

PHOENIX FIRE DEPARTMENT

VOLUME 1 – Operations Manual

EMPLOYEE DISCIPLINE

MP102.05 09/09 - R

PURPOSE

Phoenix Fire Department members are required to conduct themselves in a highly self-disciplined manner, obeying the City of Phoenix Personnel Rules and Policies, Fire Department Rules of Conduct (M.P. 102.01), and Departmental Standard Operating Procedures. In situations where members do not adhere to these expectations, supervisors will take the necessary action to correct the problem.

This procedure will guide Phoenix Fire Department supervisors in dealing with disciplinary problems they may encounter. For additional information, the "Supervisor's Manual" published by the City of Phoenix Personnel Department should be consulted. If supervisors have any questions concerning employee discipline, they should be directed to the Department's Personnel Section.

GENERAL INFORMATION

It is the policy of the Fire Department that supervisors administer discipline in a corrective, progressive, and lawful manner.

Corrective in the sense that the supervisor and member come to an understanding about the causes and/or reasons for a member's deficiencies, correct those deficiencies, and restore the member to a productive and positive employment status.

Progressive in that discipline will normally begin with a verbal reprimand or warning and, when circumstances of separate or related incidents warrant, proceed to written reprimand(s), suspension without pay, demotion, and finally to dismissal. An incident of misconduct may require any of these forms of disciplinary action whether or not a lesser form has preceded the action. This would depend upon the severity of the offense.

Lawful in that discipline and the procedure by which it is administered does not violate City Personnel Rules or Administrative Regulations, Departmental Rules of Conduct, the Memorandum of Understanding between the City and the Union, Departmental Standard Operating Procedures, or the member's constitutional rights.

The principal objective of disciplinary action is to improve or correct performance, efficiency and morale of the member receiving discipline as well as that of the Department. Disciplinary proceedings and the results thereof are confidential. The supervisor is responsible for maintaining this confidentiality. All media inquiries pertaining to disciplinary actions shall be directed to the Fire Chief and or the Chief of Personnel. Contents of a reprimand or separation notice are public record and subject to disclosure.

Supervisors should keep in mind that all disciplinary actions imposed are reviewed by their superiors, as well as being subject to either the grievance process or Civil Service Appeal. It is mandatory that supervisors seek support from their superiors prior to taking disciplinary action, and feel comfortable that they can support their actions in a formal review or appeal process. Support from supervisors is extremely important when disciplinary action beyond a verbal reprimand is being considered. The Department Personnel Section, upon request of the supervisor, is available to provide staff support and guidance in any disciplinary action. Also, the Deputy Chief of the Training Academy shall be notified of all disciplinary action involving a probationary Firefighter or Firefighter Trainee.

EMPLOYEE ASSISTANCE PROGRAM

Occasionally supervisors will be approached by a member with personal problems who requires assistance. Many times just listening and helping the members reason through the problem will be all that is needed. Other times, particularly with serious alcohol, drug, stress, marital or financial problems, the member may require professional assistance. This help is available through the Employee Assistance Program (Refer M.P. 105.01A). Supervisors must be aware that when a member's personal problems involve violations of City or Departmental Rules or Policies, disciplinary action may be necessary in addition to entering the Employee Assistance Program.

UNION REPRESENTATIVE

Employees who are members of bargaining units have the right to Union representation in disciplinary actions if they so chose.

The presence of a Union Representative will require a non-unit supervisor to become involved. If the second level of supervision or above is directly involved in the disciplinary action and/or investigation of a member represented by Local 493, the right of Union representation will be told directly to the member. When a member requests not to be represented by the Union in a disciplinary action and/or investigation, that request will be honored and documented.

LEGAL REPRESENTATION

Supervisors MAY allow legal counsel for the member in disciplinary actions resulting from alleged criminal activity. The legal counsel's function would be to advise the member, not to answer for him/her.

PROGRAMS FOR IMPROVING JOB PERFORMANCE

In most cases minor job performance problems can be resolved by the supervisor bringing the problem to the attention of the employee, and the employee making the proper modification in his/her performance. When a serious job performance problem is identified, the supervisor must decide whether to solve it through:

- Training
- Employee Assistance Services
- Non-Disciplinary Counseling or
- Disciplinary Action

Each situation will be considered separately, and it will be the supervisor's responsibility to make a determination as to the best course of action to take to resolve the situation.

If the situation is determined to be a training problem, a program for improvement will be developed for the member. This may best be accomplished through the use of a Performance Management Guide (PMG) Report. If a scheduled rating is used, the appropriate section or sections on the forms must be rated. If it is unscheduled, only the areas of the appropriate section or sections, which are unsatisfactory or require improvement, are rated.

When utilizing the Performance Management Guide (PMG) Report to prepare a program for improvement, attachments must be included that clearly identify the member's problem area(s). These attachments must include measurable objectives for improvement. The program must also indicate a reasonable time frame within which the objectives are to be met. At the completion of the evaluation period, if the member's performance has been corrected, another Performance Management Guide (PMG) Report should be completed indicating compliance with standards in all areas. If the member's performance has not improved sufficiently, the situation should be dealt with as a disciplinary problem.

INVESTIGATIVE PROCESS

Any accusation of misconduct or complaint involving Fire Department members shall be thoroughly investigated before formal action is taken. All accusations of misconduct or complaints involving Fire Department members shall include notification of the next level Supervisor. This insures the situation is assessed and assigned to the appropriate level of Supervision necessary for the investigation. The investigation is a fact-finding process and Supervisors must be cautioned not to make judgments until a thorough investigation is concluded.

For accusations and complaints of serious on-duty misconduct, an investigative report must be completed. Accusations or complaints of criminal behavior or misconduct will be assigned by the Personnel Chief to the Performance Auditing Section for investigation. Exceptions to this are some misdemeanor infractions of the law, which will be assigned by the Personnel Chief to be investigated by the appropriate supervisor. The Fire Chief, with approval of the City Manager, has the discretion to suspend the employee (with pay), or reassign an employee pending the outcome of the investigation.

Preparation of an investigative report, must include the following information before it will be considered complete:

Summary of the Incident - should answer the questions: who, what, where, why, when, and how. In a criminal situation, a Summary of the Police Report will be requested through the Performance Auditing Section.

Interviews Conducted - this must include the interviewee, rank and assignment, date, time, location, those present, and the information discussed. If possible, a signed statement by the interviewee should also be obtained. When an accused member is being interviewed, and the complaint is of a criminal nature, the member shall be advised that:

- He/she has the right to Union representation.
- The questions asked will be narrowly and specifically related to employment issues.
- Statements will not be used against the member in criminal proceedings. If a subpoena is received for any of the information contained in the investigation, the City of Phoenix will use all legal resources available to quash the subpoena.

- Failure to cooperate is a violation of Personnel Rule 21BI6 and serves as a separate basis for disciplinary action, including dismissal.

Conclusions - from the information available, the supervisor must make a determination of responsibility. Extenuating circumstances may be discussed in this section.

Recommendations - state the recommended disciplinary action or alternate course of action, if any.

Attachments - relevant documents that the supervisor feels should be a part of the investigative report.

The completed report shall be forwarded to the Fire Department Personnel Chief via the appropriate Division Head. The investigative report is CONFIDENTIAL and for administrative use only. Care will be taken to maintain the confidentiality of the report.

Questions concerning legal issues pertaining to Administrative Investigations should be directed to the Fire Department Personnel Section.

The following are legal issues that all supervisors should keep in mind when conducting administrative investigations:

- A member may be compelled by supervisors to answer questions that are related to his/ her duties or fitness for duty. Failure to answer such questions completely and truthfully may form the basis for disciplinary action, including dismissal. A member under investigation should be so advised prior to an administrative interview. In an investigation involving a criminal matter, the member should be advised of the following:
 - He/she has the right to Union Representation.
 - The questions asked will be narrowly and specifically related to employment issues.
 - Statements will not be used against a member in criminal proceedings. If a subpoena is received for any of the information contained in the investigation, the City of Phoenix will use all legal resources available to quash the subpoena.
 - Failure to cooperate is violation of Personnel Rule 21BI6 and serves as a separated basis for disciplinary action, including dismissal.
- If an attorney is permitted, and the matter is of a criminal nature, the attorney's function is to advise the member, not to answer for him/her.
- Lockers, desks, etc. furnished by the Department for the use of members are subject to inspection and, if reasonable grounds for suspicion exist, may be searched by supervisors without a search warrant. Items found may be used in a disciplinary proceeding.
- If reasonable grounds for suspicion exist, a member may be required by supervisors to submit to a blood or urine test to determine whether he/she is under the influence of alcohol, drugs, or controlled substances while on duty. These tests must be performed under medical supervision.

SUSPECTED ON-DUTY SUBSTANCE ABUSE

Reporting for work under the influence of alcohol or drugs, or any substance, which impairs any employee's mental or physical capacity, will not be tolerated. The unauthorized use, sale, purchase or possession of alcohol or controlled substances at the worksite is prohibited, and shall be grounds for discipline up to and including dismissal. When there exist reasonable grounds to believe that the employee is under the influence of alcohol or drugs, the supervisor may direct the employee to submit to a drug screening and/or blood alcohol test. Refusal to submit to such test will subject the employee to disciplinary action up to and including dismissal. Any employee using medication or prescribed drugs that may impair job performance shall report this fact to his/her supervisor.

Supervisory Responsibilities - If a supervisor has reasonable grounds to believe that an employee is under the influence of alcohol or drugs when reporting for work or during the work shift, the supervisor has the obligation to verify the employee's condition and relieve the employee of his/her duties. The second level supervisor must be notified of the situation and must respond to the workstation. A Union representative shall be contacted to respond in case the employee requests representation.

The possibility of liability to the City and to the supervisor exists if an employee who is under the influence of alcohol or drugs is allowed to remain working, to operate or drive vehicles or equipment on the job, or to drive a private vehicle from the work site. An employee who is believed to be under the influence of alcohol or drugs must not be allowed to operate or drive a vehicle, including a private vehicle, until the condition of the employee has been determined.

Observation - If a supervisor observes an employee who seems to be under the influence of alcohol or drugs, he/she should, if practical, seek the opinion of at least one additional supervisor. Reasonable grounds should exist before requesting the employee to take a drug screening and/or blood alcohol test. Reasonable grounds would include a combination of various factors such as slurred speech, red eyes, dilated pupils, incoherence, unsteadiness on feet, smell of alcohol or marijuana emanating from the employee's body, inability to carry on a rational conversation, increasing carelessness, erratic behavior, inability to perform the job, other unexplained behavioral changes, etc. The supervisors shall document these observations in writing. A copy of this document will be provided to the employee upon request.

Referral for Testing - If the supervisor determines that reasonable suspicion of impairment exists, the supervisor must contact their Battalion Chief. The employee should be directed to accompany the supervisor along with the Battalion Chief to the O.M.C facility "Lab Express" at 505 W. McDowell, Bldg. "A", during the hours of 8 a.m. to 5p.m. After hours 5 p.m. to 8 a.m. employees can be taken to O.M.C. "Concerta Airport" 1818 E. Sky Harbor Circle for a drug screening or blood alcohol test to determine fitness for duty. All required releases and/or forms will be filled out and signed by the employee at O.M.C. before a sample is obtained. The employee should be informed that tests will be conducted on City time, paid for by the City, and are part of his/her job responsibilities.

The employee should be informed that refusal to take a drug screening and/or blood alcohol test or sign a release of information form may face disciplinary action up to and including dismissal.

A drug screening or blood alcohol test found to be positive would be verified by an additional test. O.M.C. will ensure adequate chain-of-custody for sample collection and testing. Upon request, a separate sample will be provided to the employee for independent testing at his/her expense.

Test Results - Employees who test positive or refuse the test of release of information shall be considered unfit for work and will be relieved from duty that day. The employee should not be allowed to drive to the hospital or home. If the employee submits to the test and signs the release of information, he/she will be placed on paid leave or "City business" until the status of the tests and the circumstances surrounding the impairment are determined.

DETERMINING THE PROPER DISCIPLINARY ACTION

After an incident or complaint has been thoroughly investigated and the need for disciplinary action determined, a decision concerning the action that would be most effective must be made. Factors to be considered in making this decision are:

- Seriousness of the offense.
- Member's past history with the Department.
- Past practice of the Phoenix Fire Department in dealing with similar offenses (Supervisors may have to consult the Fire Department Personnel Section for this information).

Consistency is critical to any disciplinary system. Although disciplinary action for the same offenses should be "similar," the final decision to determine the exact action will be made after considering the factors previously listed, and applying them to the particular situation.

SUPERVISORY COUNSELING

Verbal - This is the most often used and least severe of the formal group of corrective actions. It is, simply stated, a verbal warning. When properly administered, it serves to notify employees that certain behaviors or performance deficiencies need changing/improving or that discipline will take place. The supervisor should keep notes of the counseling session for future reference and guidance. Notes or records should be placed in the supervisor's file.

Written - A supervisor may elect to document with a memo of counseling. This memo of counseling may be placed in Employee's District or Personnel File.

THE WRITTEN REPRIMAND

Supervisors may elect to use formal written reprimands to document a repeat offense of a minor infraction, or a more serious single infraction for which suspension; demotion or dismissal is not appropriate. The form used for issuing a formal written reprimand is:

The City of Phoenix Written Reprimand (Form 14-8D Revised 11/02)

When the supervisor decides to issue a formal written reprimand he/she will prepare a Written Reprimand Form. The distribution of the document is the white copy to the employee and the canary and pink copy are forwarded to the Personnel Control Officer for inclusion in member's department personnel file and City personnel file. In a case involving the performance of probationary firefighter a photocopy of the document is forwarded to the Director of Training.

PREPARATION OF MEMOS OF COUNSELING AND WRITTEN REPRIMANDS

A memo of counseling documenting a verbal reprimand or formal Written Reprimand are both addressed from the supervisor to the member. These documents should be written as if the member were being told the information in a conversation with the supervisor. The following must be included in these documents.

- The date of preparation.
- A description of the incident.
- The rule(s) and/or policy violation.
- An explanation or what is expected of the member in the future, written as a clearly stated objective.
- The disposition of the document.
- A review date for possible removal from his/her Personnel File in accordance with M.P. 105.11.
- The signature of both supervisors and the member, as an indication that the employee understands (not necessarily that he/she agrees with) the contents of the document and has received a copy.

If the member refuses to sign a formal Written Reprimand the supervisor must obtain a witness signature on the document indicating that refusal. The document is then forwarded as previously described. A member's refusal to sign is not grounds for separate disciplinary action.

If, as a result of the disciplinary action, a formal grievance is filed, the Department will be represented in the grievance hearing by the appropriate Division Head or a designated representative. A date for review or a time at which the member may request the removal of the document from the Personnel File may be indicated. For information relating to removal of documents, see M.P. 105.11 "Removal of Documentation from Personnel File."

SUSPENSION, DEMOTION OR DISMISSAL

Suspensions, demotions and dismissals are utilized as punitive, yet corrective measures taken for numerous repeated incidents of rule infractions or a single major infraction by a member. It is the responsibility of the supervisor to stabilize a situation in which immediate action is necessary. This may require relieving the member from duty (with pay) until a decision is made concerning the official action to be taken. Supervisors should not commit themselves to a particular form of disciplinary action prematurely.

The Fire Chief will make the final decision concerning suspensions, demotions or dismissal. This will ensure the consistency of serious discipline administered throughout the Department. When the final decision is made concerning the proper course of action, a Discipline Notice (Form #60-21 Revised 1-91) will be prepared by the Personnel Section and disciplinary action will be administered.

Any suspension, demotion or dismissal is subject to appeal to the Civil Service Board within fourteen (14) days of service of notice or twenty-one (21) days from the date of certified mailing. If a formal appeal is filed, the Department will be represented in the Civil Service Hearing by the appropriate Division Head or a designated representative. The Department Personnel Section will furnish staff assistance.