



## DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

### POLICY 1.60 STANDARDS OF CONDUCT

**APPLICATION:** Full-time, Quasi Full-time, and Part-time non-probationary classified employees. *Note: Agencies may use this policy as a guide for evaluating the workplace conduct of employees who are not covered by the Virginia Personnel Act, such as wage employees, probationary employees and employees expressly excluded from the application of policy. Official Written Notice forms may not be issued to these employees.*

**PURPOSE:**

It is the policy of the Commonwealth to promote the well-being of its employees by maintaining high standards of work performance and professional conduct with an overall emphasis on diversity, equity and inclusion that promotes equitable treatment of all employees.

**POLICY SUMMARY:**

This policy sets forth the Commonwealth's Standards of Conduct and the disciplinary process that agencies must utilize to address unacceptable behavior, conduct, and related employment problems in the workplace or outside the workplace when conduct impacts an employee's ability to do their job and/or influences the agency's overall effectiveness.

**AUTHORITY & INTERPRETATION:**

Title 2.2 of the Code of Virginia

The Director of the Department of Human Resource Management is responsible for official interpretation of this policy, in accordance with §2.2-1201 of the Code of Virginia. The Department of Human Resource Management reserves the right to revise or eliminate this policy.

**RELATED POLICIES:**

All DHRM issued policies  
Related Agency policies

**POLICY HISTORY:**

EFFECTIVE DATE	DESCRIPTION
04-16-08	Policy published.
06-01-11	Policy revised.
01-10-12	Policy corrected to note that campus police departments of any public institution of higher education of the Commonwealth where such department, bureau or force has ten or more law-enforcement officers also have access to the procedural guidelines of Va. Code § 9.1-500 – 507 in cases of investigation of work-related matters that could lead to the dismissal, demotion, suspension or transfer for punitive reasons of a law-enforcement officer.
03-07-22	Policy reformatted and revised. Addition of Policy Guidance Documents.

**PROCEDURES**

## **Shortcuts to Sections**

[General Principles](#)

[Employee Standards of Conduct](#)

[Corrective and Disciplinary Action](#)

[Due Process](#)

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### **General Principles**

General Provisions	Application
Guidelines	<ul style="list-style-type: none"><li>● The intent of this policy and its procedures is to help employees become fully contributing members of the organization. This policy enables agencies to administer corrective actions or discipline to improve performance or conduct or terminate employees whose conduct and/or performance does not improve.</li><li>● Agencies are encouraged to follow a course of progressive and situationally appropriate discipline that objectively and consistently addresses employee behavior, conduct, or performance that is incompatible with the state's Standards of Conduct, agency expectations for employees, and/or related agency policies.<ul style="list-style-type: none"><li>○ NOTE: Non-probationary law enforcement officers employed by the Department of State Police, the Virginia Marine Resources Commission, the Department of Wildlife Resources, the Department of Conservation and Recreation, the Department of Motor Vehicles, the Department of Corrections and the campus police department of any public institution of higher education of the Commonwealth where such department, bureau or force has ten or more law-enforcement officers also have access to the procedural guidelines of the Code of Virginia <a href="#">§ 9.1-500</a></li></ul></li></ul>

General Provisions	Application
	<p data-bbox="695 226 1398 373">– 507 and § 9.1-508 – 512 respectively in cases of investigation of work-related matters that could lead to the dismissal, demotion, suspension or transfer for punitive reasons of a law enforcement officer.</p> <ul style="list-style-type: none"> <li data-bbox="553 384 1414 453">● Corrective or disciplinary actions must be administered through an objective process initiated as promptly as feasible.</li> <li data-bbox="553 464 1398 800">● There may be circumstances when an employee’s conduct requires immediate disciplinary action without employing progressive discipline. If the misconduct and/or unacceptable performance is of an especially serious nature, a first offense may warrant significant discipline, including termination. Agencies must provide notice of intent and give the employee an opportunity to respond. Then the agency must document the nature of the offense and the reason for taking disciplinary measures via a Written Notice.</li> <li data-bbox="553 810 1398 989">● Management should apply corrective or disciplinary actions consistently and in an objective and equitable manner, while taking into consideration the specific circumstances of each individual case. Prior to taking such action, management must consider the following: <ul style="list-style-type: none"> <li data-bbox="646 1024 1398 1094">○ Whether the corrective or disciplinary action is consistent with state and agency standards of conduct.</li> <li data-bbox="646 1104 1398 1131">○ The nature, severity, and consequences of the offense.</li> <li data-bbox="646 1142 1398 1211">○ Whether the offense constitutes a violation of a policy, procedure, rule, or law.</li> <li data-bbox="646 1222 1398 1325">○ Previous counseling, whether verbal or written, that addressed the same or similar misconduct or performance.</li> <li data-bbox="646 1335 1398 1404">○ Previous disciplinary actions that addressed the same or similar misconduct or performance.</li> <li data-bbox="646 1415 1398 1518">○ Whether the offense relates to the employee’s job duties and the employee’s ability to perform satisfactorily.</li> <li data-bbox="646 1528 1398 1598">○ How issues with similarly situated employees have been addressed.</li> <li data-bbox="646 1608 1398 1711">○ Mitigating factors that would compel a reduction in the disciplinary action to promote the interests of fairness, equity and objectivity.</li> <li data-bbox="646 1722 1398 1791">○ Whether the corrective or disciplinary action is appropriate for a specific offense.</li> </ul> </li> <li data-bbox="553 1822 1398 1892">● Before the need for, or in addition to corrective counseling or disciplinary action, management may refer employees to</li> </ul>

General Provisions	Application
	<p>the Employee Assistance Program (EAP) or other professional assistance program as appropriate to encourage employees to address their needs in support of work performance or conduct improvement. Referrals to the EAP or comparable program shall not be considered a substitute for any disciplinary action imposed for the commission of an offense.</p> <p>NOTE: Mandated referrals to the EAP or comparable program may be required depending upon the nature of the behavior or misconduct. Agencies are advised to consult with their agency's Assistant Attorney General prior to mandating participation in such programs.</p>

***Employee Standards of Conduct***

General Provisions	Application
<p>Expectations of Conduct for Employees</p>	<p>Agencies have the authority to supplement the list below as needed in a manner consistent with the needs of the organization and intent of this policy. The following list is not all-inclusive but is intended to illustrate the minimum expectations for acceptable workplace conduct and performance.</p> <ul style="list-style-type: none"> <li>● Report to work as scheduled and seek approval from the supervisor in advance for any changes to the established work schedule, including the use of leave and late or early arrivals and departures.</li> <li>● Perform assigned duties and responsibilities with the highest degree of public trust.</li> <li>● Devote full effort to job responsibilities during work hours.</li> <li>● Maintain the qualifications, certification, licensure, and/or training requirements identified for their positions.</li> <li>● Demonstrate respect for the agency and toward agency coworkers, supervisors, managers, subordinates, residential clients, students, and customers.</li> <li>● Use state equipment, time, and resources judiciously and as authorized.</li> <li>● Support efforts that ensure a safe and healthy work environment.</li> <li>● Utilize leave and related employee benefits in the manner for which they are intended.</li> <li>● Resolve work-related issues and disputes in a professional manner and through established business processes.</li> <li>● Meet or exceed established job performance expectations.</li> </ul>

General Provisions	Application
	<ul style="list-style-type: none"> <li>● Make work-related decisions and/or take actions that are in the best interest of the agency.</li> <li>● Comply with the letter and spirit of all state and agency policies and procedures, the Conflict of Interest Act, and Commonwealth laws and regulations.</li> <li>● Report circumstances or concerns that may affect satisfactory work performance to management, including any inappropriate activities (such as fraudulent, illegal, unethical or discriminatory actions) of other employees.</li> <li>● Obtain approval from supervisor prior to accepting, initiating, or continuing outside employment.</li> <li>● Obtain approval from supervisor prior to working overtime, if non-exempt from the Fair Labor Standards Act (FLSA).</li> <li>● Work cooperatively to achieve work unit and agency goals and objectives.</li> <li>● Conduct themselves at all times in a manner that supports the mission of their agency and the performance of their duties.</li> </ul>
<p>Expectations for Supervisors and Managers</p>	<p>Supervisors and managers are expected to serve as role models through their compliance with policies, agency protocols and best practices in leading and communicating with their subordinate employees. Expectations for supervisors, and managers include but are not limited to:</p> <ul style="list-style-type: none"> <li>● Demonstrate interpersonal communications, leadership strategies and personal conduct that fosters a respectful workplace culture and models the expectations established for employees;</li> <li>● Provide consistent and objective feedback, coaching and instructional guidance to employees regarding their performance, conduct or compliance with policies and procedures prior to initiating corrective or formal actions;</li> <li>● Document verbal counseling and retain corrective written counseling in confidential supervisory files;</li> <li>● Ensure the confidentiality of employee performance and disciplinary actions and related documentation.</li> <li>● Establish on-boarding and periodic communications with subordinates to inform them of policies, protocols, and expectations specific to job duties;</li> <li>● Seek guidance from Human Resources prior to administering disciplinary actions or removing employees from the workplace. This includes the responsibility to communicate any job-related criminal charges and convictions to Human</li> </ul>

General Provisions	Application
	<p>Resources;</p> <ul style="list-style-type: none"> <li>● Under the guidance of Human Resources, participate collaboratively in pre-disciplinary investigations or disciplinary reviews to include identifying or disclosing relevant documentation and witnesses or parties to the incident(s) of concern;</li> <li>● Participate in periodic training/education on the Standards of Conduct policy and best practices.</li> </ul>

***Corrective Actions***

General Provisions	Application
Counseling	<ul style="list-style-type: none"> <li>● Counseling is provided by a supervisor or manager in the employee's reporting structure and is typically the first level of corrective action but is not a required precursor to the issuance of Written Notices. Counseling may be verbal or written communication which conveys that an employee's conduct or performance was improper and must be corrected.</li> <li>● Counseling is appropriate for conduct and/or performance issues resulting in minimal impact to business operations or that involve minor infractions of policies or laws.</li> <li>● Documentation regarding counseling should be retained in the supervisor's files, and not in the employee's official personnel file maintained by the Agency's Human Resources office, except as necessary to support subsequent formal disciplinary action or a Below Contributor performance rating as part of the annual performance review. A copy must be provided to the employee.</li> <li>● Legal counsel shall not attend counseling sessions.</li> </ul>
Verbal Counseling	<ul style="list-style-type: none"> <li>● Verbal counseling should consist of private, confidential discussions between employees and their supervisors regarding the desired course of action to improve the employees' performance and/or conduct, and what may occur if the performance or conduct is not corrected.</li> <li>● The supervisor should explain that a summary of the conversation will be noted and placed in the supervisory file.</li> </ul>
Written Counseling	<ul style="list-style-type: none"> <li>● A written memorandum or Notice of Improvement Needed/Substandard Performance form should be issued to emphasize the significance of relatively minor acts of</li> </ul>

General Provisions	Application
	<p>misconduct or unacceptable performance when facts and discussions with the employee demonstrate that verbal counseling has not corrected the problem. It may also be issued as the initial means to address first instances of misconduct or unsatisfactory performance.</p> <ul style="list-style-type: none"> <li>• Written counseling must be documented by a letter, memorandum, electronic communication or Notice of Improvement Needed/Substandard Performance form. It should not be documented via the Written Notice form.</li> </ul>

***Disciplinary Actions***

<p>Formal Written Notices</p> <p>Refer to <a href="#">Attachment A: Examples of Offenses Grouped by Level</a> for additional information.</p> <p>Refer to the <a href="#">Disciplinary Meeting Reference Guide</a> for additional information.</p>	<ul style="list-style-type: none"> <li>• When counseling has failed to correct misconduct or performance problems, or when an employee commits a more serious offense, management should address the matter by issuing a Written Notice.</li> <li>• A Written Notice may be accompanied by additional actions including suspension; a demotion or transfer with reduced responsibilities with a disciplinary salary action; a transfer to an equivalent position in a different work area; or termination.</li> <li>• Management should issue Written Notices as promptly as feasible upon becoming aware of misconduct or unacceptable performance. (Refer to the <a href="#">Due Process</a> section of this policy).</li> <li>• <a href="#">The Written Notice Form</a> must include an advisory statement that an active Written Notice may affect the employee’s overall annual performance evaluation rating.</li> </ul> <p>To assist management in the assessment of the appropriate action, offenses are organized into three groups (Group I, Group II, and Group III) according to the severity of the misconduct or behavior.</p> <ul style="list-style-type: none"> <li>• Examples of offenses, by group, are presented in Attachment A – Examples of Offenses Grouped by Level.</li> <li>• The offenses listed in Attachment A are not all-inclusive, but are intended as examples of conduct for which specific corrective or disciplinary actions may be warranted.</li> <li>• Agencies may address multiple offenses through the issuance of one or more Written Notices.</li> <li>• Accordingly, any offense not specifically enumerated, that in the judgment of agency heads or their designees undermines the effectiveness of agencies' activities, may be considered unacceptable and treated in a manner consistent with the provisions of this section.</li> </ul>
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	<ul style="list-style-type: none"> <li>• An employee’s legal counsel may not attend or participate in internal discussions or investigative meetings to determine the facts or if violations have occurred.</li> </ul> <p>NOTE: Under certain circumstances, an offense typically associated with one offense category may be elevated to a higher-level offense. Agencies may consider any unique impact that a particular offense has on the agency and the fact that the potential consequences of the performance or misconduct substantially exceed agency norms.</p>
Group I Offense	<ul style="list-style-type: none"> <li>• Offenses in this category include acts of minor misconduct that require formal disciplinary action. This level is appropriate for repeated acts of minor misconduct or for first offenses that have a relatively minor impact on business operations but still require formal intervention. See attachment A for examples of Group I Offenses and the effects on accumulation or repeat offenses.</li> </ul> <p><b>Active Life of Notices</b></p> <ul style="list-style-type: none"> <li>• Two years from the date of issuance to the employee.</li> </ul> <p><b>Suspension Options</b></p> <ul style="list-style-type: none"> <li>• No suspension for a first offense, but a third active Group I Notice may result in a suspension of up to ten workdays (or a maximum of 80 hours for non-exempt employees). Refer to the <a href="#">Disciplinary Suspension</a> section of this policy for guidance on the suspension of exempt employees.</li> </ul>
Group II Offense	<p>Offenses in this category include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action. This level is appropriate for offenses that seriously impact business operations and/or constitute neglect of duty involving major consequences, insubordinate behaviors and abuse of state resources, violations of policies, procedures, or laws. See attachment A for examples of Group II Offenses and the effect on accumulation.</p> <p><b>Active Life of Notices</b></p> <ul style="list-style-type: none"> <li>• Three years from the date of issuance to the employee.</li> </ul> <p><b>Suspension Options</b></p> <ul style="list-style-type: none"> <li>• Suspension of up to 10 workdays (or maximum of 80 hours for non-exempt employees) for the first Group II Offense. Refer to the <a href="#">Disciplinary Suspension</a> section of this policy for guidance on suspensions for exempt employees.</li> </ul>
Group III Offense	<p>Offenses in this category include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination. This level is appropriate for offenses that, for example, endanger others in the workplace, constitute illegal or</p>



	<p>unethical conduct; indicate significant neglect of duty; result in disruption of the workplace; or other serious violations of policies, procedures, or laws. See attachment A for examples of Group III Offenses.</p> <p><b>Active Life of Notices</b></p> <ul style="list-style-type: none"> <li>• Four years from the date of issuance to the employee.</li> </ul> <p><b>Suspension Options</b></p> <ul style="list-style-type: none"> <li>• Suspension of up to 30 workdays (or maximum of 240 hours for non-exempt employees). Refer to the <a href="#">Disciplinary Suspension</a> section of this policy for guidance on suspensions for exempt employees.</li> </ul> <p><b>Considerations for Group III Offenses</b></p> <ul style="list-style-type: none"> <li>• One Group III Offense normally should result in termination unless there are mitigating circumstances.</li> <li>• Mitigating circumstances for a Group III offense may support, as an alternative to termination, an employee's demotion or transfer to a position with reduced responsibilities or removal of responsibilities and a disciplinary salary action with a minimum 5% reduction in salary; transfer to an equivalent position in a different work area; and/or suspension of up to 30 workdays.</li> <li>• An employee who is issued a Written Notice that would normally warrant termination but who is not terminated due to mitigating circumstances should be notified that any subsequent Written Notice for any level offense during the active life of the Written Notice may result in termination.</li> <li>• If an agency permits an employee to resign in lieu of termination, this transaction should be recorded in the human resource system of record as a resignation in lieu of termination.</li> </ul>
Active Life of Written Notices	The active life of Written Notices as stated above are definite and may not be extended due to an employee's absence. Notices expire when an employee voluntarily or involuntarily separates provided that re-employment with the same or different agency occurs after a formal break in service and a new probationary period is required.
Mitigating Circumstances and Aggravating Factors	<ul style="list-style-type: none"> <li>• Agencies may reduce the level of a disciplinary action if there are mitigating circumstances, such as conditions that compel a reduction to promote the interests of consistency, equity and objectivity, or based on an employee's otherwise satisfactory work performance.</li> <li>• Aggravating Factors may support a higher-level offense when the facts and circumstances associated with the employee's actions negatively impact the employee's credibility as a supervisor/manager of subordinates, reveals a serious disregard for the safety and well-being of self or others, or damages the credibility and reputation of the agency. Repeat</li> </ul>

	infractions of the same or significantly similar offense may also be considered an aggravating factor.
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***Notice of Intent (Due Process)***

General Provision	Application
Advance Notice of Potential Discipline to Employees	<ul style="list-style-type: none"> <li>● Prior to the issuance of Written Notices, employees must be given oral or written notification of the offense, an explanation of the agency's evidence in support of the charge, and a reasonable opportunity to respond.</li> </ul>
Employee's "Reasonable Opportunity to Respond"	<ul style="list-style-type: none"> <li>● Employees must be given a reasonable opportunity to respond after receiving notification of potential disciplinary actions. Typically, a 24-hour period is a sufficient period of time, however, a "reasonable opportunity to respond" should not be based solely on the quantity of time provided but also on the nature of the offense, the time period over which alleged events occurred, and the volume of evidence that may be presented. Based on this assessment more or less time may be granted to refute the allegations.</li> <li>● The employee's response may be written or provided to management during a virtual, telephonic or face to face meeting.</li> <li>● Legal counsel may not attend or participate in the agency's internal due process meetings. Agency staff in attendance may include the appropriate supervisor or manager within the employee's reporting structure. A representative of Human Resources may also attend.</li> <li>● An employee on paid or unpaid leave may receive a notice of intent and the agency may proceed with the expectation for the employee to respond. However, agencies are encouraged to be mindful of the employee's current circumstances and availability to respond.</li> </ul>
Human Resource Director's review of disciplinary actions  Refer to the <a href="#">Due Process Reference Guide</a> for additional information.	<p>Prior to the issuance of any Written Notices, demotions, transfers with disciplinary salary actions, suspensions or terminations, Agency Human Resource Directors or their designees must review the documentation for the recommended actions to determine:</p> <ul style="list-style-type: none"> <li>● If the action is appropriate for the offense and if the documentation supports the selected level of action;</li> <li>● If a referral to the employee assistance program is advisable;</li> </ul>

General Provision	Application
	<ul style="list-style-type: none"> <li>● If there is evidence that warrants mitigation of the disciplinary actions, and</li> <li>● What the final recommendation for corrective action should be to ensure consistency, equity and objectivity.</li> </ul>

**Pre-disciplinary Leave or Suspensions Pending Reviews or Investigations**

General Provisions	Application
<p>Removal from the Workplace</p>	<p>Contingent upon the circumstances, management may immediately remove an employee from the workplace or instruct the employee to cease performing work or representing the agency in business matters when the employee's continued presence:</p> <ul style="list-style-type: none"> <li>● May be harmful to the employee, other employees, clients, and/or patients/residents;</li> <li>● Hinders the agency's ability to conduct business operations;</li> <li>● May hamper or interfere with an internal agency disciplinary review or pre-disciplinary investigation regarding the employee's alleged misconduct;</li> <li>● May hamper or interfere with an external investigation conducted by law enforcement for alleged criminal charges that are relevant to the employee's performance of assigned job duties; and/or</li> <li>● May constitute negligence in regards to the agency's duties to the public and/or other employees.</li> </ul> <p>Following the employee's removal from the work area for reasons stated above, management must provide a notice of intent of potential disciplinary action as promptly as feasible.</p> <p>Written notification of pre-disciplinary leave with pay pending a disciplinary review or agency pre-disciplinary investigation shall be by memorandum, not communicated via the Written Notice form.</p> <p>Contingent with the circumstances and in consultation with Human Resources, agency management may temporarily reassign an employee to a vacant position in the same pay band, temporarily remove and reassign job duties at the same pay level, or permit the employee to telework as appropriate.</p>

General Provisions	Application
	<p>Provide the employee specific instructions in writing prohibiting potential interference with the ongoing investigation to include refraining from discussing the matter with other employees. Such discussions shall be limited to Human Resources or the employee’s supervisor or managers within their reporting structure.</p>
<p>Removal for Disciplinary Reviews or Pre-disciplinary Investigations</p>	<p>Employees may be placed on paid pre-disciplinary leave for up to fifteen workdays (maximum of 120 hours for non-exempt employees).</p> <p>If the disciplinary review or pre-disciplinary investigation is not completed within fifteen workdays or 120 hours the agency must:</p> <ul style="list-style-type: none"> <li>● Impose disciplinary action in accordance with this policy;</li> <li>● Permit the employee to return to work to include remote work or a temporary reassignment pending the outcome of the review or investigation; or</li> <li>● Extend pre-disciplinary leave with pay for a specified period of time as determined by the agency head; and</li> <li>● Advise the employee of the action in writing.</li> </ul>
<p>Removal from the Workplace for Criminal Charges</p>	<p>Management may also immediately remove an employee from the workplace without providing advance notification when the employee is under investigation for alleged criminal conduct that is impactful to the employee’s performance of job duties or to the agency’s critical mission activities. Contingent with the circumstances of the criminal charges, reassignment may occur if the agency can identify a placement that does not jeopardize the investigation or create liability for the Commonwealth.</p> <p><b>Suspension without Pay due to Alleged Criminal Conduct</b></p> <ul style="list-style-type: none"> <li>● Any employee who is formally charged with a criminal offense that impacts their ability to do their job or represents a risk to the agency and to the agency’s mission shall be immediately suspended without pay for a period not to exceed ninety calendar days or temporarily reassigned to a position that is not impacted by the criminal charges.</li> <li>● Agencies have the option to allow employees to charge accrued annual leave to this period of suspension provided that the employee has sufficient leave balances.</li> <li>● If, at the conclusion of the ninety-day period of suspension without pay there has been no resolution of the criminal charge, the employee will be placed on or returned to pre-disciplinary leave with pay until the charge has been resolved.</li> </ul>

General Provisions	Application
	<ul style="list-style-type: none"> <li>● If the criminal investigation is concluded without a formal indictment, or if the charge is resolved without the employee being convicted, the employer shall return the employee to active status.</li> <li>● Any accrued annual leave applied to the period of suspension without pay for pending criminal charges shall be reinstated provided the leave was not carried over into the new Leave Year on January 10<sup>th</sup>. This includes the reinstatement of missed annual leave accruals.</li> <li>● Regardless of the status of any criminal investigation, process, or outcome, the agency may determine at any time to notify the employee of disciplinary charges and administer formal disciplinary actions up to and including termination, based upon the facts or evidence of conduct that prompted the criminal investigation or process.</li> <li>● See the <a href="#">Policy Guidance document Impact of Suspension on Pay and Benefits</a></li> </ul>
<p>Impact of Felony Convictions for Misconduct Associated with Performance of Job Duties</p>	<p>In accordance with § 51.1-124.13, when an employee is convicted of a felony for misconduct associated with the performance of job duties, a forfeiture of all VRS-related benefits will occur.</p> <ul style="list-style-type: none"> <li>● Prior to making such a determination, the agency must provide the employee with a written notice and provide a reasonable opportunity for the employee to be heard during the agency’s review process. The employee’s response may be written or heard orally via a virtual or in person meeting.</li> <li>● Upon consideration of the employee’s response and the relevant criteria associated with the felony, the agency shall notify the employee in writing of a determination which shall also include the employee’s option to appeal.</li> <li>● Within five calendar days of the receipt of the determination, the employee may submit a written appeal of the agency’s determination sent to the Agency Head or designee.</li> <li>● Within five working days of receiving an employee’s appeal of the determination, the agency shall transmit a copy of the record to the clerk of the circuit court in the jurisdiction where the employer is located.</li> <li>● If a timely appeal is not filed by the employee, the Agency’s determination becomes final ten calendar days after the agency’s determination.</li> </ul>

General Provisions	Application
	<ul style="list-style-type: none"> <li>● Within thirty days of the receipt of the record, the court shall hear the appeal and evidence that is necessary to resolve any controversy as to the correctness of the record and at its discretion, may hear other relevant evidence. The circuit court hearing shall be at no cost to the Agency or the employee per § 51.1-124.13.</li> <li>● The court may affirm, reverse or modify the Agency’s determination. The decision of the court shall be rendered within fifteen days from the date of the hearing’s conclusion. The court’s decision shall be considered final and is not subject to appeal.</li> </ul> <p>Upon a final determination that the felony conviction is associated with the employee’s job, Human Resources must submit a completed VRS-180 (Employer Request for Forfeiture of Member Benefits) to the VRS. The VRS-180 provides detailed descriptions of the forfeiture and appeals processes as well as which VRS benefits are affected by the request.</p> <p>Direct the employee to the Virginia Retirement System (VRS) to determine their eligibility for a full or partial refund of employee contributions and interest based on vesting requirements for refunds as established by the VRS policies.</p>

***Disciplinary Suspension***

General Provisions	Application
Disciplinary Suspensions	<ul style="list-style-type: none"> <li>● All disciplinary suspensions represent a Leave without Pay or pay docking transaction.</li> <li>● Employees on suspension normally shall not be allowed on the agency's premises, nor shall they be allowed to work except to fulfill previously scheduled court obligations or to file and process a grievance or Equal Employment Opportunity complaint.</li> <li>● The maximum periods of suspensions are described in Attachment A – Examples of Offenses Grouped by Level.</li> </ul>
Suspension of Employees <b>Exempt</b> from the Fair Labor Standards Act	<p><b>Exempt</b> employees’ salaries may not be reduced as the result of a suspension except as described in this section. Exempt employees should be reimbursed promptly for any disciplinary salary reductions that are non-compliant.</p> <p>NOTE: Although probationary employees are not covered by this policy, the FLSA rules for suspension are applicable.</p>

General Provisions	Application
	<p><b>Suspension for Infraction of a Safety Rule</b></p> <ul style="list-style-type: none"> <li>● Disciplinary suspension of an exempt employee for an infraction of a safety rule of major significance may be applied for less than a full workday or workweek.</li> <li>● Safety rules of major significance are defined as provisions intended to prevent serious danger to the workplace or to other employees.</li> </ul> <p><b>Suspension for Misconduct</b></p> <ul style="list-style-type: none"> <li>● If an exempt employee is suspended for misconduct, the suspension shall not be less than a full workday.</li> <li>● Suspensions of more than one workday must be in multiples of full workdays, e.g., a three-day (24 hour) suspension for an employee assigned to 8-hour workdays, or a three-day (30 hour) suspension for an employee assigned to 10-hour workdays.</li> <li>● If it becomes necessary to remove an exempt employee from the workplace for a partial workday due to the employee's misconduct, the employee must be paid for that partial day's absence.</li> </ul> <p><b>Suspension for Unsatisfactory Attendance or Non-Conduct related Performance Issues</b></p> <ul style="list-style-type: none"> <li>● If an exempt employee is suspended for disciplinary reasons related to the employee's unsatisfactory attendance or performance issues (non-conduct related) the suspension shall not be less than a full workweek.</li> <li>● Suspensions of more than one workweek will be in multiples of full workweeks, e.g., a three-week (120-hour) suspension. An employee may not be permitted to serve a suspension related to attendance or performance other than in whole workweek segments.</li> <li>● Less serious violations in these areas should be addressed by other means of discipline, reserving suspension for the most serious or repeated violations.</li> </ul> <p><b>Suspension Pending Outcome of a Criminal Investigation</b></p> <ul style="list-style-type: none"> <li>● If an exempt employee is suspended pending the outcome of a criminal investigation, the employee must be paid for any partial work week suspensions.</li> <li>● Full workweeks of suspension are unpaid. See the <a href="#">Policy Guidance document Impact of Suspension on Pay and Benefits</a></li> </ul>

**Removal Due to Circumstances which Prevent Employees from Performing their Jobs**

General Provisions	Application
<p>Inability to meet working conditions</p>	<p>An employee unable to meet the working conditions of their employment due to circumstances such as those listed below may be removed under this section. Reasons include but are not limited to:</p> <ul style="list-style-type: none"> <li>● Loss, suspension or restrictions of driver's license that is required for performance of the job;</li> <li>● Incarceration for any period that is disruptive to agency business operations;</li> <li>● Failure to obtain or retain license, certification, or other credentialing required for the job;</li> <li>● Inability to perform the essential functions of the job after reasonable accommodation (if required) has been discussed, applied and alternative accommodations will result in undue hardship;</li> <li>● Failure to successfully pass an agency's background investigation;</li> <li>● Conviction of a misdemeanor crime of domestic violence for employees whose jobs require: a) carrying a firearm; or b) authorization to carry a firearm; or</li> <li>● Conviction of barrier crimes that impact the employee's ability to perform assigned job duties;</li> <li>● Failure to timely present appropriate documentation of identity and eligibility to work in the U.S. as required by federal law to include expiration of prior visa.</li> </ul> <p>Prior to such removal, the appointing authority and/or Human Resource Office shall gather full documentation supporting such action and issue a notice of intent to the employee, verbally or in writing, of the reasons for such a removal, giving the employee a reasonable opportunity to respond.</p> <p>Final notification of removal should be via memorandum or letter, not by a Written Notice form.</p> <p>Employees may challenge removals through the Employee Grievance Procedure, and may direct questions regarding this procedure to the DHRM Office of Employment Dispute Resolution.</p> <p>Agencies may, based on mitigating circumstances, demote or transfer and reduce the employee's duties with a minimum 5% reduction in salary, or transfer them to an equivalent position</p>



General Provisions	Application
	without a reduction in salary as an alternative to termination based upon availability of funded positions and agency business need.
Terminations	Refer to <a href="#">Policy 1.70, Termination/Separation from State Service</a> for additional information on the disposition of leave and other benefits upon separation from state service. Refer to the <a href="#">Terminations Reference Guide</a> for additional information

***Use of Grievance Procedure***

General Provisions	Application
Classified Non-Probationary Employees	Classified, non-probationary employees may challenge corrective or disciplinary actions through the Employee Grievance Procedure, and may direct questions regarding this procedure to the Department of Human Resource Management’s Office of Employment Dispute Resolution.
Hearing Officer's Authority	<p>A hearing officer may uphold, reduce or rescind corrective or disciplinary actions taken by an agency so long as the officer’s decision is consistent with written policy. See the Grievance Procedure Manual for a full understanding of Hearing Officer’s Authority.</p> <p><b>Reinstatement by a Hearing Officer</b></p> <p>When a hearing officer orders an employee's reinstatement from suspension or termination the hearing officer may order:</p> <ul style="list-style-type: none"> <li>● Full, partial, or no back pay;</li> <li>● A reduction in the employee's disciplinary record such that termination no longer could take place (e.g., the employee has only three Group I Written Notices or one Group II Written Notice); or the officer must reinstate the employee with full back pay minus an appropriate disciplinary suspension;</li> <li>● Adjustments to accrued leave; or</li> <li>● Reimbursements for health insurance premiums.</li> <li>● For additional details, see the <a href="#">Policy Guidance document Impact of Suspension on Pay and Benefits</a></li> </ul>

## **Records Management**

General Provisions	Application
Disciplinary Records	Agencies must update payroll and/or the human resources information system records as promptly as feasible upon issuance of a Written Notice, upon placing employees on pre-disciplinary leave or disciplinary suspension, and upon subsequent demotions or transfers with disciplinary salary actions, terminations, or reinstatements or reduction of the disciplinary action. See the DHRM <a href="#">Policy Guide – Managing Corrective and Disciplinary Records</a> .

### **GLOSSARY**

Pre-disciplinary Leave	Pre-disciplinary Leave is leave with pay which is applicable when disciplinary action is being considered and the employee's removal from the workplace is necessary or prudent to allow for the completion of a disciplinary review or pre-disciplinary investigation.
Corrective Action	Any intervening verbal or written counseling action taken by a supervisor or manager to address employment problems, such as unacceptable performance, behavior, or conduct.
Counseling	Counseling may be a verbal or written intervention that consists of a dialogue between an employee and their supervisor to address and reinforce expectations of an employee's work performance, behavior, and/or conduct. Written counseling discussions must be documented in a written memorandum or the use of the Notice of Improvement Needed/Substandard Performance form. Counseling that is related to work performance may be included in an interim performance evaluation as described in Policy 1.40, Performance Planning and Evaluation.
Criminal Charge	An arrest or indictment by law enforcement authorities against an employee for the commission of a criminal offense.
Criminal Offense	Criminal Offenses include felonies and misdemeanors as defined in the statutes of the United States, the Commonwealth of Virginia, other sovereign states, and other city and county governments. Criminal offenses shall not include traffic or other charges that are specifically differentiated and exempted from statutory criminal offenses. However, DUI or other formal charges that impact an employee's ability to drive a vehicle or could result in incarceration if convicted shall be considered criminal charges.
Disciplinary Action	A formal action taken in response to unacceptable performance or misconduct. Disciplinary actions include the issuance of Written Notices; suspensions; demotions; transfers; disciplinary salary actions; and terminations.

Disciplinary Demotion	Management initiated assignment of an employee to the same or a different position in the same or lower Pay Band/Grade with reduced job responsibilities that must result in a minimum of a 5% reduction in base salary. In no case may an employee's salary exceed the maximum of the pay band following a disciplinary salary action.
Disciplinary Review	A process that involves reviewing the facts and circumstances surrounding misconduct or unacceptable performance in order to determine if disciplinary action is warranted.
Disciplinary Salary Action	Employees may be retained in their current positions and have their duties reduced, be demoted, or transferred to positions in the same or lower pay band with reduced job responsibilities in lieu of termination. The employee's salary in each case must be reduced by at least 5%. In no case may an employee's salary exceed the maximum of the pay band following a disciplinary salary action. Agencies have the authority to transfer employees to equivalent positions as part of the disciplinary process without a reduction in salary.
Employee Assistance Program (EAP)	A confidential assessment, referral, and short-term problem-solving service available to eligible employees and family members. Enrollment in the EAP is automatic as part of the health plan coverage.
Formal Break in Service	For the purpose of this policy, a break of at least thirty days from the date of separation. Periods of leave with or without pay do not count toward satisfying this break in service.
Interim Evaluation	A performance evaluation completed during the performance cycle to document and assess an employee's progress toward achieving the performance plan. Interim Performance Evaluations are not considered "official" documents and are retained in the supervisor's confidential file for use in constructing the annual performance evaluation. Counseling, particularly when related to work performance, may be part of an interim evaluation. Prior to any pre-disciplinary or disciplinary actions employees must be given oral or written notification of an offense, an explanation of the agency's evidence in support of the charge, and a reasonable opportunity to respond. Agencies must provide a clear and descriptive explanation of the offense in a manner that ensures that the employee understands the facts presented and will be able to present mitigating factors or denial of the charge.
Notice of Intent	Prior to any pre-disciplinary or disciplinary actions, employees must be given oral or written notification of an offense, an explanation of the agency's evidence in support of the charge, and a reasonable opportunity to respond. Agencies must provide a clear and descriptive explanation of the offense in a manner that ensures that

the employee understands the facts presented and will be able to present mitigating factors or denial of the allegations.

Notice of Improvement Needed/Substandard Performance Form	A form completed by the immediate supervisor during the performance cycle to document substandard performance and the need to improve performance. This document may be issued as written counseling or may also result in issuance of a formal Written Notice. This form must include an improvement plan, which includes an improvement period of no less than 30 days or more than 180 days. See Policy 1.40, Performance Planning and Evaluation.
Progressive Discipline	A system of increasingly significant measures that are utilized to provide feedback to employees so that they can correct conduct or performance problems. It is most successful when provided in a way that helps an employee become a fully contributing member of the organization. Progressive discipline also enables agencies to objectively, and with reliable documentation, terminate an employee who is unable or unwilling to improve their workplace conduct and/or job performance. There may be extenuating circumstances when an employee's conduct requires disciplinary action administered without employing progressive discipline.
Reasonable Opportunity to Respond	Employees must be given a reasonable opportunity to respond after receiving notification of an impending pre-disciplinary or disciplinary action.
Standards of Conduct	Positive expectations for work performance, conduct, and behavior. See Sections: Expectations for Employees and Expectations for Supervisors/Managers.
Suspension	An employee's absence from work, without pay, that an agency imposes as a part of a disciplinary action.
Unacceptable Conduct/Misconduct	Employee conduct or behavior that is inconsistent with state or agency standards for which specific corrective or disciplinary action is warranted.
Workday	For purposes of suspensions without pay, workday is defined as 8 hours for non-exempt employees. For exempt employees, a workday consists of the hours scheduled to work on a normal day.
Workweek	A fixed period of seven consecutive 24-hour periods which is established by the employer for each employee. It may begin on any day of the week and at any hour of the day; it need not coincide with the calendar week. Full-time employees normally work a five-day, 40-hour schedule during a workweek.