



<b>EMPLOYEE MANUAL</b>	
Title: <b>DISCIPLINARY ACTION AND APPEAL PROCESS</b>	
Policy No.: 28.0	Section Nos.: 28.0 – 28.8
Approval Date:	Effective Date: January 2018
Approved By: Board of Directors	

## **28.0 DISCIPLINARY ACTION AND APPEAL PROCESS**

### **28.1 Section 1 - General Provisions:**

Discipline is intended to be imposed primarily to help correct problematic work performance, maintain proper decorum and professionalism, and to address misconduct in the workplace. Discipline may be applied to any Santa Clarita Valley Water Agency employee. Prior to completion of an employee’s probationary period the Agency may, in its discretion, choose simply not to retain the employee rather than to impose discipline. Notice, hearing and appeal rights provided in Section 5 are provided only to regular employees and other employees provided due process rights pursuant to law.

Unless otherwise agreed by the employee and the Agency, documents relating to the above disciplinary action(s) will become a permanent part of an employee’s personnel file. The term Senior Manager as used in the policy is defined as an Assistant General Manager, Chief Engineer, Chief Operating Officer, Director of Administrative Services, Director of Finance, Director of Operations and Maintenance, Director of Technology Services, and Director of Water Resources.

### **28.2 Section 2 - Causes for Disciplinary Action:**

**28.2.1** The following is a non-exclusive list of the more common reasons for disciplinary action and subject to progressive discipline outlined herein:

1. Unsatisfactory Performance – a pattern of below standard work performance and/or the inability to perform the assigned duties of the position promptly, including repeated, negligent violation of the provisions of this Employee Manual.
2. Insubordination – knowingly refusing to perform reasonably assigned duties or defying the proper instructions of a supervisor.
3. Inattention to or Dereliction of Duty – a pattern of continued negligence or failure in the performance of assigned duties.
4. Actions contrary to the rules and policies of the Agency, including but not limited to the safety rules set forth in the Agency’s Illness Injury Prevention Program (“IIPP”).
5. Frequent or habitual tardiness, unexcused absences or unsatisfactory attendance.



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6. Abuse of Leave.
7. Accepting gratuities or tips.
8. Conducting non-Agency business activities during working hours and authorized use of Agency assets or property.
9. Discourteous treatment of the public or other Agency employees.
10. Misrepresentations in obtaining employment with or promotion within the Agency.

**28.2.2** The following is a non-exclusive list of the more serious violations and shall be grounds for immediate disciplinary action, up to and including termination. Due to the severity of the misconduct, these causes shall not be subject to the full progressive discipline procedures outlined herein.

1. Consumption of alcoholic beverages or performance-altering drugs (including medical marijuana, whether prescribed or not) while on duty or on Agency premises.
2. Being under the influence of alcohol or performance-altering drugs (including medical marijuana, whether prescribed or not) while on duty.
3. Use of, possession of, and/or transfer or sale of, non-prescribed drugs or narcotics (including marijuana, whether prescribed or not) while on duty or on Agency premises.
4. Disorderly, indecent or immoral conduct while on duty, while driving a Agency vehicle, in Agency uniform, or when representing the Agency in any capacity.
5. Conviction of any felony or of a misdemeanor involving moral turpitude, dishonesty or immoral conduct.
6. Dishonesty.
7. Theft or unauthorized use of Agency property.
8. Fighting while on duty or on Agency premises.



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9. Harassment and/or discrimination in any form.
10. Actions incompatible with, inimical to, or offensive to the image or the goals of the Agency.
11. Failure to follow safe working practices.
12. Failure to report an injury promptly.
13. Failure to report significant unsafe working practices.
14. Misuse of Agency monies.
15. Falsification of forms, records, or reports; including, but not limited to, time sheets, employment applications and Agency documents.
16. Possessing or bringing firearms or weapons of any kind onto Agency property.
17. Destroying or willfully damaging Agency or employee property, records, or other materials.
18. Unauthorized opening or tampering with locks in desks, doors, cabinets, etc., or unauthorized use or duplication of keys.
19. Failure to immediately report the loss of a California driver's license due to suspension, withdrawal, forfeiture or confiscation by any court of law or by the California Department of Motor Vehicles by employees who must maintain such a license as a condition of employment.
20. Failure to maintain any license or certification required pursuant an employee's job description or for the performance of an employee's regular duties.
21. Severe violation of any established Agency rule, policy or procedure that will put at risk the Agency employees, Board members and the public.

**28.3 Section 3 - Progressive Discipline:**

The Agency values fairness and strives to give employees every opportunity to identify and correct problem behavior. Ideally, problem behavior is identified by informal counseling, oral reprimand and then a written reprimand and performance improvement plan prior to the



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imposition of more serious discipline. Progressive discipline is not required but is the Agency’s preferred method of discipline. The Agency expressly reserves the right to impose any level of discipline appropriate to the severity of the offense, regardless of the absence of progressive discipline.

**28.4 Section 4 - Disciplinary Actions Not Subject to Notice, Hearing, and Appeal Procedures:**

Except for regular employees and other employees provided due process rights by law, the Agency may impose any level of discipline, up to and including termination, without notice or hearing. With regard to regular employees, the following disciplinary actions may be taken against any employee by the General Manager, Senior Manager or such management personnel as he or she may designate without notice or hearing procedures:

1. Oral counseling
2. Oral reprimand
3. Written reprimand and Performance Improvement Plan
4. Suspension for up to three (3) days without pay.
5. Change in working hours.
6. Reassignment not entailing a salary reduction or demotion.

All discipline, even informal counseling or oral reprimand, should be documented by the party imposing the discipline. Documentation should include specific facts constituting the basis for the discipline. Periodic evaluations of performance are not disciplinary in nature and are not subject to grievance or disciplinary notice, hearing, or appeal rights.

**28.5 Section 5 - Disciplinary Actions Subject to Notice and Response:**

Only regular employees or other employees provided due process rights by law are afforded Notice, Hearing, and Appeal rights provided herein and in Section 6. This Section does not apply to employees expressly hired as “at will” employees, probationary employees, temporary employees, casual employees, seasonal employees, interns, or volunteers. The Agency may impose discipline by suspension for four (4) working days or more, salary reduction, demotion or termination from employment upon compliance with the notice and response provisions provided herein.

**28.5.1 Notice of Intent to Discipline:**



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Prior to recommending the imposition of any such disciplinary action the Agency shall issue a written Notice of Intent to the employee setting forth the nature of the proposed disciplinary action, any specific charges against the employee, and the facts supporting the proposed disciplinary action. The Notice of Intent shall be personally served on the employee or sent by mail to the employee’s last known residence. The Notice of Intent shall be served not less than seven (7) calendar days prior to the date the proposed discipline is to be imposed and shall contain the following:

1. Notice of the type of discipline proposed.
2. The charges upon which and reasons why such action is being taken.
3. Reference to the evidence supporting the charges or reasons and the right to receive such documentation.
4. A time and date by which the employee may respond to the charges or reasons, either orally or in writing, not less than seven (7) calendar days after the Notice of Intent is served on or mailed to the employee, whichever occurs first.

**28.5.2 Response by Employee:**

The employee shall have the right to respond, either orally or in writing, no later than the time and date provided in the notice to the employee. The time for response may be extended by the General Manager in his or her discretion if the General Manager determines it to be necessary to provide the employee with a fair opportunity to answer the charges made. Any response shall be delivered to the General Manager within the time allowed or said right shall be waived. If the employee desires a *Skelly* conference in order to make an oral response, the employee shall schedule the conference with the General Manager at least two (2) calendar days before the time and date stated in the notice. Failure of the employee to timely request a *Skelly* conference shall constitute a waiver by the employee of any right to present an oral response.

**28.5.3 Notice of Discipline:**

Upon expiration of the period of time set forth in the Agency’s notice to the employee, the General Manager shall review the matter, including the response of the employee, if any, and shall make a determination regarding the proposed discipline. The General Manager shall notify the employee in writing of his or her determination. Such Notice of Discipline shall be personally



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served on the employee or shall be sent by mail to the employee’s last known address.

The Notice of Discipline shall contain the same information as the Notice of Intent and shall state the discipline, if any, imposed by the Agency and the reasons therefore and reference to the employee’s right to appeal the discipline under Section 28.6, below. In the event the Agency determines not to proceed with discipline, or mitigates the discipline imposed, that shall be stated in the Notice of Discipline.

**28.6 Section 6 - Appeal Procedures:**

Only regular employees or other employees provided due process rights by law are afforded Appeal rights provided herein. This Section does not apply to employees expressly hired as “at will” employees, probationary employees, temporary employees, casual employees, seasonal employees, interns, or volunteers.

**28.6.1 Request for Appeal:**

An employee or former employee dissatisfied with the discipline determination made by the General Manager may make a written request for an appeal. The request shall be written, signed, and presented to the Human Resources/Risk Management Supervisor (“Human Resources”) within ten (10) working days after the date of the Notice of Discipline if personally served, or fifteen (15) calendar days if served by mail, whichever occurs first. Any such request shall be addressed to Human Resources and shall identify the subject matter of the appeal, the grounds for the appeal, and the relief desired by the employee. If the employee fails to issue a written request for an appeal within the prescribed time, the employee shall have waived the right to a hearing and all rights to appeal of the disciplinary action.

**28.6.2 Scheduling of Appeal Hearing:**

Human Resources shall schedule the appeal hearing within a reasonable time after receipt of the employee’s request, considering the availability of a Hearing Officer and the convenience of the employee and relevant witnesses. Human Resources will thereafter provide the employee with written notice of the fixed time and date of the hearing.

**28.6.3 Hearing Officer:**

The Agency Committee assigned to personnel matters shall be the Hearing Officer for appeal hearings unless the Committee designates another unbiased Hearing Officer.



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**28.6.4 Conduct of Appeal Hearing:**

All appeal hearings shall be conducted in private unless a public hearing is requested by the employee in writing. The conduct of the appeal hearing shall be under the control of the Hearing Officer with due regard for the rights and privileges of the parties:

1. The employee shall have the right to formal representation and to present evidence on his or her behalf. If the employee desires to have any other available employee present at the time of the hearing in order to present evidence or to examine adverse witnesses, the employee shall make a written request to Human Resources at least two (2) days before the scheduled hearing, requesting the presence of such persons. If such persons can be made available without unduly interfering with the operations of the Agency, the Agency shall cause such person to be available to provide testimony at the hearing.
  
2. Technical rules of evidence shall not apply. Any relevant evidence shall be admitted if it is the sort of evidence, which parties may reasonably rely when reviewing serious affairs. Hearsay evidence may be allowed, in the Hearing Officer’s discretion, to supplement or explain other evidence. The Hearing Officer may exclude evidence that is irrelevant, unnecessarily burdensome, or where its probative value is outweighed by prejudice. During the examination of a witness, the Hearing Officer may exclude from the hearing any and all other witnesses.
  
3. Both parties shall have the right to introduce evidence. The Hearing Officer shall have the power to require the production of documents from either the Agency or the employee where the Hearing Officer deems such documents material and relevant to the disciplinary action and not otherwise privileged under Federal or State law.

**28.6.5 Hearing Officer’s Decision:**

Upon conclusion of the appeal hearing, the Hearing Officer shall review the record and issue a written decision. The decision shall be issued within a reasonable time following appeal hearing’s conclusion. The Hearing Officer shall have the authority to affirm, revoke or reduce the disciplinary action imposed against the employee. The Hearing Officer’s decision constitutes a





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final resolution of any disciplinary action and no further appeal shall be permitted within the Agency’s administrative process. Such decision shall refer to the employee’s right to seek a writ under CCP Section 1094.5 and the time frame for such process.

**28.6.6 Resolution before Hearing:**

If the employee requests a Disciplinary Hearing and prior to or at that hearing the employee and the Committee agree on an alternative course of action, this agreement shall be set forth in writing and signed by the employee and the General Manager.

**28.7 Section 7 - Layoff or Reduction in Force:**

Notwithstanding any other provision in this policy, nothing provided herein shall prohibit the Agency from discharging employees due to an elimination of position(s). Decisions of the Agency under this Section are not subject to any grievance or appeal procedure.

**28.8 Section 8 - Paid Administrative Leave:**

The Agency has the authority to place any employee on paid administrative leave at any time. Paid administrative leave is not considered discipline and shall not trigger any right to Notice, Hearing or Discipline as set forth in this policy.