

Chapter 11 – DISCIPLINARY ACTION

SECTION 1. POLICY

Employees of the Nation are expected to abide by and comply with employment policies, procedures and rules of conduct adopted to govern their employment. Policies, procedures and regulations governing employment are intended to result in an effective and efficient Nation government. Therefore, it is understood that an employee who fails to follow policies and regulations governing employment can seriously and adversely affect discipline and the effectiveness of the Nation. Further, rules and regulations are enacted to enhance the general well-being of the Nation, and to protect the safety of other employees and the public it serves.

SECTION 2. REASONS FOR DISCIPLINARY ACTIONS

When an employee of the Nation violates established policies, procedures, or rules of conduct, that employee will face disciplinary action. A Supervisor, Director or Executive Leadership or Court Administrator, as appropriate, may take disciplinary action against an employee for cause or for violating established rules and regulations. If disciplinary action or adverse action against an employee becomes necessary such action shall be accomplished through written letters, memorandum and other documentation.

It is the responsibility of all Supervisors and Directors at all levels to make it clear that it is the responsibility of all employees to abide by the policies, rules and regulations of the Jicarilla Apache Nation Government.

Disciplinary action shall be imposed upon an employee for conduct or action that interferes with or prevent the Nation from effectively and efficiently discharging its responsibilities to the public. Actions that include, but not limited to the following shall be sufficient cause for disciplinary action:

- A. Neglect in the performance of the duties of the position to which the employee is assigned.
- B. Disregard for or violations of the requirements of this Human Resource Manual as well as departmental policies and regulations.
- C. Misuse, misappropriation, negligence, destruction of Nation property or conversion of Nation property to personal use or gain.
- D. Excessive tardiness or absence from duty without prior approval
- E. Abuse of leave or other benefits.

- F. Violation of any official order or verbal/written directive, refusal to carry out lawful directions given by immediate supervisor or other acts of insubordination.
- G. Intoxication or use of alcoholic beverages, narcotics, drugs, or other controlled substances while on duty.
- H. Criminal, dishonest conduct which interferes with effective job performance or has an adverse effect on the efficiency of the Nation.
- I. Disregard for or violations of the Nation's laws and ordinances.
- J. Improper disclosure of or use of privileged or confidential information for private gain.
- K. Violations of the bullying, electronic media or social media policies.
- L. Violation of the Retaliation policy.

SECTION 3. DISCIPLINARY ACTION PROCESS

The severity of the disciplinary action will be determined by the seriousness of the offense and the degree to which an employee's behavior affects the harmony of the workplace or the safety of others. The final outcome desired from disciplinary action is the satisfactory performance of the employee, but when and where necessary any of the following steps described below may be taken: oral reprimand, written reprimand, suspension from work without pay, demotion or termination.

Disciplinary action shall:

- A. be discussed and resolved informally between the employee and supervisor and/or appropriate Director whenever possible.
- B. include a formal written statement and be provided to an employee explaining the reasons for the disciplinary action and include recommendations and timelines for rectifying the deficiencies specified.
- C. be included in the employee's official personnel file.

Hearsay and rumors shall not serve as a basis for disciplinary action.

If an employee disagrees with the adverse personnel action being made or the recommendations for corrective action, he may request a formal hearing with the Human Resource Office utilizing the grievance process

SECTION 4. RESPONSIBILITY OF SUPERVISORS AND DIRECTORS

Executive Leadership, Court Administrator, respective directors and supervisors are responsible for the proper and efficient operation of their departments and for enforcing all employment policies, rules and regulations. When an employee fails to properly perform the duties and responsibility assigned or whose actions threatens the health, safety and well-being of others, it is the responsibility of supervisory personnel and directors to take appropriate disciplinary action. The supervisor, and up through Executive Leadership or Court Administrator, as appropriate, must document every phase of a disciplinary action and make such documentation a part of the employee's official personnel file. Executive Leadership and the Court Administrator, as appropriate, are ultimately accountable for and responsible to see that all required and/or appropriate documents pertaining to a disciplinary action are submitted to Human Resource Office in a timely manner.

SECTION 5. DISCIPLINARY ACTION STEPS—RESOLUTION

Generally, the following steps will be applied in the order presented below, but in instances where the offense is severe, some disciplinary action steps may not be applicable. Executive Leadership and Directors and the Court Administrator, as appropriate, will determine the nature and level disciplinary action necessary.

A. Oral Reprimand

Whenever grounds for disciplinary action exist and the supervisor determines that more severe action is not immediately necessary, the supervisor may select a course of action that involves an oral reprimand. The warning or admonishment received must include remedial solution to correct the deficiency. The employee shall be given one chance, within a specific timeframe, to improve before more severe disciplinary action is taken. When an oral reprimand is given, the Supervisor must ensure that proper documentation of the reprimand, including time, dates, and reason, are made a part of the employee's personnel file.

The employee will be advised that the reprimand will be documented and filed in his/her personnel file. Documents and materials accumulated that involve an oral reprimand will be purged at the end of twelve (12) months.

B. Written Reprimand

A written reprimand involves a critical step in the disciplinary action process. It is a step wherein a serious rules violation has occurred, or the employee's conduct is such that it warrants a written warning.

The written reprimand addressed to the employee should include the following:

- a description of the specific behavior, circumstances and supporting documentation that has brought about the need for a written reprimand;

- a warning that if the behavior continues it will result in more severe disciplinary action; specific suggestions about how to remedy the behavior;

A signed copy of the reprimand shall be included in the employee's personnel file. The employee will have the opportunity to submit comments or a response to the written reprimand for filing in his personnel file.

All documents involving the written reprimand will be purged from an employee's file at the end of twelve (12) months from the date of the incident.

C. Suspension

The Department Director, Executive Leadership or Court Administrator, as appropriate, may recommend suspension without pay for up to but not to exceed fourteen (14) calendar days. Not less than two workdays before the effective date of the suspension, Executive Leadership or Court Administrator will furnish the employee with a written statement setting forth specific reasons for the suspension that includes the following:

- description of specific behavior that supports the suspension, with effective suspension date and effective return to work date;
- give notice that if behavior continues it will result in more severe action and/or termination;
- offer specific suggestions on how to remedy the behavior; and

A signed copy of the statement of suspension shall be filed in the employee's personnel file and also be provided to the employee at the time of suspension. The employee will have the opportunity to submit comments or responses and all such materials will be retained in the employee's personnel file.

An employee while on suspension is not considered on duty and shall not be hired or hold a position with pay within another department or at any level of the Nation.

At the end of the period of suspension, the employee shall report to his or her supervisor and return to the regular work schedule. Failure to report at the proper time may be cause for further disciplinary action. Failure to report for a period of three (3) consecutive work shifts shall be considered an abandonment of position.

D. Demotion

When reason for the disciplinary action involves job performance or the inability to perform assigned duties and responsibilities of the position, Executive Leadership or Court Administrator, as appropriate, may recommend as a solution, the demotion of an employee. The demotion is to a position of a lower grade and pay rate within the Nation organizational unit involved. If performance does not improve or behavior associated with poor performance continues, then more severe action may be taken.

E. Dismissal for Cause

A supervisor or director may recommend termination of an employee to Executive Leadership or Court Administrator, as appropriate, and with their concurrence and approval make a recommendation to terminate an employee to Nation President or Trial Judge, as appropriate. The employee must be given written notice signed by the Nation President or Trial Judge, as appropriate, prior to or within two workdays after the effective date of the dismissal. The dismissal may be effective immediately if it is determined that the employee being dismissed is a threat or danger to other employees.

The formal notice of dismissal or termination shall specify the effective date of termination, the charge or offense, and offer reasons why such severe action is necessary. The written statement also advises the employee of his or her right to file a formal grievance or appeal. A copy of the termination documents shall be included in the employee's personnel file and the employee will have the opportunity to submit a response, which is made a part of his or her personnel file.