

**BOX ELDER COUNTY PERSONNEL POLICIES AND PROCEDURES**

<b>5.</b>	<b>DISCIPLINE</b>
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**5-1. Policy**

It is the policy of Box Elder County to provide and enforce a system of progressive discipline to merit employees. The goal of any disciplinary action is a modification of behavior. If this policy contradicts any other policies within the county, this policy governs.

**5-2. Procedures**

**A. Levels of Progressive Discipline**

1. The usual sequence of progressive discipline shall be oral warning, written warning, written reprimand, suspension, and termination. Demotion may also be used in the progressive discipline process. Deviations from procedure may be justified depending on the severity and/or circumstances of the action(s) to be disciplined. If, in the judgment of the supervisor, the facts show aggravated misconduct, disciplinary action may proceed directly to suspension or termination by following the procedures as outlined below.

Behavior that includes, but is not limited to, those listed in Section 5-3: Violations of Standards of Conduct may warrant discipline up to and including termination.

2. **Oral Warning:** A record detailing the following information should be kept as evidence that an oral warning was given. The record should be forwarded to human resources to be kept in the employee’s personnel file. An oral warning is not considered a disciplinary action that can be grieved.
  - a. Name of employee;
  - b. Date of oral warning;
  - c. Date, time, place, and type of violation;
  - d. What action is required to correct the situation;
  - e. Employee’s response to violations communicated in the oral warning.
3. **Written Warning:** A record detailing the following information should be kept as evidence that a written warning was given. The record should be forwarded to human resources to be kept in the employee’s personnel file. A written warning is not considered a disciplinary action that can be grieved.
  - a. Name of employee;
  - b. Date of written warning;

- c. Date, time, place, and type of violation;
  - d. What action is required to correct the situation;
  - e. Employee's response to violations communicated in the written warning.
4. **Written Reprimand:** A copy of the written warning, including the following information, should be given to the employee for signature and then forwarded to human resources for placement in the employee's personnel file. A written reprimand is not considered a disciplinary action that can be grieved.
- a. Name of employee;
  - b. Notification that the letter is a written reprimand;
  - c. Date of reprimand;
  - d. Date, time, place, and type of violation;
  - e. Number and types of previous warnings;
  - f. What action is required to correct the situation;
  - g. Probable consequences of not correcting the violation;
  - h. The employee's response to violations contained in the reprimand;
  - i. A place for the employee to sign evidencing the receipt of the letter.

The signature of the employee shall not be an admittance of or agreement with the contents of the reprimand, or an admittance of guilt, but shall only be used to document that a reprimand was received.

5. **Suspension:** An employee may be suspended from work without pay for up to three days (24 hours) in combination with a Written Reprimand, under the approval of the Department Head or Elected Official. Suspensions longer than 3 days (24 hours) must provide for a pre-determination hearing as outlined in Section B below.
6. **Disciplinary Actions:** Before any type of disciplinary action is decided upon, not including a warning, reprimand, or short-term suspension the procedures in Section B: Pre- Determination **MUST** be followed. When imposing a suspension, demotion or termination, authorization from Human Resources Manager and the Department Head must be obtained.
- a. A suspension is a defined period without pay.
    - 1. An employee may not be suspended for more than 30 calendar days for a single incident, nor for more than 60 calendar days in a calendar year.
  - b. A demotion is a disciplinary action that results in a reduction in grade, pay, or both grade and pay. The salary of the demoted employee will not exceed the maximum of the pay range of the position they were moved into.
  - c. A termination, as used in this policy, is when an employee is separated from county employment for disciplinary reasons.

## **B. Pre-Determination**

1. Before any type of disciplinary action is taken against a merit employee, excluding oral /written warnings or written reprimands, the supervisor or department head will provide the employee the opportunity to participate in a pre- determination meeting. The purpose of the predetermination meeting is to give the employee an opportunity to be heard and provide new or additional information that might provide cause to prevent disciplinary action.
  - a. The supervisor may place the employee on paid administrative leave until the pre-determination process is complete.
  - b. The employee should be given a written notice of the claims, findings and conclusions against him or her and that notice should advise the employee of their opportunity to participate in a pre-determination meeting, along with the date, time, and location of the meeting. The employee should indicate by signature that the information presented in the written notice is understood.
  - c. The employee may waive the right to a pre-determination meeting. Such waiver must be made in writing, signed by the employee, and specifically acknowledge that the employee has received a copy and read the requirements of Section 5, accepts the proposed discipline, and acknowledges that the waiver also applies to the right to appeal to the Administrative Law Judge.
  - d. The employee may obtain assistance of a personal representative, at the employee's expense, to advise the employee. The representative may attend the pre-determination meeting. However, the personal representative will not be permitted to speak during the meeting. During the meeting, the employee may request a recess to confer with the representative in another room, except that the employee may not make such a request if the employee has not yet answered a question asked by the supervisor.
  - e. At the pre-determination meeting, the employee will have the opportunity to present to the supervisor and Human Resources Manager, or the manager's designee, any and all information, witnesses, or evidence, orally or in writing, which they feel may mitigate or explain their actions.
  - f. After the employee and the supervisor have completed a discussion on the claims and the employee's explanation for such, the meeting shall be adjourned without any decision concerning discipline being made.

- g. An audio recording of the pre-determination meeting will be made and kept by the agency until all formal disciplinary proceedings are completed.
- h. If, after reflection upon the claims against the employee and the employee's explanation for such, the supervisor decides no discipline is warranted, or to impose discipline, this decision will be communicated in writing to the employee no later than five working days following the pre-determination meeting.
- i. If the claim is deemed unfounded or it results in non-disciplinary action no record will be kept in the offending employee's permanent personnel file.
- j. Any decision to suspend, demote, or terminate an employee will first be authorized by the Human Resources Manager or his/her designee and the department head. In such a case, the supervisor will prepare a notice of disciplinary action and submit it to the Human Resources Manager or his/her designee for review. The notice should contain the following information: Name of employee;
1. Notification that the letter is a notice of disciplinary action;
  2. Date of notice;
  3. Date, time, place and type of violation(s);
  4. Number and type(s) of previous warnings;
  5. Effective date of disciplinary action;
- k. After Human Resources approves the notice of disciplinary action, the supervisor shall meet with the employee, and the Human Resources manager, or their designee, to deliver the notice and discuss its contents. At this time, the employee should be informed of their appeal rights under Section 5-4 Appeal Procedure, if applicable, and shall be given a copy of the policy.
- l. A copy of the disciplinary notice shall be given to the employee, a copy forwarded to the human resources office for placement in the employee's personnel file, and a copy retained by the supervisor.
2. Copies of disciplinary action placed in personnel files are eligible for purging after three years, upon the request of the disciplined employee. Such request must be made in writing to the Human Resources Manager. If the disciplining supervisor agrees to the request, the Human Resources Manager shall submit the request to the Board of County Commissioners for review. If the Board of County Commissioners determines that the disciplinary action can be purged from the employee's file, the Board shall authorize the Human

Resources Manager to remove the disciplinary action from the employee's file.

### **5-3. Violations of Standard of Conduct**

A. **Standards of Conduct:** Employees will fulfill their job duties, act professionally, and comply with policies and procedures. Inappropriate and unprofessional behavior includes, but is not limited to, the following:

1. Indulging in offensive conduct or using offensive language
2. Insubordination by refusing superior's order, verbal abuse of a superior, or unwillingness to submit to proper authority
3. Deliberate, reckless, or careless conduct endangering the safety of the employee or employees
4. Using, threatening, or attempting to use personal or political influence in an effort to secure special consideration as a county employee
5. Incompetence or inefficiency in the performance of job duties resulting in an unsatisfactory performance evaluation
6. Sleeping on duty except as provided for in official county regulations
7. Using offensive language toward the public, county officers, or employees
8. Excessive absenteeism and/or tardiness
9. Horseplay and related kinds of activity
10. Violating a safety rule or practice
11. Inattentiveness to work, failing to start work at the designated time, quitting work early or leaving employer's premises during working hours without authorization from the supervisor, elected official or department head
12. Not wearing seat belts at all times or ensuring passengers are wearing seat belts when driving or riding in a county vehicle
13. Neglect of work and/or failure to comply with oral instructions or warnings
14. Distributing written or printed literature or circulating a petition without authorization
15. Unauthorized use of county equipment or materials
16. Failure to comply with requests and instructions from supervisor(s), elected official, or department head.
17. Gross neglect of duty or refusal to comply with lawful instruction unless such instruction is injurious to the employee's or general public's health or safety
18. Inducing or attempting to induce any employee in the service of the county to commit an unlawful act in violation of county regulations, official policies or departmental order
19. Carelessness or negligence with county monies or property
20. Theft or intentional destruction of county or employee funds or property
21. Intentional falsification of personnel records, time reports, or other county records

22. Filing a false or unsubstantiated report with any outside agency
23. Harassment to another employee, vendor, or member of the public as defined in Section 11 of the Employee Handbook: Harassment
24. Unlawful possession of a weapon while on duty
25. Physical attack on the public, county officers or employees
26. Making direct, indirect, implied, or conditional threats against another employee
27. Using a county computer for self-employment or outside employment. Entering or maintaining personal information, which is detrimental to public service, on a county computer
28. Using computer software in violation of license agreement. Copying software licensed to or developed by Box Elder County. Bringing software from home computers to run on Box Elder County computers unless authorized by the Information Technology director or designate. Purchasing, moving, altering, or repairing computer equipment and wiring unless authorized by the Information Technology director or designate.
29. Failure to report to work without notification to the supervisor, elected official or department head prior to the time the shift begins, unless it is impossible to give such notice
30. Misuse of sick leave or official leave
31. Operating any vehicle without the proper license or insurance
32. Failing to immediately notify supervisor of traffic violations or accidents if driving county vehicle or equipment.
33. Failing to immediately notify supervisor of knowledge of direct, indirect, implied, or conditional threats against employees.
34. Knowingly or intentionally altering safety mechanisms or using equipment without safety mechanisms in place.
35. Smoking in unauthorized areas *including all county buildings and vehicles/equipment* and less than 25 feet away from *any entrance* to any county building.
36. Working at another job that creates a conflict of interest or adversely affects performance at work.
37. Conviction of any felony while an employee of the county
38. Any use of intoxicants or drugs, including prescription drugs, affecting the employee's ability to safely perform duties. (see Policy 12)
39. Clocking in for or completing another employee's time record
40. Violations of Code of Conduct for Sheriff Department employees

#### **5-4. Appeal Procedure**

##### **A. Procedure Prior to Hearing**

1. A merit employee who is suspended, disciplinarily transferred, demoted, terminated, or who claims discrimination shall have the right to file an appeal to the Administrative Law Judge.

a. Appeals shall not include disputes over oral or written warnings, initial probation, performance appraisal, work schedule or other factors not associated with the above list. These matters shall be handled through a formal complaint procedure through the direct supervisor as outlined in Section 6. Only the appeals including suspension, disciplinary transfer, demotion, claim of discrimination, or termination shall be considered for appeal as the procedure progresses. To ensure this limitation, a copy of the original grievance shall be filed with the Human Resources Manager.

b. Such appeals shall be filed in writing no later than five (5) working days after the decision of the supervisor as outlined in Section 5-2.

c. Employees who are dismissed may appeal to the Administrative Law Judge no later than five (5) working days after notice of termination is given. The Administrative Law Judge shall hold a formal hearing no less than five (5) nor more than fifteen (15) working days after receipt of such appeal. If the parties are not able to find a mutually agreeable date within that time range, the Administrative Law Judge shall determine if an extension to the fifteen (15) days is reasonable.

d. This five (5) day limitation may be waived by the Human Resources Manager if, through no fault of the employee, the employee was unaware of the action in question before the time limit expired. However, in no case shall an employee submit an appeal more than thirty (30) days after the event giving rise to the appeal.

The hearing will not be scheduled unless the conditions of this paragraph are addressed in the appeal statement. The appellant shall include in the appeal information, statements, or claims as may lend support to the appeal. They shall advise the Human Resources Manager of any witnesses whom they expect to introduce at the hearing in support of the appeal, and whether they intend to present the case personally or through a representative. The appellant shall be responsible for notifying such witnesses of the time and place of the hearing and for any expenses incurred. If the notice of appeal does not satisfy the requirements of this paragraph, the Human Resources Manager shall notify the appellant. The appellant shall comply with the Human Resource Manager's instructions within five (5) working days.

e. The Human Resources Manager shall notify the disciplining supervisor and legal department when an appeal is received. The County Attorney's Office shall represent the interests of the County at the appeal hearing and shall advise the Human Resources Manager of any witnesses it expects to introduce at the hearing in support of its action. The County Attorney's Office shall be responsible for notifying such witnesses of the

time and place of the hearing.

- f. In advance of the hearing, the Human Resources Manager shall:
  - i. Notify the appellant and the County Attorney's Office of the time and place the hearing is to be held, provide them access to the appellant's personnel file, and provide each party a copy of the other party's witness list.
  - ii. Furnish the Administrative Law Judge access to all documentation relating to the disciplining supervisor's reasons for their decision and disciplining actions, a copy of the appellant's letter appealing such actions and a list of each party's witnesses.
  - iii. Furnish the Administrative Law Judge with a copy of these Rules and Regulations.

## **B. Hearing Procedure**

1. The following procedure is intended to be a guide for the conduct of the hearing in an orderly manner. The procedures of the hearing are not set in the sense that it will interfere with the purpose of the hearing, which is to bring out all the facts. The appellant may present their case personally or through a representative of their choice. The hearing shall not be bound either by legal procedures or by legal rules of evidence. A record shall be kept of the proceedings. Results of the hearing and the Administrative Law Judge's decision and recommendations shall be presented to the Commissioners during a Closed Session at a County Commission meeting. Any resulting personnel action shall be included in a Personnel Action form and signed by the Commissioners upon returning to the open meeting, which shall be reflected in the minutes of the meeting.
2. The Administrative Law Judge shall open the hearing by naming the parties and stating the nature of the action of the department.

Presentation of the department's case - When requested by the Administrative Law Judge, the County Attorney's Office representative shall read the disciplining department's letter to the employee. Upon completion of the reading, the County Attorney's Office representative may make such other oral statements or offer such other evidence as they may consider necessary to supplement the statement.

- a. When the County Attorney's Office representative has finished with their oral statements or has stated that they have none to make, they may introduce witnesses or material evidence in support of the department's action. PARTIES INTRODUCING DOCUMENTS OR



**OTHER MATERIAL EVIDENCE MUST SUBMIT THREE (3) COPIES.**

- b. At the close of the County Attorney's Office representative's oral statements and the testimony or evidence offered by department witnesses, questions may be directed to the County Attorney's Office representative and each witness by interested parties. Interested parties are as follows, and they shall raise questions in the order named and at times called upon by the Administrative Law Judge.
  - i. The County Attorney's Office representative.
  - ii. The appellant representative. Questions of the appellant at this point should be aimed at focusing the attention of the Administrative Law Judge on what the representative considers to be weaknesses of the department's position or on points that the representative will make later when presenting the appellant's case. **THIS IS NOT THE PROPER PLACE FOR REBUTTAL OR COUNTER ARGUMENTS.**
  - iii. The Human Resources Manager.
  - iv. The Administrative Law Judge.
3. Presentation of the appellant's case - The Procedure here shall be exactly the same as that for presentation of the case of the department except that the roles of the County Attorney's representative and witnesses and those of the appellant and their witnesses shall be reversed.
4. Rebuttal witnesses may be called by the County Attorney's representative to address information presented by appellant. The County Attorney's Office representative shall not be allowed to bring up new evidence which does not address appellant's arguments.
5. Before closing the case, the Administrative Law Judge shall allow the appellant and County Attorney's Office in turn to make closing statements.

**C. Decision of the Administrative Law Judge.** The Administrative Law Judge shall, within fifteen (15) working days after the end of the hearing, make its decision in writing and transmit copies of such decision to the interested parties.

1. A person adversely affected by a decision of the Administrative Law Judge may appeal the decision to the district court.

**D. Administrative Law Judge**

- a. The Board of County Commissioners may appoint one or more administrative law judges to hear appeals. Each

administrative law judge shall be trained and experienced in personnel matters.