

## DISCIPLINE AND DISMISSAL OF CLASSIFIED EMPLOYEES

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### A. Purpose

The purpose of this policy is to provide a procedure for the discipline and dismissal of classified employees who are subject to its provisions. Classified employees are at-will employees, and no provision of the policy and procedures that follow shall confer rights to employees that are contrary to the employment-at-will doctrine.

### B. Persons Affected

This policy applies to conduct or job performance of a classified employee of The University of Texas Rio Grande Valley (UTRGV) that results in a decision to impose a disciplinary penalty of demotion, suspension without pay, or dismissal. It does not apply to:

1. Institutional police or faculty who are subject to other approved discipline or dismissal procedures;
2. Investigative leave with pay pending investigation of allegations relating to an employee;
3. Decisions not to offer reappointment to persons whose appointment for a stated period of one year or less expires at the end of such period without the necessity of notice of non-renewal as provided in the University of Texas System Board of Regents' *Rules and Regulations* or the policies of UTRGV;
4. Administrative and professional employees who are appointed to positions without fixed term and serve at the pleasure of a specific administrative officer;
5. Persons who are employed in positions that require student status as a condition of employment; or
6. The dismissal of employees:
  - a. who occupy positions that are dependent upon funding from a specific source and such funding is not received,
  - b. as a result of a reduction in force,
  - c. due to financial exigency,
  - d. during any probationary period of employment,
  - e. who are appointed for a stated period that is less than 180 days,
  - f. who are appointed at a per diem or hourly rate and work on an as needed basis,
  - g. who have not attained or maintained the necessary clearance, certification or licensure for their position, or
  - h. who have exhausted applicable leave entitlements.

### C. Policy

It is the policy of UTRGV to require high standards for employee conduct and performance. It is also the policy of UTRGV to encourage fair and efficient processes to resolve disputes arising out of the employment relationship and to meet the requirements of state and federal law. The Office of Human Resources is responsible for ensuring consistency, uniform application, and EEO compliance of employee discipline under this policy. Disciplinary actions may not be imposed without prior written approval of the Office of Human Resources. The President, or President's designee, will review disciplinary actions for EEO compliance.

All employees are expected to become familiar with the performance criteria for their particular job and with all rules, procedures, and standards of conduct established by the UT System Board of Regents, UTRGV, and the employee's department or unit. An employee who does not fulfill the responsibilities set out by such performance criteria, rules, procedures, and standards of conduct may be subject to adverse personnel action. While effectively identifying and correcting unacceptable work performance or conduct through progressive steps is encouraged, UTRGV reserves the right to determine the appropriate level of disciplinary action based on the seriousness of unacceptable conduct or work performance at issue.

Conduct Subject to Disciplinary Action includes:

#### 1. *Work Performance*

Work performance is to be judged by the supervisor's evaluation of the quality and quantity of work performed by each employee. Failure of an employee to maintain satisfactory work performance standards or to meet a reasonable and objective measure of efficiency and productivity may constitute grounds for disciplinary action including dismissal.

#### 2. *Unacceptable Conduct*

All employees are expected to maintain standards of conduct suitable and acceptable to the work environment. Disciplinary action, including dismissal, may be imposed for unacceptable conduct.

Examples of unacceptable conduct include without limitation:

- a. falsification of time sheets, personnel records, or other institutional records;
- b. neglect of duties;
- c. the use of any smoking devices or tobacco products on UTRGV property;
- d. gambling or participating in lotteries or any other games of chance on the premises at any time;

- e. soliciting or collecting money or circulating petitions on the premises other than within the rules and regulations of UTRGV;
- f. bringing alcohol, illegal drugs or controlled substances on campus; using alcohol, illegal drugs or controlled substances on campus; having alcohol, illegal drugs or controlled substances in one's possession on campus; or being under the influence of alcohol, illegal drugs or controlled substances on campus at any time (Note: This provision does not apply to the consumption of alcoholic beverages served in accordance with UTRGV policy at UTRGV-sponsored events);
- g. abuse or waste of tools, equipment, fixtures, property, supplies, or goods of UTRGV;
- h. creating or contributing to unhealthy or unsanitary conditions;
- i. violation of safety rules or accepted safety practices;
- j. failure to cooperate with supervisor or co-worker, impairment of function of work unit, or disruptive conduct;
- k. disorderly conduct, harassment of other employees (including sexual harassment), or use of abusive language;
- l. fighting, encouraging a fight, or threatening, attempting or causing injury to another person on the premises;
- m. theft, dishonesty, or unauthorized use of UTRGV property, including records and confidential information;
- n. creating a condition hazardous to another person on the premises;
- o. destroying or defacing UTRGV property or records or the property of a student or employee;
- p. refusal of an employee to follow instructions or to perform designated work that may be required of an employee, or refusal to adhere to established rules and regulations;
- q. repeated tardiness or absence, absence without proper notification to the supervisor, or absence without satisfactory reason or unavailability for work;
- r. performance, conduct, or behavior, whether by action or omission, that interferes with or adversely affects the orderly and efficient operation of UTRGV; or
- s. failure to comply with policies, rules or procedures of UTRGV or the UT System, or with state or federal laws or regulations.

#### **D. Procedures**

The following procedures will be followed when an employee who is subject to this policy is demoted, suspended without pay, or dismissed for disciplinary reasons.

1. The supervisor will review the evidence and the proposed disciplinary action with the Chief Human Resources Officer or designee.

2. Once the supervisor has sought and obtained the concurrence of the Chief Human Resources Officer or designee, the supervisor must then obtain the concurrence of the department head or administrative equivalent to whom the supervisor reports before proceeding with the proposed disciplinary action.
3. The supervisor will inform the employee in writing of the reasons for the proposed disciplinary action and the facts upon which the supervisor relies. Before a final decision is made to take disciplinary action, the employee will be provided with an opportunity to respond to the charges in writing within a reasonable time (usually not to exceed 24 hours), and to persuade the supervisor that the grounds for the disciplinary action are mistaken or incorrect. This pre-disciplinary notification serves as an opportunity to avoid mistaken decisions to impose discipline, and is not intended to definitively resolve the propriety of the disciplinary action being considered.
4. If the supervisor is not persuaded by the employee's response that the decision to take disciplinary action is incorrect or mistaken, the supervisor will proceed to impose the disciplinary action after review and approval by the Office of Human Resources. The supervisor will inform the employee in writing of the following:
  - a. whether the disciplinary action is a demotion, suspension without pay, or dismissal and its effective date;
  - b. a specific period for a suspension without pay, not to exceed one (1) month;
  - c. the specific incident, conduct, course of conduct, unsatisfactory work performance, or other basis for the disciplinary action;
  - d. any previous efforts to make the employee aware of the need to change or improve work performance or conduct; and
  - e. reference to any relevant rule, regulation, or policy.

5. Effect upon Employee Benefits

An employee who is demoted or suspended without pay continues to accrue vacation and sick leave, to be covered by group insurance, and to be entitled to other employee benefit programs. If a demotion or suspension without pay is appealed and the appeal of the demotion or suspension is successful, the employee will be paid for wages lost as a result of the demotion or suspension. If an appeal of dismissal is successful, the employee will be reinstated to the same or similar position and will be entitled to payment of back wages less any unemployment compensation insurance benefits received by the employee after the date of dismissal. Employee benefits such as vacation and sick leave will be credited back to the date of dismissal.

6. Procedures for Written Appeal

a. *Step One Appeal*

- i. To appeal a disciplinary action, the employee must deliver a written appeal to the department head or administrative equivalent ("Step One Official") and a copy to the

Office of Human Resources within five (5) working days from the date of the disciplinary action. At the same time, the employee will deliver a copy of the appeal and all attachments to the supervisor who signed the disciplinary action. Once the documents are delivered and five (5) calendar days have elapsed, no changes or additions can be made. An employee's failure to submit the appeal in a timely manner will constitute the withdrawal of the appeal.

- ii. The written appeal must be a clear and concise statement of the reasons the employee believes the disciplinary action to be inappropriate, why the employee believes the decision should be changed, the name(s) and contact information of any witness that may have information relevant to the employee's disciplinary action, the employee's requested remedy, and any additional relevant information to be considered in support of the employee's written appeal.
- iii. The supervisor, within five (5) working days of receipt of the employee's appeal, will provide a written response and all documentation pertaining to the disciplinary action to the Step One Official and to the Office of Human Resources. The employee's personnel file may also be submitted to the Step One Official if requested. A copy of the written response from the supervisor will be provided to the employee as a part of the Step One Official's decision.
- iv. Within ten (10) working days after receiving information from the supervisor, the Step One Official will render a written decision. The written decision will be emailed or delivered to the employee's last known home address. Each employee is responsible for keeping the Office of Human Resources notified of their current mailing address.

b. *Step Two Appeal*

- i. To appeal the decision of the Step One Official, the employee must deliver a written appeal to the Executive Vice President or the applicable Vice President over the department or unit ("Division Executive") within five (5) working days following the date of receipt of the Step One Official's decision. The employee will also deliver a copy of the appeal and all attachments to the Office of Human Resources. Once the documents are delivered and five (5) calendar days have elapsed, no changes or additions can be made. An employee's failure to submit the appeal in a timely manner will constitute the withdrawal of the appeal.
- ii. The written appeal must be a clear and concise statement of the reasons the employee believes the disciplinary action or decision of the Step One Official to be inappropriate, why the employee believes the disciplinary action should be changed, and the employee's requested remedy.
- iii. Within five (5) working days of receipt of the employee's Step Two appeal, the Office of Human Resources will consult with the supervisor and Step One Official and will provide all available documentation pertaining to the disciplinary action to the Division Executive. The employee's personnel file may also be submitted to the Division Executive if requested. The Division Executive may select a designee who will work in consultation with the Office of Human Resources to provide a written

recommendation. A copy of the written response will be provided to the employee as a part of the Division Executive's decision.

- iv. Within twenty (20) working days after receiving information from the Office of Human Resources, the Division Executive will render a written decision. The written decision will be mailed or hand-delivered to the employee's last known home address. Each employee is responsible for keeping the Office of Human Resources notified of their current mailing address.
  - v. The decision of the Division Executive is final.
- c. *Extension of Time Requests*

The Chief Human Resources Officer may grant an extension to the response time period required for a response from the supervisor, Step One Official, or the Division Executive under Step One Appeal and Step Two Appeal. Notice of any time extension grant will be provided in writing to the employee.

- d. *Documentation of Disciplinary Actions*

Copies of employee appeals, responses, and decisions pertaining to disciplinary actions will be maintained as a part of the employee's official personnel file maintained by the Office of Human Resources.

- e. *Employee Representation*

An employee has the right to be represented during the appeal by an attorney or other individual representative. If the employee is represented by an attorney or an individual from an employee organization, UTRGV may be represented by an attorney from the Office of Legal Affairs or the Office of General Counsel of The University of Texas System.

## **E. Definitions**

1. Alcohol – any beverage containing more than one half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted (Texas Alcoholic Beverage Code, Chapter 1 General Provisions, Section 1.04).
2. At-will Employees – employees who serve without tenure or expectation of continued employment, and whose employment may be terminated by UTRGV for any lawful reason, or no reason at all, with or without advance notice.
3. Classified Employees – any employee in a position that has been designated as a classified employee in the UTRGV Classified Institutional Pay Plan.
4. Illegal Drugs or Controlled Substance – any drug or substance so defined by federal or state statute or regulation.

5. Work Performance – includes all aspects of an employee’s work including the performance of job duties and adherence to work conduct standards.

**F. Related Statutes or Regulations, Rules, Policies, or Standards**

[University of Texas System Board of Regents’ Rules and Regulations Rule 30601, Discipline and Dismissal of Classified Employees](#)

**G. Dates Reviewed or Amended**

Reviewed and amended - March 18, 2019.