

SUPERVISOR'S GUIDE

1091

(September 1988)

This guide serves as a general reference. Its purpose is to bring about a better understanding of discipline as a positive factor in personnel management. Public safety officers have some rights guaranteed to them under the "Public Safety Officers Bill of Rights" (Government Code section 3300 et seq.) which other employees do not have. For a copy of the Public Safety Officers Bill of Rights ([see exhibit](#)) .

Discipline is not synonymous with punishment or penalties. It is defined in terms of instructing, teaching and training. Discipline is a supervisory responsibility.

SUGGESTIONS FOR MAINTAINING GOOD DISCIPLINE

1091.1

(September 1988)

The following suggestions are to help you develop and maintain good discipline in your staff. You should create and maintain conditions that make corrective actions rarely necessary.

Let Employees Know What Conduct Is Expected

If they are not self-evident, accepted standards of conduct should be in writing. In cooperation with your employees, you can develop and write the standards of conduct that are expected in your section or unit and see that all employees, particularly those who are new, receive a copy of these standards. Employees want and are entitled to know what is expected of them. They more readily accept and abide by standards if they have been able to influence their establishment. Here, as in other supervisory contacts, follow the old admonition, "Do not overestimate the knowledge or underestimate the intelligence of an employee."

By establishing standards of conduct and ensuring that employees understand them, you can prevent many instances of misconduct, thus reducing the need for corrective action.

Set Reasonable Work Objectives

Supervisors will have infrequent need to use corrective actions if they set reasonable work objectives for their employees and keep them interested in reaching these objectives. Give employees written statements of the duties they are expected to perform and the standards by which their work is evaluated. When given the opportunity, employees will consistently set and maintain higher and more realistic production standards for themselves than you would have set for them.

Create a Favorable Working Atmosphere

A good working climate encourages employees to want to do their best. Remember, a word of commendation and praise for a job well done can be as conducive to the maintenance of good discipline as correction of an employee who has been guilty of some act of misconduct.

Employees should feel free to offer suggestions for improvements in working methods and to bring problems to you when and if they arise. If they know that you will be open-minded in evaluating their recommendations and fair in handling their problems, then they will be more willing to bring problems and suggestions to your attention.

Be ready at all times to do the following:

- Employ active listening skills when employees bring problems to you. You can assist employees in working through their problems in order to reach a mutually acceptable solution.
- Adjust a situation if necessary and be in a position to take action.
- Be familiar with the formal grievance and/or complaint procedure under the specific unit Memorandum of Understanding (M.O.U.) of your employees.
- Refer to a higher authority those cases you cannot satisfactorily adjust.

Set a Good Example

Good conduct starts with you. Your employees watch and evaluate you. You set the pattern of acceptable conduct and performance for your employees by what you do and do not do.

Maintain Fair, Impartial Control

Fair and impartial control creates respect. Do not allow infractions to go uncorrected. Stop infractions which have become accepted by a group by making a public announcement of change followed by impartial enforcement. Also, never allow infractions to accumulate and become so aggravated that, as the first corrective act, you want the employee dismissed or some other severe punishment which is inappropriate for the single infraction that triggers it. Nothing will do more to undermine the morale of your employees and their confidence in you than the feeling you are being arbitrary and unfair or partial in your treatment. Beware of actions when strong feelings make it difficult for you to handle the situation objectively. At such times, consult with your supervisor to ensure that your actions will be fair and impartial.

Consider the Employee Assistance Program (EAP)

EAP is an assistance service to CDF's employees and supervisors for the prevention and/or reduction of problems as they relate to job performance. The EAP for Bargaining Unit 8 employees is provided in accordance with the agreement with the California Department of Forestry Employees Association. All others can avail themselves of the EAP through the department's EAP coordinator.

PRIOR TO FORMAL ADVERSE ACTION

1091.2

(September 1988)

By emphasizing preventive rather than corrective action, you can make great strides toward securing the cooperation of your employees and in developing and maintaining proper personnel discipline. However, in an organization of any size, it is inevitable that a few employees unwittingly, thoughtlessly, or willfully violate the established standards of conduct and job performance. If uncorrected, such instances can undermine the morale of other employees, disrupt their work effort, and reflect unfavorably on you as a supervisor and on your unit. Take prompt corrective action if you have the authority or, when necessary, promptly call these instances to the attention of your supervisor. Your unit or regional administrative officer and personnel office are also available to provide you with assistance.

Your decision to take or recommend corrective action must be based upon a firm working knowledge of the standards of conduct which apply uniformly to all state employees and of those CDF policies which pertain to your unit. Units may establish supplementary standards of conduct with which employees should comply. For a suggested format which may assist you in maintaining effective discipline ([see exhibit](#)) .

Identify the Performance Problem(s)

To make certain the problem calls for disciplinary action, these five questions must be answered:

- What is the exact nature of the problem/offense?
- Under what conditions did it occur?
- What individual or individuals are involved?
- When and how often has the problem/offense occurred?
- Does this case call for possible disciplinary action?

It is the supervisor's responsibility to investigate, gather facts, document, report the incident(s), and initiate corrective action.

Gather the Facts About an Incident Which May Warrant an Adverse Action

- Check any written record of the incident.
- Interview supervisors, other employees, and public complainants who were involved in or who witnessed the incident and record the information during or immediately after each interview.
- Make every effort to reconcile conflicting statements.
- Examine pertinent records or equipment and make a written notation of any information that may have a bearing on the case.
- Make sure the employee knows the applicable standards of behavior or performance.
- Check the employee's file for prior incidents. Review annual performance reports or probationary reports for a past record of work performance.
- Check for approvals of merit salary adjustments (MSA) which imply the employee was performing satisfactorily up to that effective date. (If an incident, such as theft, was unknown at the time of MSA approval, make a written notation of that fact.)
- Confer with your administrative officer/personnel office for pertinent information you may require.
- Review the section on "Employee's Right to Representation" to obtain a clear understanding of the proper procedure.

After gathering all of the available facts, inform the employee that you would like to discuss the incident to hear the employee's side of the story. Inform the employee of his/her right to representation during the discussion. It may also be advisable for you to have a witness to verify the discussion that takes place. Keep in mind that even though your witness and/or the employee's representative may be present, this should be a private meeting. When in doubt, go through channels to check with your unit, regional administrative officer, or labor relations office.

Compile Precise, Factual Records

Complete and factual records permit appropriate corrective actions to be taken. Records are also necessary to prepare for an appeal hearing before a SPB Hearing Officer, should that be necessary.

Documentation of unsatisfactory conduct or work performance is required to substantiate formal adverse actions, as well as other types of actions, such as rejections from probation and denials of merit salary adjustments, special in-grade salary adjustments, or range changes.

Documentation usually involves the following:

- Notes properly dated and signed that set forth the facts of incidents (include dates of discussions with employee). Unless the employee is being informed as problems occur, the information may not be useful in supporting the case.
- Written statements from witnesses, if any.
- Identification of the course of constructive action that the supervisor followed, including what the employee was told.
- Informal letters or memoranda to the employee calling for corrective action (see exhibit) and (see exhibit)
- Schedules, work records, and other data pertaining to production or errors.
- Annual appraisal and development reports or probationary reports of below standard conduct or work performance. Examples should be clearly stated on these reports.
- Comparison of the employee's work to published or known performance standards. Where poor production is the problem, production records should show the results of other employees performing similar tasks during the same period.

Consider the Following when Contemplating Corrective Action

- The circumstances and consequences surrounding the case.
- The seriousness of the employee's conduct in relation to the employee's particular job and employment record with the state.
- The probable cause of the employee's behavior.
- What management has done to help prevent this type of behavior.
- What corrective action would serve to eliminate the cause and prevent a recurrence, rather than serve as a punishment or reprisal for the offense.
- The probable impact of the action on the employee.
- Advising the unit and regional administrative officer or the personnel office of the circumstances and utilize the advice and expertise received.

JAC Training Requirements, Appeal Rights, and Procedures

JAC apprentices, although subject to the same rules of conduct that apply to all other civil service employees, have additional training requirements and different appeal rights and procedures. Any adverse actions against a JAC apprentice should first be discussed with the personnel office to ensure appropriate action.

THE CORRECTIVE INTERVIEW--INFORMAL ACTION

1091.2.1

(September 1988)

If you find after a reasonable period of time that the problem still exists, intensified corrective action may be your only remaining method to bring the problem to the employee's attention.

When the situation has reached a point that a change must take place, either in the employee's conduct or status with the organization, it is time for the corrective interview. This important step in the process marks the beginning of either (1) acceptable performance by the employee or (2) building the record which will support formal adverse action. Technically, a corrective interview is a meeting between you and the employee to plan the change which must take place in the employee's conduct by a certain time in order that formal adverse action may be avoided. It is not an adverse action nor is it an appraisal and development interview. Refer to the section on an employee's right to representation to determine whether a representative should attend the corrective interview. For a suggested worksheet for you to use in conducting a corrective interview ([see exhibit](#)) . For a suggested letter following a corrective interview ([see exhibit](#)) .

A corrective interview has several objectives:

- Complete understanding by the employee of the behavior that is expected and acceptable.
- A detailed plan outlining the expected improvement.
- Designation of a time when the required improvement shall be accomplished or formal adverse action will be recommended.
- Creation of a record on which to build any necessary further action.

The following do's and don'ts will aid you in accomplishing these objectives:

Do

- Be sure the corrective interview is necessary and have the facts to support the decision.
- Make your own supervisor aware of the situation and your intended course of action.
- Arrange privacy for the interview.
- Allow ample time.

- Plan in advance what you intend to cover and note it for reference during the interview.
- Tailor your approach to your knowledge of the individual.
- Keep the interview job oriented; correct observable behavior, not personality traits.
- State the problem clearly, as you understand it; be specific.
- Stick to the subject; this is not a career exploratory discussion.
- Use examples and relate them to standards of performance.
- Be helpful; sincerely try to plan for change.
- Respect the employee's dignity and right to a viewpoint.
- Stay calm.
- Share the blame gracefully for any part in which you have fault.
- Be aboveboard; avoid harassing or entrapping the employee.
- Explain, encourage, and/or refer the employee to use the Employee Assistance Program (EAP) if the employee feels or you suspect there are personal problems creating the poor performance or attendance problems.
- Work out a remedy; specify change(s) required.
- Set a deadline for specific measurable change; set a specific date for progress review.
- Take notes freely during the course of the interview; they will assist greatly in summarizing and preparing a written summary.
- Summarize; be sure that the following purposes of the discussion have been met:
 - communicate standards of performance and behavior.
 - point out deviations or errors.
 - indicate remedy.
 - reiterate plan of follow-up.
- Prepare a written summary of the interview and furnish the employee with a copy (see exhibit)

- Review progress at the time specified, discuss it with the employee and, if settled, make a note to that effect on corrective letter. If progress has not occurred, prepare a written memo confirming the lack of planned improvement. A positive note on the prior letter will close the action; a negative letter can be used as part of your evidence in taking appropriate formal adverse action in the future.

Don't

- Procrastinate; go ahead with the interview once you have determined it is needed.
- Exaggerate; avoid unsupportable generalizations.
- Wander, apologize for the interview, or volunteer excuses for the employee to use; avoid "reaching" to give praise or to find humor.
- Be trapped into prolonged discussion of the merits of one example or deviate from the main issue.
- Accuse or recriminate; stick to a discussion of the behavior that must change.
- Jump to conclusions.
- Be afraid of listening to mitigating circumstances.
- Win the argument and lose the employee; try to solve the problem.
- Require abject submission or agreement; it's the change in behavior that counts.
- Bluff or threaten what you don't mean or can't carry out.
- Block the employee from taking the matter up the line to your supervisor; this is the employee's right.

Again, this is not a formal adverse action; therefore, nothing is filed with the SPB or in the employee's official departmental personnel file. However, be sure to retain a copy of the written summary and the follow-up memo. A copy of each may be given to your supervisor for information only.

THE LETTER OF WARNING--INFORMAL ACTION

1091.2.2

(September 1988)

When the corrective interview fails to improve the employee's behavior or performance, a Letter of Warning serves to notify the employee of the deficiencies which need correction and the consequence which will result if such correction is not accomplished.

A Letter of Warning is an informal action which may be placed in the employee's official personnel file. It is an instructive, corrective tool--intended to correct a less-than-satisfactory situation and serve as documentation for formal adverse action if necessary (see exhibit) . A letter of warning should do the following:

- Advise the employee of each deficiency.
- Tell the employee what corrective action is necessary and suggest how to achieve it.
- Inform the employee when the improved performance should be achieved. Time allowed for improvement should be appropriate for the correction expected; it should not be an indeterminate threat to force compliance and good behavior.
- Specify a date to review the employee's progress.
- Inform the employee that further action will be recommended if the problem is not corrected.

The employee may attach a rebuttal to a letter placed in his/her personnel file. Once the letter has served its intended purpose, any copy placed in the employee's file should be removed. (In any case, it must be removed and destroyed not later than three years from the date issued—Government Code section 19589.)

The determination of when such a letter has served its purpose depends on common sense and the circumstances. If the employee has improved work performance for a period of six months to a year, the letter can be considered to have served its purpose. If the employee chooses not to heed the warning, formal adverse action should be initiated within a short period of time.

Refer to for an example of a Letter of Warning (see exhibit) and for a list of Right/Wrong Statements on acts or omissions (see exhibit) .

EMPLOYEE'S RIGHT TO REPRESENTATION

1091.3

(September 1988)

You should be aware of the following information, since a counseling session or investigatory meeting with an employee could, at any time, turn into a meeting leading to investigation of facts to support a formal adverse action.

If a meeting is held between a state employee (rank-and-file and supervisory employees only) and his/her supervisor(s) involving fact-finding which may lead to an adverse action against the employee, the employee has a right to union representation.

"Adverse action" refers to formal adverse action, which includes dismissal, demotion, reduction of pay, suspension without pay, and an official reprimand. If a rejection during probation is being considered, the employee has the same rights to representation as for an adverse action. A letter from a supervisor to an employee is not considered a formal adverse action.

Employees are not entitled to have a representative present during routine business communications which occur between a supervisor and employee, such as performance evaluations, training, job audits, counseling sessions, and work-related instructions. This is so even though the employee may have received an informal letter from you warning that adverse action may be taken in the future if the employee's performance does not improve.

If there is any question whether an employee has a right to representation, contact the labor relations office.

If the meeting is disciplinary in character, but explanatory in the sense that the employee is only told what the employer intends to do and the employee is not required to respond, the employee has no right to representation.

A routine counseling session may at any time transform into an investigatory interview which may lead to formal adverse action or rejection during probation. For example, a "witness" in an investigation may become a "subject" of the investigation. If this happens, the employee should be so informed and also advised of his/her right to representation. If representation is then requested, the meeting should be terminated and rescheduled to allow for representation.

Limitations on the Right to Representation

(For public safety officers, [\(see exhibit\)](#) .

The right to representation arises only when the employee requests representation. As a matter of practice, management should inform the employee of the right to representation when the matter to be discussed may support formal adverse action or rejection during probation. An employee who requests a specific representative should be accommodated if reasonably possible. However, the interview need not be postponed if the employee insists on a specific representative who is unable to attend a meeting within a reasonable period of time and another representative is available.

The representative may not disrupt the interview. The investigation should be handled in an atmosphere of cooperation among the employee, employer and representative. If the representative becomes unduly disruptive, the interview should be recessed. If the representative refuses to cooperate and another representative is not reasonably available, the interview may proceed without a representative.

The representative is present to assist and advise the employee regarding his/her rights, not to negotiate with management regarding appropriate discipline. Disagreement concerning any adverse action which may be taken can be dealt with in the Skelly Hearing or during the appeal process.

Problem Situations Concerning Representation

If the employee refuses to be interviewed in a situation where there is no right to representation, inform the employee why there is no right to representation and that he/she will be disciplined for insubordination for refusing the interview. Management is free to act on the basis of information obtained from sources other than the employee. A caution-- remember that public safety officers have additional rights guaranteed to them by the Public Safety Officers Bill of Rights ([see exhibit](#)) . If the employee wants a representative, but does not know where to obtain one, you may provide the following information:

- If the employee is rank-and-file, the representative may be anyone other than a designated manager, supervisor, or confidential employee.
- If the employee is supervisory, the representative may not be a rank-and-file employee.
- If the employee is managerial or confidential, there is no right to representation by anyone. However, as a matter of policy, the department should extend the right voluntarily. If the department does allow representation, the representative should not be a rank-and-file employee or an agent acting on behalf of a rank-and-file employee organization.

Uncertainties over an employee's right to representation should be resolved in favor of representation. This will protect the employee while generally imposing little burden on the employer. Management should consult with the labor relations office regarding representation and the appropriate course of action in a particular situation.

SUPERVISOR'S RESPONSIBILITIES TO INITIATE FORMAL ADVERSE ACTIONS

1091.4

(September 1988)

Determine whether formal action is appropriate by discussing an employee's unacceptable behavior/performance with your supervisor and the administrative officer/personnel office.

Prepare a documented report on the incident. Provide a concise explanation with specific examples. You may be called to testify to the facts at an appeal before an SPB Hearing Officer (see exhibit) .

Discuss the report and the recommendation for formal action with your supervisor. Give the report to the person who is responsible for recommending the degree of action appropriate for the offense and for preparing the formal adverse action. Depending on the severity of the problem, the adverse action may be an official reprimand, suspension without pay, reduction of pay, demotion, or dismissal.

RESIGNATION IN LIEU OF ADVERSE ACTION

1091.5

(September 1988)

When faced with an adverse action being taken against him/her, an employee may announce an intent to resign or ask to resign. It is an employee's right to resign under any circumstances, and he/she cannot be prevented from doing so. The resignation must be entirely voluntary in order to avoid the possibility of its being set aside because it was given by "mistake, fraud, duress, or undue influence." Resignations under circumstances involving potential adverse action must be in writing.

The supervisor should be careful to give correct information in answer to any questions that the employee may have concerning his/her status if he/she resigns. However, a supervisor must never bring up the subject of the possibility of resignation nor suggest it to the employee before service of the adverse action. If a supervisor implies, "Unless you resign, you will be dismissed!" the resignation is under duress and subject to appeal within 30 days of the effective date.

An employee may resign for any reason he/she wishes at any time up to the effective date of adverse action. The employee must be informed whether a copy of the action served will remain on file or not, whether the resignation will be with fault or not, and if so, that he/she may appeal this to the Department of Personnel Administration (DPA) within 30 days of the separation (DPA Rule 599.904).

OTHER EMPLOYER ACTIONS

1091.6

(September 1988)

There are other actions you should be aware of in the interest of good personnel management. While not considered adverse actions, the following require the same type of justification and collection of facts.

REJECTIONS DURING PROBATIONARY PERIOD

1091.6.1

(September 1988)

Rejection of a probationary employee is part of the selection process and is not an adverse action. The same procedure and type of documentation are required for rejections as for adverse actions for employees with permanent status. A probationer may be rejected during the probationary period for reasons relating to qualifications, the good of the service, or failure to demonstrate merit, efficiency, fitness, and moral responsibility.

During an employee's probationary period, document all significant aspects of performance and alert your administrative officer/personnel officer to any problems. Regular performance reports not given in the proper time intervals could prejudice an effort to reject an employee. Deficient performance and suggestions for improvement should be called to the employee's attention both verbally and in writing as soon as the deficiencies occur. You may prepare a supplemental probationary report at any time during the probationary period to define specific deficiencies and recommend corrective action, or to recognize improvement. Notification to the employee that progress at the rate expected is not being met should not wait until the first probationary report.

The first probationary report should contain as many specific examples of unsatisfactory performance as are necessary to inform the employee of all areas which need improvement. You may reject a probationer after the first report of performance or earlier if you have strong data to support your belief that the employee cannot improve.

If the employee's performance is still less than satisfactory when the second probationary report is due, the employee should be informed of this in writing along with the fact that a rejection from his/her position will be recommended if expected standards are not met.

By no later than the end of the fifth month of a six-month probationary period (the end of the eleventh month of a one-year probationary period), you should notify the administrative officer/personnel office of your intention to reject the employee during probation. The Notice of Rejection shall be prepared by the region office or personnel office.

Rejections may be amended at any time prior to the receipt by the SPB of the employee's appeal.

RESIGNATION IN LIEU OF REJECTION

1091.6.2

(September 1988)

When faced with a rejection, an employee may resign. An employee has the right to resign for any reason he/she wishes at any time up to the date of rejection. The process is handled in the same manner as a resignation in lieu of adverse action.

Resignation of a probationary employee may be reported under unfavorable circumstances even though action against the employee has not reached the rejection stage. This is done by a statement of specific facts of the reasons why the employee was unsatisfactory. The employee must be informed his/her resignation will be coded "with fault." The employee has the right to appeal to the SPB to have his/her record cleared.

DENIAL OF SPECIAL IN-GRADE SALARY ADJUSTMENTS (SISA), ANNUAL MERIT SALARY ADJUSTMENT (MSA), OR ALTERNATE RANGE CHANGE

1091.6.3

(September 1988)

Consider whether the employee meets the standards of efficiency required for the position. Recommendations or denials of Special In-Grade Salary Adjustments (SISA), Merit Salary Adjustments (MSA), or Alternate Range Changes are considered one month in advance of the pay period in which the adjustment is due. If the employee's work performance is less than satisfactory, you should counsel the employee. Document acts or omissions in memos or on probationary or annual appraisal and development reports, and inform the employee on an ongoing basis of his/her deficiencies. This documentation should include a warning that if performance does not improve, the SISA, MSA, or Range Change will be denied. This provides you with documentation to deny the adjustment. You should ensure that the recommendation is consistent with the documentation. You should recommend denial if the employee's performance is less than satisfactory.

Denial of Special In-Grade Salary Adjustments

You should carefully review and analyze the work performance to determine if the employee should receive the SISA.

If the employee's work performance has been in any way less than satisfactory, the adjustment should be denied. This is not an adverse action. The letter of denial should include specific instances with dates, times, and places of unsatisfactory work performance (see exhibit) . Documentation in letters of warning, probationary reports, and/or annual performance reports are acceptable for this purpose.

A probationary employee with performance problems may show some improvement to the point where permanent status could be recommended. However, the special in-grade salary adjustment may still be disallowed if the performance is not yet at a level to deserve the salary adjustment. When a SISA is denied, the employee must be given written notification by the 16th of the month preceding the month in which the increase is due. A SISA may be reconsidered any month after denial, but must be reconsidered at the end of six months. A SISA cannot be effective prior to the first of the pay period in which it is granted.

Denial of Annual Merit Salary Adjustment

The MSA should not be granted if an employee's work performance has been less than satisfactory. Poor performance must be documented by counseling sessions, letters of warning and/or appraisal and development reviews, so that the denial of the MSA is well-supported (see exhibit) . Notify the personnel office to ensure that the employee's pay properly reflects the denial of the MSA. Normally, under DPA Rule 599.684, an MSA shall not be considered again in less than three months.

When an MSA is being denied, the employee must be informed of the reasons for such action before certification. Written notification must be given to the employee no later than the 16th of the month prior to the month in which the increase is due. Within 10 days after the employee is informed of the MSA denial, the employee may file a request for reconsideration through the departmental grievance process or the appropriate M.O.U. procedure. The employee may appeal to the DPA within 15 days after the departmental procedure has been followed.

If an MSA is granted when an employee's performance is unsatisfactory, it becomes difficult to use any documentation of poor performance prior to the MSA effective date to support a future adverse action.

When the MSA is granted, you are certifying that the employee's performance has met the standards of efficiency up to that date. When the MSA is not granted, it means the employee's performance has not met the standards of efficiency required for the position. The MSA denial is in accord with any subsequent adverse action you may initiate.

Denial of Alternate Range Change

Many classes in state service have more than one salary range (alternate salary ranges). A few of the classes with alternate salary ranges have been designated as deep classes. In these cases, movement to the higher range is based upon the employee's satisfactory performance and your recommendation.

A decision to retain the employee at the lower salary range should be supported by documentation of unsatisfactory performance. After a reasonable period of time and a re-evaluation of performance, the range change may be recommended if improvement has occurred. However, if unsatisfactory performance continues for an extended period of time, adverse action, such as demotion or dismissal, should be taken.

Denial must be given to the employee in writing, indicating the reasons which are supported by probationary reports or other documentation. The employee may appeal the denial through the departmental grievance or appropriate MOU procedure.

Reconsideration of the range change movement may occur after three months and must be reconsidered at the end of a year.

AUTOMATIC RESIGNATION FOR BEING ABSENT WITHOUT LEAVE (AWOL)

1091.6.4

(September 1988)

This action has been delegated to regional and headquarters section chiefs and is not considered an adverse action. An automatic resignation is an absence without leave (AWOL) for five consecutive working days. The authority for AWOL separation is based on Government Code section 19996.2. The DPA has made a number of changes to AWOL procedures (see Section 1091.6.4.1). AWOL may be implemented in only the two following situations:

- The absence without leave is admitted, or
- The employer reasonably believes an abandonment has occurred.

AWOL may not be used when there is a dispute about whether an employee is or is not absent without leave. Inexcusable absence without leave for any length of time is cause for discipline, including dismissal.

When an employee fails to report to work or contact you, you should attempt the usual means to contact the employee (i.e., telephone call, personal visit, calls to relatives or inquiries among friends, etc). Contact your supervisor and document all efforts to reach the absent employee.

An employee is not to be considered AWOL because of illness, inability to return to work following release by the SCIF, or for any other good reason for not reporting for work. When a personal physician releases an employee to return to work with the concurrence of CDF's medical consultant, and the employee refuses, the employee shall be considered AWOL.

Automatic Resignation of Intermittent Employees

An intermittent employee may be considered to have automatically resigned (DPA Rule 599.828) from the position without fault under the following conditions:

- The intermittent employee's continuity of employment in a position is interrupted by a nonwork period that extends longer than one year and is not covered by a paid leave, a formal leave without pay, or other temporary separation. The resignation is effective as of one year from the last day the employee was on pay status.
- The intermittent employee waives three requests to report for work. No waiver shall be counted if the employee was unable to come to work due to illness or other acceptable reasons. The resignation is effective as of the date of the third contact.

When one of these conditions occurs, you should contact your administrative officer/personnel office who will prepare a written notification to the employee which includes the employee's appeal rights under DPA Rule 599.904.

AWOL SEPARATION PROCEDURES

1091.6.4.1

(September 1988)

The following procedures are a guide to implement AWOL separation procedures. For procedural time lines (see exhibit) .

Warning Letter

A warning letter should be sent to the employee no later than the third scheduled work day of unauthorized absence. For a sample warning letter (see exhibit) . The file copy of the letter should be accompanied by a proof of service by mail (see exhibit) . This letter will notify the employee of the statute and allow the employee an opportunity to return to work prior to invoking the statute.

Notice of Automatic Resignation

Once the employee has been absent without leave for five consecutive or scheduled work days, written notice of automatic resignation must be sent to the employee. The notice must include the right to respond to the appointing authority at a Skelly hearing and the right to appeal to DPA. For a sample notice (see exhibit) . A proof of service must be attached to the file copy of the notice. The effective date of the resignation is the last date the employee worked, pursuant to the provisions of Government Code section 19996.2. The employee has five days after the effective date of service to respond to the appointing power and fifteen days after the effective date of service to appeal to DPA.

Effective Date of Service

Service of both the warning letter and notice of automatic resignation is by first class mail (not certified mail) pursuant to the Code of Civil Procedure section 1013. Service is effective to addresses within California five days from the postmark date, to addresses within the United States but outside California 10 days from the postmark, and to addresses outside the United States 20 days from the postmark. The notice must be sent to the employee's place of residence and to any other known address at which the employee is believed to be (e.g., mother's home, etc.). If the document is returned as undeliverable, the address should be verified and reasonable, diligent efforts should be made to obtain a current address. The notice should be remailed to the correct address, if located. The undelivered notice should be placed in the employee's personnel file to document the employer's attempt to notify the employee of the action.

Applications of the AWOL Statute

If the employee returns to work, reports after receiving the notice within five days of effective service (i.e, during the Skelly period), or exercises his/her Skelly rights, the automatic resignation must be rescinded. Adverse action may still be instituted. The following factors should be taken into consideration:

- Length of state service.
- Employee's reason for the absence.
- Whether the employee has any prior unexcused absences.
- Any likelihood that the employee will have any future unexcused absences.
- Any additional charges against the employee listed in Government Code section 19572.

The Zike, Goggin, and Phillips decisions hold that a limited abandonment of the position will not justify use of the AWOL statute. The AWOL statute must be used only for those employees whom the employer reasonably believes have abandoned their positions in state service or who admit their absences without leave (an extremely rare occurrence). If the appointing power knows where the employee is, or that the employee intends to return to work, the AWOL statute should not be applied; instead, adverse action should be instituted. If adverse action is imposed, the usual procedures including a Skelly hearing must be followed.

The period of absence should be recorded as unapproved dock time. Once the employee returns to work, the employee resumes paid status pending the effective date of any adverse action. Administrative time off pending the adverse action is not appropriate.

An employee need not respond to the appointing power. If the employee does not respond to either the appointing power or DPA within the specified time frames for appeal, the automatic resignation is final.

Failure to comply with the new requirements may allow the employee to be reinstated as of the effective date of the notice, with payment of back salary and accrued interest, plus reinstatement of all benefits, including but not limited to retirement, medical, dental, and seniority (Government Code section 19584).

For rank-and-file employees, consult the appropriate MOU to determine if automatic resignation/AWOL separations are grievable or arbitrable in lieu of the statutory procedures.

Permanent-Intermittents

For permanent-intermittent (PI) employees, different procedures are used, depending upon whether the PI is regularly scheduled or "on-call."

If the employee is on a regular work schedule, the procedure is the same as above, and all of the same considerations apply (i.e., by the third day of unapproved absence on his/her regular schedule, a warning letter should be sent; after the fifth consecutive absence, the notice must be sent, and if the employee exercises his/her Skelly rights, the AWOL should be rescinded and adverse action instituted).

However, if the employee is "on call," the employee is entitled to three waivers before AWOL separation (DPA rule 599.828). Each block of time for which the employee is scheduled but refuses to work is one waiver, unless the employee was unable to work due to illness or other good reason. After an "on call" employee has waived two requests to report to work, a warning letter should be sent ([see exhibit](#)). After three waivers, the Notice of Automatic Resignation must be sent ([see exhibit](#)). The notice must include the right to respond to the appointing authority at a Skelly hearing and the right to appeal to DPA. The rules governing effective service are the same. If the employee exercises his/her Skelly rights, the automatic resignation should be rescinded and adverse action instituted.

SEPARATION OF UNSATISFACTORY NONPERMANENT EMPLOYEES

1091.6.5

(September 1988)

An employee hired on a limited-term basis or under temporary authorization (TAU) may be separated for cause. Cause is defined to include failure to demonstrate merit, efficiency, fitness, and responsibility. These situations require consultation with the administrative officer/personnel office.

The separation of a nonpermanent employee should be for a valid reason. An employee should not be considered unsatisfactory for failure to do something which would not be expected or required of a permanent employee in that classification.

The employee has no appeal from this action except on the grounds that other temporary or emergency employees in limited-term positions remain employed in violation of SPB Rule 282.

If you have a problem with a limited-term employee, consult your administrative officer/personnel office. If determined to be appropriate, a written notice of separation to the employee will be prepared by the administrative officer/ personnel office. The employee may be notified verbally in advance of the written notice of separation.

TAU employees may be terminated at any time with only verbal notification.

PROCEDURES FOR MEDICAL PROBLEMS

1091.6.6

(September 1988)

An employee whose job performance is unsatisfactory quite often has a pattern of excessive absenteeism and may have a health problem, either physical or mental. In cases where this condition exists, special procedures are advisable before considering adverse action. You should request that the regional administrative officer seek the advice of, and action by, the Health and Safety Office when a medical problem of the employee may be involved. You should arrange to meet with the employee and the appropriate region or headquarters person to determine the nature and extent of the problem.

If an employee is unable because of medical reasons to perform the work of his/her present class but is able to perform the work of another class, he/she may be transferred or demoted. If an employee is unable because of medical reasons to perform the work of his/her present position or any other position in the department, he/she may be terminated.

Determination of an employee's inability to perform because of medical reasons is made by the appointing authority based on pertinent medical information. The appointing authority may require an employee to submit to a medical examination by a physician selected by the appointing authority to evaluate the capacity of the employee to perform the work of the position. Fees for the medical examination are paid by the state.

The appointing power must give the employee written notice of demotion or transfer for medical reasons at least 15 days prior to the effective date. The notice must contain an explanation of the conditions for reinstatement.

The notice must also inform the employee that the action of the appointing power may be appealed to the DPA. A written appeal must be filed with the DPA within 15 days after service of the notice.

A permanent or probationary employee may be terminated for medical reasons if he/she is not eligible for disability retirement or if he/she is eligible for, but waives, disability retirement.

If the appointing authority determines that the employee must be terminated for medical reasons, a written notice must be served on the employee at least 15 days in advance of the effective date. The notice of termination must inform the employee that he/she may appeal the action by filing a written appeal with the DPA no later than 15 days after service of the notice. It must also contain an explanation of the conditions for reinstatement.

FORMS AND/OR FORMS SAMPLES: RETURN TO ISSUANCE HOME PAGE FOR FORMS/FORMS SAMPLES SITE LINK.

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