

Part 3-1:

Workforce Management



Disclaimer:

This overview of Missouri state merit laws is provided by the Center for Management and Professional Development for informational purposes only. The advice or information included is not legal advice and should not replace legal research when evaluating particular situations or cases. We encourage you to review, evaluate and consult with your legal counsel on these issues.



General Discipline

- Do not let things "ride"
- Take action immediately
- Employee should be informed
- Verbal counseling documented
- Specify corrective action that must be taken
- Employee performance: review PERforM
- Performance Plans: Objective vs. Subjective
- Document, Document, Document



Causes for Suspension, Demotion and Dismissal: 1 CSR 20-3.070(2)

“The following are declared to be causes for suspension, demotion, or dismissal of any employee in the classified service, depending upon the seriousness of the cause; **however, those actions may be based upon causes other than those enumerated in this rule . . .**”



Causes for Suspension, Demotion and Dismissal: 1 CSR 20-3.070(2)

- Willful violation of state merit system law or rules
- Incompetent, inadequate, careless or inefficient performance of duties or failure to meet established minimums standards in the performance of duties
- Wantonly careless or negligent in care of state property
- Abusive or improper treatment toward inmate or patient

This is not an inclusive list



Causes for Suspension, Demotion and Dismissal: 1 CSR 20-3.070(2)

- Permanent or chronic physical or mental ailment which incapacitates from proper performance of duties including unrehabilitated alcoholism or narcotics addiction
- Habitual tardiness or frequent absences during course of regular working hours or completely absent from duty without prior or subsequent authorization for that absence
- Convicted of felony or misdemeanor involving moral turpitude

This is not an inclusive list



Causes for Suspension, Demotion and Dismissal: 1 CSR 20-3.070(2)

- Guilty of scandalous and disgraceful conduct while on or off duty where this conduct tends to bring the state service into public disrepute
- Guilty of abusive or improper treatment of guests or clients
- Submitted a false statement of a material fact
- Insubordination or failure to respond in a reasonable manner to lawful instructions of persons with duly delegated authority
- Willful violation of regulations or policies

This is not an inclusive list



Causes for Suspension, Demotion and Dismissal: 1 CSR 20-3.070(2)

- Abusive or physically violent toward other employees while on duty or in duty area or willfully exhibited behavior which is disruptive of the working activities of other employees
- Intoxicated or under influence of a controlled substance while on duty
- Practiced or attempted to practice fraud or deception in securing benefits

This is not an inclusive list



Suspensions: 1 CSR 20-3.070(3)

- A suspension may not exceed 20 working days in any 12 month period with the following exceptions:
 - Terminal suspension in conjunction with dismissal;
 - Suspension in connection with criminal offense involving the use of a controlled substance or
 - With approval of the Director pending investigation or trial of any charges

This is not an inclusive list



Suspensions: 1 CSR 20-3.070(3)(A)

- No suspension for **more than five working days** shall take effect unless, prior to the effective date, the appointing authority...



Suspensions: 1 CSR 20-3.070(3)(A)

- Gives the employee a written statement setting forth in substance the reason(s) for the suspension
- Informs the employee of their right to appeal
- Provides the employee with a copy of the Administrative Hearing Commission appeal form
- Provides a copy of the statement of reason(s) to the Director of Personnel
- Provides the employee the opportunity to respond to the reason(s) prior to the effective date of the suspension



Notice of Suspension of More Than 5 Working Days

Dear Mr. Doe:

For the reasons indicated herein, you are hereby notified of your suspension without pay from your position as a [Employee Title] for a period of ten working days effective April 16, 2013 through April 29, 2013. You should return to work on April 30, 2013 at the start of your shift. This action is being taken subject to your right to show reasons why this suspension should not be effected.

You may answer in person by making arrangements by April 9, 2013 to meet with me in my office on or before noon on April 10, 2013. To make an appointment, you may call [Appointing Authority Contact Number]. If you prefer, you may present your position in writing delivered to my attention at [Appointing Authority Address] on or before noon on April 10, 2013.

If there is to be any change to the disciplinary action, you will be contacted prior to the effective date of the original action. If you are not contacted, the original action will be effected.

This action is being taken due to [list specific reasons for suspension including dates of misconduct]. Please be advised that any further incidents of this nature may lead to disciplinary action up to and including dismissal. The loss of pay resulting from this action will be deducted from your May 15, 2013 pay check.

If you consider your suspension improper, you are advised that you have the right to appeal to the Administrative Hearing Commission. The appeal must: (1) be in writing; (2) set forth in substance the basis for the appeal; (3) be addressed to the Administrative Hearing Commission, P.O. Box 1557, Jefferson City, Missouri 65102; and (4) be received by the Administrative Hearing Commission within 30 calendar days of the effective date of dismissal. If appeal is sent by registered or certified mail, it will be deemed filed on the date it is mailed, if it is sent by any method other than registered or certified mail, it will be deemed filed on the date that it is received by the Commission. A copy of the personnel appeal form is attached.

Suspensions: 1 CSR 20-3.070(3)(B)

No suspension for a period of **five working days or less** shall take effect unless, prior to the effective date, the appointing authority...



Suspensions: 1 CSR 20-3.070(3)(B)

- Gives the employee a written statement setting forth in substance the reason(s) for the suspension
- Provides a copy of the statement of reason(s) to the Director of Personnel
- Provides the employee the opportunity to respond to the reason(s) prior to the effective date of the suspension



Notice of Suspension of 5 Working Days or Less

Dear Mr. Doe:

For the reasons indicated herein, you are hereby notified of your suspension without pay from your position as a [Employee Title] for a period of three working days effective April 16, 2013 through April 18, 2013. You should return to work on April 19, 2013 at the start of your shift. This action is being taken subject to your right to show reasons why this suspension should not be effected.

You may answer in person by making arrangements by April 9, 2013 to meet with me in my office on or before noon on April 10, 2013. To make an appointment, you may call [Appointing Authority Contact Number]. If you prefer, you may present your position in writing delivered to my attention at [Appointing Authority Address] on or before noon on April 10, 2013.

If there is to be any change to the disciplinary action, you will be contacted prior to the effective date of the original action. If you are not contacted, the original action will be effected.

This action is being taken due to [list specific reasons for suspension including dates of misconduct].

Please be advised that any further incidents of this nature may lead to disciplinary action up to and including dismissal.

The loss of pay resulting from this action will be deducted from your May 15, 2013 pay check.

Demotions: 1 CSR 20-3.070(4)

No involuntary demotion shall take effect unless, prior to the effective date, the appointing authority...



Demotions: 1 CSR 20-3.070(4)

- Gives the employee a written statement setting forth in substance the reason(s) for the demotion
- Informs the employee of their right to appeal to the Administrative Hearing Commission
- Provides the employee with a copy of the Administrative Hearing Commission appeal form
- Provides a copy of the statement of reason(s) to the Director of Personnel
- Provides the employee with an opportunity to respond to the reason(s) prior to the effective date of demotion



Dismissals: 1 CSR 20-3.070(5)

- Regular Employees
 - You may not dismiss an employee for the same incident for which you have already disciplined the employee. However, you can consider the previous discipline as long as it is not the reason for dismissal



Dismissals: 1 CSR 20-3.070(5)

No dismissal shall take effect unless, prior to the effective date the appointing authority...



Dismissals: 1 CSR 20-3.070(5)

- Gives the employee a written statement setting forth in substance the reason(s) for the dismissal
- Informs the employee of their rights to appeal
- Provides the employee with a copy of the Administrative Hearing Commission appeal form
- Provides a copy of the statement of reason(s) to the Director of Personnel
- Provides the employee with an opportunity to respond to the reason(s) prior to the effective date of the dismissal



Dismissal: 1 CSR 20-3.070(5)

- **“For the good of the service”** under Chapter 36 means some personal misconduct or fact that renders the employee’s further employment harmful to the public interest
- In other words, it requires the appointing authority to determine that the employee’s conduct is of such a serious nature that dismissal is required rather than some other form of discipline

Lombardi v. Dunlap, 103 S.W. 3d 786 (Mo. App. W.D. 2003); see also Henry v. Missouri Dept. of Mental Health, 351 S.W. 3d 707 (Mo. App. W.D. 2011); Snider v. Missouri Highway and Transportation Commission, 366 S.W. 3d 320 (Mo. App. W.D. 2011); Mo Veterans’ Commission v. Vanderhook, 290 S.W. 3d 115 (Mo. App. W.D. 2009)



Dismissal: 1 CSR 20-3.070(5)

The authority to approve or disapprove a dismissal does not extend discretion to override the judgment of the appointing authority that dismissal of an employee is for the good of the service

Lombardi v. Durlap, 103 S.W.3d 786 (Mo. App. W.D. 2003)



Notice of Dismissal to Regular Employee

Dear Mr. Doe:

For the reasons indicated herein, you are hereby notified of your dismissal from employment with the [Department Name, Division Name] effective January 15, 2014 at the end of your shift. Effectively immediately you are hereby placed on administrative leave with pay. This dismissal action is being taken subject to your right to show reasons why this dismissal should not be effected. You may answer in person by making arrangements by January 14, 2014 to meet with me in my office on or before noon on January 15, 2014. To make an appointment, you may call [Appointing Authority Contact Number]. If you prefer, you may present your position in writing delivered to my attention at [Appointing Authority Address] on or before noon on January 15, 2014.

If there is to be any change to the disciplinary action, you will be contacted prior to the effective date of the original dismissal action. If you are not contacted, the original dismissal action will be effected.

This dismissal is required in the interest of efficient administration and that the good of the service will be served thereby. The specific reasons for your dismissal are listed below.

This action is being taken as a result of [list specific reasons for dismissal including dates of misconduct].

You will be compensated for any annual leave and compensatory time which you have credited to your record effective with the date of your dismissal. Your final payment for work performed and leave with pay time granted will be for the February 14, 2014 payroll. Your annual leave and/or compensatory time will be included on the February 14, 2014 payroll. In accordance with [Agency Policy on Exit Procedures/Return of Materials], you will need to return all keys, ID, uniforms and other state property issued to you to your supervisor. In the event that these items are not returned in a timely manner, your final payment(s) may be reduced by an appropriate amount to reimburse the State for the loss of the item and/or the cost of any measures needed to remedy the situation (e.g., changing locks, replacing equipment, etc.) Failure to return these items in a timely manner may also result in your payment(s) being through check and not through direct deposit.

If you consider your dismissal improper, you are advised that you have the right to appeal to the Administrative Hearing Commission. The appeal must: (1) be in writing; (2) set forth in substance the basis for the appeal; (3) be addressed to the Administrative Hearing Commission, P.O. Box 1557, Jefferson City, Missouri 65102; and (4) be received by the Administrative Hearing Commission within 30 calendar days of the effective date of dismissal. If appeal is sent by registered or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered or certified mail, it will be deemed filed on the date that it is received by the Commission. A copy of the personnel appeal form is attached.

Dismissals: 1 CSR 20-3.040(4)

Probationary Employees:

- Generally, no appeal
- Probationary period is a working test
- Be aware when probation expires – probation can be extended prior to the original expiration date subject to statutory guidelines
- If employee fails to do the job satisfactorily, may end employment prior to the employee reaching regular status



Dismissals: 1 CSR 20-3.040(4)

- Do not have to wait until the end of the probationary period to terminate a probationary employee
- Reasons to terminate:
 - Unable or unwilling to perform the duties of the position satisfactorily
 - Habits and dependability do not merit continuance in the service
- Upon removal, report the dismissal and the reasons for the action to the Director of Personnel and to the removed employee



Dismissals: 1 CSR 20-3.070(5)(C)1

- Non-Merit Employees:
For non-merit agencies that have elected to follow the provisions for appeals for certain positions provided in section 36.390, RSMo, or have failed to adopt dismissal procedures substantially similar to those provided for merit employees, the following applies:

No dismissal shall take effect unless, prior to the effective date the appointing authority...



Dismissals: 1 CSR 20-3.070(5)(C)1

- Gives the employee a written statement setting forth in substance the reason(s) why the dismissal is for the good of the service or not against the good of the service
- Informs the employee of their rights to appeal
- Provides the employee with a copy of the Administrative Hearing Commission appeal form
- Provides a copy of the statement of reason(s) to the Director of Personnel



Dismissals: 1 CSR 20-3.070(5)(C)2

Reminder:

- Where the employee is not a merit employee, no finding of cause is necessary in order to terminate the employee. However, the employee, like a merit employee, may complain to the AHC that the termination was for political, religious or racial reasons or that it was "not for the good of the service." The firing may be made for any cause or no cause, so long as it is not for a reason prohibited under the common law or under section 36.390(5). See *Bowen v. Missouri Department of Conservation*, 46 S.W.3d 1 (Mo. App. W.D. 2003)
- 1 CSR 20-3.070(5)(C)2 does not require that the appointing authority articulate "cause" or a reason for the employee's dismissal. Further, the terms "cause" and "for the good of the service" are not synonymous.



Dismissals

Please consult with your legal counsel regarding other applicable federal and state law restrictions regarding the hiring and firing of employees that may allow employees to file unlawful employment actions with the Missouri Commission on Human Rights or the Equal Employment Opportunity Commission.


