



Corrective action and discipline

If an employee is not meeting expectations, supervisor should promptly address the issue with the employee. Before imposing any disciplinary action, the issuing supervisor must consult with the human resources department.

Supervisors should make employees aware of the performance and conduct expectations. This may be done through the job description; city, department or division policies; communication in the hiring process; orientation; performance discussions or previous disciplinary action.

- Performance discussions (which may include coaching and counseling or verbal warnings) are non-disciplinary actions designed to promote improvement in performance and/or conduct.
- Performance discussions should be documented and may include but are not limited to a memo to the employee, an email to the employee or this [performance discussion form](#). However, these documents will not be made part of the employee’s official personnel file.

Supervisors may determine an employee is not meeting expectations through any of the following:

- personal observation;
- complaints from others including coworkers, customers, public, etc.,
- records which may include attendance records, or
- It may be determined an investigation is needed. Supervisor should work with their HR consultant to determine the appropriate process for an investigation.

In some instances, corrective action and disciplinary action may be issued without prior warning to the employee, depending on the nature and severity of the issue or concern.

Initial Inquiry

Typically conducted by the supervisor to understand the situation and determine how to proceed with an issue.

May include gathering information and speaking with those involved.

Questions that may asked during an initial inquiry include:

- a. Did this happen?
- b. Who was there? (Witnesses)
- c. Where did it happen?
- d. When did it happen?

The initial inquiry is not recorded and employees are not permitted to bring a representative. If the employee requests representation at any time, the supervisor will stop the inquiry and continue with the investigative interview process.

Investigation

An investigation may be completed by the supervisor, human resources, finance (fraud, waste and abuse), attorney’s office, or other party.

An investigation may include but is not limited to interviewing witnesses, gathering documentation, and interviewing the accused.

Questions that should be asked during an investigation include but not limited to:

- a. What happened?
- b. What is your side of the story?



- c. Why did it happen?
- d. Interrogative questions specific to the incident.

If interviewing an accused employee who is covered by a collective bargaining agreement, the investigative interview provision in the MOU will be followed.

- a. Investigative interview is an interview with the accused employee. Only the accused union employee will receive an investigative interview. The process is as follows:
 - i. Notice will be provided to the employee with the:
 - 1. Nature of the complaint
 - 2. Approximate date, time, and location of the incident
 - 3. Employee's right to representation
 - ii. Investigator/supervisor will provide the notice and schedule a hearing not to exceed two (2) working days from date of notice.
 - iii. The interview will be recorded by human resources. A copy of the recording will be provided to the employee if requested.
 - iv. Investigator/Supervisor will provide a written notice to the employee of the outcome of the investigative interview.

If the accused employee is not covered by a collective bargaining agreement, notice of the allegations and representation are not required. The interview is not recorded.

Levels of Corrective Action and Discipline

Corrective action and disciplinary actions include written warning, suspension without pay, demotion into a position with lesser pay, and termination of employment. A supervisor, in consultation with human resources and others as needed, will determine which tier of corrective action or disciplinary action is appropriate. Corrective action and disciplinary actions are categorized as follows:

Levels of corrective action and discipline:

Tier 1 – corrective actions based on a concern, typically resulting in a written warning.

- a. Typically the first step in the progressive discipline process.
- b. Requires a formal notice that will be filed in the employee's personnel file.
- c. This tier does not require a pre-determination hearing.
- d. Employee does not get representation.

Tier 2 – suspensions without pay of 2 days or less, 1-2 shifts for employees whose shifts are longer than 8 hours, or 24 hours or less for sworn employees in the police and fire departments.

- a. Requires a Pre-determination hearing with a formal notice.
- b. Requires a formal notice that will be filed in the employee's personnel file.
- c. Employee may bring a representative during the pre-determination hearing.

Tier 3 – suspensions without pay of more than 2 days, or more than 2 shifts for employees whose shifts are longer than 8 hours, or more than 24 hours for sworn employees in the police and fire departments, demotion into a position with lesser pay, or termination of employment.

- a. Requires a Pre-determination hearing with a formal notice.
- b. Requires a formal notice that will be filed in the employee's personnel file.
- c. Employee may bring a representative during the pre-determination hearing.



Pre-Determination Hearing

If a supervisor is considering tier 2 or tier 3 disciplinary action, a pre-determination hearing is required. The supervisor will work with their assigned HR consultant for review and scheduling of the pre-determination hearing.

A pre-determination hearing notice is given to the employee and must include:

- a. written notice of the allegations against them,
- b. the time and place of the pre-determination hearing and
- c. the employee's right to bring a representative of their choice.

The employee may, in writing, waive the right to a pre-disciplinary meeting or present their response in writing and forego the in-person meeting.

The HR consultant will facilitate and record the pre-determination hearing. HR Consultant will read from a script to open the hearing. The HR consultant's role is to ensure policies and procedures are followed. If the employee's representative is an attorney, the city will also have an attorney present at the hearing.

The purpose of the hearing is to give the employee the opportunity to be heard and defend themselves. The employee will be allowed to present relevant information. Witnesses will not be called, however, witness statements may be informally presented in writing or verbally. Supervisors will listen and ask clarifying questions, if necessary. After a pre-determination hearing, the supervisor will consider all the information and determine appropriate action. The supervisor will provide a written decision to the employee. If no corrective action or discipline is issued, the pre-determination hearing notice will not be placed in their employee file.

Decision Letters

Decision letters, including written warnings, should include the following:

- a. Issue
- b. Impact
- c. History (if applicable)
- d. Expectations
- e. Appeals options

After a pre-determination hearing, if the decision is non-disciplinary, the notice of pre-determination hearing and the decision notice do not become part of the employee's official personnel file. If the decision letter is disciplinary, the notice of pre-determination hearing and the decision letter will be placed in the employee's official personnel file.

Appeals

Disciplinary actions may be appealed as follows:

Tier 2 disciplinary action may be appealed to the department director or designee by submitting a request in writing to the department director within ten (10) calendar days after the date of the action unless otherwise stated in an applicable MOU. The written request should specifically address the employee's reasons for the appeal. The department director will hold an informal hearing. The HR consultant will attend and record the hearing. The department director or designee has the authority to uphold, rescind or modify the disciplinary action being appealed. The department director or designee's decision is final and no further appeals are permitted.



Tier 3 appeal for police and fire employees may be appealed the Civil Service Commission. All requests for appeals must be in writing, addressed to the Civil Service Commission, and filed with the City Recorder's Office. Depending on manner of delivery of decision,

(a) within five (5) business days of the date the decision or action was personally delivered to the person requesting the appeal or (b) within eight (8) business days of the date the decision or action was mailed to the person requesting the appeal.

Tier 3 disciplinary action may be appealed to the department director or designee by submitting a request in writing to the department director within ten (10) calendar days after the date of the action unless otherwise stated in an applicable MOU. The written request should specifically address the employee's reasons for the appeal. The department director will hold an informal hearing. The HR consultant will attend and record the hearing. The department director or designee has the authority to uphold, rescind or modify the disciplinary action being appealed.

For Tier 3 disciplinary action, the department director or designee's decision may be appealed to the appropriate body, which may include the employee appeals board (EAB). An employee must submit a written appeal to the office of the city recorder within fourteen (14) calendar days after the date of the department director's or designee's decision unless otherwise stated in an applicable MOU. The decision by the appeals board or hearing officer is final and no further internal appeals are permitted.

EAB Hearing Procedure:

The following is the EAB hearing procedure. The mayor's designee will provide training to all board members on these procedures and how to conduct the appeal hearing.

The EAB only has jurisdiction to hear an employee's appeal from a tier 3 disciplinary action. The EAB may not review or decide any other personnel matters. The EAB does not have jurisdiction to hear an appeal filed by:

- a. An employee appointed by the mayor;
- b. An employee employed by the city council;
- c. An employee in an at-will position;
- d. An hourly employee;
- e. A seasonal employee;
- f. A probationary employee;
- g. An employee in the police department;
- h. An employee in the fire department; or,
- i. An employee challenging the city's classification of the employee as A through H above.

EAB Appeal Process

An employee starts the appeal process by completing the form attached as Appendix "A." The employee must file four (4) copies of the fully completed signed form with the city recorder's office located in Room 415, City & County Building, 451 South State Street, Salt Lake City, Utah.

The city recorder's office will promptly provide one (1) copy to the mayor's designee and one (1) copy to the city attorney.

The employee must file the form within fourteen (14) calendar days from the date the department head issues a final appealable decision. The EAB will only consider an appeal which is properly filed. The mayor's designee will determine if the appeal was properly filed.



After the mayor's designee has appointed a panel of three (3) board members to hear the appeal, the panel will set a hearing date which will allow it to hear the matter. The hearing date may only be changed for good cause and must occur within the time allowed by Utah law.

The panel will determine the outcome of the appeal and issue a decision at the hearing. The decision must be filed no later than fifteen (15) days after the date it received the appeal. The panel and the employee may agree to extend this time up to sixty (60) days.

EAB Hearing Process

An employee may be represented by one person of his or her choice before the panel. The employee may also appear, have a public hearing, question any witness whose testimony is to be considered and examine the evidence the panel will consider in making its decision. The employee or the city may not raise any issues or use any documents before the panel which the employee or the city did not raise with the department director, or which the department director did not consider in making the decision being appealed. Any discovery during an EAB appeal process is limited to those documents and issues which were considered during the disciplinary or layoff process prior to the appeal.

The panel may require a city employee attend the hearing as a witness or for any other reason. A city employee who does not attend a hearing after being notified that the employee's attendance is required may be disciplined.

The hearing will be open to the public and recorded. The panel may close a hearing if it complies with the Utah Open and Public Meetings Act.

The panel is not required to follow the Utah Rules of Civil Procedure or the Utah Rules of Evidence. The mayor's designee will assist the panel in making decisions related to the hearing's procedures, including, but not limited to: whether or not to exclude potential witnesses from the hearing before they are called to testify and whether or not to exclude evidence or testimony. If the city or employee introduces information which was not considered by the department director, the panel shall remand the matter to the department director.

EAB Board Decision

After hearing an appeal from a disciplinary decision, the panel will determine if the employee has demonstrated that the department head's decision to impose discipline was clearly erroneous. If the employee successfully demonstrates that the decision to impose discipline was clearly erroneous, the panel may overturn that decision. If the panel overturns a disciplinary decision, the city will revoke the discipline and reimburse the employee for any lost wages. The panel may not modify the discipline or substitute its own judgment for the department head's judgment.

After hearing an appeal from a layoff designation, the panel will determine if the employee has demonstrated that the city failed to substantially follow its layoff procedures. If the employee successfully demonstrates that the city did not substantially follow its layoff procedures, the city will reinstate the employee and reimburse the employee for any lost wages. If an employee has been designated for layoff due to a decision by the city council to discontinue funding of the employee's position, the panel will determine if the employee has demonstrated that the city council failed to follow its layoff procedures, if any, or if the employee suffered a prejudicial procedural error due to the city council's failure to follow a statutory requirement in making its decision. The panel may not modify the decision or substitute its own judgment for the city's judgment when reviewing a layoff designation.

After hearing an appeal from a termination decision for non-disciplinary reasons, the panel will determine if the employee has demonstrated that the city failed to follow its procedures when it terminated the employee. If the



employee successfully demonstrates that the city did not follow its procedures, the city will reinstate the employee and reimburse the employee for any lost wages.

The panel must make its decision by casting a secret ballot. After making this determination, the panel must outline the facts it relied upon and the conclusions it made based upon the facts in a written decision. The panel will provide a copy of its decision to the employee, the city and the city recorder within the time limits established by Utah Code Ann. § 10-3-1106 (or subsequent provisions) and this procedure.

The EAB may not provide any remedy beyond that outlined in these procedures.

Civil Service Commission

Civil service employees (except the deputy chiefs and the assistant chiefs) may appeal to the Civil Service Commission a discharge, demotion and suspension without pay of more than three (3) working days or twenty-four (24) working hours. Appeals must be filed in accordance with civil service rules and regulations. All requests for appeals must be in writing, addressed to the Civil Service Commission and filed within the time limitations contained in the civil service rules and regulations, available from the civil service secretary (535-7616). The Civil Service Commission follows their rules and regulations in the establishment and conduct of hearings. The decision of the Civil Service Commission is the final internal appeal in the city.

Current References:

[Performance Discussion Form](#)

Approved and passed this 31st date of August, 2018