Taking Adverse Action

Presented by:
Employee-Management Relations Branch
Human Resources Division
Department of Administration

Kathryn.Diaz@doa.guam.gov , Employee-Management Relations Officer II
Herta.Delacruz@doa.guam.gov, Personnel Specialist III
Ellen.Ryan@doa.guam.gov, Personnel Specialist II

Table of Contents

Page

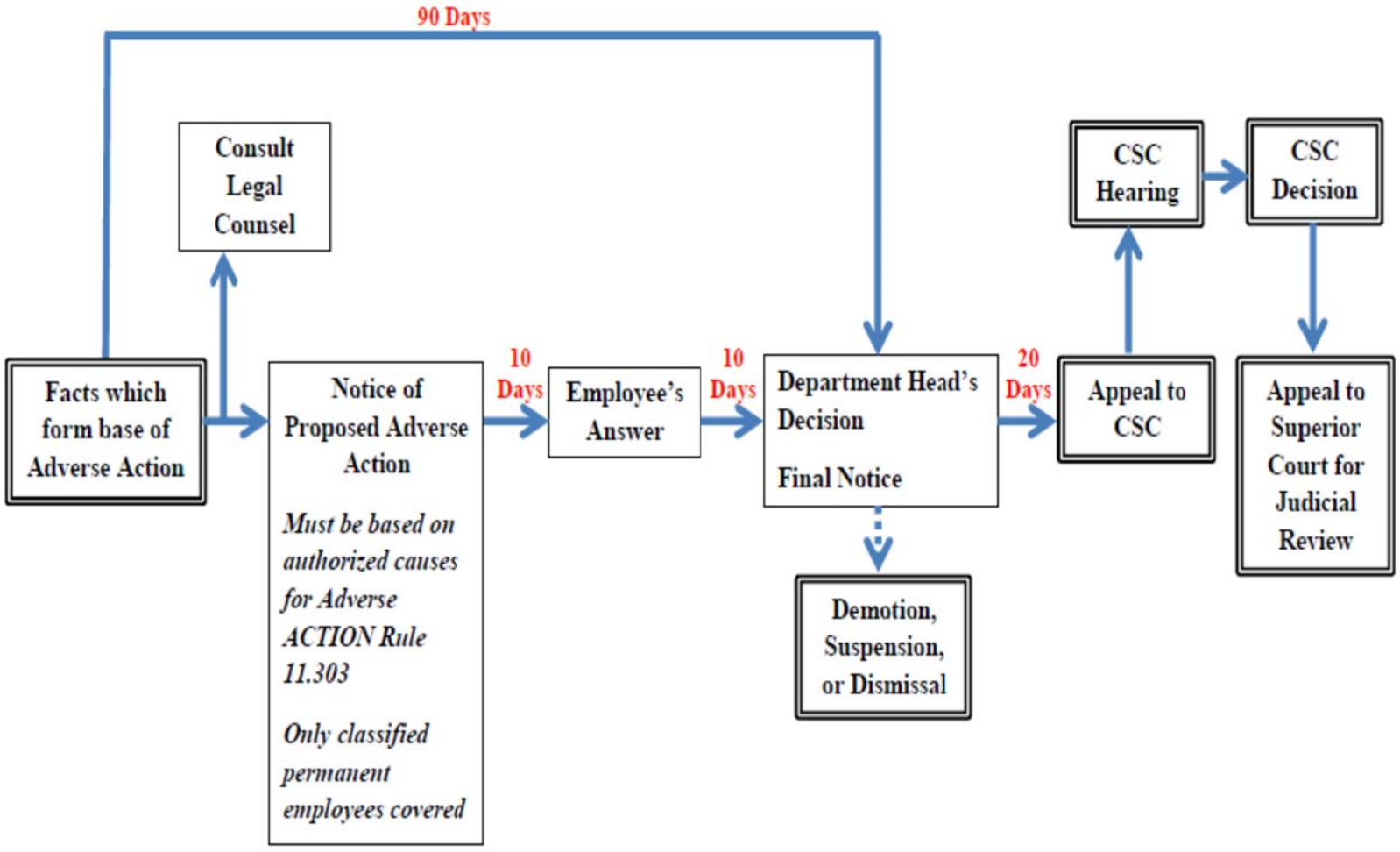
Flow Chart – Adverse Action Procedures 3

DOA Personnel Rules & Regulations, Chapter 11 – Adverse Action Procedures 4
11.000 Coverage 4
11.100 Scope 4
11.200 Employee Discipline 4
11.300 Adverse Action Procedures 6
11.303 Authorized Causes for Adverse Action 7
11.304 Employees Covered 8
11.305 Adverse Action Covered 8
11.306 Notice of Proposed Adverse Action 9
11.307 Employee's Answer 9
11.308 Suspension During Notice Period 9
11.309 Leave Pending Investigation 10
11.310 Employment Status During Imprisonment 11
11.311 Notice of Final Adverse Action 11
11.312 Appeal to the Civil Service Commission 12
11.313 Service of the Proposed & Final Notices Adverse Action 12
11.400 Guidelines for Disciplinary Offenses & Penalties 12

Additional Resources

- Department of Administration Circular No.98-025 dated 9/23/1998 Guide to Taking Employee Disciplinary Action
- DOA Personnel Rules & Regulations, Chapter 3 Code of Conduct
- Title 4 Guam Code Annotated (GCA) Chapter 4 §4202.1 Duty to Report Criminal Charges or Conviction and §4202.2 Failure to Report Criminal Charges or Conviction
- Attorney General Memorandum dated April 15, 1997 – Adverse Actions – Ruling on Motion to Void Adverse Action
- PL 34-145 Increase in Timeline for Adverse Action – 90 Day Rule (lapsed on 12/13/2018)
- DOA Personnel Rules & Regulations, Chapter 11 – Adverse Action Procedures

ADVERSE ACTION PROCEDURES



CHAPTER 11

ADVERSE ACTION PROCEDURES

STATEMENT OF POLICY

This chapter sets forth the guidelines and procedures by which the appointing authority may suspend, demote, or dismiss a permanent employee.

11.000 COVERAGE

This chapter shall apply to all permanent classified employees.

11.100 SCOPE

For the purpose of this chapter, the term "dismissal" shall not be interpreted to include:

A. Actions taken by the appointing authority or Director referenced in the Chapter on RESIGNATION AND TERMINATION; or

B. Action taken by the appointing authority in the termination of services of an original probationary employee.

11.200 EMPLOYEE DISCIPLINE

11.201 General Provisions

A. Responsibility for Discipline

The appointing authority derives its authority and responsibility for employee discipline under the provisions of Section 4105, Title 4, of the Guam Code Annotated. Agency management has the responsibility to remove or

Please see Page 114: Chapter 11 Department of Administration's Personnel Rules and Regulations

demote to another position on a fair and equal basis, any employee in the classified service whose conduct or capacity is such that his removal or demotion will promote the efficiency of government service.

B. Delegation of Authority

The appointing authority may delegate responsibility for administration of day-to-day discipline to its line management, to include such actions as oral admonitions, letters of reprimand, and the recommendation of adverse actions.

11.202 Job Protection Procedures in Employee Discipline Actions

A. All levels of supervision and management, share the responsibility for strict adherence to employee's job protection rights and considerations including:

1. Informal counseling at the first indication that an on-the-job or personal problem is affecting the employee's job performance.

2. A reasonable opportunity for the employee to correct inadequate performance including providing specific training to the employee to improve the level of his job performance, or to correct unacceptable habits or practices, such as tardiness or lack of attention to work requirements.

3. The right to reply to the notice of a proposed adverse action that may result in a suspension, demotion, or dismissal.

4. The right to reply to the notice of a proposed adverse action and careful consideration of any reply.

5. The right to appeal to the Civil Service Commission as provided in the CSC Rules and Regulations relative to Demotion, Suspension, Dismissal and Appeal of Adverse Actions.

B. Agency heads are accountable for assuring that each supervisor and manager has received orientation and training on the government's basic intent that discipline shall be a method for correcting people in such a way as to produce satisfactory job performance. The use of discipline in a punitive matter is inconsistent with the government's concept of discipline as an opportunity to provide constructive correction.

11.300 ADVERSE ACTION PROCEDURES

11.301 General Requirements

***PL 34-145 Increase in Timeline for Adverse Action – 90 Day Rule Lapsed on 12/13/2018**

A. An employee must be given the final notice and statement of the charges, pursuant to Title 4, Guam Code Annotated (GCA) Section 4406, no later than 60 days after management knew, or should have known the facts or events which form the alleged basis for the adverse action.

B. An employee covered by the Adverse Action Procedures may be suspended for not more than 30 work days as the result of a single adverse action, nor may an employee be suspended for more than a total of 60 work days in a calendar year, as the result of multiple adverse actions taken by any one department or agency. Employees on a 24 hour on and 24 hour off employment basis, shall not be suspended for more than 10 work days, or an equivalent of 240 work hours as a result of a single adverse action, nor may suspension be more than a total of 20 work days (480 work hours) in a calendar year as a result of multiple adverse actions.

C. Copies of the adverse action rules and appeal procedures should be made available upon request by the employee.

11.302 Definition

A. **Suspension -** The temporary removal of an employee from his position with loss of pay as a disciplinary measure.

B. **Demotion -** The involuntary reduction in status of an employee for disciplinary reasons from a position which he occupies in a specific class, to a position in another class, where the maximum rate of pay is less than the maximum rate of pay for the class which he had held, or a reduction to a lower salary step in the same class.

C. **Dismissal -** The termination of an employee for any authorized cause of adverse action.

D. **Days -** Refers to calendar days unless otherwise specified.

11.303 Authorized Causes for Adverse Action

A department/agency head may remove an employee for such misconduct, which affects the efficiency of the service. The authorized causes for adverse actions include, but are not limited to the following:

A. Fraud in securing appointment.

B. Refusal or failure to perform prescribed duties and responsibilities.

C. Insubordination.

D. Intoxication while on duty or the unauthorized possession, use or sale of alcohol on duty or while on government premises.

E. Unlawful use, possession, or sale of illicit drugs.

F. Unauthorized absence.

G. Conviction for a crime.

H. Discourteous treatment to the public or other employees.

I. Political activity prohibited by law.

J. Misuse or theft of government property.

K. Refusal to take and subscribe to any oath or affirmation which is required by law in connection with employment.

L. Acts prohibited by Section 9102, 4 GCA relating to strikes against the government.

M. Acts of prohibited discrimination to include sexual harassment.

N. Failure to comply with the Drug-Free Workplace Program.

0. Other misconduct not specifically listed.

11.304 Employees Covered

All employees in the classified service are covered by these rules, except the following:

A. Contract employees whose contracts are not renewed upon expiration.

B. Probationary employees serving original appointment.

C. Employees on limited-term, temporary, seasonal, intermittent, part-time, provisional, or only for a specific project.

D. Employees who are exempt by law or other legal authority from the jurisdiction of the Civil Service Commission with regards to adverse actions.

11.305 Adverse Action Covered

A. These rules apply to the following adverse actions:

1. Suspension

2. Demotion (disciplinary action)

3. Dismissal

B. The use of any combination of the adverse actions listed for the same offense is prohibited.

11.306 Notice of Proposed Adverse Action

An employee against whom adverse action is sought is entitled to immediate written notice stating any and all reasons, specifically and in detail, for the proposed action. The written notice must make it clear that it concerns only proposed action and not a matter already decided. A copy of such action shall be filed by the department/agency head with the Department of Administration and CSC.

11.307 Employee's Answer

***AG's Memo – Adverse Actions dated 4/15/1997**

An employee is entitled to seek reconsideration of the proposed adverse action by answering any charges within 10 days after receipt of the notice; the answer may be made orally, in writing, or both. The department/agency head shall be available to meet with the employee at the designated date and time. The department/agency head may designate a committee to hear the employee's answer. The employee may be represented by a person of his choice. The department/agency head must consider the employee's answers to the charges in the proposed adverse action notice. If the employee fails to answer during the notice period, the employee's inaction shall be construed as an answer, and the department/agency head may proceed with the adverse action upon expiration of the notice period.

11.308 Suspension During Notice Period

A. An employee against whom adverse action is proposed, must be retained in active duty status during the notice period; however, in an emergency situation, an employee may be immediately suspended during the notice period, under the following conditions:

1. The continued presence of the employee may interfere with the efficient operation of the department/agency, or the health or safety of the employee or others.

2. Suspension is necessary to eliminate the possibility of deliberate damage to equipment, property or important documents.

3. The employee's absence without authorized leave prevents the issuance of notice of proposed adverse action and the department/agency's attempt to contact the employee was unsuccessful.

B. Suspension under this section is a separate adverse action and is appealable to the Commission within 20 days of the effective date of the immediate suspension. A copy of the notice of immediate suspension shall be filed with the Civil Service Commission not later than the next working day following the effective date of the suspension.

C. If the Commission sustains the department's action in suspending the employee during the notice period, the number of days of suspension under this section shall be considered part of the final disciplinary penalty and in no case, shall the final days of suspension be more than 30 work days.

11.309 Leave Pending Investigation

In cases requiring investigation of allegations against an employee involving misappropriation of public funds or property, mistreatment of persons in a government institution or acts which constitute a crime, the department head may authorize the employee an administrative leave of absence with pay for up to 20 work days. The administrative leave may be terminated by the department head by giving the employee 24 hours written notice.

11.310 Employment Status During Imprisonment

A. An employee who is incarcerated pending disposition of a case by the court, and who does not have accrued annual leave, may be granted leave without pay at the discretion of the department/ agency head.

B. When the employee is released from incarceration or imprisonment, the department/agency head shall determine whether the employee will return to duty, or whether to take adverse action against an employee so imprisoned. Nothing in this Section shall preclude the department/agency head from taking adverse action against an employee during imprisonment.

11.311 Final Notice of Adverse Action

A. An employee is entitled to written notice of the department's decision within 10 days after receipt of the employee's answer to the charge(s). The decision shall be made by the department/agency head and shall be delivered to the employee at, or before the time the action will be made effective. The notice shall be in writing; be dated; state the specific facts found upon which such action is based; inform the employee of his right to appeal to the Commission; and, inform the employee of the time limit of 20 days within which an appeal may be submitted as provided in Section CSC-100(c) of the Civil Service Commission Hearing Procedures for Adverse Action Appeals.

B. In the event the appointing authority cannot locate the employee, the Notice of Proposed Adverse Action and/or Notice of Final Adverse Action shall be sent, certified mail, to the employee's last known address.

C. Copies of the final notice of adverse action shall be filed by the department with the Commission not later than the next work day following the effective date of the action. A copy of the final notice shall be filed with the Department of Administration.

11.312 Appeal to the Civil Service Commission

The Hearing Procedures for Adverse Action Appeals adopted by the Civil Service Commission shall be applicable for all Adverse Action Appeals proceedings.

11.313 Service of Proposed and Final Notices of Adverse Action

The Proposed and Final Notices of Adverse Action shall be personally served upon the employee. In the event the appointing authority cannot locate the employee, after reasonable efforts have been made to locate the employee, service of the Proposed or Final Notices may be made by leaving the Notice at the employee's dwelling or usual place of abode with some person of suitable age and discretion residing therein, or by mailing the Notice to the employee at the last known address. Service by mail is complete upon mailing.

11.400 GUIDELINES FOR DISCIPLINARY OFFENSES AND PENALTIES

11.401 General Provisions

A. The list that follows is not intended to cover every possible type of offense. Penalties for offenses not listed will be prescribed by the department head.

B. Many of the items listed on this schedule combine several offenses in one statement, connected by the word "OR". Usage of the word "OR" in a charge makes it non-specific. Use only the items which describe the employee's actual conduct and leave out parts which do not apply.

C. Penalties for disciplinary offenses will, in general, range from the minimum penalty to the maximum indicated. In unusual circumstances, depending on the gravity of the offense, the past record, and the position of the employee, a penalty outside the general range may be imposed.

D. Suspension penalties on this schedule apply to work days and holidays.

E. Depending on the gravity of the offenses, dismissal proceedings may be instituted against an employee for any number of offenses committed. A greater penalty may be imposed for any offense if the circumstances justify greater penalty.

F. In as much as a reprimand is not an adverse action under these rules, a management official need not apply the Adverse Action Procedures. The penalty of reprimand is included in the schedule of penalty to provide certain flexibility for management's discretion to institute progressive disciplinary action against an employee or group of employees.

G. Reprimands shall not remain in an employee's personnel file for more than one year.

11.402 Range of Penalties for Stated Offenses

(Reprimands - Suspensions - Dismissals)

* In as much as a reprimand is not an adverse action under these rules, a management official need not apply the Adverse Action Procedures. The penalty of reprimand is included in the schedule to institute progressive disciplinary action against an employee or group of employees. Reprimands shall not remain in an employee's personnel file for more than one year.

NATURE OF OFFENSE	1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
A. Unauthorized absence.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
B. Falsifying attendance record for oneself or another employee.	Reprimand*	Suspension	Suspension	Suspension	Suspension	Dismissal
C. Leaving job to which assigned at any time during working hours without proper permission.	Reprimand*	Suspension	Suspension	Suspension	Suspension	Dismissal
D. Unexcused or unauthorized absence on one or more scheduled days of work or assigned overtime.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
E. Unexcused tardiness.	Reprimand*	Suspension	Reprimand*	Suspension	Suspension	Dismissal
F. Actual or attempted theft of govern-ment property or the property of others.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
CONDUCT						
A. Criminal, dishonest, infamous or notor-iously disgraceful conduct adversely affecting the employee/employer relationship (on duty or off duty).	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal

CONDUCT (con't.)	1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
B. Disobedience to constituted author-ities, or deliberate refusal to carry out any proper order from any supervisor having responsibility for the work of the employee; insubordination.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
C. Disorderly conduct; fighting threaten-ing or attempting to inflict bodily injury to another; engaging in dangerous horseplay, or resisting competent authority.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
D. Disrespectful conduct; use of insulting, abusive, or obscene language to or about other personnel.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
E. Falsification, misstatement, or con-cealment of material fact in connection with any official record.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
F. False testimony or refusal to testify in an inquiry, investigation or other official proceedings.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
G. Knowingly making false or malicious statements with the intent to harm or destroy the reputation of authority, or official standing of individuals or organizations.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
H. Gambling or unlawful betting during working hours.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
I. Promotion of gambling on government premises.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal

CONDUCT (con't.)	1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
J. Willful damage to government property or the property of others.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
K. Engaging in prohibited acts covered in Section 9102 of 4 Guam Code Annotated.	Suspension	Dismissal	Dismissal			
	(Penalty shall be imposed pursuant to Section 9103, 4GCA.)					
DISCRIMINATION						
A. Discriminating against an employee or applicant because of race, color, religion, sex, national origin, age, disability, creed, political affiliation or marital status or other prohibited discriminatory practices.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
INTOXICANTS						
A. Reporting for duty or being on duty under the influence of intoxicants, unauthorized possession of or attempting to bring intoxicants on government premises.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
B. Reporting for duty while under the influence of a narcotic or dangerous drug, or use of same on government property or on duty.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
C. Unauthorized sale or transfer of narcotic or dangerous drug on government property or during duty hours.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal

	PERFORMANCE	1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
		MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
A.	Careless workmanship resulting in spoilage or waste of materials or delay in production.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
B.	Covering up or attempting to conceal defective work; removing or destroying same without permission.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
C.	Failure or delay in carrying out orders, work assignments or instructions of superiors.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
D.	Loafing, wasting time, or in-attention to duty.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
E.	Sleeping on duty where life or property is endangered.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
F.	Unauthorized use or possession of, loss of or damage to government property or the property of others.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
	SAFETY						
A.	Failure to observe precautions for personal safety posted rules, signs, written or oral safety instructions, or to use protective clothing or equipment.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
B.	Violation of safety regulations which endangers life or property.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
C.	Endangering the safety of or causing injury to personnel through carelessness.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal

SAFETY (con't.)	1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
D. Failure to observe no smoking regulations or carrying matches in restricted areas.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
E. Violating traffic regulations, reckless driving on government premises, or improper operation of government motor vehicles.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal

11.500 CIVIL SERVICE COMMISSION HEARING PROCEDURES FOR ADVERSE ACTION APPEALS (COVERING SUSPENSIONS, DEMOTIONS, DISMISSALS) (SEE APPENDIX A)

GOVERNMENT OF GUAM
AGANA, GUAM 96932
DEPARTMENT OF ADMINISTRATION
(DIPATTAMENTON ATMENESTRASION)
DIRECTOR'S OFFICE
(UFISINAN DIRECKTOT)
Post Office Box 884 • Agana, Guam 96932
Tel.: (671) 475-1101/1250 • Fax: (671) 477-6788

Carl T.C. Gutierrez
Governor

Madeleine Z. Bordallo
Lieutenant Governor

SEP 23 1998

DEPARTMENT OF ADMINISTRATION CIRCULAR NO. 98-025

To: Department Heads of Line Agencies and Departments

From: Director, Department of Administration

Subject: Guide to Taking Employee Disciplinary Action

Hafa Adai! The attached Guide to Taking Employee Disciplinary Action is provided to assist supervisors in preparing for and conducting disciplinary actions due to deficiencies in employees' conduct or performance.

We have experienced some procedurally erroneous disciplinary actions taken against employees. These actions resulted in the Civil Service Commission reversing management's decisions. In an effort, therefore, to ensure that corrective actions taken on employees are error-free, the enclosed Guide is provided to help management decide the appropriate corrective action necessary to meet the expected result.

Please provide a copy of this Guide to all supervisory personnel in your office. If you need additional information on this subject, you may contact the Division of Personnel Management, Employee-Management Relations Branch at 475-1131. Si Yu'os Ma'ase.

MICHAEL J. REIDY

Attachment

COMMONWEALTH NOW!

A GUIDE FOR TAKING EMPLOYEE DISCIPLINARY ACTION

Department of Administration
Division of Personnel Management
Employee-Management Relations Branch

A GUIDE FOR TAKING EMPLOYEE DISCIPLINARY ACTION

TABLE OF CONTENTS

INFORMAL CORRECTIVE ACTIONS

1. ORAL ADMONISHMENTS 1

2. LETTER OF WARNING 1

3. LETTER OF REQUIREMENT 1

FORMAL DISCIPLINARY ACTIONS

1. LETTER OF REPRIMAND 3

2. ADVERSE ACTIONS 3

RECORDS FOR ADVERSE ACTIONS 4

SCHEDULE OFFENSES AND RECOMMENDED REMEDIES 4

PRE-ACTION INVESTIGATION 5

GENERAL PROVISIONS 6

OFFICIAL RESPONSIBILITIES

1. DIVISION OF PERSONNEL MANAGEMENT 8

2. DEPARTMENT OR AGENCY DIRECTORS. 8

3. SUPERVISORS 9

4. EMPLOYEE 10

AUTHORIZED CAUSES FOR ADVERSE ACTION. 12

RANGE OF PENALTIES FOR STATED OFFENSES 13

ADVERSE ACTION FORM 18

ATTORNEY GENERAL - USERS GUIDE FOR GOVGUAM AGENCIES
REF: AG 95-1527 DATED JULY 30, 1996 24

INFORMAL CORRECTIVE ACTIONS

1. **ORAL ADMONISHMENTS** are the most common and informal means by which supervisors may call to the employee's attention certain deficiencies in their conduct or work performance. Events for which an employee is orally admonished will not be counted as offenses when determining whether a subsequent event is a first, second or third offense under the Schedule of Penalties and Recommended Remedies. However, such events may be included in the specifications of proposed disciplinary action or performance rating warnings when it is appropriate to describe a pattern of conduct or performance. Oral admonishments will normally be given by the employee's immediate supervisor. They will not be made a matter of record for the employee's official jacket.

2. **LETTER OF WARNING** is a documented informal disciplinary action. By notifying the employee in writing, the supervisor is calling attention to the employee's deficiencies, misconduct, or work performance. The employee should also be advised of the consequences which **MAY** occur if the employee doesn't correct the deficiency or engages in misconduct again. While these letters are not first offenses when determining first, second, or third offenses, they may be appropriately considered in determining the severity of any penalty. This letter should be made a matter of record in the department/agency file for a maximum period of one year. Letter of Warning should not be filed in the employee's official jacket. However, if the employee commits more severe offenses or continues the behavior or conduct in which the Letter of Warning was issued, a copy of this letter must accompany any subsequent disciplinary actions submitted to the Department of Administration, Division of Personnel Management.

3. **LETTER OF REQUIREMENT** is a documented informal disciplinary action which places a specific action or requirement on the employee. A Letter of Requirement is generally used for performance-based discipline and must state:

   A. The reason for issuance;

B. The specific requirements the employee must meet;

C. Failure to meet the requirement may lead to formal disciplinary action;

D. The length of time the requirement will remain in effect;

E. The employee's right to grieve the letter under the administrative or negotiated grievance procedure;

F. That the Letter of Requirement will not be made a matter of record in the employee's official personnel jacket, but must be placed in the department or agency's files for a period of not more than one year.

While the Letter of Requirement will not be counted as a first offense when determining a range of remedies, it may be considered in determining an appropriate remedy should an offense subsequently occur.

FORMAL DISCIPLINARY ACTIONS

1. **LETTER OF REPRIMAND.** Employees reprimanded in writing shall have the following elements in the letter:

   A. Sufficient information to identify the incident which was the basis for the reprimand;

   B. The summary of any discussion held;

   C. The identity of persons involved in the discussion;

   D. The duration the reprimand will be made a matter of record in the employee's official personnel jacket;

   E. Any additional infractions of the same rule/order will result in a more severe penalty; and

   F. Who/what to contact for information on grievance rights.

2. **ADVERSE ACTIONS.** Adverse actions are defined as suspensions, demotions or dismissals from government service. An adverse action will be taken only for such cause as will promote the efficiency of the service. Procedures for adverse actions are defined in Chapter 11 of the Department of Administration Personnel Rules and Regulations as approved by the Civil Service Commission. The Attorney General's Guide is provided as an attachment to assist Department Heads in meeting all the legal requirements for an effective representation by the Attorney General's office.

   It is the responsibility of management to show in every case that it has satisfied delivery requirements of all formal disciplinary actions, i.e., that the employee actually received the notice on a timely basis, or that the actions it took to accomplish delivery constituted an intelligent and diligent effort. This is best accomplished by delivery to the employee personally, and if possible, to obtain written acknowledgment of its receipt. Certified mail with return receipt is another documented method.

RECORDS FOR ADVERSE ACTIONS

All permanent records shall be maintained by the Department of Administration, Division of Personnel Management. A "record" shall contain:

A. A copy of the Notice of Proposed Adverse Action and documented receipt by the employee.

B. The original copy of the employee's written answer, if any.

C. The original copy of a written summary of the employee's oral reply, if an oral reply was made.

D. A copy of the reasons for and written notice of decision (Notice of Final Adverse Action) and documented receipt by the employee.

E. Any order affecting the action.

F. All original supporting material including documents, pictures, statements, notes, investigations, etc.

G. A copy of the Personnel Action (GG-1) effectuating the decision.

If an employee appeals to the Civil Service Commission, the "record" shall be forwarded to the employee and to the commission, when requested.

Records of this nature may be required for further administrative or judicial litigation and may be retained until no longer necessary. All records on disciplinary actions shall be kept in strict confidence and for official use only.

SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

Employees may be formally disciplined by being reprimanded in writing, suspended from duty, reduced in grade or pay, or dismissed from employment. To provide a uniform code of penalties, a Schedule of Offenses and Recommended Remedies is included as an attachment to this handout, to assist supervisors in the administration of discipline. The objectives of the schedule are to:

A. Provide a measure of uniformity in imposing penalties.

B. Develop on the part of employees generally, a clearer understanding of what constitutes reasonable cause for disciplinary action and the penalty for such offenses; and

C. Provide management with a standard and uniform basis for disciplinary offenses and penalties, and to support management in its administration of disciplinary matters.

IT IS EXPECTED THAT ABSENT AGGRAVATING OR MITIGATING CIRCUMSTANCES, THE PENALTY RANGES STATED SHALL BE USED BY SUPERVISORS AND DEPARTMENT/AGENCY HEADS.

PRE-ACTION INVESTIGATION

Before initiating any disciplinary action, a thorough investigation must be made to determine and document the facts. This investigation will normally be done by the employee's supervisor or other management officials. A "prima facie" case (evidence which suffices for the proof of a particular fact until contradicted and overcome by other evidence) should exist before any disciplinary or adverse action is initiated.

A thorough investigation brings the issue(s) into sharp focus and affords the employee an opportunity to explain his/her position to the supervisor, possibly eliminating any need for initiating disciplinary action. Pre-action investigation should encompass any means necessary to clarify the facts.

A. Interviews should be conducted individually and privately with the employee concerned, other employees or supervisors involved and any witnesses; written statements, as appropriate, should be obtained; a visual inspection of the work site should be conducted; and any unusual or special conditions and circumstances should be documented. All supervisors are responsible for ascertaining all pertinent facts prior to making a final decision and for uncovering and attaching due weight to such facts supporting the employee's positions, whether or not the employee offers such facts in their own defense.

B. A bargaining unit employee who reasonably believes the interview may lead to disciplinary action against him/her may request a union representative. Management must afford the union a reasonable opportunity to provide the employee with a representative before continuing the interview. The Public Employee-Management Relations Act (PEMRA) granted employees "the right to be represented by

employee organizations when exclusive recognition has been granted to such organizations for purposes of consultations and negotiations with government management officials concerning terms and conditions of their employment not otherwise fixed by law and in the settlement of grievances and disputes."

C. If, as a result of the investigation, it is determined that a prima facie case does not exist, no further action will be taken. If a prima facie case does exist, the proposing official will draft charges and specifications. The Department of Administration Personnel Division will provide technical assistance on substantive issues and ensure procedural correctness.

D. If it is determined that disciplinary action is warranted, the penalty imposed will be the minimum which may reasonably be expected to correct the employee while maintaining general discipline and morale in the work force.

AT THE TIME THE DISCIPLINE IS PROPOSED OR IMPOSED, THE EMPLOYEE SHALL BE FULLY ADVISED OF THE FACTS WHICH SUPPORT THE ACTION, AND WHY, IN VIEW OF THE FACTS, DISCIPLINARY ACTION IN THE CASE IS NECESSARY. FURTHER, THE EMPLOYEE SHALL BE ADVISED OF ANY AND ALL RIGHTS INCLUDING THE RIGHT TO GRIEVE OR APPEAL SUCH ACTION, AS APPROPRIATE.

GENERAL PROVISIONS

When situations call for disciplinary action, there is a wide range of penalties depending on the offense and the circumstances. The attached Schedule of Offenses and Recommended Remedies shall be used in the determination of appropriate remedies. The minimum penalty imposed should normally be the minimum stated for the type of offense. More severe penalties than those provided in the schedule may also be appropriate when aggravating circumstances exist. When determining the appropriate penalty, the deciding official will consider all relevant facts and information available, the guidelines provided in the schedule and the following criteria:

A. The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical, or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

B. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.

C. The employee's past disciplinary record.

D. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.

E. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties.

F. Consistency of the penalty with those imposed upon other employees for the same or similar offenses.

G. Consistency of the penalty with the Schedule of Penalties. (These schedules are not to be applied mechanically so that other factors are ignored. A penalty may be excessive in a particular case even if within the range permitted by regulations. A penalty grossly exceeding that provided by the standard schedule of penalties may for that reason along be arbitrary and capricious, even though such a schedule provides only suggested guidelines.)

H. The notoriety of the offense or its impact upon the reputation of the department or agency.

I. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

J. Potential for employee's rehabilitation.

K. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

NOT ALL THE FACTORS LISTED ABOVE WILL BE APPLICABLE TO EACH CASE. SELECTION OF THE PENALTY REQUIRES A RESPONSIBLE BALANCING OF RELEVANT FACTORS. MANAGEMENT MUST CONSCIENTIOUSLY CONSIDER THE RELEVANT FACTORS AND IMPOSE DISCIPLINE WHICH IS REASONABLE UNDER THE CRITERIA.

OFFICIAL RESPONSIBILITIES

1. **DIVISION OF PERSONNEL MANAGEMENT, DEPARTMENT OF ADMINISTRATION** will:

   A. Provide information, guidance and assistance to all levels of management in disciplinary matters.

   B. Review disciplinary actions for procedural conformity prior to effecting the action, including any applicable negotiated procedures.

   C. Provide assistance on technical matters relating to the exercise of protective and appeal rights upon request of employees against whom disciplinary action is proposed or effected.

   D. Maintain all permanent records of formal disciplinary actions as prescribed by Personnel Rules and Regulations.

2. **DEPARTMENT OR AGENCY DIRECTORS** will:

   A. Ensure full enforcement of rules/policies and administer fair and just discipline.

   B. Review all proposed and effected actions on their employees.

   C. Make the determination to release an employee's choice of representative if not a bargaining unit designated representative.

   D. Ensure all employees are informed of appropriate standards of conduct and work ethics.

   E. Ensure all supervisors follow any applicable provisions of the negotiated agreement before disciplining employees in the bargaining unit.

   F. Authorize all disciplinary actions involving Proposed and Final Adverse Actions.

   G. Ensure compliance with Chapter 11 of the Personnel Rules and Regulations and the attached guidance provided by the Attorney General's office.

3. **SUPERVISORS**. Each supervisor plays a key role in effectively implementing disciplinary rules and policies. The skill supervisors display in handling disciplinary situations, determines what kind of management image is projected among their subordinates and fellow workers. How well supervisors handle rule-breakers is also an indication of their ability or lack of ability as supervisors. Therefore, all supervisors are responsible to ensure that subordinate employees:

   A. Are sufficiently trained and qualified to perform their assigned job and that they know what the job entails;

   B. Know the rules they are supposed to follow and the penalties for violation.

   C. Know what their supervisor expects of them.

   D. Know where to get help or answers to their questions.

   E. Are periodically informed of their work performance and areas of performance that need improvement and further, are given a reasonable opportunity to improve; and

   F. Are informed about changes in rules, work routines, etc., and given a reasonable amount of notice.

IN ORDER TO ACCOMPLISH ALL OF THE ABOVE, SUPERVISORS MUST;

   A. Have a good communication program to ensure employees know what is going on and feel they belong;

   B. Be impartial in the enforcement of rules;

   C. Be consistent in the enforcement of rules;

   D. Know each employee as an individual;

   E. Plan and organize the work assigned to their unit;

   F. Keep complete records of disciplinary problems;

   G. Recognize the storm warning; prevention, not punishment, should be the goal;

H. Set a good personal example; their attitude and that of their employees are reflected in their product;

I. Ensure all subordinate employees are informed of the standards of conduct, work ethics and appropriate behavior at least annually.

J. Conduct pre-action investigations, when appropriate, compile documented evidence, draft notices to employees when appropriate, and ensure technical review by the Division of Personnel Management before issuing any formal disciplinary letter (proposed or decision); and

K. Ensure all applicable provisions of the negotiated agreement are followed when disciplining employees who belong in a bargaining unit.

Consistent with the above, employees generally receive directions and discipline only from or through their line supervisors. Employees who are guilty of misconduct may be disciplined by a higher level supervisor who should consult with, and to the extent practicable, work through the immediate supervisor in order to ensure that line supervisors exercise maximum responsibility over their subordinates.

4. **EMPLOYEE**. Ideally, discipline should come from the work group and the individual employee, rather than being imposed by management. Employees are urged to assume a positive approach to their responsibilities, as a member of the total work force, by promoting a working climate where fellow employees are motivated to follow their supervisor's leadership to respond by working productively and cooperatively. Every employee is expected to:

A. Know the rules, including what their supervisors expect of them. Ask one's supervisor for an explanation.

B. Maintain a high standard of honesty, integrity, impartiality, and conduct.

C. Recognize that a violation of rules and regulations may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law; and

D. Carry out any proper order from any supervisor having responsibility for the work being supervised. When in receipt of contradictory orders, the employee shall immediately advise the issuing supervisor of the previous

orders and then comply with the latest order even if it remains in conflict with the previous order. Such issuing supervisor thereby assumes full responsibility and accountability for issuing such contradictory orders. (Under this situation, no disciplinary action may be taken against the employee unless the action is otherwise improper, i.e., illegal, in violation of regulation, patently unsafe endangering the employee or others, etc.)

11.303 AUTHORIZED CAUSES FOR ADVERSE ACTION

A department/agency head may remove an employee for such misconduct which affects the efficiency of the service. The authorized causes for adverse actions include, but are not limited to the following:

A. Fraud in securing appointment.

B. Refusal or failure to perform prescribed duties and responsibilities.

C. Insubordination.

D. Intoxication while on duty or the unauthorized possession, use or sale of alcohol on duty or while on government premises.

E. Unlawful use, possession, or sale of illicit drugs.

F. Unauthorized absence.

G. Conviction for a crime.

H. Discourteous treatment to the public or other employees.

I. Political activity prohibited by law.

J. Misuse or theft of government property.

K. Refusal to take and subscribe to any oath or affirmation which is required by law in connection with employment.

L. Acts prohibited by Section 9102, 4 GCA relating to strikes against the government.

M. Acts of prohibited discrimination to include sexual harassment.

N. Failure to comply with the Drug-Free Workplace Program.

O. Other misconduct not specifically listed.

11.402 Range of Penalties for Stated Offenses

(Reprimands - Suspensions - Dismissals)

* In as much as a reprimand is not an adverse action under these rules, a management official need not apply the Adverse Action Procedures. The penalty of reprimand is included in the schedule to institute progressive disciplinary action against an employee or group of employees. Reprimands shall not remain in an employee's personnel file for more than one year.

NATURE OF OFFENSE	1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
A. Unauthorized absence.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
B. Falsifying attendance record for oneself or another employee.	Reprimand*	Suspension	Suspension	Suspension	Suspension	Dismissal
C. Leaving job to which assigned at any time during working hours without proper permission.	Reprimand*	Suspension	Suspension	Suspension	Suspension	Dismissal
D. Unexcused or unauthorized absence on one or more scheduled days of work or assigned overtime.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
E. Unexcused tardiness.	Reprimand*	Suspension	Reprimand*	Suspension	Suspension	Dismissal
F. Actual or attempted theft of govern-ment property or the property of others.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
CONDUCT						
A. Criminal, dishonest, infamous or notoriously disgraceful conduct adversely affecting the employee/employer relationship (on duty or off duty).	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal

CONDUCT (con't.)		1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
		MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
B.	Disobedience to constituted author-ities, or deliberate refusal to carry out any proper order from any supervisor having responsibility for the work of the employee; insubordination.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
C.	Disorderly conduct; fighting threaten-ing or attempting to inflict bodily injury to another; engaging in dangerous horseplay, or resisting competent authority.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
D.	Disrespectful conduct; use of insulting, abusive, or obscene language to or about other personnel.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
E.	Falsification, misstatement, or con-cealment of material fact in connection with any official record.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
F.	False testimony or refusal to testify in an inquiry, investigation or other official proceedings.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
G.	Knowingly making false or malicious statements with the intent to harm or destroy the reputation of authority, or official standing of individuals or organizations.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
H.	Gambling or unlawful betting during working hours.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
I.	Promotion of gambling on government premises.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal

CONDUCT (con't.)		1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
		MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
J.	Willful damage to government property or the property of others.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
K.	Engaging in prohibited acts covered in Section 9102 of 4 Guam Code Annotated.	Suspension	Dismissal	Dismissal			
		(Penalty shall be imposed pursuant to Section 9103, 4GCA.)					
	DISCRIMINATION						
A.	Discriminating against an employee or applicant because of race, color, religion, sex, national origin, age, disability, creed, political affiliation or marital status or other prohibited discriminatory practices.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
	INTOXICANTS						
A.	Reporting for duty or being on duty under the influence of intoxicants, unauthorized possession of or attempting to bring intoxicants on government premises.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
B.	Reporting for duty while under the influence of a narcotic or dangerous drug, or use of same on government property or on duty.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
C.	Unauthorized sale or transfer of narcotic or dangerous drug on government property or during duty hours.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal

PERFORMANCE	1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
A. Careless workmanship resulting in spoilage or waste of materials or delay in production.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
B. Covering up or attempting to conceal defective work; removing or destroying same without permission.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
C. Failure or delay in carrying out orders, work assignments or instructions of superiors.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
D. Loafing, wasting time, or in-attention to duty.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
E. Sleeping on duty where life or property is endangered.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
F. Unauthorized use or possession of, loss of or damage to government property or the property of others.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
SAFETY						
A. Failure to observe precautions for personal safety posted rules, signs, written or oral safety instructions, or to use protective clothing or equipment.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
B. Violation of safety regulations which endangers life or property.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
C. Endangering the safety of or causing injury to personnel through carelessness.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal

SAFETY (con't.)	1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
D. Failure to observe no smoking regulations or carrying matches in restricted areas.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
E. Violating traffic regulations, reckless driving on government premises, or improper operation of government motor vehicles.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal

11.500 CIVIL SERVICE COMMISSION HEARING PROCEDURES FOR ADVERSE ACTION APPEALS (COVERING SUSPENSIONS, DEMOTIONS, DISMISSALS)

(SEE APPENDIX A)

ADVERSE ACTION FORM (Blank)

GOVERNMENT OF GUAM
AGANA, GUAM 96910

ADVERSE ACTION FORM

NAME OF EMPLOYEE: SOCIAL SECURITY NUMBER:

POSITION TITLE: DEPARTMENT/DIVISION:

DATE OF THIS ACTION:

LAST KNOWN RESIDENCE/MAILING ADDRESS:

TYPE OF ACTION:

/ / Notice of Proposed Adverse Action (note: Employee must answer orally or in writing within ten (10) calendar days after receipt of this notice.

/ / Notice of Final Adverse Action

A. SUSPENSION

Effective: _____

Number of Working Days: ___

You may appeal this action in accordance with the procedure outlined on page four (4).

B. DEMOTION

FROM: _____

TO: _____

You may appeal this action in accordance with the procedure outline on page four (4).

C. DISMISSAL

Effective: _____

You may appeal this action in accordance with the procedure outlined on page four (4).

NOTE: A Request for Personnel Action (GG-1) is required to effectuate an Adverse Action.

PAGE 2 - NAME:_____ **SSN:**_____

THIS ACTION IS TAKEN IN ACCORDANCE WITH CHAPTER 11.303, PERSONNEL RULES AND REGULATIONS, EXECUTIVE ORDER 96-24 "AUTHORIZED CAUSES FOR ADVERSE ACTION" AS SHOWN AND MARKED BELOW:

/ / A. Fraud in securing appointment

/ / B. Refusal or failure to perform prescribed duties and responsibilities.

/ / C. Insubordination.

/ / D. Intoxication while on duty or the unauthorized possession, use or sale of alcohol on duty on while on government premises.

/ / E. Unlawful use, possession, or sale of illicit drugs.

/ / F. Unauthorized absence.

/ / G. Conviction of a crime.

/ / H. Discourteous treatment to the public or other employees.

/ / I. Political activity prohibited by law.

/ / J. Misuse or theft of government property.

/ / K. Refusal to take and subscribe to any oath or affirmation which is required by law in connection with employment.

/ / L. Acts prohibited by Section 9102, 4 GCA relating to strikes against the government.

/ / M. Acts of prohibited discrimination to include sexual harassment.

/ / N. Failure to comply with the Drug-Free Workplace Program.

/ / O. Other misconduct not specifically listed.

SEE LAST PAGE FOR CIRCUMSTANCE(S) SURROUNDING ABOVE CHARGE(S).

PAGE 3 - NAME:_____ **SSN:**_____

/ / Chapter 11.306, PR&R, EO96-24 NOTICE OF PROPOSED ADVERSE ACTION

An employee against whom adverse action is sought is entitled to immediate written notice stating any and all reasons, specifically and in detail, for the proposed action. The written notice must make it clear that it concerns only proposed action and not a matter already decided. A copy of such action shall be filed by the department/agency head with the Department of Administration and the Civil Service Commission (CSC).

/ / Chapter 11.307, PR&R, EO96-24 EMPLOYEE'S ANSWER

An employee is entitled to seek reconsideration of the proposed adverse action by answering any charges within 10 days after receipt of the notice; the answer may be made orally, in writing, or both. The department/agency head shall be available to meet with the employee at the designated date and time. The department/agency head may designate a committee to hear the employee's answer. The employee may be presented by a person of his choice. The department/agency head must consider the employee's answers to the charges in the proposed adverse action notice. If the employee fails to answer during the notice period, the employee's inaction shall be construed as an answer, and the department/agency head may proceed with the adverse action upon expiration of the notice period.

/ / Chapter 11.308, PR&R, EO96-24 SUSPENSION DURING NOTICE PERIOD

A. An employee against whom adverse action is proposed, must be retained in active duty status during the notice period; however, in an emergency situation, an employee may be immediately suspended during the notice period, under the following conditions:

   1. The continued presence of the employee may interfere with the efficient operation of the department/agency, or the health or safety of the employee or others.

   2. Suspension is necessary to eliminate the possibility of deliberate damage to equipment, property, or important documents.

   3. The employee's absence without authorized leave prevents the issuance of notice of proposed adverse action and the department/agency's attempt to contact the employee was unsuccessful.

B. Suspension under this section is separate adverse action and is appealable to the Commission within 20 days of the effective date of immediate suspension. A copy of the notice of immediate suspension shall be filed with the Civil Service Commission not later than the next working day following the effective date of the suspension.

C. If the Commission sustains the department's action in suspending the employee during the notice period, the number of days of suspension under this section shall be considered part of the final disciplinary penalty and in no case, shall the final days of suspension be more than 30 work days.

/ / Chapter 11.311, PR&R, EO96-24 NOTICE OF FINAL ADVERSE ACTION

A. An employee is entitled to written notice of the department's decision within 10 days after receipt of the employee's answer to the charge(s). The decision shall be made by the department/agency head and shall be delivered to the employee at, or before the time the action will be made effective. The notice shall be in writing, be dated, state the specific facts found upon which such action is based; inform the employee of his right to appeal to the Commission; and inform the employee of the time limit of 20 days within which an appeal may be submitted as provided in the Personnel Rules and Regulations, Appendix A-CSC-100(c) of the Civil Service Commission Hearing Procedures for Adverse Action Appeals.

B. In the event the appointing authority cannot locate the employee, the Notice of Proposed Adverse Action and/or Notice of Final Adverse Action shall be sent, certified mail, to the employee's last known address.

C. Copies of the final notice of adverse action shall be filed by the department with the Commission not later than the next work day following the effective date of the action. A copy of the final notice shall be filed with the Department of Administration.

CSC-100, PERSONNEL RULES & REGULATIONS, APPENDIX A, EO96-24

/ / A. RIGHT TO APPEAL

1. Any person in the classified service holding a permanent appointment and who is subject to an adverse action by management, except one who is exempted by law from the jurisdiction of the Civil Service Commission, is entitled to appeal an adverse action to the Civil Service Commission. A person who has been appointed to a permanent position and who has satisfactorily completed his probationary period holds a permanent appointment.

2. A contract employee occupying a permanent position in the classified service is entitled to appeal an adverse action to the Civil Service Commission during the term of his contract. Non-renewal of the contract by the government of Guam is not appealable.

/ / B. CONTENTS OF APPEAL

An appeal shall be in writing and shall set forth the answer to the charges and the grounds for appeal. An appeal may be amended within 15 days after filing. A person who is the subject of an adverse action and who files an appeal on his own behalf or through a representative is the appellant.

/ / C. TIME LIMIT FOR FILING APPEAL

An appeal must be submitted within 20 calendar days from the effective date of the action.

/ / D. RIGHTS IN PURSUIT OF APPEAL

An appellant shall:

1. Be assured freedom from restraint, interference, coercion, discrimination, or reprisal.

2. Have the right to be accompanied, represented, and advised by a representative.

3. Be assured a reasonable amount of official time to prepare his case if he is on duty status.

NOTE: CHAPTER 11.302d PR&R, EO96-24 DEFINITION OF DAY

Day means calendar days unless otherwise specified.

NAME OF EMPLOYEE:

SOCIAL SECURITY NUMBER:

DATE OF THIS ADVERSE ACTION:

THE FOLLOWING CIRCUMSTANCE(S) SUBSTANTIATE(S) THE CHARGE(S) INDICATED ON THE FIRST PAGE OF THIS ADVERSE ACTION: (Use additional sheets if necessary)

Name of Department/Agency Head:	Signature of Department/Agency Head:	
Signature of Employee being served:	Date:	Time:

I hereby certify that a copy of this notice was served on the subject on the _____ day of _____, 19__.

/ / SERVED PERSONALLY

/ / REGISTERED MAIL

/ / COPY LEFT AT LAST KNOWN ADDRESS

Print Name of Person who served notice:	Signature of Person who served notice:

ATTORNEY GENERAL
USERS GUIDE FOR GOVGUAM AGENCIES
REF: AG 95-1527 DATED JULY 30, 1996

III. PERSONNEL MATTERS - ADVERSE ACTION

Before instituting any adverse action against any of your employees, coordinate such matters with the Attorney General's Solicitor's Division. This is because employees often exercise their right to appeal your decision to take adverse action, and it is the Attorney General's Office that is called on to defend the actions of your department. It is very difficult to get the Civil Service Commission to sustain an adverse action against an employee, even when required procedures are followed. Furthermore, if the employee prevails, Your Department or Agency will be required to pay attorney fees to the employee's attorney. Before contacting us with your proposed adverse action, create a file documenting the activities of the employee that you believe warrants disciplinary action. This file should include statements from coworkers, notes from supervisors, or any affidavits or written materials that you believe support your case against the employee. Please send this file to the Attorney General's Office along with a cover letter giving us the name of the supervisor or contact person we can call to discuss the matter. We will then review the case and advise you regarding the action. Our office will provide advice and assistance in most other personnel matters if you request assistance.

IV. ATTORNEY'S PRESENCE REQUIRED

If a board, commission, or department wishes to hold a special hearing, or if for any reason you think you need the presence of an attorney at a particular hearing or meeting, please submit a written request at least one week before the requested date. Please explain in this request why you expect to need an attorney present, and include the name and phone number of someone we can contact to help assess the problem and your needs. This advance notification is not merely a courtesy but is essential so that the attorney can assess and anticipate the legal ramifications of the meeting or hearing. By notifying your attorney in advance will receive better legal advice and representation.

CHAPTER 3

CODE OF CONDUCT

STATEMENT OF POLICY

It is the policy of the Director to maintain the highest standards of conduct of government employees to ensure that government services are properly administered.

3.000 ETHICAL CONDUCT AND RESPONSIBILITIES OF GOVERNMENT EMPLOYEES

A. Public service is a public trust. Employees are expected to be loyal to the U.S. Constitution, the Organic Act of Guam, and to perform their duties and responsibilities ethically and in accordance with laws.

B. Employees shall not hold financial interests that conflict with the conscientious performance of duty.

C. Employees shall not engage in financial transactions using confidential or non-public government information or allow the improper use of such information to further any private interest.

D. An employee shall not, except as permitted by statute or regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or persons whose interests may be substantially affected by the performance or non-performance of the employee's duties, or that of the employee's department.

E. Employees shall put forth honest effort in the performance of their duties.

F. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the government.

G. Employees shall not use public office for private gain.

H. Employees shall protect and conserve public property and shall not use it for other than authorized activities.

I. Employees shall not engage in unauthorized outside employment or activities, including seeking or negotiating for employment that conflicts with official government duties and responsibilities.

J. Employees shall, in good faith, disclose waste and abuse and corruption to appropriate authorities, and in doing so shall be protected from reprisal.

K. Employees shall respect the rights and privacy of other employees and shall not use their position, authority or other means to injure another person or employee for personal reasons or malicious purposes.

L. Employees shall refrain from the unlawful use of drugs and alcohol. Drugs shall mean those drugs identified in the Drug-Free Workplace Program Operating Procedures (DFWPOP).

M. Employees shall be courteous and helpful to clients and members of the public.

N. Employees shall be courteous to other employees and respect supervisory authority.

3.100 OATH OF OFFICE

All persons employed by the government, or accepting employment with the government shall subscribe and certify to the prescribed loyalty oath. This oath may be administered by the Director or the officers, or employees designated by him at the time of employment processing. Failure to take such oath, or certifying falsely to such oath, shall be cause for disciplinary action, dismissal or rescindment of employment offer.

3.200 NEPOTISM

A. Spouses and persons within the first degree of relation such as brother/sister or parent/child may not be employed in the same department or agency in a direct supervisor-subordinate relationship. Exception to this rule may be made when it is for the good of the service and upon the approval of the Civil Service Commission.

B. No spouse of any director, chief administrator or other department head within the government of Guam may be employed within the department, agency or instrumentality so headed by such director, chief administrator or other officer.

C. Whenever there are already two or more members of an immediate family in the public service under the same department of any branch of the government, no other members of such family shall be eligible for appointment to any such department; provided, however, that such prohibition shall not apply to employees in the medical, para-medical or teaching professions. ("Immediate Family" means a collective body of persons living together in one house under one head).

Title 4 Guam Code Annotated (GCA)
Public Officers & Employees
CH 4 Personnel Policy and the Civil Service Commission

§4202.1. Duty to Report Criminal Charges or Conviction.
An employee in the classified service who is charged by indictment, information or magistrate's complaint with any crime in any court or who is convicted of a crime in any court except Traffic Court shall provide the head of the department or agency employing the employee with written notice of the charges or the conviction within seventy-two (72) hours thereof.

SOURCE: Added by P.L. 28-122:1 (June 13, 2006), effective July 13, 2006, pursuant to P.L. 28-122:3.

§4202.2. Failure to Report Criminal Charges or Conviction.
(a) Failure to provide the notice required by Title 4 GCA § 4202.1 is grounds for a separate Adverse Action. (b) The sixty (60) day limitation imposed by Title 4 GCA § 4406 commences when the employee gives notice of the charges or conviction of a crime to the head of the department or agency as required by Title 4 GCA §4202.1.

SOURCE: Added by P.L. 28-122:2 (June 13, 2006), effective July 13, 2006, pursuant to P.L. 28-122:3.

GOVERNMENT OF GUAM
AGANA GUAM 96910

RECEIVED
APR 21 1997
D. P. A. OF
ADMINISTRATION

April 15, 1997

RECEIVED
APR 28 1997
Division of
Personnel Management
Admin. Office

To: All GovGuam Directors

From: Attorney General

Subject: Adverse Actions

Hafa Adai!

As you know when a Notice of Proposed Adverse Action (NPAA) is served upon an employee, the employee may respond to the charges within a ten (10) day period before a Final Notice of Adverse Action (FNAA) may be issued, pursuant to DOA Rule 14.22, and simultaneously may seek an audience with the agency head, who must make himself available to the employee during this period.

Rule 14.22 is worded, " An employee is entitled to seek reconsideration...within ten (10) days after receipt of the notice." This has been interpreted by Management to mean that an employee may come in and answer anytime "within" the ten (10) day response period. Management, then, may issue notice of its decision, pursuant to Rule 14.26, within ten (10) days after receipt of the employee's answer to the charges. If the employee answers at the beginning of the ten (10) day response period and Management issues its decision immediately, like the following day, it is conceivable that the entire process will be completed before the entire employee ten day response period has expired.

With the Civil Service Commission's oral decision in Tommy Lee Aflague v. Department of Corrections, CY96-AA04, Management must now wait until the entire ten day response period has expired before it may issue the FNAA. The Commission was persuaded by Judge Frances Tydingco-Gatewood's decision in the Herbert Q. Quinata v. Department of Corrections, CY93-AA05, SP 0312-94, case. The issue there, as in the Aflague case, was whether the meeting between the Director and the employee during the ten day response period constituted an "employee's answer". In both cases, the appellants claimed that the meeting was a summons and occurred in a coercive atmosphere that it could not constitute a voluntary answer to the charges.

The impact of the Commission's ruling is that, from now on, the full ten days response period must run before an agency can issue the FNAA. The Commission is also cognizant that the regulations (Rules 14.22 and 14.26) must be revised in order to reflect this change in policy. but until this is done, please wait - the full period of time has elapsed for the employee's response.

Dångkolo Na Agradesimiento - Thank You Very Much!

CALVIN E. HOLLOWAY, SR.

agmem-3.mem
SS/lzl

CIVIL SERVICE COMMISSION

GOVERNMENT OF GUAM

TERRITORY OF GUAM

TOMMY LEE AFLAGUE, **Appellant,**	**ADVERSE ACTION APPEAL CASE NO. CY96-AA04**
vs.	**RULING ON MOTION TO VOID ADVERSE ACTION**
DEPARTMENT OF CORRECTIONS, **Appellee.**	

This adverse action appeal came for hearing on 23 January 1997 on Appellant's Motion to Void Adverse Action. Appellant was represented by Attorney Curtis Van de veld; the Department of Corrections was represented by Assistant-Attorney General Sylvia L.G. Stake.

MOTION

Appellant moved to void his dismissal on the basis that the Appellee failed to provide the Appellant ten (10) days within which to answer the Notice of Proposed Adverse Action.

FINDINGS

1. Appellant was served a Notice of Proposed Adverse Action on 21 February 1996, charging Appellant with inefficiency, inexcusable neglect of duty, dishonesty, and other failure of good behavior. Appellant was notified of his right to answer within ten (10) days after receipt of the notice pursuant to DOA Rule 14.22. Appellant had up until 02 March 1996 to answer.

2. Appellant met with the Director of Corrections and several management staff on 26 February 1996.

3. On 01 March 1996, Appellant was issued Notice of Final Adverse Action, dismissing Appellant effective 01 March 1996.

4. In Quinata v. Department of Corrections, SP03012-94, the Superior Court ruled that an employee is entitled to the full ten (10) day-answering period even if the day of the meeting precedes the expiration of the tenth day. The Final Notice of Adverse Action by a matter of rule must be issued after the tenth day of this response period. In other words, if the employee answers on the first day of the answering period, management has ten (10) days from the date of answer to issue the final notice, but must allow the balance of the answering period to expire. In this scenario, the remaining nine (9) days for answering must run before the final notice may be issued. If the employee answers more than once, the final date of answer begins the ten (10) day final notice period. By keeping the full ten (10) days open for answering there is a greater opportunity for resolution of disciplinary actions, as we have seen with numerous settlements of adverse action appeals encouraged by open and good faith communication.

CONCLUSION

Appellant is entitled to the full ten (10) day answering period under DOA Rule 14.22. The notice of final adverse action was therefore premature by being served prior to the expiration of the answering period.

ORDER

Appellant's dismissal is hereby voided. Appellant is to be reinstated to his former position with backpay and benefits that he would have been entitled to but for the dismissal. Appellant's records are to be purged of all references to the adverse action.

SO ORDERED this 5th day of August 1997.

RICHARD J. UNTALAN
Chairman

JOAQUIN T. ANGOCO
Vice-Chairman

ZENON J. BELANGER, JR.
Commissioner

JOHN V. GERBER
Commissioner

MANUEL R. PINAUIN
Commissioner

PRISCILLA T. TUNCAP
Commissioner

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

DEC 12 2018

Honorable Therese M. Terlaje
Acting Speaker
I Mina'trentai Kudttro Na Liheslaturan Gudhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Hon. Speaker Therese M. Terlaje
34GL-18-2607
DEC 19 2018
Time: 10:42
Received by:

2018 DEC 19 AM 11:38

Dear Madam Speaker:

Transmitted herewith is Substitute Bill No. 267-34 (COR), **"AN ACT TO *AMEND* §§ 4406 AND 4406.2 OF ARTICLE 4, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO ENHANCING PROCEDURAL PROTECTIONS WITHIN THE CIVIL SERVICE COMMISSION IN FAVOR OF INCREASING TIMELINESS, EFFICIENCY, AND DUE PROCESS FOR CLASSIFIED EMPLOYEES OF THE GOVERNMENT OF GUAM,"** which lapsed on December 13, 2018, as **Public Law 34-145.**

Senseramente,

EDDIE BAZA CALVO

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2018 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÅHEN GUÅHAN*

This is to certify that **Substitute Bill No. 267-34 (COR), "AN ACT TO *AMEND* §§ 4406 AND 4406.2 OF ARTICLE 4, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO ENHANCING PROCEDURAL PROTECTIONS WITHIN THE CIVIL SERVICE COMMISSION IN FAVOR OF INCREASING TIMELINESS, EFFICIENCY, AND DUE PROCESS FOR CLASSIFIED EMPLOYEES OF THE GOVERNMENT OF GUAM,"** was on the 30th day of November 2018, duly and regularly passed.

Therese M. Terlaje
Acting Speaker

Attested:

Régine Biscoe Lee
Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 30 day of NOV, 2018, at 7:55 o'clock P.M.

Assistant Staff Officer
Maga'låhi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date: DEC 13 2018

Public Law No. 34-145

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2018 (SECOND) Regular Session

Bill No. 267-34 (COR)
As substituted by the Committee
on Appropriations and Adjudication.

Introduced by: Mary Camacho Torres
Thomas C. Ada
FRANK B. AGUON, JR.
William M. Castro
James V. Espaldon
Fernando Barcinas Esteves
Régine Biscoe Lee
Tommy Morrison
Louise B. Muña
Telena Cruz Nelson
Dennis G. Rodriguez, Jr.
Joe S. San Agustin
Michael F.Q. San Nicolas
Therese M. Terlaje

AN ACT TO *AMEND* §§ 4406 AND 4406.2 OF ARTICLE 4, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO ENHANCING PROCEDURAL PROTECTIONS WITHIN THE CIVIL SERVICE COMMISSION IN FAVOR OF INCREASING TIMELINESS, EFFICIENCY, AND DUE PROCESS FOR CLASSIFIED EMPLOYEES OF THE GOVERNMENT OF GUAM.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. § 4406 of Article 4, Chapter 4, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 4406. Adverse Action Procedures and Appeals.**

(a) Notice of Adverse Action. An employee in the classified service who is dismissed, demoted, or suspended *shall* be given immediate notice of the action, together with a specific statement of the charges upon which such action is based in the manner required by Article 2 of this Chapter. Copies thereof *shall* be filed with the Commission and, if applicable, with the government entity charged with hearing that person's appeal under the personnel rules governing that person's appointment not later than the working day next following the effective date of the action.

(b) Ninety (90) Day Rule.

(1) Management *shall* give the employee in the classified service notice and statement of the charges under this Section no later than:

(A) ninety (90) calendar days from the date in which management knew or should have known the facts or events which form the alleged basis for the adverse action; or

(B) ninety (90) calendar days from the date of entry of a judgment of conviction in any court of competent jurisdiction that forms the alleged basis for the adverse action.

(2) As used in this Subsection, "management" means the appointing authority of a government department, agency, or instrumentality, or any deputy, division head, or other senior assistant of the appointing authority, however designated, having administrative power to implement management policy and the supervisory responsibility to directly advise the appointing authority regarding an adverse action or other personnel decision involving an employee of the department, agency, or instrumentality.

(3) In situations of emergencies, acts of nature, or disasters, the department, agency, or instrumentality may petition the Commission to suspend or extend the ninety (90) day time limitation provided in this Subsection. The Commission *shall* consider all such petitions expeditiously and may, in its discretion, suspend or reasonably extend the ninety (90) day time limitation after issuing written findings that support the suspension or extension.

(4) Any action brought by a government department, agency, or instrumentality in violation of this Subsection is barred and any decision based upon such action is void.

(c) Suspension and Reinstatement Pending Appeal. While an employee's appeal is pending before the Commission, the employee may be suspended by the department, instrumentality, or agency. The Commission or appropriate entity may order the employee reinstated to active duty during pendency of the appeal.

(d) Twenty (20) Day Rule. The employee, within twenty (20) days of effective date of the action, may appeal to the Commission or appropriate entity by filing that person's written answer to the charges against the employee, regardless of whether the employee has tendered any resignations, which shall have no effect upon the employee's appeal rights. In the event an employee resigns before the issuance of the final notice of adverse action, the employee's twenty (20) day appeal period to the Commission *shall* begin to run at the time the employee submits the resignation, which notice of Proposed Adverse Action *shall* be deemed a final notice of adverse action. Management may not fill the employee's position until:

(1) the twenty (20) day period has elapsed and no appeal has been filed; or

(2) the right to appeal has been exhausted upon judicial review.

(e) Adverse Action Hearing. The Commission or appropriate entity *shall* set an adverse action appeal for hearing as expeditiously as possible and in accordance with the Time Standards provided under this Article. The employee, or that person's representative, *shall* be given the opportunity to inspect any documents relevant to the action that would be admissible in evidence at the hearing, and to depose, interview, or direct written interrogatories to other employees having knowledge of the acts or omissions upon which the dismissal, demotion, or suspension is based. The Commission or appropriate entity may sustain, modify, or revoke the action taken. The decision of the Commission or appropriate entity *shall* be final but subject to judicial review.

(f) Judicial Review.

(1) The government department, agency, instrumentality, or the employee may petition the Superior Court for judicial review of an adverse action appeal only after:

(A) the appeal has been heard by the Commission and a final written or oral decision has been issued; or

(B) the Commission has failed to meet the Time Standards provided under this Article.

(2) The party who petitions for judicial review is responsible for providing certified transcripts of hearings and *shall* bear associated costs.

(g) Reinstatement Pending Judicial Review. Where the Commission has modified or revoked an adverse action in favor of the employee from the classified service, the employee *shall* be reinstated immediately pursuant to

the terms of the decision until such time as the decision is overturned by judicial review.

(h) Enforcement. Failure to adhere to a decision by the Commission to reinstate an employee *shall* result in reduction in salary by ten percent (10%) for the responsible agency head and his deputy from the date of the decision until the date of reinstatement in full compliance with the decision. The Commission may bring an action in the Superior Court to enforce the reinstatement of the employee and impose any appropriate penalties or remedies available at law or equity."

Section 2. § 4406.2 of Article 4, Chapter 4, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 4406.2. Time Standards and Case Management.**

In order to assist in case management and promote timeliness in the resolution of matters before the Commission, *I Liheslatura* (the Legislature) establishes the following Time Standards, which the Commission *shall* attain in all cases filed with the Commission after the effective date of this Act:

(a) For appeals from actions resulting in the termination of an employee, a Hearing on the Merits *shall* commence *no later than* four (4) months from the initial filing of the appeal.

(b) For all other appeals from adverse actions, a Hearing on the Merits *shall* commence *no later than* six (6) months from the initial filing of the appeal.

(c) For grievances filed before the Commission, a Grievance Hearing *shall* be held *no later than* four (4) months from the initial filing of the grievance.

(d) All matters *shall* be adjudicated within twelve (12) months from the filing of a notice of appeal *unless* the Time Standards are waived by the employee.

(e) Failure on the part of the Commission to adhere to the Time Standards described in Subsections (a), (b), and (c) *shall* in no way result in the dismissal of the employee's right to appeal an adverse action.

(f) The Time Standards described in Subsections (a), (b), and (c) may be waived by the employee.

(g) The Time Standards described in Subsections (a), (b), and (c) may be waived by the Commissioners upon finding substantial and compelling reasons to determine that a waiver of the Time Standards is the only option available, and only upon mutual consent of the parties.

(h) Following all oral decisions by Commissioners, the prevailing party *shall* present its proposed written decision for Commissioners to sign *no later than* ten (10) working days from the date of the hearing in which the oral decision was rendered.

(i) All written decisions following any and all hearings *shall* be signed and ordered within sixty (60) days of the date of the hearing."

Section 3. Effective Date. This Act *shall* become effective upon enactment.