



**Supervisor's Guide To**

**PERFORMANCE MANAGEMENT**

**&**

**PROGRESSIVE DISCIPLINE**

Revised: 2004

# PERFORMANCE MANAGEMENT PRACTICES FOR SUPERVISORS & MANAGERS

## INTRODUCTION

An important part of a manager or supervisor's job is obtaining effective job performance from workers. The employees in a unit look to the supervisor for direction and leadership. The supervisor provides this by identifying performance standards and providing motivation, employee development, evaluation, training, reward and discipline, if necessary. The purpose of this manual is to equip DMHAS supervisors with the means to effectively manage and improve employee work performance when problems occur.

Supervisors are responsible for instructing employees in what is needed to meet performance standards and comply with rules of conduct. If this is properly done and problems are recognized and solved early, the need for disciplinary action should be reduced. Effective discipline is the result of constructive leadership exercised within the framework of clear and consistent policies and direction. It is inseparable from other aspects of supervision and employee relations.

Handling performance issues well is a matter of using good judgment and common sense within the context of DMHAS policies and Work Rules, State regulations, accepted labor relations practices, and collective bargaining agreements. The information that follows is meant to inform the DMHAS supervisor in following procedures for improving and/or correcting employee performance through the various aspects of performance management as well as the application of the concept of "Progressive Discipline." Sample letters are available in the Appendix to this manual.

At the onset, a supervisor should communicate the concept that satisfactory performance is a minimal expectation. Techniques of non-disciplinary action as well as progressive discipline should be used to immediately address performance deficiencies or incidents of misconduct.

When violations of work rules, clinical policies, human resource policies and procedures or State or federal regulations or mandates, occur, it is the supervisor's responsibility to recognize these violations and begin corrective action. If such violations or performance issues go unchecked, problems may escalate and become more difficult to handle. In addition, the solution will probably be more difficult and time consuming to administer. The supervisor should address all issues at the earliest possible step using the primary tools outlined in the non-disciplinary and progressive discipline process described in this manual.

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# **I. NON-DISCIPLINARY PERFORMANCE MANAGEMENT**

## **COACHING**

As it relates to performance management, coaching is a process that is used primarily to motivate and/or teach employees certain tasks/responsibilities. Coaching is a method especially useful in assisting employees to address complex problems and/or attain significant goals in a highly individualized fashion. Coaching is a collaborative process, one where a supervisor and employee continually set short and long term performance goals; listen actively to each other during coaching sessions; and ask questions, share views, and negotiate approaches for further development. Coaching is not disciplinary, and occurs BEFORE performance problems occur.

There are three major steps to coaching:

- Preparation
- Discussion
- Follow-up

Preparation is the key to coaching success. A good coach writes a discussion plan beforehand identifying the things that need to be covered during the coaching session. The employee should also write a discussion plan prior to each coaching session.

In the coaching session both coach and employee should agree to and list areas where results were achieved or exceeded; areas where results did not meet expectations; action plans for remedying problems where desired results did not occur; and additional short and long term performance goals.

Follow up should occur on a regular basis. Good coaches continually reinforce positive performance results and address issues arising when goals are not reached.

The difference between coaching and counseling:

COACHING is meant for when a person does not know how to do the task/assignment. Coaching takes place BEFORE problems occur.

COUNSELING is for when a person knows how to do the assignment but is not able to or not willing to do it.

## **COUNSELING**

The counseling session is a meeting held between the supervisor and employee to discuss either specific general work performance areas in need of improvement or a violation of policies or work rules. Frequently, problems that are recognized early can be resolved by counseling. Privacy and sufficient time devoted to the meeting are essential. It is generally helpful to prepare for the counseling session by developing a written outline of specific problem areas with corresponding suggestions/directives for improvement.

A positive approach to the discussion, coupled with constructive counseling, serve as key elements to the counseling session. Documentation of the session on the appropriate counseling form or kept in supervisory notes is strongly urged. This provides a basis for follow-up at future meetings with the employee, and gives you a source of documentation if the problem persists.

### **When Counseling Is Used**

Counseling is used at first indication that improvement is necessary. It is important to remember that although counseling sessions may precede written warnings and official disciplinary action(s), it is not in and of itself considered disciplinary. Some supervisors feel that because a topic has been mentioned in a conversation with the employee at some time, counseling has occurred. However, a casual conversation, combined with other topics, may not have the desired impact on the employee. Counseling is a private discussion with a closed door and limited interruptions. It is meant to impress upon the employee the seriousness of your expectations, and permit the exchange of information that is critical to the employee's success. If feasible, the situation should be reviewed with facility Human Resource staff prior to proceeding with the meeting.

If the employee does not improve, or the problem is not corrected following counseling, it may be necessary to move to progressive discipline. A general rule of thumb is that if a person has been counseled twice without improvement, it may be appropriate to move on to progressive disciplinary procedures.

When counseling an employee, remember that the proper objective is corrective action, not punishment.

**DO** tell the employee at the outset, "This is a counseling session".

**DO** tell the employee what the SPECIFIC problem is.

**DO** tell the employee the expected improvements.

**DO NOT** threaten the employee with discipline.

**DO NOT** describe adverse consequences if no improvement is made.

A calm and thoughtful approach will keep the supervisor in control of the situation and hopefully allow the employee to move positively towards a productive goal without causing resentment or embarrassment.

A counseling session is not discipline, and the employee has no contractual right to union representation. If an employee insists upon union representation during a counseling session, the supervisor *may* comply with such requests, in accordance with specific bargaining unit language. Consult with your Human Resource Officer if you have questions about this.

### Record of Counseling

Make a written record showing the date and circumstances of the counseling session. This may be done in one of several ways:

- The counseling session may be documented by informal notes in the supervisor's administrative file or notebook and on his/her calendar. The notes should include the date the counseling session was held, who attended, and what was discussed.
- The "Immediate Supervisor's Record of Counseling" form may be completed and kept in the supervisor's administrative file. (See Appendix).
- A memo to the employee should be issued confirming that the verbal counseling session was held on a given date. *This is strictly a communication between the supervisor and the employee.* It should restate the problem that was discussed, indicate who attended the meeting, the supervisor's specific expectations, a description of the objective and a target date, and state what assistance the supervisor will provide. *The memo must NOT include any warning of consequences if the objective is not met, and it must NOT include any reference to "discipline" or "further disciplinary action". A copy of this memo should be placed in the supervisor's administrative file. A copy is NOT placed in the employee's official personnel file.*

PLEASE NOTE: The collective bargaining agreement may require written notice to the employee of counseling under some circumstances. The memo confirming the counseling session as described above will fulfill such a contractual requirement. A facility Human Resource staff member should be consulted for guidance. This process also applies to managerial employees.

## **POINTS TO REMEMBER DURING ANY DISCUSSION WITH AN EMPLOYEE**

### **BE IN CONTROL OF YOURSELF**

Nothing constructive is accomplished with loss of temper. Things are likely to be said and accusations made that will later be regretted. By being in control and thinking clearly, the supervisor can maintain a positive environment.

### **SPEAK WITH THE EMPLOYEE IN PRIVATE**

Labor contracts as well as counseling objectives require that it be done in private. Safety violations which endanger others or department property must be stopped immediately, but even in those situations, the employee should be taken aside at the first opportunity and counseling should be conducted in private.

### **BE POSITIVE OF YOUR FACTS**

A supervisor should be certain that counseling is necessary. Therefore, it is important that the supervisor does not rely on gossip, rumors, or hearsay.

What did the person do wrong? What are the consequences? Has the individual committed similar infractions in the past? How long ago? The supervisor needs all the facts in order to be well prepared. Supervisors who impulsively counsel an employee and then discover that the counseling was not warranted may find the employee and the work environment negatively impacted.

Plan your comments and directives before the meeting. Make an outline of subjects to be discussed in order to address all of the important issues. Don't rely on memory alone.

### **GET THE EMPLOYEE'S SIDE OF THE STORY**

By listening attentively and courteously to the employee's explanation, the supervisor shows concern for fair treatment of the individual. Facts may need to be verified and/or mitigating circumstances considered. This may revise the supervisor's approach or treatment of the subject(s) to be covered. The success of the counseling session will depend on the supervisor's approach to understanding the employee's side of the story and the facts of the issues being discussed.

### **BE FIRM BUT FAIR – MEASURE THE EMPLOYEE BY A REALISTIC STANDARD**

The supervisor should explain that the employee's performance is below what is expected or that her/his behavior is unacceptable, how the performance or behavior violates the supervisor's expectations or the rules, and the reasons for these expectations and rules. In order to be fair in counseling, the supervisor and employee should set an objective for the employee to reach in a reasonable period of time by a certain date.

## **SHOW CONFIDENCE IN THE EMPLOYEE'S ABILITY TO LEARN AND CHANGE**

An employee's fear of counseling can be lessened if a supervisor shows that s/he has confidence in the ability of the employee to change his/her behavior or meet performance standards. Showing confidence in the employee is a strong, positive way to conclude the session.

## **MAKE A WRITTEN RECORD OF THE COUNSELING**

A record of the counseling in the form of supervisory notes or a memo to the employee should be completed immediately after the counseling session. It should confirm that a counseling session was held on a given date, restate the problem and the supervisor's expectations, describe the specific objective(s) and target date, and offer assistance to the employee to reinforce the need for change.

## **FOLLOW-UP**

If the employee has met the objective(s), tell the employee and compliment him/her.

If the employee fails to meet the objective(s), disciplinary action may be necessary.

A key point to remember in the non-disciplinary process is that *clear and thorough communication of work rules, policies and procedures is a critical first step* to ensuring employee compliance. In fact, ensuring that employees know and understand all rules, policies and procedures can sometimes help you avoid having to take disciplinary action.

## **EMPLOYEE ASSISTANCE PROGRAM**

Solutions EAP (Employee Assistance Program) is a program of Behavioral Health Connecticut, LLC. Solutions provides Employee Wellness Program services to DMHAS employees and their families. If you believe that an employee may be having problems that require outside assistance you may mention the EAP in your counseling session with them. In some cases a statement on EAP may be placed into the text of a letter of warning, usually stating "...If you are experiencing problems that are affecting your work performance you may contact the DMHAS Employee Assistance Program at 1-800-526-3485."

The website for Solutions is at [www.solutions-eap.com](http://www.solutions-eap.com).

## II. THE PROGRESSIVE DISCIPLINE PROCESS

Progressive discipline is a generally accepted supervisory practice that establishes penalties of increasing severity for repeated infractions or work performance issues. Done correctly, it provides a fair, consistent method of addressing unsatisfactory performance or inappropriate behavior. Progressive discipline offers the employee the opportunity to correct unacceptable behavior before being discharged. Disciplinary action will normally begin at the lowest step in the progressive discipline process, but may be advanced depending on the seriousness of the performance issue or infraction. Some cases of misconduct are so severe that you may skip one or more of the steps in the progressive discipline process. Such serious offenses may include but are not limited to theft, violent/assaultive behavior, patient abuse, falsification of employment records, gross insubordination, sleeping on the job, or use of State computers to access pornographic web sites. However, it is not appropriate to fire the employee on the spot. It is important to follow proper procedure when taking action. An employee *may* be placed on administrative leave pending investigation into serious infractions or allegations. The decision to place an employee on paid leave of absence is usually made at the facility level, after consultation with the DMHAS Director of Human Resources or Director of Labor Relations.

### TYPES OF DISCIPLINE

The goal of progressive discipline is to give the employee a chance to correct errors or work performance issues at the first opportunity possible. The process gradually increases the severity of the corrective action and corresponding disciplinary penalty if the employee fails to improve. The process of progressive discipline may include the following actions:

- Letter of warning
- Suspension
- Demotion
- Dismissal

An important point to remember about progressive discipline is that it is intended to be corrective, rather than punitive. Therefore, as a general rule, the minimum disciplinary action should be the first step in the corrective process. However please note that if the infraction is severe enough the penalty can be termination. In these types of cases the goal of discipline is to remove a staff member who has been involved in conduct that is too egregious to warrant a second chance.

### When Progressive Discipline is Used

Supervisors may need to implement the progressive discipline process for the following reasons:

- violation of DMHAS General Work Rules;

- violation of DMHAS (or facility) policies or procedures;
- violation of regulations of the State of Connecticut;
- violation of state or federal laws; and
- job performance, which is less than satisfactory.

The expectation is that the problem will be remedied after initial disciplinary action has been taken. The type of corrective action taken in a specific situation depends upon many variables, including:

- the seriousness of the offense committed or the job performance deficiency and the circumstances under which it occurred;
- the seriousness of the offense or deficiency in terms of the employee's duties and responsibilities, level in the organization, and possible impact on coworkers;
- the effect of the offense or deficiency on the efficient operations of the organizational unit;
- the previous measures taken to correct the same problem, if this is a "repeated" offense or occasion of performance deficiency;
- the employee's explanation of her/his actions regarding the offense or deficiency;
- the type of corrective action taken for similar offenses or deficiencies;
- the employee's work history.

A supervisor may implement non-disciplinary corrective actions, such as counseling, as necessary. In DMHAS, however, corrective actions that rise to the level of discipline are taken by the facility Human Resources Director, in consultation with the DMHAS Director of Human Resources and/or the Director of Labor Relations. Disciplinary action is usually imposed as a result of a supervisor's recommendation or at the conclusion of an administrative investigation into an employee's alleged wrongdoing.

The following pages describe, in detail, the formal process known as "Progressive Discipline." While properly implementing progressive discipline can be time consuming it has critical implications in the success and defense of your actions as a supervisor. Therefore, it is important for you to thoroughly understand and practice these concepts when disciplining employees.

## **DISCIPLINARY CORRECTIVE ACTION**

### **A. WRITTEN WARNING**

A written warning can be done only in consultation with the facility Human Resource Director.

A written warning is used if the offense is serious enough to warrant discipline or when counseling has not corrected the employee's poor performance or behavior. Counseling is non-disciplinary and tells the employee what is expected of him/her; a written warning restates those expectations but also tells the employee the consequences for failing to meet them. It is a severe sanction for actions or omissions and also includes the consequences of failure to correct such action/omission.

A written warning is the most commonly used disciplinary action in DMHAS. It often can be the result of an investigation into allegations of work rule violations. The employee is entitled to union representation during any investigatory or fact-finding meeting when the employee reasonably believes he/she may be subjected to discipline.

A letter of warning should be as concise as possible and usually includes the following elements:

- the violation, infraction or work performance inadequacy
- the required change in behavior expected from the employee
- specific consequences or actions that may be taken
- a statement that indicates a copy of the warning will be placed in the employee's personnel file and a copy will be sent to the employee's union

A written warning requires that the matter be fully discussed with the employee. It is good management practice to involve the union in the process, however it is not required *unless* the employee refuses to sign the letter of warning.

When meeting with the employee to issue the letter of warning, the employee is required to sign and date the document, to acknowledge receipt. If the employee refuses to sign, a union representative should be asked to sign for the employee in order to acknowledge receipt.

NOTE: If both refuse to sign, another supervisory person should sign as a witness. In such cases, the following statement should be added to the letter:

*“This letter was given to and discussed with the employee, who refused to sign it. When presented to their union representative, they also refused to sign it.”*

(Witness and Date)

NOTE: In the case of an 1199 employee, the contract *requires* the Union delegate to sign the letter when the employee refuses to sign.

## **B. SUSPENSION**

Suspending an employee is to be done only by the facility Human Resource Director in consultation with the DMHAS Director of Labor Relations and the DMHAS Director of Human Resources. A suspension will be issued only after a thorough investigation of the alleged violation by a human resource manager.

A suspension is the most serious action that can be taken prior to the dismissal or disciplinary demotion of an employee. Under existing regulations and contractual provisions, an appointing authority may suspend an employee without pay for an aggregate period not exceeding sixty calendar days in any calendar year.

Suspension imposes a penalty on the employee by depriving the employee of pay during the suspension period. Occasionally it will be deemed to be in the best interests of the employer to impose an "on-paper" suspension or a "letter in lieu of" suspension. This usually occurs in cases of attendance issues. In such a situation, the employee who has been disciplined continues to work his/her regular schedule for the usual wages, but the record reflects a suspension for progressive discipline purposes. This type of discipline carries the same weight as a suspension without pay. It is usually imposed when a staffing shortage would be exacerbated by the suspended employee's absence from the workplace and, concurrently, when management believes the document itself will have the desired corrective results.

Suspension is most often imposed for a specific and serious violation of work rules and not because of an employee's continued poor work performance. A suspension may be warranted for either a first offense, if it is sufficiently serious, or for a repeated violation after one (or more) written warnings have been issued.

## **C. DISCIPLINARY DEMOTION**

A disciplinary demotion can be done only by the facility Human Resource Director in consultation with the DMHAS Director of Labor Relations and the DMHAS Director of Human Resources.

A disciplinary demotion may be used when an employee is willing but not able to carry out the duties of the assigned job, yet has potential as a good, steady, dependable employee in a less demanding assignment. For example, a person may not be able to function as a supervisor of Qualified Craft Workers but may be an excellent carpenter. Normally this determination should be made during the working test period. More often, however, this conclusion is not reached until after a lengthy performance evaluation process resulting in one or more Less Than Good or Unsatisfactory Service Ratings.

Disciplinary demotion has limited use and requires a thorough review with the facility Human Resource Office. In some cases, it may be a more productive alternative than dismissal for two (2) consecutive unsatisfactory service ratings.

#### **D. DISMISSAL**

Dismissal of an employee is to be done only by the facility Human Resources Director and facility CEO in consultation with the DMHAS Director of Human Resources and/or the Director of Labor Relations.

Often called the “capital punishment” of the employment world, dismissal is normally the last step in the disciplinary process and is used after all other remedial measures have been exhausted. In certain circumstances, dismissal is used for certain first offenses of a very serious nature such as patient/client abuse, theft or gross insubordination.

Dismissal will be *considered* only after a thorough investigation of the alleged violation or a thorough review of long-term, continued performance deficiencies. The *decision* to dismiss an employee will be made only after the requisite Loudermill Conference has been held. (A description of the Loudermill Conference appears in the following pages of this manual).

The appointing authority must give the employee written notice of dismissal in accordance with existing regulations and appropriate bargaining unit agreements. The facility Human Resource Office prepares the notice informing the employee of the charges, the disciplinary action, and of the employee’s right to appeal.

These progressive disciplinary actions, as described, are also applicable to managerial employees.

### **III. THE SERVICE RATING AS A SUPERVISORY TOOL**

A service rating is a written evaluation by the supervisor of an employee's productivity, work habits, and general behavior on the job over a specified period of time. It documents the employee's job performance, how well s/he is doing the job and what improvements, if any, need to be made. It contains a written summary of the employee's successes, problems, or failures on the job over time.

Generally speaking, the duties being performed by a State employee are based on the State of Connecticut job description for the position the employee holds. Competency based job descriptions and ratings can serve as supportive or "back-up" information ONLY. The State of Connecticut job description and bargaining unit rating form are considered the official documents for performance rating purposes.

#### **THE SERVICE RATING PROCEDURE**

Traditionally, service ratings have been evaluation forms designed to require supervisors to appraise an employee's work performance in a number of different job elements or rating categories. These categories and the format of service rating forms may vary from bargaining unit to bargaining unit. Some of the more common, basic rating categories are:

- Quality of Work
- Quantity of Work
- Dependability
- Attendance
- Ability to Deal with People
- Supervisory Ability

***See Appendix for Description of Job Rating Categories.***

In rating the employee, the supervisor is expected to tell how good (or deficient) the employee is in each of the above categories. The supervisor, therefore, may rate each job category in varying degrees of acceptability, ranging from totally unacceptable to absolutely outstanding. Generally, there are four degrees of acceptability: Excellent, Satisfactory or Good, Fair, and Unsatisfactory. The service rating forms for some bargaining units have a fifth category of Very Good or Superior, inserted between Excellent and Satisfactory/Good.

***See Appendix for Description of Degrees of Acceptability.***

## Preparation and Review

The supervisor has a strong responsibility in preparing a service rating properly. While it is generally of great significance to the employee being rated, it is also an indicator of how well the supervisor has managed the performance of the employee. It is, therefore, extremely critical that service ratings be thoughtfully prepared and carefully reviewed.

An immediate supervisor has a great deal of input into how an employee is rated. As the person most familiar with the employee's work record, s/he will be responsible for the actual service rating preparation.

Service ratings submitted by supervisors are reviewed by higher-level managers to make certain that:

- they are correctly completed and documented, and
- a fair and consistent approach to rating employees has been used.

## Service Rating as End Result

The service rating is supposed to be the end result, or the culmination, of the employee's job performance throughout the rating period. During the rating period, it was the supervisor's responsibility to bring any problems or shortcomings to the employee's attention, tell the employee what was expected or how to improve, give the employee a chance to improve, and provide counseling or other corrective action as necessary.

Ordinarily, discipline and poor work performance occurring during the course of the year should be reflected in the employee's service rating. However, an isolated incident during the course of the rating year does not automatically result in a poor service rating, especially if it occurred in the beginning of the rating period. The incident should be referenced in the "Remarks" space on the service rating form. If the remainder of the employee's work performance during the year was good, the employee should not be penalized and rated poorly for the one mistake, unless it was a very serious one that resulted in a lengthy suspension. In that case, depending on the circumstances, it may also be grounds for a Fair or Unsatisfactory rating in the appropriate job category. If there is a series or a pattern of infractions for which counseling or discipline was issued, then these different incidents taken together could be grounds for a poor service rating.

Remember that when rating an employee either Excellent or Less than Good the supervisor must have documentation to support that rating.

A significant improvement in an employee's work performance can sometimes improve the less than satisfactory rating that would otherwise be given. If an employee had a poor work or attendance record during the first part of the rating period but has responded positively and significantly to the counseling and/or progressive discipline the supervisor has provided, then a somewhat better rating should be issued to recognize the employee's drastic improvement. Instead of an Unsatisfactory rating in that category, a Fair may be appropriate.

The supervisor must explain in the "Remarks" space what is being done and why. Preparing the service rating in this manner should encourage the employee to continue to improve while putting him/her on notice that if s/he slips back into poor work habits, an Unsatisfactory rating will subsequently be issued.

### Discussion With Employee

It is the responsibility of a supervisor to discuss the service rating with the employee. In some cases, this may be the immediate supervisor; in others, it may be a higher-level supervisor. The discussion should be an open, honest conversation about the employee's work and resulting service rating. The supervisor should be able to explain the rating to the employee, citing valid reasons why the employee received the rating s/he did, and offering suggestions for improvement. Remember, if appropriate non-disciplinary and progressive discipline measures have been taken the service rating should be of no surprise to the employee.

The service rating discussion is neither disciplinary in nature nor an interrogation session. Therefore, there is no obligation to notify the employee of any right to union or other representation.

The supervisor must be certain to comply with all bargaining unit contractual requirements relative to service ratings. Because there may be considerable variation in the collective bargaining contracts, the supervisor should review the appropriate contract article before presenting and discussing the rating with the employee. Again, consultation with a facility Human Resource Officer may be indicated.

The employee should be given a copy of the completed service rating only after all signatures are on it, indicating that the authorized persons have reviewed it. The employee should read the completed rating and sign and date each copy and any attachments to signify that the rating has been seen. If the employee refuses to sign, the supervisor should have another supervisory person sign as a witness. In this case, the following statement should be added to the rating:

*“This service rating was given to and discussed with the employee, who refused to sign it”.*

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(Witness and Date)

If the employee refuses to sign an overall Less Than Good or Unsatisfactory service rating, a union delegate or steward should be brought in to sign for the employee.

## **WHEN TO FILE A SERVICE RATING**

If the rating period covers time supervised by more than one supervisor, the current supervisor should be responsible for conducting the service rating, but *both* should participate in its preparation. In determining the appropriate rating period, a supervisor should consider the following:

- A rating period should never cover a period of time that has previously been rated.
- A rating period should start from the final date of the last rating period.
- A rating period need not be of one year in duration if problems frequently occur. (Most contracts specify a minimum length of time between ratings).

In general, service ratings should be filed as follows:

- Annual service ratings for permanent employees are required no later than three months before the annual increment date.
- Service ratings for probationary employees are required no later than one month before the end of the working test period. This requirement is in addition to the mid-working test period evaluation. Service ratings for provisional, durational, and temporary employees are required in the same manner as for probationary employees.
- Initial overall Less Than Good or Unsatisfactory service ratings may be filed at any time.

Depending on the employee's anniversary date, the annual service rating must be completed by April 1 or by October 1 of each year. *Preparation of this document should begin early enough* so that all necessary signatures are in place by the applicable date. However, it is absolutely critical that the document is prepared and signed at least by the rating supervisor by the April 1 or October 1 date.

## **OVERALL LESS THAN GOOD OR UNSATISFACTORY SERVICE RATINGS**

An overall Less Than Good or Unsatisfactory service rating is an administrative evaluation of an employee's overall work performance and is not disciplinary action in the true sense. Ordinarily, it should not be used to correct specific infractions of rules or incidents of misconduct. It is included as part of the progressive discipline process because:

- the dividing line between misconduct and unsatisfactory performance is not always distinct;
- an overall Less Than Good or Unsatisfactory service rating is an indicator to an employee that his/her job performance must be improved if employment is to continue;
- an overall Less Than Good or Unsatisfactory service rating, when not amended, may be cause for loss of an annual increment; and
- two consecutive Unsatisfactory service ratings within a two-year period may be grounds for dismissal (or disciplinary demotion).

Before giving an employee a Less Than Good or Unsatisfactory service rating, a supervisor should be able to answer the following questions in the affirmative:

“Are the employee's job functions in accordance with the official State of Connecticut job specification?”

“Have the DMHAS General Work Rules, performance standards, and other applicable rules, regulations, and policies been explained to the employee?”

“Does a written record exist documenting a meeting in which these were discussed?”

“Have the employee's weaknesses or deficiencies and the supervisor's expectations for improvement been discussed with the employee? Is there a record of these discussions?”

“Has the employee been given adequate training and sufficient opportunity to improve?”

“Is the rating an objective evaluation of the facts based on careful observation and measured against understandable requirements?”

“Does the rating cover an appropriate period of time?”

“Is there evidence (i.e., does a record exist) demonstrating the above actions?”

A Less Than Good or Unsatisfactory service rating should not come as a surprise to an employee. If the supervisor has conscientiously used non-disciplinary and progressive discipline concepts and indicated a path of corrective or remedial action, there should be an adequately documented record leading up to the Less Than Good or Unsatisfactory service rating. Documentation as to dates of incidents, counseling, written warnings, reprimands, suspensions, or other disciplinary actions must be included, along with examples of deficiencies.

The consequences of an overall Less Than Good or Unsatisfactory service rating are as follows:

For an employee with permanent status in his/her classification, an overall Less Than Good or Unsatisfactory service rating will normally preclude the employee's receiving the next annual increment unless the service rating is amended at least two weeks before the date of the anniversary increase. The appropriate collective bargaining contract should be consulted to determine what constitutes a Less Than Good or Unsatisfactory service rating.

During an employee's working test period, a Less Than Good or Unsatisfactory service rating results in termination of employment. If the appointment is promotional, the employee would be reverted to his/her former position in accordance with the appropriate contract or regulation.

Two successive Unsatisfactory service ratings, if filed within two years of each other, *may* be cause for dismissal. Therefore, it is critical that the supervisor meet with the employee on at least a quarterly basis AFTER an unsatisfactory rating has been given, in order to closely monitor performance and review progress.

#### IV. INSUBORDINATION AND DIRECT ORDERS

Every employee has an obligation to comply with reasonable and proper work-related directives from a supervisor. Under ordinary circumstances a supervisor doesn't need to issue a direct order to an employee to ensure that the employee performs assigned work. Employees usually perform everyday work tasks as a matter of routine and willingly agree to any special supervisory requests that may be necessary. However, there may be times when an employee balks at performing some task (or avoids it) or defies the supervisor and refuses to follow the supervisor's directive. When this occurs, the employee's behavior could be considered insubordinate in nature and may be cause for disciplinary action.

In a situation like this, the most immediate concern of the supervisor is to restore order in the workplace and maintain his/her effectiveness. The supervisor does so by issuing a direct order.

The Department of Mental Health and Addiction Services has a procedure to be followed by the supervisor when it becomes necessary to issue a direct order. The purpose of the procedure is to establish that, in fact, an act of insubordination has occurred. The required elements of the DMHAS "direct order" procedure are:

- the employee must understand what s/he is being asked to do;
- the employee must refuse to comply;
- the supervisor must *order* the employee to do the task, explaining the consequences of refusal;
- the employee must understand that s/he is being ordered to perform the task and that refusal will result in discipline;
- the employee must refuse to comply;
- the supervisor should have a second supervisor or a manager witness the "direct order";
- ***The person making the order must have the authority to do so.***

## **HOW TO GIVE A DIRECT ORDER**

If a supervisor or person in charge requests an employee to perform certain duties (or work overtime, e.g.) and the employee refuses, the supervisor should make certain the employee has a clear understanding of the supervisor's request. If the employee still refuses, the supervisor should summon a second supervisor or manager, if either is available, to witness the "direct order". The supervisor should then respond to the employee:

***"I am ordering you to perform (identify specific duties). Are you going to perform (identify specific duties)?"***

If the employee responds, "Yes," then the situation shall be considered resolved. If the employee responds "No," then the supervisor should reply with the following statement:

***"Do you understand what I want you to do?"***

If the employee responds "No," then efforts must be made to clarify the situation so that s/he fully understands the request being made. If the employee responds, "Yes," the supervisor should reply with the following statement:

***"Do you still refuse to perform (specific duties)?"***

If the employee responds "No", the situation shall be considered resolved. If the employee responds "Yes", the supervisor should use the following statement:

***"Do you understand that this is a direct order? By refusing to follow a direct order, you are being insubordinate and will be subject to disciplinary action, including dismissal."***

The employee may comply at this point, in which case the situation shall be considered resolved. However, if the employee still refuses, s/he will usually be put on administrative leave with pay, pending the outcome of an investigation of the act of insubordination/refusal to follow a direct order. Each facility has its own internal procedure for placing an employee on paid administrative leave under these circumstances. ***CHECK WITH YOUR FACILITY HUMAN RESOURCE OFFICER .***

The supervisor should complete a DMHAS 20 (Work Rule Violation Report) citing the employee's insubordination/ failure to follow a directive/direct order.

***PLEASE NOTE:*** *When giving a direct order, the supervisor should never say, "Do it or go home." There have been situations where the employee, in fact, went home and later argued successfully at a grievance hearing that s/he thought the supervisor was giving a bona fide alternative.*

#### Failure to Follow An Administrative/Supervisory Directive

A less formal procedure involves giving an employee a supervisory directive. The procedure usually includes the supervisor stating the directive to the staff member, followed by the statement that "...This is a supervisory directive that you are expected to comply with. If you fail to follow the directive I will write the incident up on a MHAS-20 Report and you will be required to appear in Human Resources to explain your failure to follow the directive." The supervisor then asks if the employee needs any clarification on anything related to the above statements. If not, then they are told to proceed with the directive.

#### Safety Issues

Of course, there are exceptions to the rule, but they are rare. The only time an employee is justified in refusing to follow a supervisor's order is when there is imminent danger to the employee's health or safety or it would be illegal to do so.

An employee who refuses a direct order may argue that what the supervisor is requesting is unsafe. The supervisor should review the situation immediately, seeking advice, as necessary, to determine whether there really is a safety issue. If the equipment or work environment is unsafe, the order should not be enforced. However, if the situation is safe and the employee still disagrees with the supervisor, then the supervisor should issue the direct order, spelling out disciplinary consequences if the order is disobeyed.

In any grievance arising out of the situation, the burden of proof to demonstrate that the situation was unsafe will be on the employee.

Except where there is a "clear and present danger" to an employee's health or safety, the rule of the workplace is "work now, grieve later".

## **V. REPRESENTATION DURING INVESTIGATORY INTERVIEW**

An employee who is being interviewed or interrogated concerning an incident or action that may subject him/her to disciplinary action has the right to have a union steward or other representative present at the interview. This provision should not be interpreted to prevent a supervisor from questioning employees relative to an incident. However, if evidence that may subject the employee to discipline develops during the interview the supervisor should immediately advise the employee of their right to union representation.

A bargaining unit employee is entitled to have a union representative present. An employee not covered by a contract may have a representative of his/her choice present. In each case, the above provision shall not unreasonably delay the investigatory interview or notification to the employee of disciplinary action.

Employees who waive the right to representation must do so in writing.

The above provisions do not prevent a supervisor from questioning an employee at the workplace or at the scene of an incident to find out what happened, why something was/was not done, and ask other pertinent questions.

## **VI. ADMINISTRATIVE LEAVE WITH PAY PENDING INVESTIGATION**

On occasion, it may be necessary to place an employee on administrative leave with pay pending an investigation into serious allegations of misconduct or other illegal actions, including but not limited to workplace violence, substance abuse, client abuse, and insubordination. In such cases, the facility Human Resource Director, in consultation with the DMHAS Director of Human Resources and/or the Director of Employee Relations and Organizational Development, may decide to remove the employee from the workplace during the course of the investigation.

The following procedure is used when placing an employee on a leave of absence pending investigation of alleged serious misconduct and subsequent administrative action or pending the disposition of criminal charges. In each case of paid leave of absence, a “day” should be understood to mean an employee’s regularly scheduled workday regardless of length. It does not mean “calendar day” per se.

- An employee may be placed on leave of absence with pay for up to fifteen (15) days to permit investigation of alleged serious misconduct which could constitute just cause for dismissal under C.G.S. Section 5-240-1a(c). (Contractual exceptions may occur; for example, 1199's timeframe is 60 days.) Such leave shall only be utilized if the employee's presence at work could be harmful to the public, the welfare, health or safety of patients/clients or state employees or state property, or compromise the investigation in some way. Following a decision to place the employee on paid leave, the employee shall be provided written notice stating the reasons for the leave, the effective date of the leave and the duration of the leave, which shall not exceed fifteen (15) days, except in certain contracts.
- Any employee who is the subject of criminal charges which, upon conviction, would constitute just cause for dismissal under C.G.S. 5-240-1a(c) may request a voluntary leave of absence without pay pending the disposition of the criminal charges pursuant to the provisions of the C.G.S. Section 5-248 and applicable Regulations. In the event the criminal charges are not disposed of during a one-year voluntary unpaid leave of absence, the employee may request an extension of that leave, in accordance with the provisions of C.G.S. Section 5-248 and applicable Regulations.
- An employee may be placed on leave of absence with pay for up to thirty (30) days, pending disposition of criminal charges the pendency of which would hamper the completion of an independent administrative investigation and which, upon conviction of the employee, would constitute just cause for dismissal under C.G.S. Section 5-240-1a(c). Such leave shall only be used if the employee's presence at work could be harmful to the public, the welfare, health or safety of patients/clients or state employees or state property.

Following a decision to place the employee on such paid leave, the employee shall be provided written notice stating the reasons for the leave, the effective date of the leave, and the duration of the leave, which shall not exceed thirty (30) days.

The leave may be extended for an additional thirty (30) day period upon request of the appointing authority or designee and approval of the Commissioner of Administrative Services, based on a showing that the pendency of the criminal charges prevent the completion of an independent administrative investigation of the underlying conduct.

The decision to place an employee on paid leave of absence is in most cases made at the facility level, and requires the approval of the DMHAS Director of Human Resources and/or Director of Labor Relations and Organizational Development.

## VII. THE LOUDERMILL AND SPERL CONFERENCE

### THE LOUDERMILL CONFERENCE

A permanent employee has an entitlement to his/her job and wages unless there is "just cause" to deprive the employee of either/both. This entitlement is called a "property right". Certain procedural requirements guaranteed by the U.S. Constitution accompany any action in public sector employment that deprives an employee of a property right.

Therefore, prior to making a decision to impose a suspension, demotion for disciplinary reasons, or dismissal of an employee, the employer must hold a pre-decisional or Loudermill conference. The critical aspects of the conference are:

- notice to the employee of the charges,
- an explanation of the evidence, and
- an opportunity for the employee to tell his/her side of the story.

The facility Human Resource Director/Officer prepares the Loudermill notice and conducts the Loudermill conference. See Appendix for a sample letter.

The employer may make a decision to impose a suspension, disciplinary demotion or dismissal, only after the Loudermill conference has been held.

#### Notice

DMHAS requires that notice to the employee be *written* and include the following:

- the nature of the complaint;
- a specification of the charges;
- a concise statement of the evidence; less is better
- the law, rules or policy that may have been violated;
- the *maximum* discipline under consideration;
- the specific time and place of a pre-decisional meeting;
- a statement that at the meeting the employee will have the opportunity to tell his/her side of the story and present reasons why the disciplinary action being considered should not be taken; and
- a statement informing the employee of the right to have a representative of his/her choice present.

**NOTE:** *If the employee waives representation at the Loudermill conference, a waiver must be obtained prior to the commencement of the meeting.*

If a bargaining unit employee chooses to have an attorney present, two waivers must be obtained: the first is the standard waiver of union representation; the second is a union waiver permitting the attorney or other advisor to represent the employee at the Loudermill conference.

If an employee declines or fails to attend the pre-decisional meeting or Loudermill conference, the administrative action under final consideration may be imposed, consistent with the notice provided under this section. The notice also includes information regarding waiver of representation and a statement that the disciplinary action under consideration will be imposed if the employee declines or fails to attend the meeting.

### The Conference

The meeting or Loudermill conference is usually held by the facility Human Resource Director/Officer who is considered the designee of the appointing authority. At the meeting, s/he must:

- state the charges;
- describe the evidence supporting the charges;
- describe the maximum discipline under consideration;
- ask the employee for his/her side of the story and comments concerning what discipline, if any, is warranted; and
- keep notes of what transpires.

The employee may respond through his/her representative to the evidence, giving the employee's side of the story.

The representative may also speak for the employee regarding the form of discipline, if any, that should be imposed.

The Loudermill conference is not a formal evidentiary hearing, but rather a meeting that serves as an initial check against mistaken decisions. There is no right to cross-examination or for the employee to call witnesses. Discipline may be imposed following the meeting. If the employee chooses to appeal the action, a more thorough evaluation of the propriety of the discipline occurs during the grievance and arbitration process.

### **THE SPERL CONFERENCE**

The Sperl conference has its genesis in C.G.S. 5-271 (d). That statutory provision gives employees the right to have their grievances adjusted apart from the collective bargaining agreement. A Sperl conference is held primarily when employees fail an initial working test period. Sperl gives the employee the right to meet with the agency head or his/her designee. The Sperl is NOT considered to

be a full evidentiary or pre-termination hearing and does not afford the employee the same rights under Loudermill.

## **VIII. JUST CAUSE STANDARD**

Few, if any, union-management agreements contain a definition of “just cause.” However, over the years a “common law” definition has emerged from the consolidated opinions of arbitrators in innumerable discipline cases. The American Arbitration Association has converted this definition to a set of guidelines or criteria that are to be applied to the facts of any given case to determine whether the discipline was warranted. These criteria are set forth below in the form of questions.

A negative answer to one of the following questions normally indicates that just and proper cause for the discipline did not exist. Put another way, a “no” means that the disciplinary decision contained one or more elements of arbitrary, capricious, unreasonable, and/or discriminatory action to such an extent that the decision constitutes an abuse of managerial discretion thereby warranting the arbitrator to substitute his/her judgment for that of the employer.

“Just cause” is one of the most critical concepts in labor relations, particularly as it pertains to the disciplinary process. Management must prove that the just cause standard has been met in any disciplinary case, including termination for an unsatisfactory service rating. The following is a list of the elements of “just cause” that every supervisor should be familiar with.

### **Was the employee adequately warned of the consequences of his/her conduct?**

- Forewarning can be given orally or in writing through the medium of printed work rules and possible penalties for their violation.
- There must have been actual oral or written communication of the rules and penalties to the employee.
- Lack of such communication does not in all cases require a “no” answer to the question. Certain offenses, such as patient/client abuse, insubordination, coming to work intoxicated or otherwise unfit for duty, ingesting controlled substances or intoxicating beverages on the job, or theft of the property of the agency or of fellow employees are so serious that any employee is expected to know that such conduct is punishable.

- Absent any contractual prohibition or restriction, the agency has the right to unilaterally promulgate reasonable rules and issue reasonable orders that need not be negotiated.

**Was the agency's rule or order reasonably related to the orderly, efficient, and safe operation of the Department?**

- If an employee believes that the rule or order is unreasonable, s/he must nevertheless obey it (in which case s/he may file a grievance later) unless s/he sincerely feels that to obey the rule or order would seriously and immediately jeopardize his/her personal safety and/or health. Given a firm finding to the latter effect, the employee may properly be said to have had justification for his/her disobedience. Otherwise the mandate is "work now; grieve later".

**Did the agency investigate before administering discipline?**

- The agency must *investigate before* it makes a disciplinary decision. If the agency fails to do so, its failure may not be excused on the grounds that the employee will get his or her day in court through the grievance procedure after the imposition of discipline.
- There may, of course, be circumstances under which management must react immediately to the employee's conduct. In such cases, the normally proper action is to place the employee on leave with pay pending investigation, with the understanding that (a) the final disciplinary decision will be made after the investigation, and (b) if the employee is found innocent after the investigation, s/he will be restored to his/her job.

**Was the investigation fair and objective?**

- During the investigation, the management official may be both "prosecutor" and "judge" but s/he may not also be a witness against the employee.

**Did the investigation produce substantial evidence or proof of guilt?**

- It is not required that the evidence be preponderant, conclusive, or "beyond reasonable doubt" except where the alleged misconduct is of such a criminal or severe nature as to stigmatize the employee and seriously impair his/her chances for future employment.

**Were the rules, orders and penalties applied evenhandedly and without discrimination?**

- A “no” answer to this question requires a finding of discrimination and warrants negotiation or modification of the discipline imposed.
- If the agency has been lax in enforcing its rules and orders and decides henceforth to apply them rigorously, the agency may avoid a finding of discrimination by telling all employees in advance of its intent to enforce hereafter all rules as written.

**Was the penalty reasonably related to the seriousness of the offense and past record?**

- A trivial proven offense does not merit harsh discipline unless the employee has properly been found guilty of the same offense a number of times in the past. (There is no rule as to what number of previous offenses constitutes a “good”, a “fair”, or a “bad” record. Reasonable judgement must be used).
- An employee’s record of previous offenses may never be used to discover whether s/he was guilty of the immediate or most recent offense. The only proper use of his/her record is to help determine the severity of discipline once s/he has properly been found guilty of the immediate offense.
- Given the same proven offense for two or more employees, their respective records provide the only proper basis for distinguishing” them in the administration of discipline for said offense. Thus, if employee A’s record is significantly better than those of the employees B, C, and D, the agency may properly give a lighter punishment to A than it gives the others for the same offense and this does not constitute discrimination.

# **APPENDIX**

## IMMEDIATE SUPERVISOR'S RECORD OF COUNSELING

(Facility) \_\_\_\_\_ (Department) \_\_\_\_\_ (Date/Time) \_\_\_\_\_

Employee: \_\_\_\_\_ Title: \_\_\_\_\_

1. Describe concisely the reason(s) for this counseling, i.e. circumstances or deficiencies involved.
2. What was the employee's response concerning the circumstances or deficiencies stated?
3. What improvements and expectations have you outlined for the employee?
4. Follow-up (*to be discussed with employee*):

Supervisor: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_

Initial counseling should not, in and of itself, have any effect on a subsequent Service Rating

**WAIVER OF REPRESENTATION  
(Sample)**

I understand I have the right to have a union representative present and waive that right.

NAME: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**WAIVER OF REPRESENTATION  
(Sample)**

I fully understand the reasons for this meeting, and I hereby waive my right to union or other representation at this time. However, I reserve my right to representation at future meetings.

NAME: (PRINT) \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

## **DESCRIPTION OF JOB RATING CATEGORIES**

**QUALITY OF WORK** - is intended to measure how good or how accurate or complete the employee's work is. If the work is of a very high caliber or high quality, with very few or no corrections required, then the employee deserves a high mark in this area. But if the employee's work is generally sloppy, or filled with errors, or incomplete, then of course the employee deserves a poor grade.

**QUANTITY OF WORK** - measures volume of work, how much the employee does, how quickly he or she works, how many items get done. Quality and Quantity of Work are both measures of the employee's *productivity*; how much good work actually gets accomplished.

**DEPENDABILITY** - means how reliable or dependable the employee is, how much supervision the employee needs, whether or not the employee can be left alone to do a job well, or whether s/he needs continuous instruction and direction from the supervisor; whether or not the employee begins another task on her/his own or waits around to be assigned more work. Dependability is not so much a measure of whether or not the employee comes to work as expected -- that is addressed in the "Attendance" element.

**ATTENDANCE** - evaluates how well the employee conforms to the work schedule and whether or not s/he comes to work as expected. Punctuality and tardiness should be considered as well as the employee's use of sick leave and unauthorized leave. The Department has an Employee Attendance Policy and an Attendance Review Procedure. Abuse or excessive use of sick leave or excessive absenteeism, in general, can affect the employee's rating in "Attendance." Attendance is a very important element tied into an employee's productivity. An employee may do a very good job when s/he is at work -- but if the employee is absent frequently, then obviously s/he is not producing as much work as s/he could or should. Arbitrators have ruled in grievance cases that the employer has a right to expect the employees to have reasonably good attendance. If the employee doesn't have good attendance, for whatever reason, the employer may terminate her/his services and hire another employee who will be more faithful about coming to work.

**ABILITY TO DEAL WITH PEOPLE** - means how well the employee gets along with coworkers, supervisors, and the general public. An employee may do her/his own individual job very well - but if the employee exhibits antisocial behavior, is disruptive, or is ill-mannered to the general public, then a poor rating should result. On the other hand, if the employee is especially cheerful, pleasant, or cooperative, then s/he should be recognized with a high mark in this category.

**SUPERVISORY ABILITY** - should be used only to rate employees who actually supervise other employees. This category measures how good a supervisor the employee is, whether or not s/he is aware of and follows Departmental and/or facility policies and procedures, how effective s/he is in dealing with subordinate employees, how much productivity comes out of her/his unit.

## **DESCRIPTION OF DEGREES OF ACCEPTABILITY**

**EXCELLENT** - absolutely outstanding; does a great deal more than what is expected; far above the other employees; little or no room for improvement; practically perfect. This is a very difficult standard to meet, and not many employees do.

**VERY GOOD/SUPERIOR** - performs significantly above the norm and the supervisor's expectations; does an especially fine job.

**SATISFACTORY/GOOD** - performs a good, solid, average job; does what is expected; earns her/his pay. No major or significant problems. Most employees would fall into this category.

**FAIR** - poor; performs below what is expected, below standards, below average. There is a definite problem, which should be corrected.

**UNSATISFACTORY** - totally unacceptable; far below standards; far below average; performs very poorly. There is a big problem in job performance, which must be corrected immediately.

Supervisors are required to explain any rating other than Satisfactory/Good on the service rating form in order to justify the exception to the normal Good rating. Such explanations should be responsible comment and judgment on the employee's job performance and not just a restatement that the service rating was Excellent or Unsatisfactory. In documenting Fair or Unsatisfactory ratings in any category, be sure to specify any previous counseling (with dates); also include mention of any written warnings/reprimands or suspensions issued during the service rating period.

