

Maricopa Special Health Care District Policies	Subject: Predisciplinary Action Hearing	Number: HR2402 Issue Date: 9/22/04
Approved CEO:	Initiating Department: Human Resources Department	

I. PURPOSE

In accordance with the U.S. Supreme Court decision of Cleveland Board of Education v. Loudermill (March, 1985), public employers who have implemented a Merit or Civil Service system must provide a minimal due process procedure before taking certain disciplinary actions. The following Administrative Personnel Procedure provides the basic steps necessary for a Predisciplinary Hearing. This procedure must be used prior to any disciplinary action of dismissal, demotion or suspension of a regular status employee.

II. BASIC REQUIREMENTS

- A. This Administrative Personnel Procedure applies only to those employees who have successfully completed their initial probationary period.
- B. The employee must receive preliminary written notice of the proposed action giving the specific grounds and the particular facts upon which the action will be based.
- C. Upon receipt of the Predisciplinary Hearing notice letter, the employee may request and must be provided access to any known written materials, reports or documents upon which the action is based.
- D. The employee must be afforded an opportunity to respond either orally, in writing, or both to the charges.
- E. The due process requirements only apply to suspensions, demotions (not from promotional probation) and dismissals. Employees who are exempt under the Fair Labor Standards Act (FLSA) shall not be subject to suspension. In lieu of suspending an FLSA exempt employee, the appointing authority may issue a written warning. Subsequent offenses may be cause for demotion or dismissal. A written warning is not an appealable action. (See Attachment A.)
- F. If it is determined that the employee must be removed from the work place pending the Predisciplinary Hearing or final discipline determination, the employee may be placed on administrative leave with pay for a period normally not to exceed two weeks. (See Attachment B.)

III. PROCEDURE

- A. Predisciplinary Action Notification Letter
 - 1. When an appointing authority has determined it is necessary to impose disciplinary action (demotion, suspension or dismissal), documentation should be assembled and all alternatives reviewed. The Human Resources Department is available for assistance.
 - 2. The department must then notify the employee of the Predisciplinary Hearing. (See Attachment C.) The letter must notify the employee of:
 - a. the proposed action;
 - b. the Merit Rules, District and department policies and procedures which the employee is alleged to have violated;

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- c. the specific reason for such action, including the acts or omissions on which the proposed action is based;
 - d. a time (usually three to five days after delivery of notice) and place for such response to be presented; and
 - e. a statement of the employee's right to the opportunity to respond, either orally or in writing or both.
3. The notice should be hand-delivered if the employee is in the work place. If the employee is not in the work place, the notice may be hand-delivered to the employee at his home. If mailed to the employee's last known address, the notice must be sent via certified mail, return receipt requested, as well as via regular mail. Copies of the notification letter should be retained by the department.
- B. The Predisciplinary Hearing requirement may be satisfied by the employee submitting a written response or by waiving any response.
 - C. The hearing must be conducted by the appointing authority or authorized designee. The appointing authority (designee) must refrain from making any announcement of the final decision at the time of the hearing.
 - D. After considering the input provided by the employee, the appointing authority will issue the appropriate letter implementing/decreasing (Attachment D) or abandoning (Attachment E) the imposition of any discipline. If the decision is to increase the discipline, a new Predisciplinary Hearing must be held including issuing a new notice of the proposed action.
 - E. If the appointing authority decides to implement the disciplinary action, a copy of the predisciplinary action notification letter and the disciplinary letter must be attached to the disciplinary Personnel Action Form (PAF) and forwarded to the Human Resources Department.
- IV. Sample letters are attached for reference.

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ATTACHMENT A

WRITTEN WARNING NOTIFICATION LETTER

(To be used in lieu of SUSPENSION of FLSA EXEMPT employee)

UNDERLINED ITEMS SHOULD BE CHANGED AS NECESSARY

January 1, 199__

Mr. John Doe
123 Any Street
Nowhere, AZ 85_____

RE: WRITTEN WARNING

Dear Mr. Doe:

This letter is your written warning (detail the facts upon which the action is based).

The reason for this action is your (describe the offense) which is a violation of Maricopa Special Health Care District Merit System Resolution Section (15.A.5. - Neglect of duty and 15.A.10. - Absence without authorized leave.)

Due to the Fair Labor Standards Act regulations, we are not suspending you. However, we do consider this offense to be serious and are giving you this letter in lieu of suspension.

Any further violation of Merit System Rules may result in demotion or dismissal.

Sincerely,

Appointing Authority

cc: Employee's Personnel File, Human Resources Department, Employee Information Services, Records Section

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ATTACHMENT B

SAMPLE LETTER FOR ADMINISTRATIVE LEAVE WITH PAY

UNDERLINED ITEMS SHOULD BE CHANGED AS NECESSARY

January 1, 199_

Mr. John Doe
123 Any Street
Nowhere, Arizona 85____

Dear Mr. Doe:

Effective (immediately, or month, day, year), you are placed on administrative leave with pay in accordance with (Maricopa Special Health Care District Employee Merit System Rule 12.07.D.3. or Section VIII.D.3. of the Maricopa Special Health Care District Employee Leave Plan) pending investigation into your conduct surrounding a serious breach of the Code of Ethics.

OR ...

Effective (immediately, or month, day, year), you are placed on administrative leave with pay pending the results of an investigation into the incident that occurred on month, day, year.

During your leave, you are to contact your supervisor by 8:00 AM each day for further instructions.

Sincerely,

Appointing Authority

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ATTACHMENT C

PREDISCIPLINARY ACTION NOTIFICATION LETTER

(To be used for SUSPENSION, DEMOTION, DISMISSAL of regular status employee)

UNDERLINED ITEMS SHOULD BE CHANGED AS NECESSARY

January 1, 199____

Mr. John Doe
123 Any Street
Nowhere, AZ 85_____

Dear Mr. Doe:

This letter is to notify you of my intention to (suspend, demote, dismiss) you from your position with (department name).

The reason for this action is your abuse of family/medical and personal leave privileges, which is a violation of Maricopa Special Health care District Employee Merit System Resolution Section 15.A.4. - Abuse of leave, 15.A.5. - Neglect of duty and 15.A.10. - Absence without authorized leave.

XXXXXXXXXXXXX ... (This paragraph should detail the facts upon which the action is based.) XXXXXXXXXXXXXXXX

You have the right to meet with (name of appointing authority or authorized designee) on (date, time and place -- date should normally be three to five days from date of this memo). At this time, you may present either orally or in writing or both, your explanation of the reasons why the proposed disciplinary action is not appropriate. If you intend to appear at that time, please confirm the date with this office. If you choose not to appear, you may respond in writing, by the above date and time. If you do not appear or reply in writing, you will be deemed to have waived your right to this Predisciplinary Hearing.

Sincerely,

Appointing Authority

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ATTACHMENT D

SAMPLE LETTER IMPLEMENTING/DECREASING DISCIPLINE
(To be used for SUSPENSION, DEMOTION, DISMISSAL of regular status employee
UNDERLINED ITEMS SHOULD BE CHANGED AS NECESSARY

January 1, 199____

Mr. John Doe
123 Any Street
Nowhere, AZ 85_____

Dear Mr. Doe:

After giving due consideration to your explanation and information presented at the Predisciplinary Hearing on (month, day, year,) I have decided to proceed with your (suspension, demotion, dismissal).

OR ...

After giving due consideration to your explanation and information presented at the Predisciplinary Hearing on (month, day, year,) I have decided to amend the discipline previously proposed and instead impose XXXXXXXX.

OR ...

Since you have chosen not to respond orally or in writing, my decision is based on the information available.

This letter is to notify you of your (suspension, demotion, dismissal) from your position with the (department name) effective (month, day, year). The reason for this action is your (abuse of family/medical leave privileges), which is a violation of Maricopa Special Health Care District (Employee Merit System Resolution Section 15.A.4. - Abuse of leave, 15.A.5. - Neglect of duty and 15.A.10. - Absence without authorized leave.) (Where there is more than one incident which is the basis for the action being taken, consider including the following optional statement: Whether taken separately or as a whole, the incidents which form the basis for the disciplinary action, merit the discipline imposed.)

XXXXX ... (This paragraph should detail the facts upon which the action is based. It will be essentially the same as in the predisciplinary letter) ... XXXXX.

You have the right to appeal this (suspension, demotion, dismissal) to the Merit System Commission. Any such appeal must be submitted in writing and received within ten (10) (DEPENDING ON METHOD OF DELIVERY, SELECT ONE OF THE FOLLOWING: business days following the date of personal delivery OR business days of the certified mailing date) of this notice. Your appeal must state the facts upon which it is based and the action requested of the Commission. Address any appeal to the Human Resources Director, (address).

Sincerely,

Appointing Authority

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ATTACHMENT E

SAMPLE LETTER ABANDONING DISCIPLINE

(To be used for SUSPENSION, DEMOTION, DISMISSAL of regular status employee)

UNDERLINED ITEMS SHOULD BE CHANGED AS NECESSARY

January 1, 199____

Mr. John Doe
123 Any Street
Nowhere, AZ 85_____

Dear Mr. Doe:

After giving due consideration to your explanation and information presented at the Predisciplinary Hearing on month, day, year, I have decided to abandon the proposed (suspension, demotion, dismissal).

Sincerely,

Appointing Authority