

**2.60.040 - Disciplinary action.**

A. General Policy.

1. It is the policy of the city that management will inform its employees about what is expected at work, what constitutes employee misconduct, what management and the employee may do to correct any misconduct, and what the employee's rights are if disciplined.
2. It is the responsibility of all employees to observe rules of conduct necessary for the proper operation of city government. Administrative procedures have been established for the handling of disciplinary measures when required. All such measures shall follow the presentation of charges to the employee.
3. Disciplinary action, up to and including termination, may be imposed for misconduct.
4. Written documentation concerning employee disciplinary action imposed will become a permanent part of an employee's personnel record.

B. Types of Disciplinary Action.

1. Verbal Warning.
  - a. Whenever grounds for disciplinary action exist, and the department head determines that more severe action is not immediately necessary, the deficiency demonstrated should be verbally communicated to the employee.
  - b. A memorandum of the date and content of the verbal warning shall be written by the department head, or designee. This memorandum shall be placed in a separate verbal warning folder in the human resource department and is not part of the employee's personnel file.
2. Written Reprimand.
  - a. The department head, or designee, may reprimand employees for cause. The department head, or designee, shall furnish the employee with an employee written reprimand notification setting forth the reason(s).
  - b. A copy of the employee written reprimand notification, signed by the department head, or designee, and the employee, shall be sent to the human resource department and be permanently placed in the employee's personnel file. If the employee refuses to sign the form, the department head, or designee, will so state.
3. Suspension.
  - a. The department head, or designee, after consultation with human resource department and the city attorney, may suspend employees with or without pay.
  - b. When suspending an employee, the department head, or designee, shall follow the due process proceedings hereinafter set forth in subsection E of this section, entitled, Imposing Disciplinary Action.
  - c. On or before the effective date of the suspension, the department head, or designee, shall furnish the employee with a written employee suspension notification setting forth the reason(s) for suspension.
  - d. A copy of the employee suspension notification, signed by the department head, or designee, and the employee, shall be sent to the human resource department and

be permanently placed in the employee's personnel file. If the employee refuses to sign the form, the department head, or designee, will so state.

e. Employees on suspension shall be responsible for making full-time employee contributions to their employee insurance benefits.

4. Demotion.

a. If in the best interest of both the employee and the city, the department head, or designee, after consultation with human resource department and the city attorney, may demote or reduce in grade employees for cause, or provide for reasonable accommodation in appropriate circumstances.

b. When demoting an employee, the department head, or designee, shall follow the due process proceedings hereinafter set forth in subsection E of this section, entitled, Imposing Disciplinary Action.

c. On or before the effective date of the demotion, the department head, or designee, shall furnish the employee with a written employee demotion notification setting forth the reason(s) for demotion.

d. A copy of the employee demotion notification, signed by the department head, or designee, and the employee, shall be sent to the human resource department and be permanently placed in the employee's personnel file. If the employee refuses to sign the form, the department head, or designee, will so state.

5. Transfer for Cause.

a. If in the best interest of both the employee and the city, the department head, or designee, after consultation with human resource department and the city attorney, may transfer employees (except a probationary employee) by furnishing the employee with a written employee transfer notification.

b. A copy of the employee transfer notification, signed by the department head, or designee, and the employee, shall be sent to the human resource department and be permanently placed in the employee's personnel file. If the employee refuses to sign the form, the department head, or designee, will so state.

6. Termination.

a. The department head, or designee, after consultation with human resource department and the city attorney, may terminate employees for cause.

b. When terminating an employee for cause, the department head, or designee, shall follow the due process proceedings hereinafter set forth in subsection E of this section, entitled, Imposing Disciplinary Action.

c. On or before the effective date of the termination for cause, the department head, or designee, shall furnish the employee with a written employee termination notification setting forth the reason(s) for termination.

d. A copy of the employee termination notification, signed by the department head, or designee, and the employee, shall be sent to the human resource department and be permanently placed in the employee's personnel file. If the employee refuses to sign the form, the department head, or designee, will so state.

e. Any employee who has been terminated for cause is not eligible for any city position for a period of one year.

C. Causes for Disciplinary Action. Causes for disciplinary action, up to and including termination, may include but are not limited to, the following:

1. Violation of the laws, regulations, or ordinances of the city, the state of Utah, or the United States, other than minor traffic offenses.
2. Any violation of the employee code of conduct.
3. Any violation of this personnel policies and procedures manual.
4. Conduct which endangers the peace and safety of others or poses a threat to the public interest.
5. Any type of inappropriate behavior while on the job or related to the job.
6. Unauthorized absence.
7. Falsification or unauthorized alteration of records.
8. Falsification of employment application.
9. Knowingly marking the time slip of another employee, authorizing one's time slip to be marked by another employee, unauthorized alteration of a time slip.
10. Gambling or engaging in a lottery at any city work area.
11. Misusing, destroying, or damaging any city property or the property of any employees.
12. Sleeping during working hours, with the obvious exception of firefighters.
13. Inability to perform the essential functions of the job, with reasonable accommodation for a legally recognized disability.

D. Conducting an Investigation.

1. The department head, or designee, shall conduct an investigation into the allegations which form the grounds for disciplinary action.
2. The department head, or designee, may place employees on paid administrative leave during an investigation to determine the facts upon which disciplinary action may be imposed.
3. Disciplinary action shall not be imposed until a hearing, with appropriate written notice, has been held pursuant to subsection E of this section, entitled Imposing Disciplinary Action. The investigation shall include an opportunity for the employee to respond to the allegations.

E. Imposing Disciplinary Action.

1. The department head, or designee, shall conduct disciplinary action in a consistent manner.
2. Each employee shall be afforded prior access to city's rules, policies, and procedures.
3. The employee shall receive timely notice of the pre-disciplinary meeting, overview of allegations, and potential disciplinary action.
4. Prior to imposing the disciplinary action, the employee shall have the opportunity to review the disciplinary action with the department head, or designee. The employee shall have the opportunity to respond to the allegations. The employee's written response, if any, and other related documents shall be placed in the employee's personnel file.
5. In determining the type and severity of the disciplinary action, the department head, or designee, may consider aggravating and mitigating circumstances such as: the repeated

nature of misconduct; prior disciplinary action imposed; the severity of the misconduct; the employee's work record; the effect on city operations; and/or the potential of the misconduct to harm person(s) or property.

6. For disciplinary action other than a verbal warning, the department head, or designee, shall notify the employee, in writing, of the findings of the investigation. The written statement shall include:

- a. The grounds for disciplinary action, including a description of the specific misconduct for which the disciplinary action is being imposed.
- b. Any prior disciplinary action imposed.
- c. The disciplinary action to be imposed.
- d. The effective date and duration of the disciplinary action.
- e. The corrective action necessary for the employee to avoid further disciplinary action.

7. The department head, or designee, may note the disciplinary action on their personal notes at the time the disciplinary action is imposed and/or on the employee's performance evaluation form.

#### F. Appeal Procedures.

##### 1. Employee Appeals Board.

a. The employee appeals board for the city of South Salt Lake shall consist of the city's administrative law judge ("ALJ") appointed pursuant to the procedures set forth in Chapter 2.22 of this code.

##### 2. Nonappealable ~~Rights~~Actions.

- a. No probationary, temporary/seasonal, or part-time employee, or ~~department head~~appointed employee has the right to appeal any disciplinary action.
- b. No ~~merit~~-employees have appeal rights for ~~a~~ verbal warnings, written reprimands, or involuntary reassignment for disciplinary purposes which does not affect the employee's rate of pay.
- c. Unless specifically provided by this section, no employee has the right to appeal a termination, transfer or pay reduction which is made for a non-disciplinary reason, such as a reduction in force, furlough, reorganization, or a broadly applicable reduction in salary which affects multiple employees in a department.
- d. No ~~merit~~-employees have appeal rights for suspension from employment without pay for two days or less.
- e. No appeal is allowed from discharge or involuntary reassignment due to loss of state or federal licensure or certifications which are required for the employee's position.

##### 3. Appealable Rights for Merit Employees.

- a. ~~Any written reprimand.~~
- b. Merit employees have the right to appeal Aany disciplinary action resulting in:
  - i. a dismissal, termination or release from employment;
  - ii. demotion;

iii. suspension from employment without pay for more than two days; or  
iv. a involuntary transfer for a disciplinary purpose to a position with less remuneration, ~~or to a position which eliminates an opportunity for advancement in employment which existed prior to the transfer.~~

~~e. Any administrative action which directly affects the salary or rate of pay of the employee.~~

~~d. Any practice, rule, or policy, directly affecting the employee, which is contrary to law.~~

4. Appealing to the ALJ.

a. Employees desiring to file an appeal ~~a disciplinary action~~ must submit their written notice of appeal, describing in detail the grounds for the appeal with any supporting documentation, to the city City recorder Recorder within ten calendar days following the disciplinary action giving rise to the appeal, or an employee will be deemed to have waived all appeal rights.

b. A copy of the appeal shall also be filed with the employee's supervisor and the human resource department. Upon receipt by the city recorder of the employee's appeal, a date and time shall be set for the ALJ to convene a hearing to hear the appeal. All appeal documents will then be forwarded to the ALJ.

c. Hearings and decision of the ALJ shall be held and rendered as soon as reasonably practicable, with no unreasonable delay. The ALJ may allow an enlargement of time for hearing preparations, if good cause is shown, but this subsection may not extend the amount of time during which an appealing employee may timely submit a notice of appeal.

d. All parties to the appeal shall be entitled to appear at the appeals hearing in person and to be represented by counsel, to have ~~a the hearing open to the public hearing~~, to confront ~~the witness~~es whose testimony is to be considered, and to examine the evidence to be considered by the ALJ.

e. The ALJ may request the appointment of independent medical or other technical experts, in the ALJ's sole discretion, if the ALJ believes that the expert's opinion is necessary for the resolution of the case.

fe. Submission of Documentation:

i. All documentation to be presented at the appeals hearing shall be made available by each party upon written request of the party seeking the documentation at least five business days prior to the scheduled hearing date; all requests for documents shall be considered to be ongoing up to and through the time of the hearing.

ii. Any party to any appeal may, no later than five business days prior to the date of the appeal hearing or cutoff date for a decision, submit to the ALJ a written brief, no more than ten pages in length, with supporting

documentation, which articulates that party's arguments and position regarding the subject matter of the appeal.

iii. Copies of all written briefs shall be concurrently forwarded to the opposing party, and a reply brief may be submitted in response no later than two business days prior to the hearing date or cutoff date for a decision.

g. The Utah Rules of Evidence, Utah Rules of Civil Procedure, and Utah Administrative Code do not apply to administrative hearings. Hearings are conducted to be fundamentally fair to the parties and to provide due process. The ALJ may entertain objections in order to maintain decorum and to address issues of relevance.

h. With the exception of a request for an order requiring the release of documents which have been requested or scheduling matters, no pre-hearing motions shall be entertained by the ALJ.

i. In the ALJ's discretion, parties may convene for a pre-hearing conference with the ALJ to discuss relevant issues, such as anticipated witnesses or the scope of the appeal.

fj. Record of the Hearing. An audio recording of the hearing shall be kept and all exhibits received in evidence at the hearing shall be maintained.

5. ~~Decision by ALJ~~ Appeals from disciplinary actions. The proceedings for appeals from disciplinary actions are bifurcated.

a. During the first phase of the proceedings, the ALJ considers evidence of the charges upon which the discipline was based. The City bears the burden of proving the charges by a preponderance of the evidence.

i. If the ALJ sustains all of the charges, then it shall proceed to the second phase of the hearing, described in subsection (F)(5)(b).

ii. If the ALJ sustains none of the charges, then the ALJ shall overturn the disciplinary action, as provided in subsection (F)(7)(b).

iii. If the ALJ sustains some, but not all, of the charges, then the ALJ shall refer the decision back to the Department Director for reconsideration of the disciplinary decision, in light of the ALJ's findings. A referral back to the Department Director is an interlocutory order, and is not subject to appeal. The Department Director may decrease the severity of, modify, withdraw, or retain the disciplinary decision previously made. If the Department Director fails to respond to the ALJ within three (3) working days from the ALJ's referral, then the ALJ shall proceed as if the Department Director has not changed the disciplinary decision.

b. During the second phase of the proceedings, the ALJ considers whether the misconduct warranted the sanction imposed by the Department Director. The ALJ gives broad deference to the Department Director's choice of punishment, and reviews

that decision for an abuse of discretion. The disciplined employee bears the burden of proving an abuse of discretion by clear and convincing evidence.

i. A Department Director abuses his or her discretion if the sanction is arbitrary, capricious or illegal.

ii. When considering whether the sanction is arbitrary, capricious or illegal, the ALJ may consider whether the discipline imposed is:

A. disproportionate in light of the circumstances; or

B. inconsistent with previous sanctions imposed by the department upon similarly situated employees pursuant to the department's or city's own policies.

iii. If the ALJ finds that the disciplined employee has carried the burden of establishing an abuse of discretion, then the ALJ shall overturn the disciplinary action.

c. The disciplined employee may waive challenge to either phase of the proceedings at any time. In the absence of a clear, written waiver, the proceedings will proceed through both phases.

6. Appeals from discharge or reassignment due to fitness for duty determinations.

a. Notwithstanding subsection (F), in cases of discharge or transfer to a position of less remuneration due to a determination that the individual is unfit to report to duty due to a medical condition, the employee has the right to appeal that decision, as provided in subsection (F)(4).

b. In cases of fitness for duty appeals, the City bears the burden of proving by a preponderance of the evidence that the circumstances warrant the action taken.

7. The ALJ shall render a final decision in writing and may:

a. Sustain ~~the disciplinary City's~~ action; or-

b. Overturn ~~the disciplinary City's~~ action-;

i. ~~In such case~~If the City's action is overturned, the human resource department, or designee, shall remove the record of the ~~disciplinary~~ overturned action from the employee's personnel file and retain it separately, which record shall be designated as private pursuant to Utah law.

ii. The ALJ ~~may~~shall also reinstate any loss of pay associated with ~~the an~~ disciplinary ~~overturned~~ action, but in the case where an employee has taken employment elsewhere, the amount shall be reduced by any amounts the employee earned from other employment during this period of time.

iii. If a Department Director reduces the severity of the disciplinary decision pursuant to subsection (F)(5)(a)(iii), then the ALJ shall reinstate any loss of pay which would not have been incurred, if the reduced discipline had been initially imposed.

8. The ALJ shall transmit a copy of its decision to the employee, the department director, the human resources department, and the City Recorder for certification. The City Recorder shall certify the decision by placing the City's official seal on the document, and the date of certification.

96. The written ruling filed by the ALJ pursuant to subsection (F)(8) shall be the final administrative decision of the city and the decision may be appealed by either party to the ~~third district judicial court for the state of Utah~~ Utah Court of Appeals within thirty (30) days of from the date on which the ALJ's decision is certified by the City Recorder.