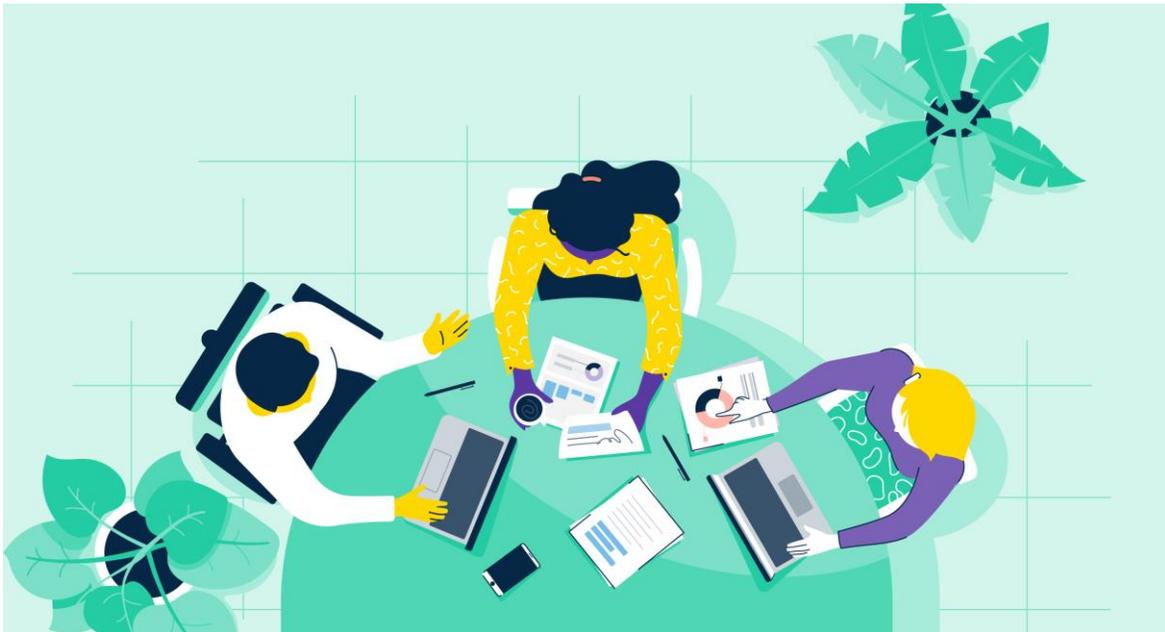


# RESOLVING EMPLOYEE PERFORMANCE PROBLEMS

*A Guide to Effective Supervision  
and Progressive Discipline*



**The University of Connecticut  
Employee Relations**

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## INTRODUCTION

A fundamental part of a supervisor's job is obtaining effective results from employees. Employees look to supervisors for direction and leadership. Supervisors outline expectations; provide employees the tools and support to succeed; hold employees accountable to standards; and take corrective action when needed.

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

Managing disciplinary problems effectively is a matter of using good judgment and common sense within the context of University policy, state regulations, labor relations best practices, and where applicable, collective bargaining agreements. The outline that follows is meant to guide supervisors in correcting employee performance problems through the application of the concept of "progressive discipline."

At the outset, a basic premise should be that satisfactory performance is a minimal expectation. To achieve excellence, supervisors should apply motivation principles and use the spectrum of progressive discipline techniques to immediately address performance deficiencies or incidents of misconduct. This manual intends to equip supervisors with the means to improve employees' work performance.

**To ensure overall consistency, supervisors and managers should contact Employee Relations with employee performance concerns or any suspected misconduct and/or violation of work rules or policy occurs.**

### **Employee Relations Contact Information:**

Phone: 860-486-5684

Email: [laborrelations@uconn.edu](mailto:laborrelations@uconn.edu)

Website: <https://hr.uconn.edu/employee-relations-overview/>

## **PROGRESSIVE DISCIPLINE**

Progressive discipline is a method to address work deficiencies and misconduct through counseling, warning, reprimand, or other forms of remedial action conducted in a manner which is appropriate to the employee's behavior and the circumstances surrounding that behavior.

There is a significant distinction between poor performance and misconduct. At the earliest stages, both may be dealt with through the steps of progressive discipline. Supervisors also should address continuing performance deficiencies in the employee's annual performance evaluation and where appropriate, a Performance Improvement Plan ("PIP"). Misconduct, on the other hand, is appropriately addressed by using progressive discipline, and each stage should reference the potential for suspension and/or termination if correction does not occur.

Problems with employee performance may occur in any job at any time. Progressive discipline provides a constructive method of problem solving for the benefit of both the employee and the supervisor.

Progressive discipline need not start at the beginning of the disciplinary spectrum. That is, if the situation warrants, suspension or even dismissal may be appropriate, even for a "first offense."

The key to progressive discipline rests with early recognition and action rather than waiting until the problem becomes grave enough to warrant disciplinary action. Informal and formal counseling is essential to the process of correcting deficiencies in employee performance and behavior and should be used as soon as a problem is noticed. Supervisors should maintain written notes or records of such counseling.

In most cases, following constructive counseling, employees will modify their work habits or behavior to conform to the expectations and standards set by their supervisor. When an employee's work does show improvement, the supervisor should acknowledge it. In most cases, counseling or the early steps of progressive discipline are successful and prevent the need for higher-level disciplinary action. Conversely, if an employee does not improve their work performance, disciplinary action at an appropriate level may be warranted.

In certain situations, and with guidance from Employee Relations, an employee may be placed on paid administrative leave while an investigation into the alleged work rule or policy violation(s) is completed.

**PRE-DISCIPLINARY ACTIVITY**

COUNSELING

LETTER OF DIRECTION

PERFORMANCE IMPROVEMENT PLAN

**THE LADDER OF PROGRESSIVE DISCIPLINE**

WARNING

LETTER OF REPRIMAND

SUSPENSION

DEMOTION

DISMISSAL

*The above disciplinary actions outline the spectrum of progressive discipline techniques but should not be construed as a fixed rule for the management of all types of disciplinary action. There may be situations in which it is appropriate to skip specific steps and proceed directly to a higher level of disciplinary action, including dismissal.*

## **GENERAL PRINCIPLES OF PROGRESSIVE DISCIPLINE**

- Reasonable standards of work performance must be established by the supervisor at the time of hire, and as needed thereafter, and must be clearly communicated to all staff.
- The purpose of discipline is to correct an employee's behavior, not to punish, by making them aware of the issue and giving them an opportunity to improve.
- Employee discipline is most effective when administered promptly after the infraction(s).
- Discipline must be administered with impartiality.
- Standards of work performance and University policies must be maintained and available to employees, and employee discipline must be consistently enforced.
- The pre-disciplinary and disciplinary action taken must be related to the offense. The objective and impacts upon the individual, the group, and the University's mission must all be considered.
- All forms of pre-disciplinary and disciplinary action must be appropriately and timely documented through written records.
- Follow-through is essential to ensure that the disciplinary action has been effective.

## **PRE-DISCIPLINARY INTERVENTION**

### **COUNSELING SESSION**

A counseling session is a meeting between the supervisor and employee to discuss work performance and specific areas in need of improvement. Counseling sessions should be used at the first indication that improvement is necessary and precede official disciplinary action. Frequently, problems that are recognized early can be solved by an informal discussion. Privacy and sufficient time devoted to the meeting are essential. It can be helpful to prepare for the counseling session by outlining the problem areas and developing concrete suggestions for improvement.

Sometimes supervisors may think that because a topic was mentioned at some point in time, or as part of a larger team meeting, counseling has occurred. Remember, it is most significant to understand what message the employee has received. A casual conversation, combined with other topics or held as part of a larger group meeting, may not make an impact on the employee. A scheduled, private discussion, on the other hand, should fully inform the employee of the supervisor's expectations and permit the exchange of information.

A positive approach to the discussion, coupled with constructive counseling, are key elements to a counseling session. Documentation of the session through a follow-up email to the employee is strongly encouraged. This provides a basis for follow-up at the supervisor's next meeting with the employee and gives the supervisor a source of documentation if the problem persists and further action is needed.

### **LETTER OF DIRECTION (LOD)**

If a counseling session does not result in improved performance, a letter of direction may be issued to clarify or emphasize areas of concern and provide suggestions for improvement. This is strictly a communication between the supervisor and the employee. The LOD should be maintained only in the supervisory file and not in an employee's official personnel file. If the employee does not improve or the problem is not corrected following a LOD after being given an opportunity to improve, it may be necessary to move to progressive discipline.

### **PERFORMANCE IMPROVEMENT PLAN (PIP)**

If lower-level intervention does not result in improved performance and an employee continues to demonstrate repeated or multiple performance deficiencies, a performance improvement plan (PIP) can help provide the necessary support and direction to meet performance objectives. A PIP should identify the areas of deficiency and provide a clear plan of objectives, action items, and tangible metrics of improvement.

A PIP should have a clearly defined time frame. Once a PIP is implemented, the supervisor should have regular meetings with the employee to assess how their performance is progressing and provide feedback and support. A PIP generally is not placed in an employee's official personnel file. It provides documentation of the employee's performance deficiencies if progressive discipline is needed.

## **PROGRESSIVE DISCIPLINE**

### **GENERAL PRINCIPLES**

Disciplinary action, generally beginning with a warning, typically is issued by the first supervisor outside of the employee's bargaining unit, where applicable. Supervisors should contact Employee Relations for assistance prior to issuing any disciplinary action.

### **WARNINGS**

Warnings, verbal or written, generally are the first step on the ladder of progressive discipline. Warnings should be constructive in both tone and intent. Warnings put the employee on formal notice that further disciplinary action will be taken unless improvement is shown. Although warnings may be issued verbally, they often are less effective and are difficult to prove in grievance settings. As a general principle, if the infraction(s) is serious enough to warrant a warning, it is serious enough to put in writing. In general, warnings should be clear and concise, non-punitive in tone, and constructive in approach.

#### When Used:

A warning generally should be issued after a reasonable period has passed since the employee has been counseled, such as through a letter of direction, concerning performance deficiencies and failed to make sufficient improvement. A warning may also be issued when no counseling was given if the employee has committed a significant infraction that requires more serious corrective action.

A warning and/or subsequent disciplinary action may result in a less than good performance evaluation. Supervisors should reference in the employee's evaluation form the issues that resulted in the disciplinary action using the same terminology. This increases continuity and consistency for both the supervisor and employee throughout the process of progressive discipline.

Classified employees (NP-2, NP-3, NP-5) must sign to acknowledge receipt of the letter of warning. If the employee refuses to sign, their union representative shall sign to indicate receipt. For unclassified employees (AAUP, UCPEA, Graduate Assistants, Postdocs, and Management/Confidential), a signature of receipt is not necessary.

Inasmuch as warnings may serve as the basis for further disciplinary action, or be incorporated into evaluations, copies of written warnings must be placed in the employee's official personnel file.

## **LETTER OF REPRIMAND**

A letter of reprimand is the next step on the ladder of progressive discipline. It can be used to address an isolated incident of misconduct or ongoing performance issues.

A letter of reprimand will clearly and concisely state that the action being taken is an official letter of reprimand and will outline the employee's inadequacies or offense and include dates and all pertinent facts. If relevant, the letter will mention all previous efforts undertaken to correct the situation. The letter will caution that if there is no improvement or if another incident occurs, further disciplinary action may be taken. A reprimand and/or subsequent disciplinary action may result in a less than good performance evaluation. The manager issuing a letter of reprimand should review the matter fully with the employee and provide the opportunity for discussion.

Again, classified employees (NP-2, NP-3, NP-5) must sign to acknowledge receipt of the letter of reprimand. If the employee refuses to sign, their union representative shall sign to indicate receipt. For unclassified employees (AAUP, UCPEA, Graduate Assistants, Postdocs, and Management/Confidential), a signature of receipt is not necessary.

The signed letter of reprimand should be placed in the employee's official personnel file.

### When Used:

Generally, letters of reprimand are used for ongoing performance concerns or an infraction of state or University regulation or policy, where the employee's actions are viewed as serious but not to the extent requiring suspension or dismissal. Typically, a letter of reprimand will address issues documented previously in a letter of direction and/or warning.

## **SUSPENSION**

A suspension is serious disciplinary action. A suspension imposes a monetary penalty on the employee by depriving them of pay during the period of suspension.

### When Used:

A suspension most often is imposed for a specific and serious breach of state or University regulation or policy. It may be warranted for a violation after warnings and a letter of reprimand have been issued, or it may be given for a serious violation of a work rule or policy without any prior progressive discipline.

## **DEMOTION**

Demotion is another serious form of disciplinary action which involves reducing an employee's job level due to problematic performance.

### When Used:

Generally speaking, this action should be taken only if the performance problem relates to a characteristic of the higher-level job. A key element of this decision-making process is to determine that the individual has demonstrated competency at the lower level. Consideration also should be given to whether demotion will resolve the problem or merely move it to another place.

## **DISMISSAL**

Dismissal typically comes as the last step in the disciplinary process and after all other remedial measures have been exhausted. A dismissal terminates the employer-employee relationship completely.

### When Used:

When all other efforts to correct performance deficiencies have failed or an egregious infraction occurs, dismissal may be appropriate. In the case of an ongoing problem, there should be a significant record of corrective efforts, generally involving progressive discipline, before termination becomes the appropriate course of action. Under some circumstances, dismissal may be appropriate for a first offense of the most serious nature.

## **WEINGARTEN RIGHTS**

*Weingarten* rights are named after a 1975 U.S. Supreme Court decision, *NLRB v. J. Weingarten Inc.*, which holds that unionized employees can request that a union representative be present during an investigatory interview that could lead to disciplinary action. The employee is not entitled to have the union representative of their choice. If the employee's preferred representative is not available when the investigatory interview is scheduled to be conducted, the employee cannot delay the investigation by demanding that the employer wait until a specific union representative is available.

**Please notify Employee Relations as soon as an allegation is received that might require an investigation that could lead to disciplinary action.**

## **LOUDERMILL RIGHTS**

In *Cleveland Board of Education v. Loudermill*, the U.S. Supreme Court determined that a public sector employee has a proprietary interest in their job which precludes a public sector employer from either suspending without pay or dismissing a permanent employee without providing that employee with a right to due process. The right to due process must clearly be provided before the action is imposed. The right to a grievance process after disciplinary action is taken does not fulfill the employer's obligation.

The obligation to provide due process requires the employer to conduct a pre-disciplinary meeting with employees prior to suspending or terminating them. At these meetings, the employer shall:

- (a) Apprise the employee of the charges against them;
- (b) Explain the nature of the evidence regarding the charges against them; and
- (c) Provide the employee with an opportunity to respond.

It is important to be aware of this significant decision, and to work with Employee Relations to comply with our obligations so as not to undermine our ability to sustain the disciplinary action taken. **Please notify Employee Relations as soon as an allegation is received that might result in disciplinary action at the level of suspension or dismissal.**

## **SUPERVISORY RESPONSIBILITY**

Supervisors are responsible for the uniform application of employer policies relating to employee conduct and discipline. Each supervisor also is responsible for maintaining standards of work performance and, when necessary, issuing disciplinary action.

**Document, document, document!** It is critical that supervisors maintain a supervisory file in which they keep notes about one-on-one meetings with their employees, including any pre-disciplinary action taken (e.g., counseling or letters of direction). The supervisory file also assists the supervisor when completing annual performance evaluations and is critical if lower-level intervention is not successful in changing the employee's performance or conduct and disciplinary action is needed.

To ensure that discipline is applied consistently, supervisors contemplating disciplinary actions, whether for classified or non-classified employees must consult in advance with Employee Relations.

Under the *Loudermill* decision, the final decision to discipline an employee is made by the appointing authority or their designee. In the case of classified employees, that designee is the Executive Director for Employee Relations. For unclassified employees, that decision resides with the appropriate cabinet officer of the University in consultation with Employee Relations.

When recommending disciplinary action, the following factors should be considered: the employee's work history; the effect of the offense on the operation of the organization; the seriousness of the offense; the employee's level in the organization and the effect of the employee's behavior on other employees, students, or the public; the circumstances surrounding the offense; and previous measures taken to correct the employee.

## **PERFORMANCE EVALUATIONS**

Performance evaluations are a critical tool for supervisors because they offer an opportunity to document employees' strengths and weaknesses on at least an annual basis. Ongoing performance problems, such as poor quality of work or a lack of cooperation, must be addressed in a performance evaluation. If an employee is disciplined during the rating year, the disciplinary action should be incorporated by reference into their annual performance evaluation and reflected in the rating(s). As noted previously, disciplinary action may lead to a "less than good" evaluation, which could result in the denial of wage increases, if applicable.

## **DEALING WITH AN INSUBORDINATE EMPLOYEE**

Although insubordination is one of the most serious forms of employee misconduct, the term itself and the methods available to deal with this problem are frequently misunderstood. Acts of insubordination should not be confused with other forms of employee misconduct. Specifically, an act of insubordination is defined as: “An employee’s refusal to carry out a direct job-related work order given by an administrator or supervisor of appropriate authority.” Supervisors should contact Employee Relations for assistance with an insubordinate employee.

Other forms of employee misconduct, including abusive or argumentative actions towards their supervisor or coworkers, should be dealt with through disciplinary action including warnings and reprimands, and used as the basis for the issuance of a “less than good” performance evaluation. If employee misconduct raises a safety concern, supervisors are encouraged to call 911 as necessary, and then contact Employee Relations.

## **DROP DURING WORKING TEST PERIOD/PROBATIONARY PERIOD**

### Sperl Conference for Classified Employees

An employee who is dropped during their initial working test period, or probationary period, has the opportunity for a conference with a University designee following the notice of dismissal. This procedure derives from a Connecticut Board of Labor Relations decision (No. 1729 issued March 16, 1979) which requires that a process be established that affords the complainant “a reasonable opportunity to present [their] side of the case.” The employee should be advised of their right to request a meeting in the letter of notification. It should be noted that a conference is held only if requested; it is not an automatic system.

The conference is conducted by an appropriate supervisor or administrator with assistance from Employee Relations. The employee may bring a representative to the conference. The charge to the reviewer is to ensure that the drop was not done arbitrarily or capriciously. It is important to maintain documentation of training and notes on counseling or any other corrective actions the supervisor undertook to assist the probationary employee. The dropped employee will receive a written response from the person who conducted the conference.

Supervisors should contact Employee Relations for assistance with dropping employees during their working test period or probationary period.

### For UCPEA staff:

“A probationary employee who is dismissed, or who is not continued, may appeal in person within ten (10) days to the office of the appropriate Provost, Vice Provost, Vice President, or designee. Within seven (7) calendar days of the hearing, the Provost, Vice Provost, Vice President or designee shall respond in writing. The decision of the Provost, Vice Provost, Vice President, or designee is final and not appealable to arbitration.” The hearing is conducted by the appropriate administrator with assistance from Employee Relations. The employee may bring a representative to the conference.

## ADDITIONAL RESOURCES

### Policies:

A copy of University policies can be found at <https://policy.uconn.edu/>. Supervisors should be particularly familiar with the following:

- *General Rules of Conduct:* <https://policy.uconn.edu/2011/05/24/general-rules-of-conduct/>
- *Code of Conduct:* <https://policy.uconn.edu/2011/05/17/employee-code-of-conduct/>
- *Policy Against Discrimination, Harassment, and Related Interpersonal Violence:* <https://policy.uconn.edu/2015/12/29/policy-against-discrimination-harassment-and-related-interpersonal-violence/>
- *Non-Retaliation Policy:* <https://policy.uconn.edu/2011/05/24/non-retaliation-policy/>

### Collective Bargaining Agreements:

A copy of each collective bargaining agreement can be found on the Employee Relations website: <https://hr.uconn.edu/labor-contracts-unions/>. Questions about contract interpretation should be directed to Employee Relations at [laborrelations@uconn.edu](mailto:laborrelations@uconn.edu).

### University Offices/Resources:

Supervisors should familiarize themselves with the following services and resources offered by the University:

- Office of Institutional Equity: <https://equity.uconn.edu/>
- Office of University Compliance: <https://compliance.uconn.edu/>
- Ombuds Office: <https://ombuds.uconn.edu/>
- Employees of Concern Team: <https://safeworkplace.uconn.edu/employees-of-concern-team/#:~:text=How%20do%20I%20Report%20an,contacted%20immediately%20by%20dialing%20911>
- Human Resources (Absence Management; Benefits; Workforce Solutions): <https://hr.uconn.edu/>
- Employee Assistance Program: <https://hr.uconn.edu/employee-assistance-program/>  
Intake/Assessment and General Assistance: (888) 993-7650  
First Responder Assistance: (833) 253-1129  
Manager Consultations: (877) 249-4751 or [ManagerConsult@workplaceoptions.com](mailto:ManagerConsult@workplaceoptions.com)

## **A FINAL WORD**

Researchers have found that the most fundamental factors in effective supervision are trust and confidence on the part of both the supervisor and the employee. Trust and confidence are developed by adhering to the standards of consistency, fairness, and reasonableness in all work relationships. The fact that these same principles guide the course of progressive discipline should come as no surprise. Please do not hesitate to contact Employee Relations with any questions about the application of this information. We look forward to working with you!