

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN RESOURCES**

**CHAPTER 1120-10  
DISCIPLINARY ACTION**

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**1120-10-.01 POLICY.** The intent of this chapter is to establish fair and uniform standards for the application of disciplinary procedures among agencies and institutions subject to the provisions of these Rules. A career employee may be warned, suspended, demoted, or dismissed by the appointing authority whenever just or legal cause exists. The degree and kind of action is at the discretion of the appointing authority, but must be in compliance with the intent of the provisions of this Rule and the Act.

**Authority:** T.C.A. § 8-30-202, 8-30-203, 8-30-204, 8-30-318, 8-30-325, 8-30-326, and 8-30-330.  
**Administrative History:** (For history prior to January 2, 1988 see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

**1120-10-.02 MINIMUM DUE PROCESS.**

- (1) Career employees obtain a property right to a position in the classification in which they currently hold career status. Therefore, no suspension, demotion, dismissal or any other action which deprives a career employee of this property right will become effective until minimum due process is provided as outlined in this Rule.
- (2) Minimum due process consists of the following:
  - (a) The employee shall be notified of the charges. Such notification shall detail times, places, and other pertinent facts concerning the charges and shall be in writing.
  - (b) The notification must provide an opportunity for the employee to have a pre-decision discussion with an appropriate manager and must state the mechanism through which such a discussion may be arranged. The employee should be given a reasonable period of time to prepare to answer charges and present information relevant to the charges presented.
  - (c) The manager conducting such discussions must be an appointing authority or manager who has direct access to an appointing authority for this purpose.
  - (d) The discussion process outlined herein shall be for the purpose of allowing the employee to present information to the manager regarding the disciplinary action under consideration.
  - (e) The discussion shall be informal. The employee shall have the right to present written statements of witnesses or any other information with regard to the charges. Attendance and participation by persons other than the manager and the employee shall be at the sole discretion of the manager.

(Rule 1120-10-.02, continued)

- (f) If the employee declines the opportunity to have the discussion or present information, the provisions of this section are deemed to have been met.
- (g) The due process discussion is not considered to be a contested case hearing as defined under the Uniform Administrative Procedures Act.
- (h) The Commission shall determine, as a preliminary matter to the merits of a grievance, a grievant's allegation that the employee was denied minimum due process.

**Authority:** T.C.A. § 8-30-202, 8-30-203, 8-30-204, and 8-30-331. **Administrative History:** (For history prior to January 2, 1988 see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

**1120-10-.03 EXCEPTION TO MINIMUM DUE PROCESS.** When an employee is acting in a dangerous or otherwise threatening manner and must be removed from the workplace immediately, it is not necessary for the agency to provide minimum due process prior to removing the employee from the workplace. In such case, the appointing authority shall place the employee on administrative leave with pay, in accordance with policies established by the Commissioner, pending due process. Minimum due process is required as quickly as practicable after removing the employee from the workplace. .

**Authority:** T.C.A. § 8-30-202, 8-30-203, and 8-30-204. **Administrative History:** (For history prior to January 2, 1988 see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

**1120-10-.04 CAUSES FOR DISCIPLINARY ACTION.** Causes for disciplinary action fall into two categories:

- (1) causes relating to performance of duties; or
- (2) causes relating to conduct which may affect an employee's ability to successfully fulfill the requirements of the job.

**Authority:** T.C.A. § 8-30-202, 8-30-203, and 8-30-204. **Administrative History:** (For history prior to January 2, 1988 see pages 1-2 of the Introductions at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

**1120-10-.05 EXAMPLES OF DISCIPLINARY OFFENSES.** The following are examples of acts that may warrant disciplinary action. This list is not all-inclusive and shall not limit an appointing authority's discretion in disciplinary matters:

- (1) Inefficiency in the performance of duties;
- (2) Incompetency in the performance of duties;
- (3) Negligence in the performance of duties;
- (4) Misconduct involving public officials and employees pursuant to T.C.A., Title 39, Chapter 16, Part 4;
- (5) Careless, negligent, or improper use of state property or equipment;

(Rule 1120-10-.05, continued)

- (6) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees;
- (7) Habitual improper use of sick leave;
- (8) Habitual pattern of failure to report for duty at the assigned time and place;
- (9) Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment;
- (10) Gross misconduct;
- (11) Conduct unbecoming an employee in state service;
- (12) Conviction of a felony;
- (13) Willful abuse or misappropriation of state funds, property or equipment;
- (14) Falsification of an official document relating to or affecting employment;
- (15) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department, or any other segment of the state service or that would interfere with the ability of management to manage;
- (16) Trespassing on the property of any state officer or employee for the purpose of harassment;
- (17) Damage or destruction of state property;
- (18) Acts that would endanger the lives and property of others;
- (19) Possession of unauthorized firearms, lethal weapons, alcohol or illegal drugs on the job;
- (20) Brutality in the performance of duties;
- (21) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination);
- (22) Reporting to work under the influence of alcohol or illegal drugs, or partaking of such on the job;
- (23) Sleeping or failure to remain alert during duty hours;
- (24) Unauthorized disclosure of confidential information;
- (25) Garnishment of wages for more than one indebtedness;
- (26) Political activity prohibited by T.C.A., Title 2, Chapter 19 (the "Little Hatch Act") or by U.S.C., Title 5, Chapter 15 (the "Federal Hatch Act"); and
- (27) For the good of the service as outlined in T.C.A. § 8-30-326.

**Authority:** T.C.A. § 8-30-203, 8-30-202, 8-30-203, 8-30-326, and §§ 2-19-201 through 2-19-208.  
**Administrative History:** (For history prior to January 2, 1988 see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

**1120-10-.06 PROGRESSIVE DISCIPLINARY ACTION.**

The supervisor is responsible for maintaining the proper performance level, conduct and discipline of the employees under his supervision. When corrective action is necessary, the supervisor should administer disciplinary action at the lowest appropriate step for each area of performance issues and/or misconduct. Corrective actions include:

- (1) Oral Warning.
  - (a) The supervisor will meet privately with the employee to:
    - (1) Review with the employee exact job expectations and the reasons for those expectations.
    - (2) Explain to the employee how a job requirement has not been met and detail how the present performance or conduct is unacceptable.
    - (3) Allow the employee to give reasons for such inappropriate actions or failures.
    - (4) Make suggestions for correction.
    - (5) Provide the employee with documentation of the date of the discussion and other necessary information for future reference.
  - (b) Written follow-up to the discussion may be forwarded to the employee but is not required. Written follow-up to an oral warning should not be construed as a written warning as described below and shall not be maintained as part of the employee's official human resources file.
- (2) Written Warning.
  - (a) The supervisor will meet with the employee and:
    - (1) Review the points covered in the oral warning, if an oral warning was administered.
    - (2) Review with the employee exact job expectations and the reasons for those expectations.
    - (3) Explain to the employee how job requirements have not been met and detail how the present performance or conduct is unacceptable.
    - (4) Allow the employee to give reasons for such inappropriate actions or failures.
    - (5) Make suggestions for correction.
    - (6) Indicate that failure to improve will lead to further disciplinary action.
    - (7) Tell the employee the discussion will be documented in a letter which shall cover the significant points of the discussion.
  - (b) A copy of the written warning may be placed in the employee's human resources file in the agency human resources office at the discretion of the appointing authority. Written warnings do not become a part of an employee's human resources file until

(Rule 1120-10-.06, continued)

the review process established in 1120-10-.07 is complete or thirty (30) calendar days have passed.

- (3) Suspension Without Pay.
  - (a) After the agency has met minimum due process requirements, an appointing authority may suspend a career employee without pay for disciplinary purposes, for such length of time as the authority considers appropriate, not to exceed thirty (30) workdays in a rolling twelve (12) month period. With approval of the Commissioner, a career employee may be suspended for a longer period pending the investigation or trial of any charges against the employee.
  - (b) Any employee who is suspended will receive a written notice from the appointing authority that will contain the following:
    - (1) an account of the circumstances which led to the decision to issue the suspension;
    - (2) the beginning and ending dates of the suspension; and
    - (3) information to the employee concerning appeal rights as outlined in Chapter 1120-11 of these Rules. A copy of the notice will be placed in the employee's human resources file and a copy shall be forwarded to the Department.
- (4) Dismissal.
  - (a) After the agency has met minimum due process requirements, an appointing authority may dismiss a career employee for unacceptable performance or conduct.
  - (b) Before a career employee is dismissed, the appointing authority must provide to the employee a written notification detailing the circumstances leading to the decision to dismiss. The notice will indicate the effective date of the dismissal and inform the employee of his rights to appeal as outlined in Chapter 1120-11 of these Rules. A copy of the notice will be placed in the employee's human resources file and a copy will be sent to the Department.
  - (c) Before a career employee can be dismissed, the agency must provide ten (10) calendar days paid notice. During the notice period an employee will not be required to report for duty. The employee's accumulated annual leave balance may be used during this notice period only if dismissal was for gross misconduct.
- (5) Transfer or Demotion. If the appointing authority determines that a career employee's ability to satisfactorily perform the required duties of the position is beyond the capabilities of the employee or the employee has been compromised by notorious conduct to the extent that the employee is rendered ineffective in his position, the appointing authority may choose to demote or transfer the career employee to another position. The appointing authority may not demote or transfer a career employee more than fifty (50) miles until after the agency has met minimum due process requirements as outlined herein.

**Authority:** T.C.A. § 8-30-202, 8-30-203, 8-30-204, 8-30-318, 8-30-325, 8-30-326, and 8-30-330.

**Administrative History:** (For history prior to January 2, 1988 see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed May 6, 1996; effective July 20, 1996. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

**1120-10-.07 REVIEW OF WRITTEN WARNING.**

- (1) A career employee who wishes to contest a written warning may request a review of that warning by the agency appointing authority or designee for this purpose. The employee must submit a written request for review to the appointing authority no later than thirty (30) calendar days from receipt of a written warning. The request for review should include documentation of any mitigating circumstances causing the employee to believe that the warning is undeserved.
- (2) The appointing authority or designee will review the warning and all documentation submitted by the employee and make a decision which may be one of the following:
  - (a) There is sufficient cause for written warning and it stands as issued. The request for review and the response become a part of the employee's human resources file.
  - (b) There is sufficient cause for an oral warning and the appointing authority reduces the written warning to an oral warning.
  - (c) There is insufficient cause for disciplinary action of any kind resulting in retraction of the written warning.
- (3) The appointing authority or designee will communicate the written decision to the employee within fifteen (15) workdays of receipt of request for review.
- (4) The appointing authority's written decision is final.
- (5) Any written warning issued to an employee and a request for review and findings shall be automatically expunged from the employee's human resources file after a period of two (2) years, provided that the employee has had no further disciplinary actions with respect to the same area of performance, conduct, and discipline.

**Authority:** T.C.A. 8-30-202, 8-30-203, 8-30-204, and 8-30-330. **Administrative History:** (For history prior to January 2, 1988 see pages 1-2 in the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Amendment filed October 25, 1995; effective February 28, 1996. Repeal and new rule filed December 14, 2010; effective May 31, 2011.

**1120-10-.08 EXECUTIVE SERVICE EMPLOYEE.** An executive service employee serves at the will and pleasure of the appointing authority.

**Authority:** T.C.A. § 8-30-202, 8-30-203 and 8-30-208. **Administrative History:** New rule filed December 14, 2010; effective May 31, 2011.