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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



**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

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# 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 government property or the property of others.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
<b>CONDUCT</b>						
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 authorities, 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 threatening 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 concealment 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
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### 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

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NAME OF EMPLOYEE:

SOCIAL SECURITY NUMBER:

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POSITION TITLE:

DEPARTMENT/DIVISION:

---

DATE OF THIS ACTION:

---

LAST KNOWN RESIDENCE/MAILING ADDRESS:

---

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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

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A. SUSPENSION

B. DEMOTION

Effective: \_\_\_\_\_

FROM: \_\_\_\_\_

Number of Working Days: \_\_\_\_

TO: \_\_\_\_\_

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

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

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C. DISMISSAL

NOTE:

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

Effective: \_\_\_\_\_

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

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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).**

// 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, E096-24 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, E096-24

// 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.

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NAME OF EMPLOYEE:

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SOCIAL SECURITY NUMBER:

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DATE OF THIS ADVERSE ACTION:

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

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

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