

ALBUQUERQUE FIRE DEPARTMENT

Disciplinary Guidelines

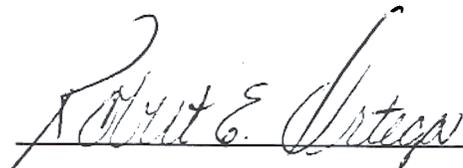
And

Resource Manual



Robert E. Ortega, Fire Chief

Approved for use and distribution: Date 8 August 2005



8-8-05

Robert E. Ortega, Fire Chief



8-8-05

Nick Bakas, Chief Public Safety Officer

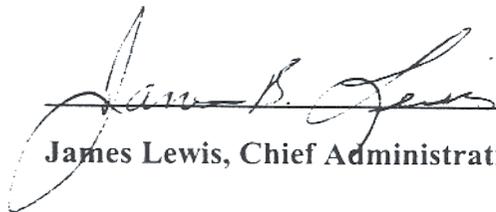
Date



8/5/05

Patricia Miller, Director of Human Resources

Date



8/8/05

James Lewis, Chief Administrative Officer

Index

Employee Code of Conduct and Work Rules	3
Disciplinary Guidelines and Resource manual	7
Appendix A Supervisors checklist	
Appendix B Disciplinary forms	27
Appendix C Sample Letters	
Appendix D Copy list	43
Appendix E List of Sanctions	44
Appendix F Flow Chart	48
Appendix G Personnel File Timetable	49
Appendix H Reference Disk	Attached

Note: Reference disk is for reference only; official copies are kept with the department document custodian. (Fire Chief's administrative assistant)

Employee Code of Conduct and Work Rules

To ensure orderly operations and provide the best possible work environment, The Albuquerque Fire Department expects employees to follow rules of conduct that will protect the interests and safety of the public we serve, all employees, and the organization.

You have a responsibility to the City of Albuquerque, the Albuquerque Fire Department, your fellow employees, and the citizens of Albuquerque to adhere to certain rules of behavior and conduct. The purpose of these rules is not to restrict your rights, but rather to be certain that you understand what conduct is expected and necessary. When each person is aware that he or she can fully depend upon fellow workers to follow the rules of conduct, then our organization will become more vibrant and productive.

Workplace Etiquette

The Albuquerque Fire Department strives to maintain a positive work environment where employees treat each other with respect and courtesy. Sometimes issues arise when employees are unaware that their behavior in the workplace may be disruptive or annoying to others. Many of these day-to-day issues can be addressed by politely talking with a co-worker to bring the perceived problem to his or her attention. In most cases, common sense will dictate an appropriate resolution. The Albuquerque Fire Department encourages all employees to keep an open mind and graciously accept constructive feedback or a request to change behavior that may be affecting another employee's ability to concentrate and be productive.

It is not possible to list all the forms of behavior that are considered unacceptable in the workplace. The following are examples of infractions of rules of conduct that may result in disciplinary action, up to and including termination of employment. However, in the Albuquerque Fire Department, we hold ourselves to a high standard of quality where the rules and authority figures simply assure that quality is maintained.

Unacceptable Activities

Generally speaking, we expect each person to act in a mature and responsible way at all times. However to avoid any confusion, some of the more obvious unacceptable activities are noted below. This will provide a guide to issues that most often give rise to rule violations and ethical dilemmas, and provide a clarification of some of the matters, which may confront employees of

the Albuquerque Fire Department. Your avoidance of these activities will be to your benefit as well as to the benefit of the Albuquerque Fire Department. If you have any questions concerning any work or safety rule, or any of the unacceptable activities listed, please consult your chain of command for an explanation.

Occurrences of any of the following activities, as well as violations of any Albuquerque Fire Department rules or policies, may be subject to disciplinary action, up to and including termination. This list is not all-inclusive and, notwithstanding this list, all employees are subject to discipline for any rules infractions.

1. Failure to follow the Operational Manuals and written directives of both the Albuquerque Fire Department and the City of Albuquerque.
2. Being intoxicated or under the influence of controlled substance drugs while at work.
3. Use, possession or sale of controlled substance drugs in any quantity while on duty (except medications prescribed by a physician which does not impair work performance).
4. Unauthorized possession of firearms, weapons or explosives on company property or while on duty.
5. Engaging in criminal conduct or acts of violence, or making threats of violence toward anyone on AFD premises or when representing the Albuquerque Fire Department.
6. Insubordination.
7. Fighting.
8. Negligent damage of property or engaging in an act of sabotage, willfully or with gross negligence causing the destruction or damage of Albuquerque Fire Department property, or the property of fellow employees, customers, suppliers, or visitors in any manner.
9. Theft of Albuquerque Fire Department property or the property of fellow employees, unauthorized possession or removal of any Albuquerque Fire Department property, including documents, from the premises without prior permission from management.
10. Unauthorized use of Albuquerque Fire Department equipment or property for personal reasons or using Albuquerque Fire Department equipment for profit. Misuse or appropriation of Albuquerque Fire Department funds including falsification of expense reports and non-repayment of cash advances.
11. Dishonesty, falsification of Albuquerque Fire Department documents, misrepresentation on your application for employment or other work records,

lying about sick or personal leave, falsifying reason for a leave of absence or other data requested by the Albuquerque Fire Department, alteration of company records or other Albuquerque Fire Department documents.

12. Acts of Libel or Slander, or engaging in behavior designed to create discord and lack of harmony.
13. Interfering with another employee on the job, willfully restricting work output or encouraging others to do the same.
14. Immoral conduct or indecency on Albuquerque Fire Department property, to include sexual activity while on duty.
15. Failure to call off, or report for work.
16. Any act of harassment, sexual, racial or other, telling sexist or racial-type jokes, making racial or ethnic slurs.
17. Leaving work without being properly relieved, or authorization of your immediate supervisor.
18. Failure to report an absence or late arrival, excessive absence or lateness.
19. Obscene or abusive language toward any employee or customer, indifference or rudeness towards a customer or fellow employee, any disorderly/antagonistic conduct on Albuquerque Fire Department premises.
20. Failure to immediately report damage to, or an accident involving Albuquerque Fire Department property.
21. Failure to maintain a neat and clean appearance in terms of the standards established by Albuquerque Fire Department uniform regulations.
22. Failure to submit FLSA timecard, alteration of your own timecard or attendance documents, or altering another employee's FLSA timecard or records, or causing someone to alter your FLSA timecard or records.
23. Acceptance of Gifts or Gratuities from the public in connection with the performance of duties.
24. Endangering self or others by willful violation of safety rules, laws or ordinances.
25. Violation of the City Smoking Ordinance.
26. Gambling
27. Failure to complete departmental documentation within required time frames, (e.g. run reports, daily logs, SCBA logs, Controlled drug logs, etc.)

28. Failure to report changes to required licensure status, to include EMT, arson, FMO, dispatch, vehicle operation, etc.
29. Failure to notify the Fire Chief of an arrest, conviction, entry of no contest plea, or imposition of sentence.
30. Fraudulent or excessive use of sick leave.
31. Unauthorized trades of shift; not entering trades into Telestaff.
32. Paying another member to work your shifts
33. Engaging in Criminal, Dishonest or Disorderly Conduct (On or Off Duty)

Progressive Discipline Guidelines And Resource Manual

PREFACE

This guide describes the basic elements of a sound progressive disciplinary system. It is intended as a guide to assist in determining when disciplinary action is necessary, what level of discipline is appropriate, and how to administer discipline.

Most employees only need to be properly trained and be informed of the rules in order to be positive, productive employees. There are, however, times when the supervisor must use the discipline process in order to get the employee's attention and attain the desired result. Supervisors are encouraged to make sure that the employee has been properly trained, coached and counseled, prior to resorting to the discipline process.

The principles of progressive discipline, equitable treatment, past practice, and just cause are set forth in this guide. This guide details how to evaluate a situation prior to taking any disciplinary action, including the investigation process. The guide also outlines the employee's right to appeal disciplinary action. A checklist of questions is provided to help guide the supervisor through the disciplinary process. Also included are the forms required for documenting disciplinary action as well as sample disciplinary letters that can be used to supplement the disciplinary forms.

Two important issues need to be emphasized. First, although the bulk of the guide addresses cases which stem from a series of events leading to discipline, such as poor work performance or poor attendance, there are times when more serious infractions occur which require moving immediately to a suspension, demotion or termination of employment. There are also times when a step may be repeated or skipped. Second, the level of responsibility or type of position within the Albuquerque Fire Department is a critical criterion in applying the concepts of progressive discipline in any given case.

The Albuquerque Fire Department Human Resources Deputy Chief (AFD-HRDC) is responsible for assisting the supervisor in administering the disciplinary process and conforming to collective bargaining agreements, employee handbooks, and Albuquerque Fire Department policies and procedures. When considering any disciplinary action, AFD-HRDC can provide the supervisor with assistance. At the more advanced disciplinary steps of suspension, demotion or termination of employment, the Albuquerque Fire Department requires that the supervisor work with the AFD-HRDC office.

I. INTRODUCTION

A. Purpose of Discipline

Discipline in its literal sense is training that corrects, molds, or improves. Its purpose in the work place is to correct, mold, or improve job-related performance or behavior. Discipline should be progressive in nature so that the Albuquerque Fire Department imposes the least severe action necessary to correct undesirable behavior and moves to increasingly severe measures only if the problem is not corrected. With the exception of termination of employment, the primary objective of discipline is to correct, not punish, the employee. When properly administered, progressive discipline benefits management, employees and also satisfies the scrutiny of third parties (e.g. Unions, EEOC, and Arbitrators).

For MANAGEMENT, progressive discipline maintains order and enforces Albuquerque Fire Department Rules and Regulations. It affects employee morale and productivity positively. It helps rehabilitate employees who choose to correct their behavior; and it helps to justify termination of employment of those who do not. Discipline that is not properly administered and thereafter is reversed or rescinded has the negative effect of discrediting the rules, regulations, policies, procedures, and/or supervisors.

For SUPERVISORS, the administration of discipline is a responsibility as important as planning, organizing, leading, and controlling the work unit. This disciplinary responsibility requires the supervisor to establish, understand, communicate and enforce rules, regulations, policies, procedures, and the provisions of the collective bargaining agreements and employee handbooks. The effectiveness of the disciplinary action depends upon the supervisor's exercise of good judgment, fairness, tact and common sense in its administration. Supervisors must not allow inappropriate behavior to be ignored. It is their obligation to take appropriate action promptly. It is disruptive and divisive when disciplinary actions are reduced or set aside by an impartial third party. It is important for the maintenance of the work environment that disciplines not be reversed. Supervisors should carefully follow the principles of discipline to avoid this.

For EMPLOYEES, progressive discipline sets clear standards and warns of consequences for noncompliance. It assures predictable, progressive, and equitable treatment. It promotes fair decisions, and it provides a process to appeal disciplinary decisions.

For THIRD PARTIES, properly administered discipline meets the test of just cause and satisfies the requirements for progressive, nondiscriminatory, fair, corrective, and consistent decisions.

B. Progressive Nature of Discipline

In order for discipline to be effective and correct employee behavior, it must have certain fundamental characteristics. Discipline must be progressive, must consider past practice and equitable treatment, and must meet the test of just cause. The principle of "progressive" discipline involves informing the employee of the problem and the need to correct it, and then using increasingly stronger disciplinary measures if the employee fails to correct the problem.

In most situations, the problem will first be brought to the employee's attention with a coaching/counseling session. This initial coaching/counseling is not considered part of the formal disciplinary system. During coaching/counseling, the supervisor should make sure the employee is aware of the problem and impress upon the employee the importance and necessity of correcting the problem. Most employees will correct the problem through such coaching/counseling. If the problem continues, disciplinary action may be initiated. Although coaching/counseling is not recognized as a formal disciplinary step, it is strongly recommended to

retain a written record of coaching/counseling including dates. It is expected that in most cases, coaching/counseling will precede the formal disciplinary process.

The formal disciplinary process may include a verbal reprimand, a written reprimand, suspension, demotion and termination of employment. For most problems, each step in the process is necessary. No step in the process is mandatory however. For more serious problems the earlier steps may be eliminated. The degree of discipline taken must correlate to the seriousness of the offense and the employee's record. Discipline should be taken at the minimum level necessary to bring about correction of the problem. If the problem is not corrected, more severe action will be taken, up to and including termination of employment. Other factors to consider when determining the appropriate discipline are the level of the employee's position and the type of position. For example, managers and supervisors are held to higher standards of performance and behavior. Discipline can progress to the final step, which is termination of employment.

Steps for Managing Performance

Coaching/Counseling

- Letter of Instruction
- Letter of Cautionary Advisement

Progressive Discipline

- Reprimand (verbal or written)
- Suspension
- Demotion
- Termination of Employment

C. Establishing the Ground Rules

As a supervisor, there are inherent responsibilities to promote positive employee morale and to maintain a productive work force. Vital to meeting these responsibilities is the effective handling of discipline. These responsibilities begin long before any disciplinary measures are actually necessary. They begin by establishing the "ground rules" by which employees are expected to conduct themselves.

Not all work environments are identical and, therefore, one set of rules will not apply to all employees. Supervisors must know the rules that apply to their particular work group as well as any unwritten practices that have become commonplace. Both long-standing and newly created work rules should be clear, reasonable, and understandable. Employees are more apt to conform to rules that are understood and reasonable, than to those that are not. All rules and practices should be reviewed regularly and updated if necessary.

The supervisor should not assume employees would learn rules by word of mouth. Initially, work rules may be communicated orally, but it is necessary to reinforce this communication in writing. Announcements delivered in memo form or in some cases through training are common forms of communication and may be reinforced by inclusion in policy manuals, collective bargaining agreements and employee handbooks. Once published and posted, copies of rules, regulations, policies and procedures should be accessible to management and employees at all times to encourage an atmosphere of open communication and prevent policies from becoming "sacred documents".

Supervisors who enforce work rules consistently and without discrimination gain the respect and cooperation of their employees. This respect can be quickly lost if some employees are allowed to "bend the rules". Being overly lenient or overlooking rules altogether invites disrespect and over a period of time the rules become dormant and unenforceable. To enforce a dormant work rule, the rule and the consequence of infraction must be communicated to employees again.

By establishing clear, reasonable, and understandable work rules, communicating the rules to employees and applying the rules consistently, the supervisor is setting the standards for employee performance and behavior. As one might expect, not every employee will measure up to performance standards or comply with established work rules. When this occurs, the supervisor's responsibility is to take the necessary progressive disciplinary action.

D. The Importance of the Probationary Period

The Albuquerque Fire Department has established a probationary period for all newly appointed Firefighters. This probationary period is an important element in any successful employer/employee relationship.

For the probationary period, "Supervisor" includes both the Division Commander of Training, and the supervisor in the field setting.

The purpose of the probationary period is to assure the employer that the employee can satisfactorily fulfill the demands of the position. The employee's work performance should be monitored throughout this period and measured against the department's policies, procedures, work rules, and performance standards. If the supervisor sees or anticipates a problem developing, it should be dealt with immediately. Inform the employee there is a problem, give the employee reasonable time to correct the problem, and tell the employee the consequences of not correcting the problem.

The importance of the probationary period is readily apparent. It is a "trial period", and disciplining an employee during this period is a shortened process. Conversely, disciplining an employee who has completed the probationary period is a much longer and more complex process.

If after this, the employee still is not "measuring up"; the supervisor may request an extension of the probationary period, suspension or termination of employment. For a probationary employee, it is not necessary to take the full sequence of disciplinary steps before making any of these decisions. The supervisor must, however, evaluate the employee's performance accurately. The supervisor needs to make sure the employee has been informed of the performance problems and given the opportunity to improve.

The employer is not required to follow all of the steps of progressive discipline as set forth in this guide to terminate the employment of a probationary employee. In light of an increasing amount of "wrongful discharge" litigation nationwide, the supervisor should, however, consider using the principles and processes as a checklist to assure fair and equitable treatment of probationary employees. Additionally, following this guide will afford probationary employees "due process" prior to termination of employment. The supervisor must contact AFD-HRDC to request the extension of a probationary period, suspension or termination of the employment of a probationary employee. This must be done prior to the end of the probationary period. The employee must be notified in writing that the probationary period has been extended.

If the employee completes the time requirement for the probationary period, but questions remain in the supervisor's mind, the employee may be "conditionally" released from probation. The supervisor should consult with AFD-HRDC whenever concern exists when ending a probationary period.

If the probationary period is satisfactorily completed, the employee will be notified. An employee should be given positive feedback relating to his/her probationary period performance. If the supervisor decides to take the employee off probation, any concerns or disciplinary actions that occurred during the probation period should be noted.

II. THE STEPS OF PROGRESSIVE DISCIPLINE

There are no formulas or set rules that will apply to all situations and give the "answer" to the proper disciplinary step to take. Each disciplinary action will depend upon the nature of the offense and the related circumstances. As always, the Fire Chief retains the right to use his/her own judgment and discretion when administering discipline.

A. Essential Elements of Each Step

At each step of the discipline process, the supervisor must insure that certain actions occur:

- Meet with the employee privately.
- Provide opportunity for representation for the employee during the investigative meeting as well as in any follow up meeting.
- Clearly identify the problem and attempt to insure the employee understands.
- Allow the employee the opportunity to explain.
- Conduct a thorough investigation and make sure the employee has done (or not done) whatever you are considering disciplining for.
- Verify just cause extras.
- Clearly explain to the employee the expected behavior.
- Inform the employee of the consequences if the problem is not resolved.
- Document the disciplinary action.

B. Verbal Reprimand

This may be the initial step of progressive discipline. Whether "spur-of-the-moment" or "after-the-fact", the verbal reprimand is given in a private setting, and the discussion is conducted in a friendly, but firm, "low-key" manner. A verbal reprimand is generally used when a problem persists after the supervisor has brought it to the employee's attention through coaching/counseling. The purpose of this step is to alleviate any misunderstanding and to clarify the direction for necessary and successful correction of the problem.

Most performance problems are resolved at this stage. If the problem continues, the supervisor may want to repeat this step before proceeding to a written reprimand. In some cases when the infraction is serious, the supervisor may at this point refer the matter to up the chain of command for consideration of alternate disciplinary actions.

The verbal reprimand is used to bring a problem to the attention of the employee before it becomes so serious that it jeopardizes the employment status of the employee. The verbal reprimand must be documented on the appropriate form. (See Appendix B)

C. Written Reprimand

This may be the initial step of progressive discipline. When the employee has not satisfactorily corrected the problem as outlined during coaching/counseling, proceed to the next step; a formal written reprimand. A written reprimand may also be the initial action in cases of a more serious nature.

The process is essentially the same as in the verbal reprimand step. The written reprimand should include the current infraction/rules violation, a review of any prior related disciplinary action and/or coaching/counseling sessions, circumstances causing the current disciplinary action, corrective action/expectations required, and a statement that future violations may result in further disciplinary action. Documentation is critical; the supervisor must complete the appropriate form. (See Appendix B) If the supervisor wants to explain the problem in greater

detail or clarify the expectations, a letter can be attached to the discipline form. Make sure to keep the letter clear and simple. A sample letter is included in Appendix C. If the supervisor would like assistance, AFD-HRDC should be contacted.

D. Suspension

Suspension may be the next corrective step in the disciplinary process and is normally preceded by coaching/counseling and a reprimand. In a few serious cases, suspension may be warranted as the initial step in the disciplinary process. Contact AFD-HRDC if the infraction may result in considering the suspension of any employee.

A suspension involves the temporary removal of the employee from the work place for a specified period of time. The employee may not accrue vacation and sick leave benefits during this non-working period of time. Again, the purpose of this disciplinary step is to correct the identified problem. A suspension is a strong warning to the employee that the problem is, indeed serious, and it may be the final opportunity the employee has to correct the problem.

The length of the suspension is determined by the supervisor and AFD-HRDC and generally ranges from one (1) to five (5) working days. Most suspensions average three (3) working days. A suspension longer than five (5) working days may be imposed in certain cases.

As in previous steps, complete the appropriate form. (See Appendix B) The disciplinary form includes the specific days of the suspension as well as the date and time the employee is to return to work.

E. Demotion

Demotion is the last corrective step in the disciplinary process and is normally preceded by suspension. In a few serious cases, demotion may be warranted as the initial step in the disciplinary process. Contact AFD-HRDC if the infraction may result in considering the demotion of any employee.

Demotion is the movement of the employee to a lower level classification that generally involves a corresponding reduction in pay. Demotion as a disciplinary action should only be considered where correction of the employees performance or misconduct would be achievable through reduced job responsibilities or closer supervision associated with the demotion. A demotion is the strongest warning to the employee that the problem is, indeed serious, and it is the "last chance" the employee has to correct the problem.

F. Termination of Employment

If all the previous steps have not been successful, the employee may be terminated from employment. Termination of employment is the final step in the progressive disciplinary process and obviously is not corrective.

As in the previous steps, it is critical that the employee be given an opportunity to hear the charges, understand the evidence, and offer an explanation.

Again, after this discussion and upon completion of the investigation, document the action by using the appropriate form. (See Appendix B).

In any situation serious enough to justify termination of employment, Albuquerque Fire Department policy requires the supervisor to contact AFD-HRDC prior to taking any action. AFD-HRDC will review the case to verify that there is just cause for termination of employment and that the employee has been afforded due process.

G. Suspension Pending Investigation

There are situations where the employee must be removed from the work place immediately before an investigation can be conducted. Examples of these situations might be suspected theft, potential sabotage, disorderly conduct, or where the employee presents a threat to other employees. In these instances, the employee can be suspended pending the results of the investigation. The supervisor must contact AFD-HRDC immediately. This should be done before sending the employee home, unless there is a need to remove the employee immediately because the employee or the situation presents a clear and imminent danger if the employee is left in the work place. The suspension pending investigation is imposed with the understanding that a final decision, relative to the appropriate disciplinary action, will be made after the investigation. If there is no cause for disciplinary action, the employee will receive pay for regular earnings lost during the suspension.

III. PRINCIPLES OF DISCIPLINE

A. Just Cause

Perhaps one of the most crucial principles necessary for a sound disciplinary process is that of just cause. Disciplinary action taken with even one (1) of the elements of just cause missing may lead to questionable disciplinary action and possible reversal of decisions.

Most collective bargaining agreements and employee handbooks do not attempt to define just cause. A "common law" has developed over the years, which consist of a set of seven (7) guidelines or questions to be applied to each case. The acceptance and use of these guidelines have set the standard of just cause. In general, if any of the seven (7) items are not present the supervisor needs to review the entire situation before proceeding with disciplinary action.

Components of Just Cause

1. Adequate Warning. Did the employee know, or should the employee have known, that the behavior could result in disciplinary action? As mentioned previously, in the role as a supervisor, work rules must be communicated to employees and indicate that failure to comply may result in disciplinary action. The lack of this explicit communication will not always lead to a "no" response to this question. In some cases, it is the employee's responsibility to know that certain actions are unacceptable and will result in disciplinary action. Insubordination, fighting on the job, coming to work intoxicated, drinking on the job, and theft of Albuquerque Fire Department property are examples of certain offenses we consider, as a society, to be unacceptable and expect severe disciplinary action to be taken.

2. Reasonable Rules. Was the rule or order reasonable, safe, and related to Albuquerque Fire Department needs? Was the rule or order related to the conduct that the Albuquerque Fire Department might properly expect of the employee? Written rules usually pass this test. It is the on-the-spot order that most often creates a problem. Even so, except in cases of immediate danger to one's health and safety, an employee generally must follow the "work now and grieve later" approach. Disobeying even an unreasonable rule may be considered insubordination, which is cause for disciplinary action.

3. Violation of Rule. Prior to administering the disciplinary action, did the Albuquerque Fire Department make an effort to discover whether the employee did, in fact, violate the rule or order? An employee has the right to know the offense with which he/she is being charged and to defend that behavior. Therefore, the supervisor should advise the employee as specifically as possible of the offense charged and verify that the employee did what they are about to be disciplined for.

4. Fair Investigation. Did the supervisor conduct a thorough investigation of the facts and circumstances, including the employee's explanation prior to administering disciplinary action? This requires the supervisor to actively seek information in a fair, objective, and nondiscriminatory manner, not passively wait for people to come forward and volunteer information. In addition, the investigation should be documented in writing.

This is one of the most critical elements at each step of the discipline process. It makes sense to provide the employee an opportunity to hear the charges, understand the evidence, and offer an explanation before the disciplinary action occurs. In other words, the employee should be given an opportunity to present "the other side of the story." It is essential to extend this opportunity at all levels of discipline.

A. Representation/Witness: When the supervisor schedules a meeting to discuss the problem, tell the employee it is part of the investigation and may lead to disciplinary action. Tell the employee arrangements will be made to have a representative/witness present, unless the employee does not want anyone else present. For unionized employees, there are individuals designated by the union to act as representatives. For non-unionized employees, the Albuquerque Fire Department will generally allow a representative of council to serve as a witness for the employee. If the employee refuses representation, make sure to make a note the employee refused representation. If the employee raises no objection to having a representative present, contact the supervisor of the appropriate representative and arrange for the representative to be present.

i. Role of the Representative The representative's role is to assist the employee in understanding the basis for the disciplinary action and to assist in presenting the employee's response. Since this is not a full or formal hearing, the representative's role does not include questioning witnesses.

ii. Role of the Witness The role of the witness is much different from that of the union representative. The witness is present to verify what was said and may take notes for the employee. The witness does not serve an advisory role.

B. Investigatory Meeting. Whether it involves a general job performance problem or a specific policy violation, the structure of the investigatory meeting is the same. Inform the employee of the problem and the evidence that currently exists and ask the employee for an explanation or response. At the conclusion of the meeting, inform the employee that disciplinary action may result if the complete investigation shows it is warranted. It is recommended that a final decision not be announced in the meeting. As facts are gathered, witnesses are questioned and evidence reviewed, you need to document the investigation. Dates, times, names of the persons questioned and the information they provided should be included. Take time to reflect on all available information and to discuss the matter with departmental management and AFD-HRDC. This will assist the supervisor in making a sound disciplinary decision (all of this must be done in a timely manner).

5. Substantial Proof. Is there substantial proof for the case? Substantial evidence or proof of guilt must exist to clearly establish that the employee did, in fact, violate the work standard or rule. The best evidence is that which is documented or witnessed and is not rumor, unsupported accusations, or superficial allegations. Hearsay evidence will often be admitted in arbitration proceedings, but generally will be accorded little weight and is usually not accepted as truth. Hearsay consists of information given by a person who states not what he/she knows of their own knowledge, but what he/she has heard from others. It is unlikely that a decision will be supported by hearsay evidence alone.

6. Equitable Treatment. Have the rules, orders, and penalties been consistently enforced? Employees in similar situations should be treated in a similar manner. Each disciplinary problem

is unique and requires that the disciplinary process be flexible in order to select the most appropriate course of action. However, it is important not to overlook the principle of equity or fairness. This principle requires that employees in similar circumstances be treated in a similar manner. Equity does not mean the supervisor should always impose the identical disciplinary action for the same offense. In other words, disciplinary action does not have to be identical to be "fair". At times it is necessary to treat employees differently to be fair. This may be based upon differences in the length of employment, discipline history, level of responsibility, type of position within the Albuquerque Fire Department, or other circumstances. All of these factors affect the level of discipline. For example, two (2) employees who commit the same offense should not receive the identical disciplinary action if they are at different steps of the progressive disciplinary process. Judgment and discretion are critical in applying disciplinary action equitably.

Another component of equitable treatment is the principle of Past Practice. By definition, "past practice" is a reasonably uniform response to a recurring situation over a substantial period of time that has been recognized, implicitly or explicitly, and in situations where the contract language is ambiguous. It is significant to note that a past practice may be established on an Albuquerque Fire Department-wide basis, confined to a division or department, or limited to an operation or small group of employees. A review of the following components will determine if a past practice exists. If all components are present, a past practice probably exists; if not, a past practice does not necessarily exist.

- A. Uniform Response and Acknowledgment.** Are employees in similar circumstances being treated in a similar manner? If so, then a uniform response exists. Note that the word "similar", not identical, is used. There may be differences in employees' levels of responsibility and types of positions or in their records, e.g., length of employment, performance record, and disciplinary record, which justify a different response. If there have been varied responses to similar situations, no past practice exists.

Have the employees come to expect a particular response? This recognition does not have to exist in writing, but there should be general knowledge of the situation.

- B. Recurring Situation.** Does a same or similar situation arise repeatedly? If so, a recurring situation exists. If the situation varies over time, it is not a recurring situation.

Has the situation occurred before? Once or even twice does not necessarily create a past practice. However, there is no well-defined rule as to how many times a situation must repeat itself to become a past practice. If, for example, a similar situation and set of circumstances existed only one time previously, the Albuquerque Fire Department's response at that time may be considered "past practice".

Always consider past practice when disciplining an employee. The supervisor must keep in mind, however, that a past practice is not a substitute for clear and unambiguous language in collective bargaining agreements or employee handbooks. A third party will generally rely on the specific language of the collective bargaining agreement or employee handbook instead of the past practice, even if the practice meets the above criteria.

Past practice can sometimes be changed depending on the language of the collective bargaining agreement, employee handbook, policy manual, or work rules. If the practice is not a matter generally reserved for collective bargaining, it may be changed. Advance written notice must be given to employees that the practice will be changed. For assistance in determining if a past practice exists or if you want to change past practice, contact AFD-HRDC. An adjustment period may be advisable following the change of a past practice. Without sufficient warning to employees that new standards will be enforced, disciplinary actions may very well be overturned.

7. Appropriate Discipline. Was the disciplinary action related to the seriousness of the offense, to the employee's record, and to the employee's level of responsibility within the Albuquerque Fire Department? Generally, minor offenses and first occurrences should result in less severe disciplinary action. Major offenses and repeated occurrences should result in more severe disciplinary action.

Together, these seven (7) elements constitute the principles of just cause. They also incorporate the other basic principles of a sound disciplinary system, namely, progressive discipline, equitable treatment, and past practice. A determination that all seven (7) components are present will lead to the conclusion that just cause for disciplinary action does exist.

B. Time Frames

Timing is critical in three (3) different areas within the disciplinary process -- timeliness of the disciplinary action, time between disciplinary actions, and the time given to the employee to correct the problem.

1. Timeliness of the Disciplinary Action. There is no universally accepted rule on this point. There is however, an expectation that disciplinary action will be administered as soon as possible after the problem occurs or is discovered. As a rule of thumb, it should not take more than ten (10) working days to complete the investigation and administer any appropriate disciplinary action after the incident or after the supervisor learns about the incident. If more time is needed, the employee should be informed that an investigation is still underway and provide a date by which a decision will be made.

2. Time between Disciplinary Actions. Under Albuquerque Fire Department policy, progressive discipline is considered successful if no further disciplinary action is necessary for at least four (4) years. There is no minimum time between disciplinary steps. The supervisor needs to allow enough time for the employee to correct the problem. This may be immediately, a week, a month, or several months, depending upon the nature of the problem.

3. Time Limits for Correcting the Problem. In situations where the employee can resolve the problem promptly, such as attendance problems or sloppy work, communicate the expectations that the employee must immediately achieve and maintain acceptable performance standards to avoid further disciplinary action. While it is appropriate to give positive as well as negative feedback to the employee, refrain from going overboard in praising the employee as you address the problem. It is important for the employee to know, although they have done well, the problem is still a concern and the potential for further disciplinary action still exists. If the supervisor sets a target date by which the employee must display the required behavior, it may inadvertently hamper flexibility and commitment to start over or repeat a disciplinary step if the problem recurs after the target date. For example, if the supervisor tells an employee that if they report late for work again within the next ninety (90) days their employment will be terminated, then they are late for work four (4) months later, employment could not be terminated. In situations where the employee needs to develop a skill, learn a procedure, or improve the level of performance, it may be appropriate to set a date when the situation will be reviewed. Document throughout this time period. But even here, once the skill has been learned or a certain level of proficiency attained, it is essential to communicate the expectation that the acceptable performance level must be maintained.

C. Documenting the Discipline

The supervisor is required to confirm all disciplinary actions in writing by completing the appropriate form. More information can be included by attaching a letter to the form. The written documentation represents an official record that the problem exists and is written after the

discussion with the employee and following the conclusion of the investigation. If a disciplinary form and letter are written prior to meeting with the employee, the discussion may be slanted to fit the contents of the form or letter. A disciplinary form prepared in advance does not allow for unknown circumstances or explanations presented by the employee.

Documentation of disciplinary action must be kept in the employee's personnel file. The employee must receive a copy and the union must also be copied. All documentation of disciplinary action will be included in the employee's personnel file in the Human Resources Deputy Chief's office as well as in the supervisor's file.

What should a disciplinary record include? The record has three parts: the present, the past, and the future.

1. The Present. This section states the purpose of the disciplinary action and cites the specific incident or nature of the problem. In recounting the incident or problem, include what occurred and when, how it affected the work activity, the results of the investigation, and the employee's explanation. State only the facts that can be proven. This section also cites the specific rule, policy, or standard violated, and disciplinary action being taken as a result of the employee's actions. Stress the significance of the offense and the reason for the disciplinary action.

2. The Past. This section reviews the employee's work record, gives the history of related offenses (if any), and reminds the employee of previous disciplinary actions taken. This summary of past events demonstrates the progressiveness of the disciplinary action.

3. The Future. Finally, the employee must have a clear understanding of the expected standard of behavior or performance, how this standard can be achieved, and the consequences of continued failure to meet these expected standards. Write in easily understood language, emphasize the "do" rather than the "don't", and focus on the future rather than the past. In other words, use a tone of correction not punishment. It is strongly recommended that you keep a record of any relevant situations that occur once you have initiated the progressive disciplinary process. These notes should give all the necessary pertinent information (including when it was brought to the employees attention). The notes should be dated and signed and kept in the supervisor's file.

D. Informing the Employee

Inform the employee of the disciplinary action, both verbally and in writing, as soon as possible after the disciplinary decision has been reached. The purpose is to outline what is wrong, what disciplinary action is being taken, and what is expected in the future. Representation should be provided at this meeting.

This may be the most crucial element of the entire disciplinary process. As a supervisor, keep close control of your emotions. Avoid sarcasm, threats, nagging, getting into an argument with the employee, or loss of temper. With the obvious exception of a termination of employment, the purpose of the disciplinary action is to correct a problem. The employee must leave this meeting knowing better conduct is expected.

Give a copy of the disciplinary form and any attachments to the employee, and inform the employee that a copy will also be included in their personnel record.

E. Double Jeopardy

It is important to thoroughly investigate and consider all factors before determining what disciplinary action will take place. An employee cannot receive one level of discipline and then

later be given a more severe discipline for the same problem. This is considered double jeopardy. An example of this would be where the first line supervisor imposes a written reprimand, and after discussing the issue with the Fire Chief, they determine that suspension was warranted. The supervisor cannot go back and suspend the employee after the employee thought he/she was getting a written reprimand. Make sure it is done right the first time!

IV. THE EMPLOYEE'S RIGHT TO APPEAL DISCIPLINARY ACTIONS

A. The Grievance/Appeal Procedure

Employees have a grievance/appeal procedure through which the employee may appeal disciplinary actions. Supervisors should not be deterred from taking a disciplinary action because of a threat or fear of a grievance. The filing of a grievance over a disciplinary action does not mean the decision was wrong, it simply means the employee disagrees. However, it is suggested all disciplinary action be implemented with the expectation the action will be reviewed. Be prepared to defend actions taken.

The grievance/appeal procedure allows for the employee's (and/or the union's) views to be considered in an orderly way without interrupting work operations. In order for the process to work effectively, the employee must feel the grievance/appeal procedure will permit a fair hearing. The procedure's effectiveness depends largely upon the success of resolving complaints at the lowest level possible. Grievances/appeals become more difficult to settle as they progress through the steps because attitudes tend to become fixed and fear of loss of prestige prevents settlement. However, to assure fair consideration, there is a definite route of appeal, without fear of prejudice, to higher levels of authority. Handling complaints promptly increases the employee's confidence that the supervisor is dealing in good faith. Stay within the time frame provided in the grievance/appeal procedure if at all possible.

The grievance/appeal procedure is contained in each of the collective bargaining agreements, employee handbooks, personnel rules and regulations and the Merit System Ordinance.

B. Management's Burden of Proof

Management has the primary responsibility to prove the disciplinary action was warranted and the level of disciplinary action was appropriate. Obviously, the employee does not remain passive in this process but will also be trying to persuade whoever is hearing the grievance/appeal that the disciplinary action was not warranted or was too severe.

In an evidentiary hearing such as arbitration, the formal rules of evidence of the legal system are not strictly applied. For example, while testimony of a witness to an incident carries more weight, a written statement may be accepted and considered in reaching a decision. Original documents are better than copies. Hearsay evidence (information provided by someone other than the primary source) and circumstantial evidence (information which causes one to deduce a certain fact) may sometimes be permitted in reviewing grievances. Either may receive greater weight, or lesser weight, depending how much direct evidence exists also. The witness's statements, physical evidence and documentation should be reviewed by AFD-HRDC to assure the best possible record is being built. In summary, the quality of evidence is judged by four (4) criteria:

- 1. Relevance.** *Is the information related to the issue?*
- 2. Materiality.** *If relevant, how relevant is it? Does it alone constitute proof?*
- 3. Competence.** *Is the information believable and is the person testifying in a*

position to know?

4. Best Evidence. *Is the best available evidence used and if not, why?*

C. Handling a Grievance/Appeal

The following are some of the do's and don'ts for you to observe in handling grievances/appeals.

DO

1. Do investigate and handle each case as though it may eventually result in arbitration or review by some outside third party.
2. Do give the employee adequate opportunity to discuss his or her concerns when the grievance/appeal is at your level.
3. Do enforce the time limits set forth in the grievance/appeal procedure and comply with them yourself.
4. Do visit the work area of the employee.
5. Do determine if there were any witnesses.
6. Do examine relevant policies and procedures.
7. Do determine if there has been equitable treatment of employees.
8. Do determine how similar cases have been handled in the past.
9. Do examine the employee's personnel record.
10. Do fully examine similar grievances/appeals.
11. Do produce all available evidence.
12. Do identify the resolution the employee is seeking.
13. Do provide representation for the employee, unless he/she declines.
14. Do hold grievance/appeal discussions privately.
15. Do recognize burden of proof in disciplinary cases.
16. Do use the grievance/appeal meeting as another avenue of communication.
17. Do control emotions, remarks, and behavior.
18. Do maintain records relevant to disciplinary actions.
19. Do admit errors and take corrective actions.
20. Do fully inform and discuss disciplinary action and grievance/appeal matters with your supervisor and AFD-HRDC.
21. Do advise the employee of the decision in writing.

DON'T

1. Don't settle a grievance/appeal while in doubt; get a time extension. Extensions should be requested through AFD-HRDC and put in writing.
2. Don't give long written grievance/appeal responses; get to the point. But don't leave out important information for the sake of brevity.
3. Above all else, don't be afraid of the grievance/appeal procedure. Use it as another management tool.

GLOSSARY OF TERMS

COACHING/COUNSELING: A discussion between the supervisor and the employee in which the supervisor makes the employee aware of a performance problem, and impresses upon the employee the importance and necessity of correcting the problem.

DISCIPLINE: Training that corrects, molds, or improves job-related performance or behavior. Discipline is progressive in nature, i.e. it becomes increasingly stronger if the problem is not corrected.

DOUBLE JEOPARDY: The imposition of a second, usually greater, discipline for an offense for which discipline has already been imposed.

DUE PROCESS: Due process requires the employee be given notice of the alleged wrongdoing and an opportunity to respond to the allegation. It may include notice of names and the nature of testimony of witnesses against the employee, a hearing before a neutral tribunal and a review of the correctness of the reason for disciplinary action -- check with the AFD-HRDC before releasing information to anyone.

JUST CAUSE: Proper or sufficient reasons for disciplinary measures imposed on employees by management. The just cause standard is necessary to safeguard employees from disciplinary action which is unjust, arbitrary, capricious, or which lacks some reasonable foundation for its support.

PAST PRACTICE: A reasonable uniform response to a recurring situation over a substantial period of time, which has been recognized, implicitly or explicitly. Past practice may be confined to a division or department, an operation, or small work group of employees.

PROBATIONARY PERIOD: A trial period of employment in which the employee's work performance is monitored and measured against department policies, procedures, work rules, and standards.

SUPERVISORS GUIDE TO COMMON DISCIPLINARY ISSUES

Poor Performance

Where an employee is to be disciplined or terminated for poor performance, arbitrators will usually support management's action if:

1. The employee received adequate training
2. The employee received adequate supervision and has suitable equipment
3. The employee's performance was judged against reasonable job standards
4. The employee was made aware of these standards
5. The employee was warned of his or her sub-standard performance before more serious disciplinary action was administered
6. If management discharges or demotes, the employee was warned specifically that such actions would result unless performance improves; and
7. Other employees with the same or similar work records were treated in the same manner.

These are the operational questions that supervisors should ask themselves if corrective action for poor performance is contemplated. Furthermore, they are the proactive steps that supervisors should take to prevent the need for disciplinary actions.

Conduct Away From the Job

Arbitrators usually find no basis to justify a discipline for misconduct away from the place of work unless:

1. The behavior harms the organization's reputation.
2. The behavior renders the employee unable to perform his or her duties or appear at work, in which case the discipline would be based upon inefficiency or excessive absenteeism; or
3. The behavior leads to refusal, reluctance, or inability of other employees to work with the employee. The effect of the employee's outside activity on the employer's organization must be reasonably discernible; mere speculation as to adverse effect upon the organization will not suffice.

Insubordination

1. Insubordination includes: · Refusal of a direct order or an intentional act of disrespect towards a supervisor or superior officer.
2. The normal procedure for an employee to follow when he or she questions a supervisor's or superior officer's directive is to carry out the order, then file a grievance.
3. An employee may legitimately refuse to carry out an order if he or she reasonably believes the order would require the employee to engage in illegal or immoral behavior.
4. If an employee contends that the carrying out of an order would be dangerous or unsafe, the supervisor or superior officer must investigate the allegation. If the supervisor or superior officer determines that the operation can be conducted safely, the employee must comply with the order.
5. If insubordination arises, you must deal with it immediately. Repeat the order clearly, using the word "order", get another supervisor as a witness and repeat the order and warn of the consequences of non-compliance. Contact the AFD-HRDC office as soon as practical.

Attendance and Punctuality

1. Excessive Absences - The right to terminate employees for excessive absences, even where they are due to illness, is generally recognized by arbitrators. Arbitrator Edwin R. Teple explained:

"At some point the employer must be able to terminate the services of an employee who is unable to work more than part-time, for whatever reason. Efficiency and the ability to compete can hardly be maintained if employees cannot be depended upon to report to work with reasonable regularity. Other arbitrators have so found . . . and upheld terminations in several appropriate cases involving frequent and extended absences due to illness.

"However, an examination of the cases provides no clear standards as to what constitutes "excessiveness".

Additional factors that a supervisor should consider include:

Intermittent nature of absences as opposed to extended absence (long-term illnesses should be looked at on a case-by-case basis with real consideration being given); Some consideration to seniority in the case of long-service employees; and an opportunity for good attendance to improve an employee's record.

2. Failure to Call In. - Arbitrators consistently uphold management's actions in disciplinary actions involving an employee who fails to follow an organization's policy regarding notification to the employer when absences will be necessary. Nevertheless, as always, before disciplinary action is taken an investigation must take place in which the employee receives an opportunity to provide his or her explanation as well as any mitigating circumstances.

3. Misuse of Contractually Provided Time Off. Should an employee intentionally use inappropriately contractually justified absences (e.g., by claiming jury duty when one was not called), disciplinary action would be warranted and normally supported.

4. Tardiness. One of the most troublesome disciplinary areas for employers is tardiness. It is an infraction perceived as minor in some cases (e.g., payroll clerk) and major in others (e.g., firefighter). It is often, therefore, inconsistently enforced. Arbitrators recognize the reasonableness of an employer's expectation that workers will report for work on time. As always, clear communication, consistent enforcement, thorough investigation, and penalties consistent with the offense and the past disciplinary record of the employee are critical.

5. Steps for Handling Attendance and Punctuality Problems Maintain an attendance record for each employee and record each occurrence of absence or tardiness. Discuss with the employee after each absence or tardiness:

If good attendee, give positive feedback about good attendance and express concern about absence or tardiness.

If poor attendee, discuss the importance of good attendance and your concern with his or her poor attendance record.

In either case, find out the reason for the absence or tardiness and make note of it on the disciplinary forms. If a problem arises conduct an investigation:

If counseling is warranted, proceed with formal or informal counseling as appropriate.

If discipline is warranted, proceed with notice of a disciplinary conference; impose penalty if appropriate.

In any case, the City of Albuquerque provides for the services of an employee assistance program (EAP). Make sure that the employee is aware of the services available.

APPENDIX A

Supervisor's Disciplinary Checklist

This checklist should be helpful in analyzing an employee problem and determining what disciplinary action might be appropriate. It is intended to help the supervisor remain objective in analyzing and administering progressive disciplinary action. "No" answers may indicate that more information, further analysis, or non-disciplinary action may be required. "No" answers do not mean that discipline cannot be administered. You may be able to proceed with a non-disciplinary course of action. You should answer all of the questions before deciding on a plan of action. Then consult your supervisor and/or the Albuquerque Fire Department Human Resources Deputy Chief.

I. Work Performance Problem – <i>If the employee is not adequately performing the work assigned.</i>	YES	NO
1. Does the employee understand your expectations: What to do? How to do it? Why to do it? When to do it?		
2. Does the employee have access to and know where to find written instruction/procedures?		
3. Has the employee ever demonstrated the skill?		
4. Is it a skill the employee can be taught?		
5. Based on experience/training, is it a skill the employee should possess?		
6. Could the employee perform the skill if he/she wanted to?		
7. Is the work expected reasonable?		
8. Has the job changed?		
II. Behavior Problem – <i>If the employee's behavior is inappropriate/unacceptable.</i>		
1. Does the employee understand acceptable behavior?		
2. Has the behavior been acceptable in the past?		
III. Supervisor's Responsibility – <i>The Albuquerque Fire Department depends on supervisors to communicate AFD policies and practices. Since the supervisor determines job duties, job performance expectations and departmental work rules must be communicated.</i>		
1. Has the supervisor provided adequate direction?		
2. Can the employee function within the work group without using the deficient skill?		
3. Does the supervisor reinforce acceptable behavior?		
4. Has acceptable behavior been clearly communicated to the employee?		
5. Has the supervisor discussed this problem with the employee to get an explanation?		
6. Does the supervisor understand the employee's explanation?		
7. Has the supervisor conducted an objective investigation by approaching the problem from all angles?		
8. Has the supervisor questioned the people involved including those mentioned by the employee?		
9. Has the supervisor examined the physical evidence (e.g., FLSA timecard, vouchers, daily logs, equipment, location)?		
10. Does the supervisor know the basic facts (e.g., Dates, times, places, people involved)?		
11. Has the supervisor separated the disputed facts from the undisputed facts?		
12. Has the supervisor considered any mitigating, or aggravating circumstances that may affect the level of disciplinary action?		
13. Has the supervisor checked AFD and COA policy?		
14. Is there a past history of enforcing disciplinary action for the same/similar offense?		
15. Has the employee been employed a long time?		
16. Did the employee know or should he/she have known the rule or policy?		

17. Is the rule that has been violated a reasonable one?		
18. Did the inappropriate performance/behavior result in a dangerous situation or safety violation?		
19. Has the supervisor set a date to follow up with the employee?		
20. Have you determined to appropriate disciplinary action?		
21. Have you consulted your supervisor/AFD-HRDC		
22. Have you documented your investigation in writing?		
<i>IV. – Before administering disciplinary steps, take into consideration the answers to the following questions.</i>		
1. Should the employee have known the supervisor's work expectations?		
2. Has the employee been warned previously for violating of this rule?		
3. If previously warned, did the supervisor communicate the consequences if the employee did not correct the problem?		
4. How long has it been since the employee's last disciplinary action?		

Appendix B

The following letters are to be used along with the samples provided in appendix C.



City of Albuquerque Albuquerque Fire Department

Martin Chavez, Mayor
Robert Ortega, Fire Chief

(Insert Date)

Notice of Coaching/Counseling

Letter of Instruction

Letter of Cautionary Advisement

Notice of Disciplinary Action

Written record of Verbal Reprimand

Written Reprimand

Suspension of _____ days from _____ to _____

Demotion

Termination

Effective Date of Action _____

Name and rank of Employee _____

Supervisors name and rank _____

Provide all of the information requested below. Attach additional pages if necessary.

Action is being taken for the following reasons: *(include dates)*

II. Employment History: *(include date and explanation of previous disciplines and relevant counseling)*

III. The following corrective action is expected:

Future infraction(s) may result in discipline up to and including termination.

Cc: *(See appendix D)*



City of Albuquerque Albuquerque Fire Department

Martin Chavez, Mayor
Robert Ortega, Fire Chief

Receipt of Delivery

The following item(s):

2 _____
3 _____
4 _____

Were delivered/mailed to:

By: _____ @ _____ hours
on _____

Comments: _____

Item(s) received by:

Signature: _____

Date: _____



City of Albuquerque Albuquerque Fire Department

Martin Chavez, Mayor
Robert Ortega, Fire Chief

(Insert Date)

TO:

FROM:

SUBJECT: Witness Notice of Investigation

The purpose of this correspondence is to inform you that you may be a witness to a violation of departmental and/or City of Albuquerque rules and regulations or other City directives and conditions of employment.

Write in a brief explanation of incident under investigation.

As per City of Albuquerque Personnel Rules and Regulations Directive 301 under Code of Conduct section 301.9, you may be ordered to provide a written account of events related to this matter. You will be kept informed and appropriately notified if formal charges are a result of this investigation.

See appendix D



City of Albuquerque Albuquerque Fire Department

Martin Chavez, Mayor
Robert Ortega, Fire Chief

(Insert Date)

TO:

FROM:

SUBJECT: Witness Request for Written Account of Events

The purpose of this correspondence is to inform you that you may be a witness to a violation of departmental and/or City of Albuquerque rules and regulations or other City directives and conditions of employment.

I am requiring you to provide to me, in writing, the following:

Formulate questions that require a detailed response.

Cc: See appendix D



Martin Chavez, Mayor
Robert Ortega, Fire Chief

(Insert Date)

TO:

FROM:

SUBJECT: Request for Written Account of Events

The purpose of this correspondence is to inform you that you may be in violation of departmental and/or City of Albuquerque rules and regulations or other City directives and conditions of employment.

I am requiring you to provide to me, in writing, the following:

Write out a list of very specific questions that require a detailed response.

Cc: See appendix D



Martin Chavez, Mayor
Robert Ortega, Fire Chief

(Insert Date)

TO:

FROM:

SUBJECT: Notice of Investigation

The purpose of this correspondence is to inform you that you may be in violation of departmental and/or City of Albuquerque rules and regulations or other City directives and conditions of employment.

Provide an explanation of the reason for conducting the investigation.

As per City of Albuquerque Personnel Rules and Regulations Directive 301 under Code of Conduct section 301.9, you may be ordered to provide a written account of events related to this matter. You will be kept informed and appropriately notified if formal charges are a result of this investigation.

Cc: See appendix D

Appendix C

The following samples are provided for use in documenting coaching/counseling and discipline in a uniform manner.



Martin Chavez, Mayor
Robert Ortega, Fire Chief

27 May, 2005

Notice of Coaching/Counseling

Letter of Instruction

Letter of Cautionary Advisement

Notice of Disciplinary Action

Written record of Verbal Reprimand

Written Reprimand

Suspension of _____ days from _____ to _____

Demotion

Termination

Effective Date of Action 27May, 2005

Name and rank of Employee Lieutenant James Doe #001

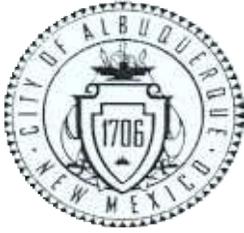
Supervisors name and rank Deputy Chief Kevin Pearce

On January 01, 2005 you called off Sick for the entire 24 (twenty four hour shift). As is stated on page 21, under 7.7.2 (excessive sick leave usage days) of the staffing management guidelines, January 01, is listed as a excessive usage day. This absence requires a signed P-30 with the physician certification section completed by a health care provider. Also reference section 11. (Holidays) in the Union contract.

This behavior should be curtailed immediately. Any further behavior of this type may result in disciplinary action.

**Cc: Robert E. Ortega, Fire Chief
Gabriel Marquez, Deputy Fire Chief
John Garcia, IAFF # 244, General-President
Gabe Blea, IAFF # 244, City Chapter Vice-President
Eric Mendoza, IAFF # 244, City Chapter Chief Steward
File**

**Cc: Robert E. Ortega, Fire Chief
Gabriel Marquez, Deputy Fire Chief
John Garcia, IAFF # 244, General-President
Gabe Blea, IAFF # 244, City Chapter Vice-President
Eric Mendoza, IAFF # 244, City Chapter Chief Steward
File**



Martin Chavez, Mayor
Robert Ortega, Fire Chief

21 May, 2005

Notice of Coaching/Counseling

Letter of Instruction

Letter of Cautionary Advisement

Notice of Disciplinary Action

Written record of Verbal Reprimand

Written Reprimand

Suspension of _____ days from _____ to _____

Demotion

Termination

Effective Date of Action 21 May, 2005

Name and rank of Employee Driver John Doe #002

Supervisors name and rank Captain Bill Jones #030

This letter is to serve as written documentation of a verbal reprimand given to you by myself on 21 May, 2005 for continued infractions of the Albuquerque Fire Department Apparatus Backing Procedure.

You have been counseled by myself in the past about the importance of using spotters while backing, as well as the requirement for compliance with the backing policy. You continue to back the apparatus without spotters in non-emergency situations, such as while checking or washing the apparatus in the morning. The reprimand delivered to you this morning was in direct response to your willful disregard of the Directive 52, dated 04/06/05 and signed by Fire Chief Ortega.

Effective immediately while backing apparatus in non-emergency situations you shall always use spotters. If you fail to comply with these instructions you will be subject to further discipline.

**Cc: Robert E. Ortega, Fire Chief
Gabriel Marquez, Deputy Fire Chief
John Garcia, IAFF # 244, General-President
Gabe Blea, IAFF # 244, City Chapter Vice-President
Eric Mendoza, IAFF # 244, City Chapter Chief Steward
File**



Martin Chavez, Mayor
Robert Ortega, Fire Chief

March 5, 2005

Notice of Coaching/Counseling

Letter of Instruction

Letter of Cautionary Advise ment

Notice of Disciplinary Action

Written record of Verbal Reprimand

Written Reprimand

Suspension of _____ days from _____ to _____

Demotion

Termination

Effective Date of Action March 5, 2005

Name and rank of Employee FF1/C_Joe Firefighter

Supervisors name and rank Lt. John Doe

I. Disciplinary action is being taken for the following reasons (include dates):

On March 5, 2005, you reported to work 35 minutes late. This is the second time in the last three weeks. Your responsibilities require that you be at work on time. Because of your tardiness, your relief has had to be held over to cover your responsibilities.

II. Employment history (include date and explanation of previous disciplines and relevant counseling):

You were told when you accepted this position that reporting to work on time was essential. Before February 15, 2005, your employment history and performance was exemplary. Since February 15, 2005, you have been tardy 2 times, once on February 15, 2005, when you arrived at

0845, and again today, March 5, 2005, when you arrived at 0837. I verbally counseled you on February 15, 2005 and made it clear that you must report to work on time, and you assured me that tardiness would not occur again. I also explained at that time that were you to be tardy again, you would be reprimanded.

Summary of prior rule infractions;

February 15, 2005 – 45 minutes late (Overslept)

March 5, 2005 – 37 minutes late (Alarm clock malfunction)

III. The following corrective action is expected:

You must report to work on time.

Future infraction(s) may result in further discipline up to and including termination.

Employee Representative present: Joe Union

Employee's Signature _____

Date _____

Supervisor's Signature _____

Date _____

(SIGNATURE INDICATES RECEIPT, NOT NECESSARILY CONCURRENCE)

Appendix D

The copy list for all coaching/counseling and disciplinary action documentation is as follows:

Letter of instruction

- Deputy Chief of Human Resources
- Division Deputy Chief
- Battalion Commander
- Station Captain
- Employee
- Union Representative?

Letter of Cautionary Advisement

- Deputy Chief of Human Resources
- Division Deputy Chief
- Battalion Commander
- Station Captain
- Employee
- Union Representative?

Reprimand

- Fire Chief
- Deputy Chief of Human Resources
- Division Deputy Chief
- Battalion Commander
- Station Captain
- Employee
- Union Representative?

Suspension

- Fire Chief
- Deputy Chief of Human Resources
- Division Deputy Chief
- Battalion Commander
- Employee
- Union Representative?

Demotion

- Fire Chief
- Deputy Chief of Human Resources
- Division Deputy Chief
- Battalion Commander
- Employee
- Union Representative?

Termination

- Fire Chief
- Deputy Chief of Human Resources
- Division Deputy Chief
- Battalion Commander
- Employee
- Union Representative?

- ❖ *Prior to issuing Notice of Investigation and Requests for written account of events, the Battalion Commander will contact the Human Resources Deputy Chief and compile a list of personnel to be notified.*

List of Sanctions

Appendix E

The following is a list of sanctions to use as a guide during the disciplinary process. It is not to be considered complete or all-inclusive, listed in any priority order, nor in any way to absolve individuals from rules infractions that are not listed. As stated elsewhere in the discipline process documents, the Fire Chief reserves the right to exercise his own discretion and judgment when imposing discipline, e.g. theft of station supplies may warrant a reprimand, while theft of firefighting equipment may result in immediate termination. The infraction must be weighted with factors such as position in the department, value of time or property etc.

Sanctions Legend:

- REP-Reprimand
- SUP-suspension,
- DEM-demotion
- TERM-termination

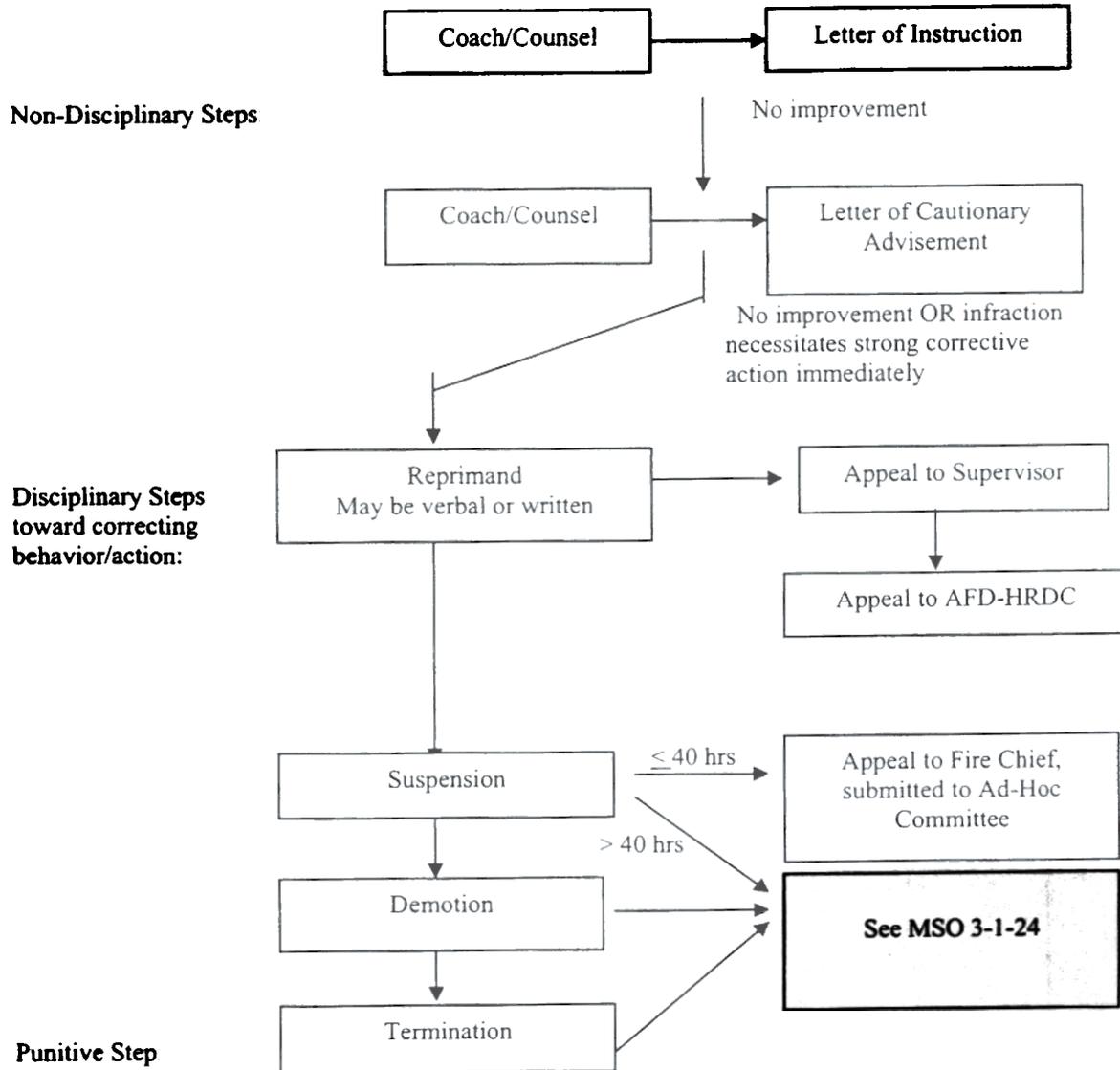
Rule #	Infraction	First Offense	Second Offense	Third Offense	Fourth Offense
1	Failure to Follow or Enforce Operational Manuals and Written Directives of the Albuquerque Fire Department and the City of Albuquerque	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
2	Failure to Enforce City of Albuquerque Harassment Policies	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
3	Possession or Consumption of Alcohol or Illegal Drugs on City Property	See COA subst- ance abuse policy	See COA subst- ance abuse policy	See COA subst- ance abuse policy	See COA subst- ance abuse policy
4	Reporting for, or Being on Duty While Impaired by Drugs or Alcohol	See COA subst- ance abuse policy	See COA subst- ance abuse policy	See COA subst- ance abuse policy	See COA subst- ance abuse policy
5	Any act of harassment, sexual, racial, or other.	SUP DEM TERM	DEM TERM	TERM	
6	Unauthorized Possession of Firearms, Weapons or Explosives on City Property or While on Duty	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
7	Engaging in Criminal, Dishonest or Disorderly Conduct (On or Off Duty)	SUP DEM TERM	DEM TERM	TERM	

8	Insubordination	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
9	Acts of Violence, or Making Threats of Violence Toward Fellow Employees, Customers, Suppliers or Visitors while on Duty or Representing the Albuquerque Fire Department.	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
10	Negligent Damage or Sabotage of City, Fire Department, Fellow Employees, Customers, Suppliers or Visitors Property.	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
11	Theft of City, Fire Department, Fellow Employees, Customers, Suppliers or Visitors Property	SUP DEM TERM	DEM TERM	TERM	
12	Unauthorized Use of City or Albuquerque Fire Department Equipment or Property for Personal Reasons.	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
13	Knowingly falsifying AFD Documents or Falsification of Application for Employment.	SUP DEM TERM	DEM TERM	TERM	
14	Lying about Sick or Personal Leave, or Falsification of a Leave of Absence.	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
15	Alteration of AFD Records	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
16	Acts of Libel or Slander, or Engaging in Behavior Designed to Create Discord or Lack of Harmony.	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
17	Interfering With Another Employee on the Job, Willfully Restricting Work Output or Encouraging Others to do the Same.	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
18	Immoral Conduct or Indecency on AFD Property, to Include Sexual Activity While on Duty.	SUP DEM TERM	DEM TERM	TERM	
19	Failure to Report an Absence or Tardy. Failure to Call Off, or Report for Work.	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
20	Leaving Work Without Being Properly Relieved, or Receiving Authorization From Your Supervisor.	SUP DEM TERM	DEM TERM	TERM	

21	Failure to Report an Absence or Late Arrival.	SUP DEM TERM	DEM TERM	TERM	
22	Obscene or Abusive Language, Indifference or Rudeness Toward Fellow Employees, Customers, Suppliers or Visitors.	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
23	Failure to Immediately Report Damage to, or an Accident Involving AFD Vehicles or Property.	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
24	Backing Apparatus without a Spotter (in a non-emergency situation)	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
25	Failure to Maintain a Neat and Clean Appearance in Terms of the Standards Established by the AFD Uniform and Grooming Standards.	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
26	Failure to Submit FLSA Timecard, or Alteration of a Timecard or Attendance Records, or Altering Another Employees Timecard or Attendance Records, or Causing Someone to Alter Timecards or Attendance Records.	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
27	Acceptance of Gifts or Gratuities from the Public in Connection with the Performance of Duties.	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
28	Endangering Self or Others by Willful Violation of Safety Rules, Laws or Ordinances.	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
29	Failure to Report a Known Injury	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
30	Violation of the City Smoking Ordinance	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
31	Failure to Complete departmental documentation in a Timely Manner, to include run reports.	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
32	Gambling	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
33	Failure to report changes to required licensure status, to include EMT, arson, FMO, dispatch, vehicle operation, etc.	SUP DEM TERM	DEM TERM	TERM	

34	Failure to notify the Fire Chief of an arrest, conviction, entry of no contest plea, or imposition of sentence.	SUP DEM TERM	DEM TERM	TERM	
35	Excessive use of sick leave	See AFD sick leave policy	See AFD sick leave policy	See AFD sick leave policy	See AFD sick leave policy
36	Unauthorized Trades of Shift	REP SUP DEM TERM	SUP DEM TERM	DEM TERM	TERM
37	Paying another member to work your shifts	SUP DEM TERM	DEM TERM	TERM	

Steps in the Progressive Discipline Process



Based on factors such as severity of the behavior/act or position held at the time of the behavior/act, steps in the disciplinary process may be bypassed. In other words, no step in the progressive discipline process is mandatory.

- 2 The Fire Chief has the sole authority to discipline.
- 3 A behavior/act may require investigation. If deemed necessary, Commanders' will issue Notices of Investigation to all relevant parties and will conduct the investigation. AFD-HRDC will be an integral part of this process.

Appendix G

Personnel File Requirements and Timeframes

All coaching/counseling and disciplinary actions are to be filed in the employee's AFD personnel file which is maintained by the Deputy Chief of Human resources.

All disciplinary actions (reprimands, suspensions, and demotions) will be also be filed in the employee's Human Resources personnel file, maintained by the Fire Chief. These inclusions will be kept in this file for a minimum of four (4) years. If no further disciplinary actions are received during this period the employee may petition the Fire Chief in writing to remove them. The Fire Chief will evaluate the infractions and subsequent work history to determine if removal is warranted. If during the four year period any other disciplinary actions are received by the employee, the original discipline must remain in the employee's file for an additional year before petitioning the Fire Chief for removal. Removal of disciplinary actions by the Fire Chief will be at his sole discretion.