager or supervisor must document the key points to be discussed with the employee on the Employee Counseling Session Documentation Form No. 250-012-04. A copy of the form is available from your local HRO.
- C. The form must be reviewed and approved by your local HRO, prior to the counseling session with the employee.
- D. A copy of the form must be provided to the employee and another copy placed in the employee's personnel file.

9.2 CONDUCTING AN EMPLOYEE COUNSELING SESSION

When conducting an employee counseling session, the manager or supervisor should:

- A. Schedule the meeting in an area that maintains the employee's privacy;
- B. Focus the conversation to specific areas of concern and avoid generalities;
- C. Listen carefully to the employee's comments, making note of excuses or mitigating circumstances;
- D. Avoid becoming hostile, confrontational, emotional, or losing their temper;
- E. Discuss the employee's behavior in an objective manner;
- F. Ensure a free exchange of information takes place as counseling sessions are not considered to be investigatory or adversarial. Employee counseling sessions do **not** require the presence of a collective bargaining (union) representative, nor should one be allowed, even if one is requested by the employee.
- G. If, during the course of the employee counseling session, it becomes apparent that a form of disciplinary action or an investigation is necessary, the session should be stopped. The manager should consult with the District Human Resources Manager or the Employee Relations Manager (Refer to **Section 4.4 Investigatory Review**).
- H. When the employee counseling session is completed, the manager or supervisor should ask the employee to repeat his or her understanding of the expected corrective action and ensure the employee understands the consequences if they fail to meet the performance or conduct expectations.

10. DISCIPLINARY STANDARDS OF CONDUCT AND EXAMPLES

10.1 Rule 60L-36.005, F.A.C., Disciplinary Standards (also referred herein as the Department's Disciplinary Standards of Conduct) sets forth the minimal (basic) standards of conduct that apply to all employees. The expanded examples of these **Disciplinary Standards** contained herein are applicable to all Department employees.

10.2 Career Service employees who have **not** satisfactorily completed a one year probationary period in their current position may be disciplined at will. All other Career Service employees may be suspended or dismissed only for cause, which shall include, but not be limited to the standards contained in **Rule 60L-36, F.A.C., Conduct of Employees** and Sections 8.4 through 8.12 of this procedure. Examples under each **Disciplinary Standard** are provided as examples only and are **not** exhaustive or be considered all-inclusive.

10.3 60L-36.005(3)(a) Poor Performance

Employees shall strive to perform at the highest level of efficiency and effectiveness; Employees (they) shall do more than "just get by."

1. **Employees are expected to be reliable and dependable**, for example:
 - to show up for work, ready to work, on a reliable basis;
 - to observe established work hours and scheduled appointments;
 - to complete work on time;
 - to obtain permission before being off work; and
 - to schedule leave in a manner that minimizes work disruption.

2. **Employees are expected to be effective**, for example:
 - to organize their work;
 - to stay focused on job related activities during work hours;
 - to provide the level of effort necessary to get the job done;
 - to demonstrate willingness and ability to make decisions and exercise sound judgment;
 - to produce work that consistently meets or exceeds expectations;
 - to accept responsibility for their actions and decisions;
 - to adapt to changes in work assignments, procedures, and technology; and
 - to be committed to improving individual performance.

Additional Examples:

- Excessive tardiness or leaving early. The mere approval of use of leave to cover such tardiness or leaving early does not automatically excuse the tardiness or leaving early.
- Leaving work area or duty assignment without permission.
- Excessive absence or abuse of leave.
- Absence without authorized leave. Includes the failure to notify the proper authority, call in on the first day of an absence or taking unauthorized leave after the employee's request for leave has been disapproved.

- Absence without authorized leave for three or more consecutive workdays. An employee, who without a valid mitigating reason, is absent without authorization for three or more consecutive workdays shall be dismissed.
- Loafing.
- Substandard quality of work / inability to perform.

10.4 60L-36.005(3)(b) Negligence

Employees shall exercise due care and reasonable diligence in the performance of job duties.

- Substandard quality of work due to carelessness.
- For supervisors and managers, “negligence” includes the neglect of their basic supervisory and/or managerial responsibilities.
- Violation of safety practices or procedures. - Includes the performance of any unsafe act.

10.5 60L-36.005(3)(c) Inefficiency or Inability to Perform Assigned Duties

Employees shall, at a minimum, be able to perform duties in a competent and adequate manner.

- Inability to perform. - Employees must maintain any required valid occupational license or certificate in order to perform duties essential and necessary to their job. Employees having driving as an essential requirement will be removed from their position if their driver’s license is suspended or revoked.

10.6 60L-36.005(3)(d) Insubordination

Employees shall follow lawful orders and carry out the directives of persons with duly delegated authority. Employees shall resolve any differences with management in a constructive manner.

- Failure to follow instructions or carry out assignments.
- Refusal to comply with a direct order or an established work assignment by the supervisor or manager.

10.7 60L-36.005(3)(e) Violation of Law or Agency Rules

- Employees shall abide by the law and applicable rules and policies and procedures, including those of the employing agency and the rules of the State Personnel System.
- All employees are subject to **Part III of Chapter 112, F.S.**, governing standards of conduct, which agencies shall make available to employees.
- An agency may determine that an employee has violated the law even if the violation has not resulted in arrest or conviction.

- Employees shall abide by both the criminal law, for example, drug laws, and the civil law, for example, laws prohibiting sexual harassment and employment discrimination.

Additional Examples:

- Assault, violence, fighting or the use, or possession of unauthorized weapon or firearm. An "unauthorized weapon" is any weapon whose possession is not authorized by the Secretary or designee in writing. The mere carrying of a common pocketknife or self-defense chemical spray is not considered a violation.
- Chargeable vehicle crash or incident.
- Failure to timely process vendor invoices, vouchers and warrants.
- Improper uniform or appearance. - Includes having an appearance that is unkempt or inappropriate for the position.
- For employees working inmate labor: Includes failure to abide by law, written procedures, rules, regulations, or directives, governing the supervision of or working with inmate labor.
- For law enforcement officers: Includes failure to abide by law, Department procedures, rules, regulations, or directives governing law enforcement activities.

10.8 60L-36.005(3)(f) Conduct Unbecoming a Public Employee

Employees shall conduct themselves, on and off the job, in a manner that will not bring discredit or embarrassment to the State.

- Employees shall be courteous, considerate, respectful, and prompt in dealing with and serving the public and co-workers.
- Employees shall maintain high standards of honesty, integrity, and impartiality.
- Employees shall place the interests of the public ahead of personal interests.
- Employees shall not use, or attempt to use, their official position for personal gain or confidential information for personal advantage.
- Employees shall protect State property from loss or abuse, and
- Employees (they) shall use State property, equipment and personnel only in a manner beneficial to the agency.

Additional Examples:

- Conduct, whether on or off the job, that adversely affects the employee's ability to continue to perform his or her job.
- Rudeness, display of uncooperative or antagonistic attitude, actions or behavior.
- Failure to work harmoniously and cooperatively with the public and others.
- Being unsupportive of the Department and disrespectful to others at work.
- Failing to provide courteous and timely service to the public.
- Threatening, abusive, or offensive language or actions. Includes ethnic or sexist jokes or remarks.
- Failure to immediately report suspected wrongdoing, bribe, or attempted bribes.
- Actual or attempted theft (stealing) or aiding others in actual or attempted theft.

- Failure to report missing or stolen property or possession of unauthorized property.
- Unauthorized use, misuse or loss of State property, services, equipment, or personnel. Any use involving pornographic materials will be grounds for dismissal.
- Sabotage or deliberate damage of State property or equipment.
- Reduced work effectiveness due to a charge of a felony or misdemeanor.

10.9 60L-36.005(3)(g) Misconduct

Employees shall refrain from conduct which, though not illegal or inappropriate for a State employee generally, is inappropriate for a person in the employee's particular position. For example, cowardice may be dishonorable in people generally, but it may be entirely unacceptable in law enforcement officers. By way of further example, people are generally free to relate with others, but it may be entirely unacceptable for certain employees to enter into certain relations with others, such as correctional officers with inmates.

Additional Examples:

- Horseplay or disorderly conduct.
- Any act of unsolicited familiarity which causes embarrassment to others or any act which is disruptive of the workplace.
- Lying or falsification of records or documents. - includes falsifying time sheets or attendance, employment applications, travel vouchers, or any other work related records.

10.10 60L-36.005(3)(h) Habitual Drug Use

Agencies shall not tolerate violations of **Florida's Drug Free Workplace Act, Section 112.0455, F.S.**, or other misuse of mood- or mind-altering substances, including alcohol and prescription medications.

- Being under the influence of alcohol or drugs. - Exhibiting signs of impairment or other physical signs normally associated with drunkenness or abuse of drugs.
- Working or reporting to work under the influence of alcohol or drugs or as confirmed by a "positive" drug test result.
- Use or possession of alcohol or unlawful drugs. during working hours, within any Department vehicle, or in the workplace.
- Buying, selling, or attempting to sell or buy controlled substances (drugs).
- Failure or refusal to submit to a required drug test.

10.11 60L-36.005(3)(i) Conviction of Any Crime

Including a plea of nolo contendere and a plea of guilty with adjudication withheld.

- Adjudication withheld. - Includes the employee being arrested and subsequently placed in an early intervention program.
- Conviction of misdemeanor under **Section 110.127, F.S.**

11. TRAINING

Training is available upon request for managers and supervisors.

12. FORMS

Forms are available upon request for managers and supervisors.