

## **RULE 11**

### **DISCIPLINE AND REMOVAL**

#### **11.01 Purpose**

The Commission establishes and supports disciplinary rules and procedures, which will provide for the orderly conduct of business operations and human resources management. The Commission provides for a proper balance between the rights of employees and the obligation of City management to employ and retain only those employees who make a positive contribution to the quality of services provided to the community. (CSC 12/15/15)

#### **11.02 Relationship to the Minnesota Public Employment Labor Relations Act**

Under the Minnesota Public Employment Labor Relations Act, employees in a recognized bargaining unit may choose to grieve the disciplinary action through their labor agreement. In such cases, the Commission will not conduct a hearing nor enter into the process. Similarly, an employee who chooses to appeal a disciplinary action to the Commission waives the right to file a grievance through a labor agreement. (CSC 12/15/15)

#### **11.03 Causes for Disciplinary Action**

The two primary causes for disciplinary action are substandard performance or misconduct. The following are examples of substandard performance and misconduct that may lead to discipline. This list is not exhaustive. (CSC 12/15/15)

##### **A. Substandard Performance**

1. Employees who fail to perform their job at minimum acceptable standards (CSC 12/15/15)
2. Employees who fail to meet or continue to meet an established requirement of the position, e.g. license or registration or are not otherwise qualified to perform the duties of the position. (CSC 4/9/92) (CSC 2/10/94) (CSC 12/15/15)

##### **B. Misconduct**

Misconduct is the failure to comply with any work rule, policy, ordinance or law or any behavior that would offend a reasonable person. The following activities are examples of misconduct, which may be cause for disciplinary action. (CSC 12/15/15)

1. Tardiness and absenteeism.
2. Sick leave abuse.

3. Absence without leave, except that this shall not be construed to prohibit or limit an employee's right to exercise his or her rights under PELRA or other applicable labor law. (CSC 12/15/15)
4. Insubordination (failure to follow a directive from a supervisor). (CSC 12/15/15)
5. Willful or negligent damage of City property.
6. Interference with the work of other employees.
7. Harassment on the basis of any protected class listed in Rule 1.01A. (CSC 12/15/15)
8. Misappropriation of City property, funds or money.
9. Violation of safety rules, laws, and regulations.
10. Discourtesy to public or fellow employees.
11. Violence, threats of violence, abusive behavior, abusive language or mental harassment. (CSC 12/15/15)
12. Accepting gifts from the public in connection with performance of duties as a City employee.
13. Criminal or dishonest conduct whether such conduct was committed while on duty or off duty. (CSC 12/15/15)
14. Reporting to work under the influence (as defined in City policies or labor agreements) or in possession of alcohol or illegal drugs, or using such substance on the job. (CSC 12/15/15)
15. Soliciting or receiving funds for political purposes or personal gain during work.
16. Using authority or influence to compel an employee to become politically active, except that this shall not be construed to prohibit or limit an employee's right to exercise his or her rights under PELRA or other applicable labor law. (CSC 12/15/15)
17. Use or threat of political influence on employment status.
18. Making a false statement or the failure to disclose a material fact during an investigation or to management. (CSC 8/27/98) (CSC 12/15/15)
19. Violation of department rules, policies, procedures or City ordinances.
20. Other justifiable causes.

#### **11.04 Types of Disciplinary Action**

It is the intent of the Commission to establish levels of discipline which are commensurate with the reasons or causes for disciplinary action. The following types of disciplinary action may be imposed and will normally be administered progressively, in the following order: (CSC 12/15/15)

A. Warning

A disciplinary warning includes a verbal discussion between the employee and supervisor covering the details of the problem, plans for correcting the problem and a written memo to document the event. (CSC 12/15/15)

B. Written Reprimand

A written reprimand is a letter documenting the rules violation, a plan for future avoidance, and a warning about future disciplinary action. (CSC 12/15/15)

C. Suspension

A suspension is an involuntary absence from work without pay for a period not to exceed ninety calendar days. In general, suspensions are more appropriate in situations involving misconduct rather than substandard performance. (CSC 12/15/15)

D. Demotion

A demotion may be utilized by management as a performance management tool or as discipline. A demotion includes a reduction in grade and/or salary. Demotions may be temporary or permanent. The granting of a voluntary demotion shall not be considered discipline. (CSC 12/15/15)

1. In general, temporary demotions, those up to one hundred eighty days, are more appropriate for misconduct. (CSC 12/15/15)
2. In general, permanent demotions, those over one hundred eighty days, are more appropriate for substandard performance. (CSC 12/15/15)
3. A voluntary demotion may be granted to avoid other disciplinary action if agreed to by the employee and by management.
4. An employee who is demoted may return to their prior status class or to a lower job class in the same occupational field. If no vacancy exists, the employee will be placed on the corresponding layoff list.

#### E. Discharge

Discharge is the involuntary separation of an employee from employment and is appropriate for substandard performance, repeated misconduct, or a single incident of severe misconduct. (CSC 12/15/15)

Progressive discipline need not be imposed in cases of; (CSC 12/15/15)

1. Substandard performance, where the employee has been afforded an opportunity to perform satisfactorily under a performance improvement plan.
2. Where an employee is no longer qualified for the position.
3. Repeated misconduct.
4. Severe initial misconduct.

#### **11.05 Notification**

A department disciplining an employee must give the employee notice of its intent to take disciplinary action and should notify Human Resources Department of its decision to impose discipline. The notice to the employee must state the cause for disciplinary action under Rule 11.03. If the employee is subject to a collective bargaining agreement, the department must inform the employee that the employee has a right to representation by the employee's exclusive certified collective bargaining representative. (CSC 12/15/15)

#### **11.06 Appeal Rights of Employees**

Disciplined employees may appeal to the Commission, only as provided herein. An employee may appeal to the Commission a suspension of over thirty days, a permanent demotion (including salary decreases), or a discharge. (CSC 12/15/15)

#### A. Probation

An employee removed or discharged during a probationary period may not appeal and is not entitled to a hearing under these rules. A veteran removed during an initial probationary period is not entitled to a hearing under these rules or to a Veteran's Preference hearing. The rights of a veteran are subject to Minnesota Statute § 197.46.

#### B. Employee Request for Hearing.

Disciplined employees who are eligible to be heard may appeal a disciplinary action by requesting a hearing before the Commission. The request for hearing must be in writing

and must describe the alleged breach of disciplinary rules and procedures by management. (CSC 12/15/15)

The request for hearing must be postmarked or received by the Human Resources Department/Civil Service Commission within 15 calendar days from the date disciplinary action was provided to the employee. The 15 days are counted from the first day after the notice was served. If the fifteenth day falls on a Saturday, Sunday, or a legal holiday, the request may be served on or before the following business day. The date of postmark must be within that 15 day period. (CSC 12/15/15)

#### C. Veterans Request for Hearing

Veterans who are eligible under Minnesota Statute §197.46 may appeal their removal or discharge by requesting a hearing before the Commission. A request for hearing must be in writing and may describe the alleged breach of disciplinary rules and procedures by management.

A request for hearing from a veteran must be received by the Human Resources Department/Civil Service Commission within 30 days of receipt by the veteran of the notice of intent to discharge. The 30 days are counted from the first day after the notice was received. If the 30th day falls on a Saturday, Sunday, or a legal holiday, the request must be made on or before the following business day.

The rights of a veteran is subject to Minnesota Statutes §197.46. (CSC 7/27/04) (CSC 12/15/15) (CSC 01/24/17)

### **11.07 The Disciplinary Hearing**

When, in the Commission's judgment, an employee's appeal for a disciplinary hearing is appropriate under the Rules, the Commission will arrange for such hearing and subsequent findings and decisions will be issued. (CSC 12/15/15)

#### A. Hearing Notice

1. The Commission will provide the disciplined employee and management with at least ten days' notice of the time and place of the hearing. (CSC 12/15/15)

2. Veteran's Hearing

Upon receipt of a timely written request for a hearing from a veteran or if a veteran timely requests a hearing but does not elect who shall conduct the hearing the Commission will establish a hearing date and conduct the hearing. The Commission will provide the veteran and management with the date, time and place of the

hearing which may be scheduled no more than ten calendar days following the end of the veteran's thirty day appeal period. (CSC 4/23/98) (CSC 12/15/15) (CSC 01/24/17)

B. Hearing Authority

A Commissioner may conduct the disciplinary hearing or the Commission may appoint a hearing examiner to conduct the hearing and report findings and recommendations to the Commission. The Commission and its appointees have the power of subpoena to require attendance of witnesses and submittal of pertinent documents, to administer oaths, and to continue the hearing from time to time. No more than five subpoenas may be issued without approval of a Commissioner. Management and the appellant employee may be represented by counsel. (CSC 12/15/15)

C. Hearing Procedure

The procedures in a disciplinary hearing will be as informal as practicable, follow Minnesota Rules, part 1400.7300 Rules of Evidence, will have a verbatim audio recording kept, and be conducted in the following sequence: (CSC 12/15/15)

1. Management or the representative of management presents evidence in support of their disciplinary action.
2. The employee or the employee's representative presents evidence in defense of the employee.
3. Both parties may offer rebuttal.
4. In no case will evidence be considered or arguments heard without all parties being present and having an opportunity to respond. (CSC 12/15/15)

D. Post-Hearing Procedures (CSC 3/14/02)

1. The Hearing Officer shall file the Findings of Fact, Conclusions and Recommendations with the Commission within forty-five days from the close of the hearing record. (CSC 3/14/02)
2. The Commission will serve the Findings of Fact, Conclusions and Recommendation of the Hearing Officer upon management and the employee. (CSC 3/14/02)
3. The employee and management shall each have ten days after receipt of the Findings of Fact, Conclusions and Recommendation to file on each other and on the Commission written exceptions to the Findings of Fact, Conclusions and Recommendations. No new evidence shall be offered by a party or received by the Commission. (CSC 3/14/02) (CSC 12/15/15)

4. Prior to issuing an Order, the Commission may hear oral closing arguments. The Commission shall provide notice to the employee and management of the date of oral closing arguments before the Commission. No new evidence shall be offered by a party or received by the Commission. (CSC 3/14/02) (CSC 12/15/15)
5. The final written decision of the commission will be published by notice to the employee and management within thirty days. The final written decision of the Commission which may be in the form of an Order shall be served on the employee and management after the oral arguments. (CSC 3/14/02) (CSC 12/15/15)
6. Time limits imposed on the Hearing Officer under Rule 11.07, D., may be extended by the Commission. (CSC 12/15/15)