Wisconsin Human Resources Handbook

Chapter 410

Employee Work Rules and Discipline Procedure

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Sec. 410.010 Introduction

Section 230.01(2)(bp), Wis. Stats., states "It is the policy of this state to retain employees on the basis of the adequacy of their performance, to correct inadequate performance when possible and appropriate, and to separate from state service employees whose performance and personal conduct is inadequate, unsuitable or inferior." This chapter sets for the standards for implementing this policy.

Sec. 410.020 Statutory Authority

1. Section 230.34 (1)(a), Wis. Stats., states: "An employee with permanent status in class or an employee who has served with the state as an assistant district attorney or an assistant state public defender for a continuous period of 12 months or more may be removed, suspended without pay, discharged, reduced in base pay, or demoted only for just cause. It is just cause to remove, suspend without pay, discharge, reduce the base pay of, or demote an employee for work performance or personal conduct that is inadequate, unsuitable or inferior, as determined by the appointing authority, but only after imposing progressive discipline that complies with the administrator's standards under s. 230.04 (13m). It is just cause to remove, suspend without pay, discharge, reduce the base pay of, or demote an employee without imposing progressive discipline for any of the following conduct:
   a. While on duty, harassing a person.
   b. While on duty, intentionally inflicting physical harm on another person.
   c. While on duty, being intoxicated or under the influence of a controlled substance, as defined in s. 961.01 (4) or a controlled substance analog, as defined in s.961.01 (4m).
   d. While on duty, being in possession of a controlled substance, as defined in s.961.01 (4), or a controlled substance analog, as defined in s. 961.01 (4m), without a prescription.
   e. Falsifying records of the agency.
   f. Theft of agency property or services with intent to deprive an agency of the property or services permanently, theft of currency of any value, felonious conduct connected with the employee's employment with the agency, or intentional or negligent conduct by an employee that causes substantial damage to agency property.
   g. A conviction of an employee of a crime or other offense subject to civil forfeiture, while on or off duty, if the conviction makes it impossible for the employee to perform the duties that the employee performs for the agency.
   h. Misuse or abuse of agency property, including the intentional use of the agency's equipment to download, view, solicit, seek, display, or distribute pornographic material.
   i. A serious violation of the code of ethics established by the director under s. 19.45 (11)(a), as determined by the director."

2. Section 230.34 (1)(am), Wis. Stats., states, "If an employee fails to report for work as scheduled or to contact his or her supervisor, the appointing authority may discipline the employee. If an employee fails to report for work as scheduled, or to contact his or her supervisor for a minimum of 3 working days during a calendar year, the appointing authority shall consider the employee's position abandoned and may discipline the employee or treat the employee as having resigned his or her position. If the appointing authority decides to treat the position abandonment as a resignation, the appointing authority shall notify the employee in writing that the employee is being treated as having effectively resigned as of the end of the last day worked.

Sec. 410.030 Work Rules - General

Work Rules are established by the State of Wisconsin, within its discretion, to regulate the personal conduct of all state employees while on the job. The State of Wisconsin enforces work rules outside of work hours when an employee's conduct is detrimental to the interests of the state as an employer. These rules are established so the State of Wisconsin can fulfill its objectives in an orderly and efficient manner.

Violation of any of the work rules may result in disciplinary action ranging from a suspension to discharge, depending on the seriousness and frequency of the infraction. In all cases, the State of Wisconsin considers discipline as corrective. Specifically, all employees of the State of Wisconsin are prohibited from committing any of the following acts:

1. Falsification of records, knowingly giving false information or knowingly permitting, encouraging or directing others to do so. Failing to provide truthful, accurate and complete information when required.

2. Failure to comply with written agency policies or procedures.

3. Disobedience, insubordination, inattentiveness, negligence, failure or refusal to carry out written or verbal assignments, directions, or instructions.

4. Failure to observe all health, safety and sanitation rules and practices, including failure to report accidents which involve injuries or damage to state equipment or property.

5. Failure to report promptly at the starting time or leaving the place of duty before the quitting time without proper authorization, or failure to promptly notify the proper authority of impending absences or tardiness.

6. Unexcused or excessive absenteeism or tardiness.

Note: Agencies may also develop an attendance policy to clarify Work Rule #6.

7. Misuse or abuse of leave benefits.

8. Failure to observe time limits for lunch or break periods.

9. Stealing, unauthorized use, neglect or destruction of government-owned or leased property, materials, equipment or supplies. Includes theft or intentional destruction of personal possessions of staff or others on government-owned or leased property.

10. Unauthorized use, abuse, or misuse of state or private property, materials, facilities and equipment including but not limited to copy machines, computers, mail services, telephone system, fax machine or other electronic media.

11. Unauthorized audio and video recording and photography on state property or while conducting state business.

12. Unauthorized access, disclosure, destruction or use of information or records that could be reasonably considered confidential.

13. Threatening or attempting to inflict, or inflicting bodily harm to or mental anguish to another person.

14. Intimidating, interfering with, harassing, demeaning, treating discourteously, or bullying; or using profane or abusive language in dealing with others.

15. Possession of a controlled substance or analogue without a prescription while on duty; manifesting signs of having consumed alcohol, or illegal drugs; or reporting to work or working in an impaired condition so as to be unsafe to the employee, others, or physical property.

16. Engaging in unauthorized activities while on duty, including but not limited to gambling, operating a personal business, soliciting, playing games, horseplay or disorderly conduct or other disruptive or unsafe behavior.

17. Making false, inaccurate or malicious statements about another person or the employer.

18. Unauthorized possession, misuse or mishandling of weapons, ammunition or explosives.

19. Entering or permitting others to enter restricted areas without authorization, including unauthorized entry outside assigned work hours or unauthorized entry into restricted areas.

20. Failure to comply with or violating any rule, regulation or order of a professional licensing agency when the license or certification is related to the employee's position.

21. Failure to comply with the provisions of the state code of ethics.

22. Unclean, unkempt, inappropriate dress or grooming which adversely affects proper performance of duties or the image of the employer.

23. Failure to submit to the inspection of items taken from or into work premises.

24. Unauthorized possession, lending, borrowing, destruction or duplicating of keys, access cards, passwords, or other security or access devices.

25. Engaging in any outside activities (including violations or convictions of criminal or other laws) which may impair the employee's independence of judgment or impair the employee's ability to perform his/her duties as an employee of the state.

Sec. 410.040 Administrative Policies and Procedures

The State of Wisconsin work rules do not constitute the entire list of violations which govern the conduct of employees, contractors, paid or unpaid interns, and volunteers. Other rules may be provided by statute, administrative code, and by administrative policies and procedures established by agencies. Additional work rules may be established by agency management to address unique requirements of the agency or as circumstances require. Violations of these rules may also result in appropriate disciplinary action. Specific agency policies and procedures may escalate the level of progression up to and including termination. Such rules and policies require review and approval by BCLR prior to implementation and for any modification.

Sec. 410.050 Job Abandonment

An absence is considered a no call/no show if it is more than two hours past the scheduled start of an employee's shift and the employee has not called the employer or arrived for his or her scheduled shift.

For each of the first two instances of a no call/no show, progressive discipline will be issued. In each discipline letter, agencies will include the language from s. 230.34(1)(am), Wis. Stats., which states "If an employee fails to

report for work as scheduled, or to contact his or her supervisor for a minimum of 3 working days during a calendar year, the appointing authority shall consider the employee's position abandoned and may discipline the employee or treat the employee as having resigned his or her position."

Agencies will treat the third incident as discipline or as a resignation.

Consecutive days of no call/no show will be treated as separate days.

Sec. 410.060 Progression Schedule

If it is determined a work rule violation has occurred, the appointing authority will consider all of the following factors in determining the appropriate level of discipline:

1. Aggravating or mitigating circumstances surrounding the violation;
2. Progression schedule;
3. Specific agency policies and procedures;
4. Just cause for discipline: Per Section 230.34 (1)(a), Wis. Stats., "…It is just cause to remove, suspend without pay, discharge, reduce the base pay of or demote an employee for work performance or personal conduct that is inadequate, unsuitable or inferior, as determined by the appointing authority, but only after imposing progressive discipline that complies with the administrator's standards under s. 230.04 (13m).

The schedule of progressive discipline below will be followed unless the facts of the specific situation warrant a different level of discipline. The Department may accelerate the level of discipline but they may not repeat a level or issue a lower level of discipline.

The progression schedule outlined below applies to all disciplinary actions.

Work Rule Violations	Corrective Disciplinary Action
First Violation	1-day suspension without pay
Second Violation	3-day suspension without pay
Third Violation	5-day suspension without pay
Fourth Violation	Termination

There will be no letters in lieu of suspension issued with the exception of employees who are categorized as exempt employees under the federal and state overtime laws and regulations. For exempt staff with **attendance violations only**, the first and second level of discipline (1-day suspension without pay and 3-day suspension without pay) will be a written reprimand in lieu of a 1-day suspension without pay and a written reprimand in lieu of a 3-day suspension without pay, respectively. Written reprimands in lieu of a period of suspension will have the same weight and effect for progressive discipline purposes as if the employee had served the comparable period of suspension without pay.

The effective date of the discipline is the date of the letter.

Sec. 410.070 Cumulative Disciplinary Actions

Disciplinary actions are cumulative from the effective date of the letter of the first violation until the employee is free from any further discipline for 12 months. If an employee is not disciplined for 12 months after the effective date of the last discipline, the employee's level of discipline will repeat rather than moving to the next higher level of progression unless the circumstances of the infraction warrant an acceleration of the level of discipline. For each additional consecutive 12 months the employee remains discipline free, the level of discipline is reduced by one level unless the circumstances of the infraction warrant an acceleration of the level of discipline.

The following examples demonstrate the application of these provisions: An employee receives a 3-day suspension through progression, effective March 5, 2016. Subsequently, the employee is disciplined. If the effective date of the discipline occurs on each of the following, the resulting discipline is as noted:

- February 1, 2017: The employee will receive a 5-day suspension following progression. The progression continues because the employee was not discipline free for 12 months from the effective date of the 3-day suspension (March 5, 2016).
- April 1, 2017: The employee will receive a 3-day suspension following progression. In this example, the employee has been discipline free for one year from March 5, 2016 so the progression is repeated and does not move up a level.
- April 1, 2018: The employee will receive a 1-day suspension following progression. The employee in this example has been discipline free for two years resulting in the level of progression dropping back two levels.

Sec. 410.080 Coordination and Review of Disciplinary Actions

The Human Resources Director must review and approve any request for employee discipline including an employee on permissive, promotional or original probation. The Human Resources Director may select a designee provided the designee serves as the Deputy Human Resources Director as the primary human resources professional assigned to employment relations matters for the agency (Employment Relations Chief or Specialist).

Sec. 410.090 Probationary Employees

Employees who are serving a probationary period and who are found to have violated State of Wisconsin work rules which merit formal discipline will have their probationary period terminated without exception.

Probationary termination of an employee with restoration rights: After an investigation is conducted and it is found that there are work rule violations for misconduct, attendance, or performance issues the employee's probation will be terminated and the employee will be restored to his or her previous position. Termination of employment may occur if misconduct or attendance violations are egregious or if the violation is one of the nine acts of misconduct identified in s. 230.34 (1)(a), Wis. Stats.

Probationary termination of an employee without restoration rights: After an investigation is conducted and it is found that there are work rule violations for misconduct, attendance, or performance issues the employee's employment will be terminated.

Sec. 410.100 Removal of Disciplinary Letters from Personnel Files (P-Files)

Pursuant to s. 230.06(4), Wis. Stats., letters of discipline shall be filed in the employee's personnel file and may not be removed unless ordered by a court or by the appointing authority, administrator or commission during the grievance process under s. 230.445, Wis. Stats. pursuant to a settlement agreement, or by other legal action.

Progressive discipline will transfer with an employee when the employee transfers, promotes, demotes or otherwise moves between agencies.

Sec. 410.110 Letters of Instruction

Management may utilize "Letters of Instruction" for violation of work rules or work performance issues when the behavior of the employee is not severe enough to warrant following the progressive discipline schedule as outlined in this chapter. Letters of Instruction should be used to correct behavior prior to moving forward with formal discipline.

Letters of Instruction are not considered discipline and will not impact an employee's cumulative disciplinary record.

The Human Resources Director or their designee must review and approve any request to issue a Letter of Instruction. Letters of Instruction may be issued to employees who are serving a probationary period.

Letters of Instruction shall be filed in the employee's personnel file and may not be removed unless ordered by a court, the appointing authority, or by other legal action. (s. 230.06(4), Wis. Stats.) Letters of Instruction will transfer with an employee when the employee transfers, promotes, demotes or otherwise moves between agencies.

Sec. 410.120 Administrative Information

This chapter was issued in July 2016.