

MARIPOSA COUNTY

Human Resources/Risk Management • (209) 742-1379



RESOLUTION - ACTION REQUESTED 2016-225

MEETING: May 10, 2016

TO: The Board of Supervisors

FROM: Steve Johnson, Human Resources Director - Risk Manager

RE: Approve County-Wide Discipline Policy

RECOMMENDATION AND JUSTIFICATION:

Adopt a Resolution Establishing a County-wide Discipline Policy to be effective June 1, 2016. This Discipline Policy will update and replace language contained in Section 13 of the County's four Bargaining Unit Memorandums of Understanding dealing with this issue.

The County has Memorandums of Understanding ("MOU's") with four Bargaining Units: Mariposa County Managerial and Confidential Organization (American Federation of State, County and Municipal Employees (AFSCME) Local 2703), Service Employees International Union, SEIU, Local 521, Mariposa County Sheriffs' Management Association and the Mariposa County Deputy Sheriffs' Association. All four of these MOU's contain language that deals with employee discipline in the workplace.

The County of Mariposa Human Resources/Risk Management Department meets quarterly with all four Bargaining Units to discuss issues of mutual interest. Most recently, based on feedback that the Human Resources/Risk Management Department received from a number of the County's Department Heads, staff initiated a discussion with the Bargaining Units regarding updating and replacing language contained in the discipline section of the MOU's through a draft County-wide Discipline Policy (see Exhibit "A," attached).

This Policy is intended to provide guidance on County disciplinary issues and will make updating disciplinary language easier through the adoption of one document, versus the current arrangement whereby this language needs to be changed in four separate MOU's. In addition, the Policy expands behavior that would be subject to discipline and provides for appeals of proposed disciplinary action to the County Administrative Officer only when there is a "taking" (such as loss of money through a suspension, demotion or termination).

Staff worked collaboratively with the County's labor law firm of Liebert, Cassidy and Whitmore, and with key County stakeholders, in developing the draft Policy.

Staff have met and conferred with all four Bargaining Units over the proposed Policy,

consistent with the requirements of State law.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board of Supervisors has approved MOU's between the County and Mariposa County Managerial and Confidential Organization (AFSCME, Local 2703), Service Employees International Union, SEIU, Local 521, Mariposa County Sheriffs' Management Association and the Mariposa County Deputy Sheriffs' Association, respectively. To date, the Board has not approved a County-wide Discipline Policy.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

The Board may reject the recommendation to adopt the proposed Resolution and Policy, in which case staff will need to return to the County's Bargaining Units to further meet and confer over this issue.

ATTACHMENTS:

Final Resolution to Adopt Disciplinary Policy (DOCX)
Discipline Policy_May 2016 (DOCX)

CAO RECOMMENDATION

Requested Action Recommended


Mary Hodson, CAO 5/4/2016

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Marshall Long, District III Supervisor

SECONDER: Merlin Jones, District II Supervisor

AYES: Smallcombe, Jones, Long, Cann, Carrier

MARIPOSA COUNTY RESOLUTION NO 16-225

A RESOLUTION ESTABLISHING A COUNTY-WIDE DISCIPLINE POLICY

WHEREAS, public employee discipline is a necessary and critical part of County personnel administration and management; and

WHEREAS, the County has determined Article 13 pertaining to discipline in each of the County's four Memorandums of Understanding ("MOU's") with Mariposa County Managerial and Confidential Organization (American Federation of State, County and Municipal Employees (AFSCME) Local 2703); Service Employees International Union (SEIU, Local 521); Mariposa County Sheriffs' Management Association; and the Mariposa County Deputy Sheriffs' Association can and should be revised to better reflect best practices and legal requirements in the area of public employee discipline; and


WHEREAS, County officials have developed a County-wide Discipline Policy (attached hereto as Exhibit A) that incorporates the best practices and legal requirements of public employee discipline; and

WHEREAS, the Human Resources/Risk Management Department notified the affected employee organizations of the proposed policy and satisfied its duty to meet and confer over the proposed changes.

NOW, THEREFORE BE IT RESOLVED, the Board of Supervisors does hereby adopt the Discipline Policy attached as Exhibit A, to replace existing Article 13 in the MOUs, effective June 1, 2016.


PASSED AND ADOPTED by the Board of Supervisors of Mariposa County, a political subdivision of the State of California this 10th day of May, 2016.

AYES: Smallcombe, Jones, Long, Cann, Carrier
NOES: None
ABSTAIN: None



JOHN CARRIER, Chairman

ATTEST:



René LaRoche, Clerk of the Board

APPROVED AS TO FORM:



Steven W. Dahlem, County Counsel



EXHIBIT "A"
COUNTY OF MARIPOSA
DISCIPLINE POLICY

SECTION I: GROUNDS FOR DISCIPLINE

Any permanent employee may have disciplinary action taken against him or her by a Department Head (or his/her designee if applicable) based on any of the charges set forth below through a progressive disciplinary practice, and in addition to any charges specified in a Memorandum of Understanding or in a Department policy. Disciplinary action as used in this policy means demotion, suspension, have a reduction in compensation, dismissal, or any other disciplinary action that affects the employee's present status.

The County shall take disciplinary action against a permanent employee for just cause only. Probationary employees, extra-help employees, or employees in at-will positions may be dismissed with or without cause and with or without notice.

If a permanent employee has been promoted, he or she may be returned to the previous position held, or a similar position, pursuant to the provisions of the applicable Memorandum of Understanding.

One or more of the following causes shall constitute grounds for a disciplinary action against any permanent employee, including, but not limited to:

Job Performance:

1. Incompetence.
2. Inefficiency in the performance of the duties of his or her position.

3. Inattention to or dereliction of duty, including, but not limited to, carelessness or negligence in the performance of one's duties or in the care or use of County property.
4. Insubordination, including, but not limited to, refusal to perform assigned work or to carry out directions of authorized County personnel.
5. Excessive or unexcused absenteeism; excessive tardiness, or excessive use of leave privileges. For purposes of this policy, excessive means that the level is disruptive or harmful to departmental operations, unduly burdens supervisors or co-workers, or negatively impacts the department's ability to provide expected levels of service.
6. Absence from duty without prior authorization or failure to report after a leave has expired or after notice has been provided that a leave has been disapproved, revoked or cancelled.
7. Failure to report for work within a reasonable time after notice of recall from layoff.
8. Inability to perform assigned duties, including, but not limited to, mental or physical incapacity.
9. Failure to possess or maintain required licenses or certifications.

Personal Conduct:

1. Discourteous, offensive, or abusive conduct or language toward fellow employees or members of the public.
2. Reporting for duty under the influence of, or carrying into County facilities, or possessing, consuming, or using on County premises, or inducing or causing others to use, drugs or other controlled substances; or giving, selling, or delivering such items to any other person on County premises.
3. Drinking alcoholic beverages on the job, or reporting for work under the influence of alcohol, or carrying an alcoholic beverage into a County facility or onto County property without prior authorization.
4. Marking, defacing, damaging, writing, or drawing on any County property not designed for that purpose.
5. Furnishing confidential information and/or material to unauthorized personnel or removal of records from an employee's personnel file.
6. Unauthorized review of an employee's personnel file or unauthorized removal of records from an employee's personnel file.
7. Dishonesty. Falsifying any information supplied to the County, including but not limited to, information supplied on application forms, employment records, examination materials, time sheets or cards, absence forms, or other records.

8. Unauthorized use of a County vehicle, including, but not limited to, transporting unauthorized persons in a County vehicle; or driving a vehicle on County business when one's driver's license has expired, been suspended, revoked or is in violation of any condition specified by the Department of Motor Vehicles.
9. Offering anything of value or any service in exchange for special treatment in connection with one's job or employment, or accepting anything of value or any service in exchange for granting any special treatment to another employee or to any member of the public.
10. Fraud in securing employment with the County.
11. Willful violation of any County rule; any deliberate action that is extreme in nature and is obviously detrimental to the County's efforts to serve its citizens.
12. Willful violation of security or safety rules or failure to observe safety rules or the County safety practices; failure to wear required safety equipment; tampering with County equipment or safety equipment.
13. Unauthorized possession of dangerous or illegal firearms, weapons or explosives on County property or while on duty.
14. Engaging in criminal conduct or acts of violence, or making threats of violence toward anyone on County premises or when representing the County; fighting, or horseplay or provoking a fight on County property, or negligent damage of property.
15. Threatening, bullying, intimidating or coercing fellow employees on or off the premises -- at any time, for any purpose.
16. Engaging in an act of sabotage; willfully or with gross negligence causing the destruction or damage of County property, including records and electronic information, or the property, records, and/or electronic information.
17. Any act of harassment, sexual, racial or other; telling sexist or racial-type jokes; making racial or ethnic slurs, or any other violation of the County's Policy against Discrimination or Harassment in the Workplace.
18. Other conduct either during or outside of duty hours which causes discredit to the County.

SECTION II: NOTICE AND PRE-DISCIPLINARY PROCEDURES

When a Department Head (or his/her designee) believes there is just cause for disciplinary action against a permanent employee, the Department Head (or his/her designee) shall give the employee a written notice of the action.

Notification to a permanent employee of disciplinary action shall be deemed sufficient when it is delivered in person to the employee or when it is deposited in the U.S. certified mail, postage prepaid, and addressed to the last known address of the employee. It is the employee's obligation to notify the County of a change of address.

The Notice of Intent to Discipline shall contain the following:

1. A statement of the cause for issuing discipline (pursuant to the Disciplinary Policy; the Memorandum of Understanding; or other Department policy) including the specific acts and omissions upon which the disciplinary action is based.
2. A statement of all County rules or regulation, provisions of any relevant Memorandum of Understanding, or Department policies violated.
3. A statement of the disciplinary action and a copy of all written materials on which the action is based.
4. A statement that the employee has a right to appeal such a decision and charges within ten (10) working days after service of the Notice of Intent to Discipline (also referred to as the "Skelly Conference.") An employee may respond to the issuance of the Notice of Intent to Discipline either orally or in writing. If the employee or his or her representative requests to respond orally, the employee or his or her representative shall notify the Department Head (or his/her designee) or the Human Resources Director within ten (10) working days of receipt of the Notice of Intent. An employee is entitled to be represented by the person of his or her choice so long as the proposed representative is reasonably available to attend the conference.

The purpose of the Skelly Conference is to review the Notice of Intent to Discipline, charge by charge, incident by incident, to allow the employee and/or his or her representative to respond to each charge and incident.

The conference shall be an informal meeting and shall not be conducted by formal evidentiary rules. The conference may be tape recorded by mutual agreement. The conference shall be conducted on the date stated in the original Notice of Intent provided to the employee, unless a change is mutually agreed to by the Department Head (or his/her designee) or Human Resources Director, or his or her designee, and the employee.

The Human Resources Director, or his or her designee, will serve as the administrator responsible for conducting the conference (also referred to as "Skelly officer"). The Human Resources Director, or his or her designee shall, after the conclusion of the

conference, make a determination of the appropriateness of the recommended disciplinary action and the charges and incidents upon which such disciplinary action is recommended. If discipline is deemed appropriate, the employee will be served with a Final Notice of Discipline and the discipline will be effective at that time.

SECTION III: RIGHT TO APPEAL FINAL DISCIPLINE

Disciplinary decisions may be appealed in writing to the County Administrative Officer within ten (10) working days after receiving notice of the decision from the employee's Department Head (or his/her designee) or Human Resources Director.

The County Administrative Officer shall meet with the employee within ten (10) working days after receiving the employee's written appeal. The employee may be accompanied by his or her union and/or legal representative. The meeting with the County Administrative Officer shall not be considered an evidentiary hearing and will be limited to the employee's appeal of the proposed disciplinary action. After hearing the employee's appeal, the County Administrative Officer shall communicate his or her decision to the employee in writing within ten (10) working days after concluding the appeal meeting with the employee.

In cases involving suspension, demotion, or discharge, the affected employee shall have the right to appeal the County Administrative Officer's decision to arbitration, if specifically prescribed in the appropriate Memorandum of Understanding, if requested in writing within ten (10) working days of the date of the County Administrative Officer's written decision. Any such request for appeal must be submitted directly to the County Administrative Officer.

With advice and counsel of the Human Resources Director, nothing in this Policy shall impede a Department Head (or his/her designee) from placing an employee on Immediate Administrative Leave with pay while a disciplinary process is conducted. Such action shall also restrict said employee from entering any County property when deemed appropriate for the safety and well-being of County employees and or the preservation of a safe and secure workplace.

SECTION IV: FORMAL WRITTEN REPRIMAND

When the Department Head (or his/her designee) determines more severe action is not immediately necessary, the Department Head (or his/her designee) shall communicate to the employee the deficiency or problem observed in the form of a formal written reprimand. A copy, and the employee's response, if any, shall be filed in the employee's personnel file after a copy has been given to the employee and the employee has acknowledged receipt of same. Failure to correct the deficiencies and

show improvement to meet standards may result in disciplinary action as described above.