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|  | P - §32.0 | <u>Policy Name:</u> Employee Discipline | <u>Approved Date:</u> |
| | <u>Prepared By:</u> Human Resources | | <u>Adopted Date:</u> August 7, 1996 |
| | <u>Amended Date:</u> May 3, 2017, December 13, 2023 | | |

A. PURPOSE

Disciplinary action may be taken to correct unsatisfactory employee behavior or performance. The purpose of this policy is to categorize the severity of policy violations and outline the County's progressive discipline process with regard to policy violations. This policy is not intended and must not be interpreted to negate or otherwise replace an employee's at-will employment status.

B. DEFINITIONS

Administrative Leave – paid or unpaid leave from work that is taken at the direction of management, for purposes of investigation or a step in the disciplinary process, and without impact to an employee's accrued leave or employment status.

Aggravating Factors – may support a higher category offense when the facts and circumstances associated with the employee's actions negatively impact the employee's credibility, particularly but not exclusively as it relates to the employee's role as a supervisor/manager of subordinates, reveal a serious disregard for the safety and well-being of others, or damage the operations, credibility, or reputation of the County. This definition is not intended to be an exhaustive list of circumstances that may be aggravating.

Demotion – a reduction in status or pay, resulting from a change in position or scope of responsibilities.

Disciplinary Action – corrective action administered in response to unsatisfactory performance or behavior, violations of County personnel or administrative policies, or violations of Virginia or federal law.

Gambling – the activity of betting or risking money or something of value on the result of a game, lottery, contest, or event. County-sponsored employee engagement activities such as participation in raffles and office challenges are exempt.

Mitigating Circumstances - mitigating factors can reduce the severity of punishment. Mitigating circumstances are conditions that recommend a reduction to promote the interests of consistency or equity, account for an employee's otherwise history of satisfactory work performance or recognize a lower level of culpability.

Offense – an instance or course of unsatisfactory work performance or behavior, violation of a County personnel or administrative policy, or a violation of federal or Virginia law that impacts work performance or the ability of the employee to meet County job requirements.

C. ROLES AND RESPONSIBILITIES

Employees – responsible for reviewing and adhering to County policies and directives from supervisors and Department Heads.

Department Heads and Supervisors – Accountability and disciplinary action may be initiated and administered by the employee's direct supervisor or the employee's Department Head. Any disciplinary action that is more severe than a written reprimand must be approved by the Department Head and the Human Resources Department prior to issuance.

Human Resources - Human Resources assists supervisors and Department Heads with understanding and interpretation of County policy, investigates matters relating to harassment, discrimination, hostile work environment, retaliation, etc., provides coaching and advice for behavioral and performance management, and ensures compliance with federal, state, and local laws and policies.

D. IMPLEMENTATION

1. Progressive Discipline

The steps for progressive discipline are outlined below. Human Resources may determine that a given step should be skipped. This depends upon the seriousness of the offense, whether the recurrence of the offense is repeated despite counseling or training, the employee's record, the impact on the organization, and similar factors. Mitigating and

aggravating circumstances may generally be considered in determining the appropriate level of discipline. Failure to adhere to County policies will result in corrective action.

The steps are as follows:

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| First Step: | Counseling and verbal warning (non-disciplinary) |
| Second Step: | Written reprimand |
| Third Step: | Unpaid administrative leave |
| Fourth Step: | Removal from position (demotion or termination) |

The County's P-§ 06.0 Standards of Conduct, P-§ 07.0 Code of Ethics, and all other personnel and administrative policies outline the standards that all employees must follow. Violations of these policies form the basis of disciplinary action.

2. Disciplinary Steps

Single incidents and/or patterns of poor work performance or behavior can form the basis for disciplinary action.

First Step: Counseling and verbal warning

For a first offense where the offense is minor, a verbal warning and counseling is the first step. More serious infractions may skip this step. Counseling and verbal warnings are typically appropriate for Category I offenses, as described in section 3.

Second Step: Written Reprimand

For most violations and offenses, a written reprimand begins the disciplinary process. More serious infractions may skip this step, as well. This level of discipline is typically appropriate for Category II offenses, as described in section 3, but may be applied in all offense categories.

Third Step: Unpaid Administrative Leave

Unpaid administrative leave may result from a pattern of inappropriate behavior or unacceptable performance. Exceptionally serious infractions and those where safety is at issue may begin with this step.

- Unpaid administrative leave may only be issued with approval from the Department Head and from Human Resources, following a thorough investigation and review of facts.
- Employees may not substitute or use any accrued annual leave, sick leave, or compensatory time in lieu of unpaid administrative leave.
- While on administrative leave, employees may not perform any work on behalf of the County except to remain available for phone calls and meetings with management pertaining to an investigation or a return to work plan. Employees

may be subject to additional disciplinary action for failing to respond in a timely manner.

Fourth Step: Removal from Position

The fourth step in the progressive discipline process is reserved for an exceptionally serious policy violation that threatens or jeopardizes the safety and security of a person or physical asset to the county. Step four may also result as a culmination of multiple policy violations or multiple management attempts to correct employee behavior or performance through prior steps of discipline.

A recommendation to terminate employment or demote an employee as a disciplinary step must be approved by the Department Head and Human Resources prior to issuance.

Where discipline is based upon criminal proceedings or other non-County proceedings, County decisions on disciplinary action may be made independently, without respect to the resolution of those other proceedings. This level of discipline is typically appropriate for Category III offenses, as described in section 3 of this policy.

3. Disciplinary Notice and Due Process

When considering unpaid administrative leave, demotion, or termination, the County must provide written notice to the employee that includes the charged policy violation(s), an explanation of the evidence supporting the charges, the discipline under consideration as a result of the investigation, and the date and time of the Due Process (Loudermill) meeting during which the employee may present their side of the matter.

- The employee must be provided reasonable time and opportunity to collect and compile facts that establish mitigating circumstances or that may not have been considered in the investigation.
- The Due Process meeting is held between the supervisor or the Department Head and the employee with a representative of Human Resources serving as facilitator and witness. Other employees, colleagues, family members, witnesses, or legal counsel are not permitted to be present during this supervisory discussion. Upon agreement of those participating in the meeting, the employee may be allowed additional time not to exceed five business days to submit additional information. The supervisor or Department Head will render a final decision on disciplinary action only after review and consideration of the information derived from the investigation and that presented in this meeting or afterwards as may be agreed.

4. Personnel Policy Violation

That a given action is not explicitly forbidden under this policy does not imply that it is permitted, but the actions that are specifically forbidden guide County decision-making on the permissibility of other actions.

- a. Category I Offense – Offenses in this category include acts of minor misconduct that require accountability and correction. A first Category I offense is sufficient to result in counseling or a verbal warning. An accumulation of two Category I offenses is sufficient to result in a Written Reprimand. Additional repeated violations may result in more severe steps in the discipline process. Category I offenses include but are not limited to:
 - I. Unsatisfactory attendance, performance, or tardiness;
 - II. Abuse of County time, such as unauthorized time away from the work area;
 - III. Obscene or abusive language, or shouting;
 - IV. Conviction of a moving violation, for employees whose duties include driving; or
 - V. Sleeping on the job.
- b. Category II Offense – Offenses in this category include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action. One Category II offense is sufficient to result in a Written Reprimand, may result in administrative leave if an investigation is required, and may result in Unpaid Administrative Leave based upon the investigation's findings. An accumulation of multiple Category II offenses is sufficient to result in administrative leave without pay, demotion, or termination. Category II offenses include but are not limited to:
 - I. Failing to follow a supervisor's instruction, perform assigned work, or comply with another County policy;
 - II. Absence from work without proper notification to supervisor or Department Head;
 - III. Unauthorized use or misuse of County property or records. Personal use of County property, including telephones, computers, related devices, and peripherals to the extent that it interferes with an employee's performance;
 - IV. Unauthorized removal of County records or property; or
 - V. Virginia Code § 15.2-1512.2(c) protects – and curtails – employees' right to engage in political activity. Political activity beyond those protected by that section is prohibited. In general, employees are prohibited from engaging in political activity while on duty or with the use of County property.
- c. Category III Offense – Offenses in this category include acts of misconduct of such a severe nature that a first occurrence could warrant administrative leave and/or consideration of unpaid administrative leave, demotion, or termination. This level of discipline is appropriate for offenses that, for example, endanger others in the

workplace, constitute illegal or unethical conduct; neglect of duty; disruption of the workplace; or other serious violations of policies, procedures, or laws. These types of suspected or reported actions and behaviors must and will be investigated by the Department of Human Resources. Category III violations include but are not limited to:

- I. Physical violence, assault, or battery;
- II. Violating County policy P-§ 10 Alcohol and Durg-free Workplace;
- III. Having an unauthorized firearm, weapon, or explosive on County property or worksite;
- IV. Criminal arrest for acts on- or off-duty that are related to the employee's job or are of a nature that leaving the employee in the same position would be inappropriate with respect to the County's duties to the public or other employees;
- V. Falsifying any record;
- VI. Damaging or defacing County records or property;
- VII. Violating safety rules, where there is a threat of serious harm;
- VIII. Gambling on County property or while on-duty;
- IX. Threatening or coercing employees;
- X. Unwelcomed solicitation of a personal relationship or any solicitation of a sexual relationship while on-duty, or any such solicitation where the employee is the target employee's supervisor;
- XI. Founded acts of harassment, bullying, discrimination, or retaliation in the workplace or scope of performing work in violation of County policy P-§ 21 Equal Employment Opportunity, Inclusion, and Prohibition against Discrimination, Harassment, Bullying, and Retaliation.
- XII. Failing to maintain any certification or licensure that is required to perform one's duties, such as a driver's or professional license.

5. Non-Disciplinary Termination

Employees unable to meet the requirements of their positions for reasons not disciplinary in nature may be demoted or subject to termination of employment without following the progressive discipline process. In this circumstance, the County will provide the employee with notice of the basis of its decision and an opportunity to present facts and circumstances the County should take into account when making its final decision.

Examples include, but are not limited to:

- Ineligibility for a required license;
- Ineligibility for necessary or advisable insurance coverage;

- A determination that continuing to employ the employee would constitute negligence on the part of the County;
- Incarceration;
- Inability to perform the essential functions of the job; or
- Residing outside of the Commonwealth of Virginia.

6. Recordkeeping

Employees will be asked to sign disciplinary documentation and are provided copies of those records, which indicates receipt and understanding of those records.

Documentation for disciplinary actions involving a written reprimand or Category II or Category III Offenses will be sent to Human Resources, placed in an employee's personnel file, and retained per Library of Virginia record retention schedules.