

**RULE 16  
DISCIPLINE  
AND DISMISSAL**

(Effective March 15, 2006; Rules Revision Memo 5C)

Purpose statement:

The purpose of this rule is to establish a progressive discipline process that is governed by the principles of due process, personal accountability, reasonableness and sound business practice.

Section 16-5 Disclaimer

This Rule 16 pertaining to discipline and dismissal does not create or constitute any contractual rights between or among the City, the Career Service Board ("Board"), the Career Service Authority ("CSA") and any employee. This Rule 16 may only be modified, rescinded, or revised, in writing, by the Board, which reserves the right to unilaterally modify, rescind, or revise Rule 16 at any time consistent with its rule-making process.

Section 16-10 Service of written notice

Written notices required to be served on an employee under this Rule 16 shall be served on the employee either in person with a certificate of hand delivery, or by first class U.S. mail, with a certificate of mailing to the employee's last known address.

Section 16-20 Purpose of discipline

The purpose of discipline is to correct inappropriate behavior or performance, if possible. The type and severity of discipline depends on the gravity of the offense. The degree of discipline shall be reasonably related to the seriousness of the offense and take into consideration the employee's past record. The appointing authority shall impose the type and amount of discipline he or she believes is needed to correct the situation and achieve the desired behavior or performance.

Section 16-30 Investigatory Leave with Pay

- A. An appointing authority may place an employee on investigatory leave with pay pending an investigation of a possible rule violation or failure to meet standards of performance when it is determined by the appointing authority that it is in the best interest of the City. Investigatory leave may be for no more than forty-five (45) calendar days. It may include the period of time required to complete the investigation, as well as any time necessary to conduct a pre-disciplinary meeting and render a decision regarding discipline.

- B. If the investigation has not been completed within the forty-five (45) calendar day time period, the appointing authority may request from the Career Service Personnel Director ("Personnel Director") an extension of time appropriate to complete the investigation and render a decision. The Personnel Director may approve a request for an extension for good cause shown. Additional extensions may be granted at the discretion of the Personnel Director. The appointing authority shall notify the employee of any extension that is granted by the Personnel Director.
- C. The appointing authority may require the employee to remain at home and/or be available by telephone; to participate in the investigatory process and/or to perform work during their normal work hours; or to return to work prior to the end of the period of investigatory leave. If an employee is unable to meet the requirements listed above, or chooses to attend to personal business during their normal hours of work, the appointing authority's regular procedures regarding the use of leave shall apply.

Section 16-40 Pre-disciplinary Notification of Contemplation of Discipline or Dismissal and Notice of Pre-disciplinary Meeting.

- A. Before an employee with career status is suspended, given an involuntary temporary reduction in pay, involuntarily demoted or dismissed, the appointing authority shall hold a pre-disciplinary meeting. A pre-disciplinary meeting is not required for verbal or written reprimands.
- B. The purpose of the pre-disciplinary meeting is to allow an employee to:
  - 1. Correct any errors in the department or agency's information or facts upon which it proposes to take disciplinary action; and
  - 2. Tell his or her side of the story and present any mitigating information as to why the disciplinary action should not be taken.
- C. Since a pre-disciplinary meeting is not an administrative hearing, witness testimony is not allowed.
- D. Employees must be served with written notice seven (7) calendar days prior to the pre-disciplinary meeting. The seven (7) calendar day notice period starts on the day following the date shown on the certificate of mailing or certificate of hand delivery.
- E. The written notice of the pre-disciplinary meeting shall contain the following:
  - 1. That disciplinary action is contemplated;
  - 2. The specific conduct or omission committed by the employee which the department or agency believes is in violation of the Career Service Rules ("Rules"), the City Charter, the Denver Revised Municipal Code, Executive Orders or other applicable legal authority;
  - 3. The purpose of the pre-disciplinary meeting as described in Section 16-40 B. of this rule;

4. The date, time and location of the pre-disciplinary meeting; and
  5. That the employee is entitled to have a representative of his or her own choosing present at the meeting.
- F. The department or agency may approve or deny requests to re-schedule pre-disciplinary meetings, but shall accommodate such requests whenever practicable.

#### Section 16-50 Progressive Discipline

- A.
1. Whenever practicable, discipline shall be progressive. However, any measure of discipline may be used in any given situation as appropriate. A lesser discipline other than dismissal may be imposed where circumstances warrant.
  2. Failure to correct behavior or committing additional violations after progressive discipline has been taken may subject the employee to further discipline, up to and including dismissal from employment.
  3. This rule should not be interpreted to mean that progressive discipline must be taken before an employee may be dismissed.
- B. In order of increasing severity, the disciplinary actions which an appointing authority may take against an employee for violation of the Rules, the City Charter, or the Denver Revised Municipal Code, Executive orders or any other applicable legal authority include:
1. Verbal reprimand.
  2. Written reprimand.
  3. Suspension without pay, or involuntary temporary reduction of pay.
  4. Involuntary demotion, with a reduction in pay pursuant to Rule 9 PAY ADMINISTRATION.
  5. Dismissal.

#### Section 16-60 Discipline and Dismissal

The following may be cause for the discipline or dismissal of a Career Service employee:

- A. Neglect of duty.
- B. Carelessness in performance of duties and responsibilities.
- C.
1. Theft, destruction, or neglect in the use of City property or property of any agency or entity having a contract with the City; or
  2. Theft of property or materials of any other person while the employee is on duty or on City premises.

- D. Unauthorized operation or use of any vehicles, machines, or equipment of the City, or of any entity having a contract with the City, including, but not limited to, the unauthorized use of the internet, e-mail or telephones.
- E. Any act of dishonesty, which may include, but is not limited to:
  - 1. Altering or falsifying official records or examinations;
  - 2. Accepting, soliciting, or making a bribe;
  - 3. Lying to superiors or falsifying records with respect to official duties, including work duties, disciplinary actions, or false reporting of work hours.
- F. Using official position or authority for personal profit or advantage, including kickbacks.
- G.
  - 1. Being under the influence, subject to the effects of, or impaired by alcohol, an illegal drug or a legal drug being used improperly: while on duty; while performing City business; while in a City facility; or while operating a City vehicle or other equipment.
  - 2. Consumption of alcohol, an illegal drug or a legal drug being used improperly: while on duty; in a City facility; on City property; while operating City vehicles or equipment; or while performing City business. The consumption of alcohol at an officially sanctioned function by an off-duty employee is not a violation of this rule.
- H. Selling, purchasing, transferring or possessing an illegal drug or a legal drug improperly: while on City property; while in a City facility; while on City equipment or in a City vehicle; or while on duty.
- I. Possessing a weapon on City property or a work location without written permission of the employee's appointing authority.
- J. Failing to comply with the lawful orders of an authorized supervisor or failing to do assigned work which the employee is capable of performing.
- K. Failing to meet established standards of performance including either qualitative or quantitative standards. When citing this subsection, a department or agency must describe the specific standard(s) the employee has failed to meet.
- L. Failure to observe written departmental or agency regulations, policies or rules. When citing this subsection, a department or agency must cite the specific regulation, policy or rule the employee has violated.
- M. Threatening, fighting with, intimidating, or abusing employees or officers of the City, or any other member of the public, for any reason.

- N. 1. Intimidation or retaliation against an individual who has been identified as a witness, party, or representative of any party to any hearing or investigation relating to any disciplinary procedure, or any violation of a city, state, or federal rule, regulation or law, or against an employee who has used the dispute resolution process in good faith.
- N. 2. A determination by the Career Service Board or Hearing Officer that the employee has violated the City's "Whistleblower Protection" ordinance. (Revised effective October 2, 2007; Rules Revision Memo 22C)
- O. Failure to maintain satisfactory working relationships with co-workers, other City employees, or the public.
- P. Conviction of or being charged with a crime. Prior to imposing discipline under this subsection, the department or agency shall follow the guidelines contained in subsection 16-61.
- Q. Failure to report charges or convictions of crimes as required by Rule 15 CODE OF CONDUCT. (Revised effective June 12, 2006; Rules Revision Memo 10C)
- R. Discrimination or harassment of any employee or officer of the City because of race, color, religion, national origin, sex, age, political affiliation, sexual orientation or disability. This includes making derogatory statements based on race, color, religion, national origin, sex, age, political affiliation, sexual orientation or disability. Discipline for this prohibited conduct does not have to rise to the level of a violation of any relevant state or federal law before an employee may be disciplined and the imposition of such discipline does not constitute an admission that the City violated any law.
- S. Unauthorized absence from work; or abuse of sick leave or other types of leave; or violation of any rules relating to any forms of leave defined in Rule 11 LEAVE.
- T. Reporting to work after the scheduled start time of the shift.
- U. Unauthorized performance of work by non-exempt employees outside of the established work schedule.
- V. Failure to use safety devices or failure to observe safety regulations which: results in injury to self or others; jeopardizes the safety of self or others; or results in damage or destruction of City property.
- W. Engaging in a strike, sabotage, or work slowdown.
- X. Divulging confidential or otherwise sensitive information to unauthorized individuals.
- Y. Conduct which violates the Rules, the City Charter, the Denver Revised Municipal Code, Executive orders, or any other applicable legal authority.
- Z. Conduct prejudicial to the good order and effectiveness of the department or agency, or conduct that brings disrepute on or compromises the integrity of the City.

16-61 Contemplating or Imposing Discipline on an Employee Convicted of or Charged with a Crime.

Upon notification that an employee has been charged with or convicted of a crime, the appointing authority shall follow the guidelines described below:

- A. If an employee has been charged with a crime, before imposing discipline, the department or agency must determine there is a preponderance of evidence demonstrating that the employee engaged in the conduct which forms the factual basis for the crime with which the employee is charged. The department or agency must also consider: the nature and type of the conduct which supports the charge; the nature of the position the employee holds in the City and the relationship of the position to the facts underlying the charge; and the impact of the facts on the employee's ability to perform the position.
- B. If an employee has been convicted of a crime, before imposing discipline, the department or agency must consider: the nature and type of crime for which the person has been convicted; the facts underlying the crime; the nature of the position the employee holds in the City and the relationship of the position to the crime; the impact of the facts on the employee's ability to perform the position; and any evidence of rehabilitation.
- C. Conviction of a crime or the facts underlying a charged crime may be grounds for any form of discipline outlined in this Rule 16, up to and including dismissal, when the conviction or facts underlying the charged crime renders the employee unfit to perform their job, brings disrepute upon the City or compromises the integrity of the City.
- D. If the department or agency, after considering these factors, believes that discipline is appropriate, it shall proceed with the pre-disciplinary procedures contained in this Rule 16.

Section 16-70 Disciplinary procedures

Appointing authorities may designate agents to act for them in imposing discipline under this Rule 16.

16-71 Verbal reprimand

Verbal reprimands must be accompanied by a notation in the supervisor's file and the agency's file on the employee. The employee shall be notified that a verbal reprimand is being documented in their file.

16-72 Form for Written Reprimand, and Notices of Discipline

- A. Written reprimands: Written reprimands shall identify the violations or failures to meet performance standards on the job with sufficient specificity and detail so as to enable the employee to correct his or her behavior and to enhance future performance. Written reprimands shall also contain a notice that the employee may file a grievance on the written reprimand and may also seek mediation in accordance with Rule 18 DISPUTE RESOLUTION.
- B. Notices of discipline or dismissal: Written notices of suspension, involuntary temporary reduction of pay, involuntary demotion or dismissal shall:
1. Identify the violations or reasons for failure to meet performance standards in detail so as to enable the employee to understand the basis for the discipline. The violation(s) indicated shall be those listed in the notice of contemplation of disciplinary action, except for any charges or violations which are dropped.
  2. Contain a reference to the opportunity afforded the employee to tell his or her side of the story in accordance with section 16-40 of this rule and that the information presented at the pre-disciplinary meeting was considered by the department or agency in reaching a determination.
  3. Contain a notice that the employee may appeal the suspension, involuntary temporary reduction of pay, involuntary demotion, or dismissal pursuant to Rule 19 APPEALS and that an employee may also seek mediation pursuant to Rule 18 DISPUTE RESOLUTION.
- C. A written reprimand, notice of suspension, notice of involuntary temporary reduction of pay, notice of involuntary demotion and notice of dismissal shall be sent to the CSA for inclusion in the employee's personnel file, along with the completed personnel action form, if required.
- D. Failure of a supervisor or appointing authority to comply strictly with the provisions of this section 16-70 shall not constitute a basis for reversing a disciplinary action on appeal unless the employee shows that his or her rights were substantially violated by the lack of compliance.

16-73 Disciplinary Action Following Pre-disciplinary Meeting

- A. Personnel decisions relating to progressive discipline may take into account any relevant prior disciplinary action.

- B. Disciplinary action based on the pre-disciplinary meeting and other pertinent information obtained by the appointing authority shall be taken within fifteen (15) calendar days after the meeting. However, if an appointing authority presents to the Personnel Director documented extenuating circumstances requiring additional time, the Personnel Director may extend the date for taking disciplinary action for an additional ten (10) calendar days. A request for an extension of time must be sent to the Personnel Director prior to the expiration of the fifteen (15) day time period. If disciplinary action is not taken within the fifteen (15) day time period and a request for extension of time is not timely submitted to the Personnel Director, the agency must repeat the steps contained in section 16-40 before disciplinary action may be taken.
- C. A written notice of the disciplinary decision and the reasons for the disciplinary action being taken shall be served on the employee. The notice shall be considered served on the date shown on the certificate of hand delivery or mailing.
- D.
  - 1. A verbal reprimand may not be grieved or appealed.
  - 2. An employee may file a grievance of a written reprimand in accordance with Rule 18, DISPUTE RESOLUTION. An employee may not appeal a written reprimand to the Career Service Hearings Office.
  - 3. An employee may directly appeal a suspension, involuntary temporary reduction of pay, involuntary demotion or dismissal in accordance with Rule 19 APPEALS.

16-74 Guidelines for involuntary temporary reduction of pay

When an involuntary temporary reduction in pay is imposed on an employee, the employee's pay shall not be reduced:

- A. More than two pay steps; or
- B. Below the lowest step of the employee's pay range; or
- C. For less than seven (7) pay periods; or
- D. For more than thirteen (13) pay periods.

Any merit increase award shall be based on the employee's normal rate of pay, not their temporarily reduced rate of pay.

16-75 Procedure for Dismissal

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- A. Dismissal of employees during employment probation: During the probationary period following employment or re-employment appointment, dismissal by the appointing authority shall be final. However, such action may be appealed only on the grounds of alleged discrimination because of race, color, religion, national origin, sex, age, sexual orientation, disability, or political affiliation, in accordance with Rule 19 APPEALS. The employee shall be given written notice of dismissal.
- B. Employees dismissed after employment probation: The appointing authority shall give the employee written notice of dismissal on or before the effective date, unless the dismissal is immediate.
- C. Dismissed employees are not eligible for future employment in the Career Service for a minimum of five years following such dismissal. The Personnel Director shall establish procedures governing how dismissed employees may be placed on eligible lists after the five years have elapsed.
- D. Current address: It is the responsibility of each Career Service employee to assure that official personnel records of the City reflect the employee' s current mailing address, current residence address and telephone number at all times.