SECTION TITLE: PAYROLL/PERSONNEL

CHAPTER TITLE: DISCIPLINARY ACTION

I. INTRODUCTION

Effective: 4/15/2007

A. PURPOSE

The purposes of this Policy are threefold:

1. providing guidelines for managers and supervisors in exercising their responsibilities in recommending and administering disciplinary action;
2. advising employees about agency expectations regarding employee work performance and conduct and the disciplinary process; and
3. providing mechanisms by which employee work performance and conduct may be managed.

B. APPLICABILITY

This Policy includes procedures applicable to all Division of Highways (DOH) employees, certified permanent and probationary employees, as further detailed herein. These procedures supersede all prior procedures and memorandums on this subject.

Disciplinary action may be recommended or taken by authorized managers in accordance with this Policy whenever an employee fails to conform to expected standards of work performance or conduct.

II. STANDARDS OF WORK PERFORMANCE AND CONDUCT

Effective: 4/15/2007

A. **GENERAL**

The Division of Highways expects its employees to meet certain standards of work performance and conduct regardless of the type of work or unit to which they are assigned. These standards include but are not limited to the following:

1. Possession of the required qualifications for a job classification and the ability to satisfactorily perform the job skills after a fair trial period;
2. Regular attendance, including promptness in reporting to work and reporting availability for work, and appropriate use of leave, meal, and break time;
3. Maintenance of a high standard of personal conduct and courtesy in dealing with the public, fellow employees, subordinates, supervisors, and officials;
4. Compliance with accepted safe working practices;
5. Compliance with working rules, policies, procedures, regulations, and laws that apply to Division of Highways employees, including but not limited to those promulgated by organizational units, the Division of Highways, the Division of Personnel, the Department of Transportation, or any other State agency;
6. Avoidance of detrimental behavior or outside activity or employment or interests that may interfere with work performance or conduct or that may create a conflict of interest;
7. Careful and diligent use and safeguarding of all state properties, facilities, equipment, and records, and use of the same for designated or approved uses only;
8. Performance of assigned duties in accordance with the standards and instructions given by an appropriate supervisor;
9. Observance of and respect for the chain of command;

10. Refusal to engage in insulting, abusive, threatening, offensive, defamatory, harassing, or discriminatory conduct or language and prompt reporting of the same to the appropriate authority; and
11. Cooperation and assistance as required in agency audits and investigations, and cooperation and assistance in all aspects of legal proceedings in which the agency is or may become involved.

B. **ORGANIZATIONAL**

Each organizational unit within the DOH has the responsibility of maintaining appropriate work performance and conduct standards and discipline in accordance with this Policy. Any working rules and procedures established within the organizational units shall be consistent with the policies and aims stated herein. Any question that may arise as to whether an organizational working rule or procedure is consistent with this Policy should be addressed to Human Resources Division.

III. DISCIPLINARY ACTION

Effective: 9/30/2011

A. **SUPERVISORY AUTHORITY**

An employee's organizational manager or his or her designee has the authority to impose an oral reprimand or to recommend any other form of disciplinary action. A District Engineer/Manager, Division Director, or his or her designee may impose a written reprimand or recommend any other form of disciplinary action. A District Engineer/Manager or Division Director may also impose an immediate oral suspension after receiving approval from Human Resources Division.

B. **TYPES OF DISCIPLINARY ACTION**

Disciplinary action may be taken in the form of oral reprimand, written reprimand, demotion, suspension, or dismissal.

1. Oral Reprimand: Examples of poor performance or misconduct that may warrant oral reprimand in response to a single performance issue or instance of misconduct include but are not limited to the following:
   a. insubordination;
   b. abuse of leave;
   c. failure to notify of absence prior to start of workday;
   d. unauthorized leave;
   e. wasting time;
   f. profanity;
   g. inability to work harmoniously;
   h. failure to comply with minor instructions;
   i. unauthorized personal use of telephone, email, or other resources;
   j. lack of personal hygiene;
   k. radio violations;
   l. failure to keep equipment/work area clean;
   m. disclosure or distribution of State, employee, or other confidential data and information without proper authorization or cause and without significant potential harm or effect;
   n. minor purchasing card violations;
   o. any similar performance issue or misconduct.

2. Written Reprimand: Examples of poor performance or misconduct that may warrant written reprimand in response to a single performance issue or instance of misconduct include but are not limited to those for which the imposition of an oral reprimand would be warranted and the following:
   a. refusal to work overtime;
   b. failure to report for regular or overtime duty as required;
   c. failure to follow major instructions;
   d. damage or neglect to equipment, materials, or property;
   e. safety violations;
   f. leaving assigned work area without permission;
   g. horseplay;

h. chargeable accidents;
i. sleeping on the job;
j. insulting, abusive, threatening, offensive, defamatory, harassing, or discriminatory conduct or language, including but not limited to sexual harassment;
k. disclosure or distribution of State, employee, or other confidential data and information without proper authorization or cause and with significant potential harm or effect;
l. major purchasing card violations;
m. any similar performance issue or misconduct.

3. Suspension: Holidays will be counted as working days when implementing suspensions.

a. FOR CAUSE

Examples of poor performance or misconduct that may warrant suspension in response to a single performance issue or instance of misconduct include but are not limited to those for which the imposition of a lesser penalty would be warranted and the following: accessing, storing, distributing, viewing, or transmitting potentially threatening, offensive, or harassing information (magazines, articles, pictures, messages, images, or other media), including but not limited to material that could be construed as insulting, abusive, threatening, offensive, obscene, pornographic, profane, sexually oriented, defamatory, harassing, or discriminatory, or otherwise inappropriate or illegal; severe purchasing card violations; and any similar performance issue or misconduct.

b. SUSPENSION PENDING OUTCOME OF INVESTIGATION

An employee may be suspended without pay pending the outcome of an investigation into alleged offenses or conduct which has a reasonable connection to the employee's

performance of his or her job. Such suspensions must be for a definite duration.

c. SUSPENSION PENDING OUTCOME OF CRIMINAL PROCEEDINGS

An employee may be suspended pending the outcome of an indictment or other criminal proceeding, the substance of which has a reasonable connection to the employee's job performance. Suspensions of this type need not be for a definite duration. Once the investigation or the criminal proceeding is complete, further disciplinary action may be recommended in accordance with this Policy.

d. IMMEDIATE ORAL SUSPENSION

An employee may be suspended immediately, upon oral notice, if the employee's performance or conduct constitutes a continuing danger to persons or property or if the orderly conduct of the affairs of the DOH is threatened.

Examples of poor performance or misconduct that may warrant immediate oral suspension include but are not limited to the following:

(1) threatening bodily harm;
(2) reporting to work under the influence of alcohol or a controlled substance;
(3) any similar performance issue or misconduct.

4. Demotion: An employee may receive a disciplinary demotion for reasons consistent with those for which a suspension would be warranted, as well as loss of licensure when same is a requirement for the employee's job classification. A demotion for loss of licensure may be accompanied by a requirement placed upon the employee to re-acquire licensure within a specified timeframe,

or be dismissed in accordance with Section 5 below.

5. Dismissal: An employee may be dismissed for cause, which requires that it be based on something of a substantial nature directly affecting the rights and interests of the public rather than trivial or inconsequential matters, or mere technical violations of statute or official duty without wrongful intention.

Examples of poor performance or misconduct that may warrant dismissal in response to a single performance issue or instance of misconduct include but are not limited to those for which the imposition of a lesser penalty would be warranted and the following:

a. blatant or persistent insubordination;
b. job abandonment;
c. theft or dishonesty;
d. failure to return from a leave of absence;
e. conflict of interest;
f. operation of DOH equipment while under the influence of alcohol or controlled substances;
g. failure to re-acquire licensure, when the same is a requirement for the employee's job classification, within a time frame specified by the agency;
h. altering or forging records;
i. unauthorized use of state vehicles, property, or equipment;
j. acts of physical violence while in the course of employment;
k. acts that may result in a criminal indictment;
l. any acts likely to cause substantial injury or damage to persons or property;
m. other actions or inactions constituting gross misconduct;
n. any similar performance issue or misconduct.

C. **DUE PROCESS**

Regardless of the type of disciplinary action taken, the employee will be granted appropriate due process. Under the law, appropriate due process depends upon the severity of the penalty imposed. The essential elements of due process for a permanent DOH employee are appropriate notice, an appropriate opportunity to respond, and the opportunity to file a grievance. This Policy is not intended to grant employees additional due process rights or protections other than those to which they are entitled by law. Variations in procedure are considered minor and harmless if these basic elements are appropriately provided.

D. **PROCEDURES**

1. Organizational and Supervisory Responsibility: Supervisors are responsible for ensuring that there is a sound basis for the disciplinary actions they take or recommend. In all cases, disciplinary action should be taken promptly and as soon as reasonably possible after the supervisor or other appropriate official becomes aware of the employee’s offense. It is the responsibility of supervisors to administer discipline so that similarly situated employees are treated consistently and fairly.

   Supervisors are expected to create and maintain appropriate records of disciplinary action(s). Such records should include the date of the offense(s), the specific offense(s) for which discipline is being administered, and the discipline administered. It is the District Engineer/Manager's or Division Director's responsibility to ensure that records of disciplinary action are accurate, that the necessary information and notices are provided to employees, and that the proper forms are used.

2. Progressive Discipline: A single performance issue or instance of misconduct may warrant immediate drastic action, including dismissal. Less serious performance issues or instances of misconduct may be handled on the basis of "progressive discipline," which does not merely punish the employee, but is intended to allow the employee an opportunity to meet the expected standards of work performance or conduct. Discipline is progressive when an employee is not subject to immediate dismissal for an initial offense but is given a lesser penalty. The initial penalty could be an oral reprimand, a written reprimand, a demotion, or a suspension. The imposition of a more severe penalty is warranted when there is an insufficient improvement in work performance and/or conduct; there is a failure to sustain improved work performance and/or conduct; or there is a persistent failure to meet the expected standards of work performance or conduct.

3. Disciplinary Process:
   a. Investigate the facts and circumstances surrounding the employee's work performance or conduct issue. Speak with relevant witnesses, including the employee, and gather relevant documents.
   b. Define the nature, type, and severity of the employee's work performance or conduct issue.
   c. Review the employee's prior disciplinary actions, if any. Determine whether prior disciplinary actions are the same or similar to the current work performance or conduct issue or whether they are indicative of a persistent failure to meet the expected standards of work performance or conduct.

d. Determine the appropriate disciplinary action considering the following:
   (1) the underlying facts and circumstances;
   (2) the nature, type, and severity of the issue;
   (3) the employee's overall work performance and conduct;
   (4) the relationship, if any, between the employee's job duties and responsibilities and the current work performance or conduct issue, including but not limited to fiduciary and supervisory responsibilities;
   (5) the employee's tenure with the agency;
   (6) the Standards of Work Performance and Conduct set forth in § II.B. of this Policy;
   (7) the standards and examples set forth in § III.B. of this Policy (not applicable to probationary employees); and
   (8) fairness to similarly situated employees.

e. In making this determination, consult, when appropriate or applicable,

   (1) the organization's administrative services manager;
   (2) the organization's personnel specialist in Human Resources Division; and
   (3) rules of progressive discipline, including (1) the time intervals between offenses; and (2) whether there has been a measurable, sustained improvement in the employee's work performance and/or conduct and whether the employee has demonstrated a persistent failure to meet the expected standards of work performance or conduct.

f. Complete the necessary paperwork.
   (1) RL-544, Notice to Employee of Warning/ Disciplinary Action/ Criminal Investigation/ Suspension, including

       the facts and circumstances surrounding the employee's work performance or conduct issue; the nature, type, and severity of the issue; identification of prior disciplinary actions, if any, taken in response to similar performance or conduct issues or that suggest a persistent failure to meet the expected standards; the action or recommended disciplinary action to be taken; the date by which any response must be received by the employee's District Engineer/Manager or Division Director; time frame and mechanism for the employee's response; and the names of relevant witnesses. Attach relevant supporting documentation and reference such documentation in the RL-544.
   (2) RL-546, Employee's Verification of Disciplinary Action, complete general fields.

g. Provide employee with information about the proposed disciplinary action.
   (1) Hold a confidential predetermination conference with the employee, including a third party witness. Review the full details on the RL-544, and inform the employee of his or her opportunity to respond and of the proper mechanisms and time period for doing so, as indicated on the RL-544. Sign the form and fill in the date of delivery, and ask the employee to sign and date the form, acknowledging its receipt. Provide the employee with a copy of the fully executed RL-544.
   (2) If the employee is unavailable, provide the employee with a copy of the RL-544

by Certified Mail, Return Receipt Requested.

(3) If, upon consultation with Human Resources Division, immediate removal from the workplace is warranted, the

employee must be given oral notice regarding the basic facts and circumstances surrounding his or her work performance or conduct issue; the nature, type, and severity of the issue; and the recommended disciplinary action to be taken. Written confirmation of the oral notice must be sent by Certified Mail, Return Receipt Requested, on Form RL-545, Notice to Employee of Immediate Oral Suspension Followed by Written Notice and an Opportunity to Respond, within three working days.

h. If the employee responds in person, encourage the employee to write his or her comments on Form RL-546 and to sign and date the same; in the alternative, summarize the employee’s comments on the RL-546 and ask the employee to sign and date the Form. Although Form RL-546 is not the only method by which an employee may respond, any written response should be signed and dated by the employee and by the person receiving the response. An employee’s timely response, on form RL-546 or otherwise, must be considered before a reprimand is imposed or before any other form of disciplinary action is recommended to Human Resources Division.

i. Documentation of an oral reprimand may be kept only in the supervisor's administrative file. In the case of a written reprimand, distribute the remaining copies of the RL-544 and its attachments, and the RL-546 or any other written employee response as follows:

(1) one copy to the District or Division personnel file; and
(2) one copy to Human Resources Division.

j. In the case of a recommended suspension, demotion, or termination, submit all documentation to Human Resources Division for review and approval. Upon completion of the review, Human Resources Division will prepare, and cause to be served, a letter notifying the employee of the final disposition of the recommended action. The original letter must be either hand delivered or sent by certified mail to the employee. If the original letter is hand delivered, a copy of the letter is to be made and should be signed and dated by the employee in acknowledgement of receipt of the original letter. If the employee refuses to acknowledge receipt by his/her signature, an appropriate third party should witness the service of the letter, as well as the refusal of the employee to acknowledge receipt. The server should note on the copy that the letter was given to the employee in person and that he/she refused to affix his/her signature in acknowledgement of receipt. The server and the third party witness should both attest to this statement by affixing their signatures to the copy. If the letter is sent by certified mail, the return receipt card should be made a part of the documentation. Copies of the letter will be provided to the appropriate District Engineer/Manager or Division Director, Legal Division, and the C level representative who is designated by the Commissioner to hear a response, if any, from the employee.

IV. **PROBATIONARY EMPLOYEES**

Effective: 4/15/2007

If, at any time during the probationary period, it is determined that the services of an employee are unsatisfactory, he or she may be dismissed in accordance

with Division of Personnel's Administrative Rule. Probationary employees are not entitled to the benefits of progressive discipline or any lesser form of disciplinary action provided for in this Policy. Dismissals of probationary employees should be handled as outlined in § III.D.3. of this Policy except that the standards and examples set forth in § III.B. are not applicable.