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Guidelines for Discipline

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Guidelines for Discipline

1. Context

These guidelines replace the *Guidelines for Discipline* issued on April 1, 2005.

Paragraph 12(1)(c) of the [Financial Administration Act \(FAA\)](#) authorizes every deputy head in the core public administration to establish standards of discipline and to set penalties, including termination of employment, suspension, demotion to a position at a lower maximum rate of pay, and financial penalties that may be applied for breaches of discipline or misconduct. Subsection 12(3) provides, among other things, that disciplinary action shall be for cause. Finally subsection 12.2(1) permits delegation of these authorities.

These guidelines support the principles set out in the [Policy Framework for People Management](#) by providing advice that will foster sound people management practices across the core public administration.

2. Target Audience and Purpose

These guidelines assist human resources advisors in the [core public administration](#) in their role of providing advice and guidance to management in the application of discipline, in the development of departmental codes of discipline, and in the conduct of disciplinary investigations and hearings.

The nature of discipline is to be corrective, rather than punitive, and its purpose is to motivate employees to accept those rules and standards of conduct that are desirable or necessary to achieve the organization's goals and objectives.

3. General

Under subsection 12.2(1) of the FAA, management is responsible and accountable for the imposition of discipline. Typically, the level of management involved is commensurate with the severity of the disciplinary measure. Managers can be referred by human resources advisors to the guidance provided in Appendix A and can consult with their human resources advisor, their labour relations specialist, or both at the earliest indication that misconduct may have occurred. Furthermore, management can refer to the following website devoted to [performance management](#).

It is recommended that codes of discipline developed by human resources advisors or management be based on sound managerial practices. When new codes of discipline or any significant amendments to an existing code are developed, a draft copy may be forwarded to the Treasury Board Secretariat's (TBS's) Employer Representation in Recourse Section for consultation before promulgation.

Upon request, TBS's Employer Representation in Recourse Team is available to provide advice and guidance on termination of employment or demotion or other disciplinary actions.

4. Definitions - Disciplinary measures

In order of increasing severity, disciplinary measures are as follows:

oral reprimand (*réprimande verbale*)

A verbal disciplinary measure that includes a statement outlining to the employee the nature of the misconduct, the corrective action required, and the consequences should it not be corrected. No record of this measure is placed on the employee's personnel file.

written reprimand (*réprimande écrite*)

A formal written notice that misconduct has occurred. It outlines the nature of the misconduct, the corrective action required, and the consequences should it not be corrected. If more severe disciplinary action should later become necessary, the record of the reprimand or reprimands on the personnel file demonstrates that the employee was made aware of the consequences of further misconduct.

suspension (*suspension*)

The temporary removal of the employee from the place of work without pay as a consequence of misconduct. The notice of suspension includes the nature of the misconduct, the corrective action required, and the consequences should it not be corrected.

financial penalty (*sanction pécuniaire*)

An alternative to a suspension, where a financial penalty is considered preferable for operational or economic reasons. Financial penalties are appropriate in situations involving mass unlawful withdrawal of services, continuous shift operations, ships at sea, or isolated posts where it may be difficult to schedule suspensions without the use of replacements and overtime. It

may also be used to impose a definitive disciplinary measure for an act of misconduct. The notice of financial penalty outlines the nature of the misconduct, the corrective measure required, and the consequences should it not be corrected.

demotion (*rétrogradation*)

An action taken by the employer to appoint an employee to a position at a lower maximum rate of pay. Demotion is an alternative to a disciplinary termination and may be used when the manager is of the opinion that, despite the misconduct, the employee is still suitable for continued employment, albeit in a position at a lower maximum rate of pay. Demotion could be used in situations where a manager is found guilty of harassment and is moved to a position with no managerial responsibilities.

termination (*licenciement*)

The separation of an employee from the core public administration for misconduct. Termination may be used after a series of acts of misconduct when a culminating incident has occurred or for a single act of serious misconduct. Termination is the most severe disciplinary measure, and the decision to proceed is taken only after careful consideration and when it is determined that the employee is no longer suitable for continued employment by reason of misconduct.

5. Redress

An employee who is disciplined as described in these guidelines is entitled to present an individual grievance at each of the levels in the grievance process, up to and including the final level, under the [Public Service Labour Relations Board Regulations](#) and the provisions of any applicable collective agreement. Individual grievances may also be subject to third-party adjudication, under paragraph 209(1)(b) of the [Public Service Labour Relations Act](#).

6. References

- [Financial Administration Act](#)
- [Privacy Regulations](#)
- [Public Service Labour Relations Act](#)
- [Public Service Labour Relations Board Regulations](#)
- [Policy Framework for People Management](#)
- [Policy on Terms and Conditions of Employment](#)
- [Collective agreements](#)

7. Enquiries

Please direct enquiries about these guidelines to your departmental labour relations headquarters. Departmental labour relations headquarters can contact their Employer Representation in Recourse Analyst at TBS for interpretation of the guidelines:

Employer Representation in Recourse Team
Compensation and Labour Relations
Employer Representation in Recourse
Treasury Board Secretariat
Ottawa ON K1A 0R5

Appendix A — Guidance for Delegated Managers with Respect to Discipline

1. Collective agreements

Review the applicable collective agreement for provisions pertaining to discipline.

2. Steps in determining misconduct and disciplinary action

- Determine whether rules and orders have been applied fairly and consistently.
- Conduct a fair and objective investigation as expeditiously as possible.
- Establish whether the employee has been accorded due administrative process (see "Investigations and interviews" below).
- Determine whether a breach of conduct has occurred.
- Determine the appropriate disciplinary action, taking into consideration mitigating and aggravating circumstances.

3. Investigations and interviews

- Conduct an investigation into the alleged misconduct as soon as possible after the relevant incident.
- Conduct the investigation fairly and objectively and consider and provide the following:
 - Background information leading to the relevant incident;
 - Input from the witness or witnesses;
 - The employee's response to the allegation(s);
 - An analysis of the facts; and
 - The conclusion as to whether misconduct has taken place.

In the context of administrative due process, employees have a right to be informed of the alleged wrongdoing and to have an opportunity to respond. Interviews with employees normally take place in private. Managers are encouraged to consult the

applicable collective agreement and to advise the employee of the provisions respecting the attendance of a union representative or other representative at the interview. Management may also choose to be accompanied by a human resources advisor or another management colleague during the interview. Documentation of the outcome of the interview, including the investigation report if there is one, is retained and made available to the employee.

Note that a suspension may be imposed pending investigation of certain suspected misconduct when the presence of the employee at work cannot be tolerated or could undermine or impede the investigation. (See Appendix B for indefinite suspension principles as enunciated in the Public Service Staff Relations Board decision 2002 PSSRB 9, [*Larson v. Treasury Board \(Solicitor General Canada - Correctional Service\)*](#)).

4. Determining appropriate disciplinary action

Each incident of alleged misconduct is considered on the basis of individual merit. Based on the circumstances, in management's opinion, what corrective measures are necessary to correct the undesirable behaviour? The application of disciplinary measures is not to be punitive. In the event that previous efforts to correct behaviour have not achieved the desired results, or if the misconduct of the employee is deemed so egregious that continued employment is not considered feasible, termination action may be the only meaningful, appropriate measure.

Mitigating circumstances, such as the employee's length of service, past record, the seriousness of the offence, and the unique circumstances of each situation, may require variations in management's response to seemingly similar offences. Whatever the response, disciplinary actions depend on the nature of the offence, the attendant circumstances, and any mitigating factors. Consultation with your labour relations specialist may also be appropriate, and a review of applicable jurisprudence is advisable.

It is strongly advised not to delay disciplinary action; a lengthy time gap between the breach of discipline and management's response tends to dissociate the offence from the corrective action. Such delay may also be considered as condoning the offence and may weaken management's case at adjudication.

5. Flexibility and application of discipline

It is recommended to avoid the rigid equation of offences and disciplinary measures. Disciplinary action of a progressively more serious nature may be warranted when there are repeated incidents of misconduct.

6. Meeting at which a disciplinary decision is rendered

Please be mindful of the principles of procedural fairness. According to these principles, once a decision on disciplinary action is made, an employee should be informed of this decision at a disciplinary meeting as soon as practicable. Managers should consult the applicable collective agreement and advise the employee of the provisions relating to the attendance of a bargaining agent or other representative at the meeting. An employee should be informed of the following during a disciplinary meeting:

- The disciplinary measure or measures to be taken;
- The reasons the disciplinary measure was chosen;
- The mitigating circumstances and the contributing factors that were taken into consideration in reaching this decision;
- The manner and the time frame in which the disciplinary measure or measures will be administered in cases involving suspension, financial penalty, demotion and termination; and
- The right to present an individual grievance.

Applicable collective agreements may also require management to inform local union representatives when taking specific forms of disciplinary action. At the disciplinary hearing, an employee should be provided with a written statement of the disciplinary action to be taken.

The Supreme Court of Canada decision in [*Baker v. Canada \(Minister of Citizenship and Immigration\)*](#), [1999] 2 S.C.R. 817, sheds additional light on the principles of procedural fairness:

The duty of procedural fairness is flexible and variable and depends on an appreciation of the context of the particular statute and the rights affected. The purpose of the participatory rights contained within it is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision maker.

7. Documentation

A written record of the disciplinary action taken should be placed on an employee's personnel file. With respect to discipline, only documentation that the employee is aware of can be placed on his or her personnel file. Failure on the part of an employee to acknowledge disciplinary documentation being placed on file may be substituted by a notation to that effect. Any document or written statement related to a disciplinary action which may have been placed on the personnel file of an employee shall be destroyed in compliance with the applicable provision of the collective agreement or in compliance with section 4 of the *Privacy Regulations*.

Appendix B — Indefinite Suspension Principles for Consideration by Delegated Managers

Adjudicators have considered the following principles from the Public Service Staff Relations Board decision 2002 PSSRB 9, [Larson v. Treasury Board \(Solicitor General Canada - Correctional Service\)](#), in determining whether an indefinite suspension was justified:

1. The issue in a grievance of this nature is not whether the grievor is guilty or innocent, but rather whether the presence of the grievor as an employee of the organization can be considered to present a reasonably serious and immediate risk to the legitimate concerns of the employer;
2. The onus is on the [employer] to satisfy the board of the existence of such a risk and the simple fact that a criminal charge has been laid is not sufficient to comply with that onus. The [employer] must also establish that the nature of the charge is such as to be potentially harmful or detrimental or adverse in effect to the [employer's] reputation or product or that it will render the employee unable properly to perform his duties or that it will have a harmful effect on other employees of the company or its customers or will harm the general reputation of the [employer];
3. The [employer] must show that it did, in fact, investigate the criminal charge to the best of its abilities in a genuine attempt to assess the risk of continued employment. The burden, in this area, on the [employer] is significantly less in the case where the police have investigated the matter and have acquired the evidence to lay the charge than in the situation where the [employer] has initiated proceedings;
4. There is further onus on the [employer] to show that it has taken reasonable steps to ascertain whether the risk of continued employment might be mitigated through such techniques as closer supervision or transfer to another position; and
5. There is a continued onus on the part of the [employer] during the period of suspension to consider objectively the possibility of reinstatement within a reasonable period of time following suspension in light of new facts or circumstances which may come to the attention of the [employer] during the course of the suspension. These matters, again, must be evaluated in the light of the existence of a reasonable risk to the legitimate interest of the [employer].