

## Procedure 6.10P—Employee Conduct and Discipline FAQ

### **Who has to abide by the conduct rules in the Employee Conduct and Discipline Procedure?**

Everyone who is employed by LCCC in any capacity.

### **Why isn't there a separate definition for performance problems?**

Performance problems fall under the existing definitions. For example, a performance issue involving failure to complete assigned duties might be caused by incidents of misconduct or by incompetency, or it might be a simply be due to neglect of duty.

### **What's the difference between performance management and discipline?**

Performance management is an ongoing process of setting expectations, providing ongoing feedback and reviewing performance on a regular basis, whereas discipline is used when a serious behavioral incident has occurred or performance problems continue despite repeated coaching.

LCCC is in the process of developing a performance management procedure that will likely include processes for the annual review of position descriptions and annual review for employees. In the meantime, supervisors who would like guidance and tools for performance management on a day to day basis should consult HR.

### **How does this work with at-will employees?**

All employees are subject to the conduct provisions of this procedure, and using the disciplinary process with an at-will employee does not impact the at-will employment relationship. Supervisors are encouraged to use coaching and, if necessary, the tools in the disciplinary process to help employees to be successful. When a supervisor comes to HR for assistance with a behavioral or performance issue, the coaching that is provided to the manager will be the same whether the employee is at-will or has another employment relationship—the goal is to do whatever we can reasonably do to help the employee be successful.

### **Do I have to discipline employees every time they do something wrong?**

As indicated in the performance management diagram, discipline is outside of the regular performance management cycle. A conversation in which corrective actions are recommended is *not* the same as a disciplinary action.

Discipline should occur when there's a serious behavioral incident or when performance problems happen despite repeated coaching. *In order for a conversation to be considered disciplinary in nature, the supervisor needs to clearly state that he or she considers it to be a disciplinary conversation and follow the policy precisely.*

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### **Does discipline have to begin with a verbal warning and progress through every stage, or can it begin at a higher level?**

LCCC's Conduct and Discipline Procedure is generally progressive, but allows for discipline to begin at a higher level if warranted by a behavioral or conduct issue.

The HR office has lots of tools available for supervisors to use to evaluate where to begin, including:

- A one-page disciplinary guidance summary,
- An extensive list of questions for supervisors to ask themselves, and
- Templates for disciplinary action that include guidance for each type of discipline.

HR can also coach supervisors who are unsure about how to deal with behavior or performance issues.

### **Who can discipline an employee?**

Direct and indirect supervisors may discipline employees. Typically, discipline occurs at the level of the direct supervisor. While it is appropriate for the supervisor to notify his or her supervisor of the intent to engage the employee discipline process, *the details of the disciplinary action are decided entirely by the supervisor. This preserves the integrity of the appeal process.*

Because this responsibility and authority rest solely with the supervisor, it is very important that supervisors have the knowledge and skills to engage in the disciplinary process appropriately. To facilitate that, LCCC will require training for all supervisors in the 2014-2015 academic year and offer training to new supervisors on an ongoing basis. Supervisors who are currently dealing with performance or conduct issues should contact HR for guidance.

### **Why do I have to manage performance? My people are great. I won't ever have to do this.**

As a supervisor, your job is to accomplish the objectives of your work unit. Individual employees might require more or less hands-on supervision, but even employees who don't need a lot of hands-on supervision need some direction to ensure that everyone is working toward the same goals.

Failure on the supervisor's part to address clear cases of these conduct and performance issues can be considered neglect of duty which is subject to disciplinary action.

### **What happened to the list of items that warrant automatic termination?**

All of the behaviors that were identified as warranting automatic termination under the old "Rules of Practice, Chapter II" and in earlier drafts of 6.10P fall under the conduct definitions in our current procedure. Because the discipline process is generally progressive but not required to be progressive, supervisors have the latitude to decide how to proceed in cases of egregious behavior—whether that means proceeding directly to suspension and a pre-termination hearing or beginning at a lower level of discipline.

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### **Why are there so many kinds of disciplinary actions?**

The range of disciplinary actions puts supervisors in a position to apply the type of discipline that best fits the needs of the situation. For example, PIP and written warning may be used together or separately because in certain instances, a simple, but very firm, “this one behavior must stop” is sufficient, whereas in other instances, there may be a range of behaviors or performance issues that need to be addressed, even if no single issue rises to the level of a written warning. Please refer to the “Disciplinary Guidance” and the disciplinary action template guidance documents for a more thorough explanation.

### **Why doesn't an administrator have to be present for a disciplinary action to occur?**

The definition of a supervisor is one with the authority to hire and fire. *If we required the presence of an administrator in disciplinary actions, we would effectively remove the authority of the supervisor.* Under Procedure 6.10P, the administrator over the supervisor is not only not required to be present for the disciplinary action, the administrator *should not* be present. This preserves the integrity of the appeal process.

### **What if it's a termination decision? Doesn't my administrator have to be there for that?**

Again, according to the new policy and procedure, discipline is enacted at the level of the supervisor. Having the administrator present disrupts the integrity of the appeal process. HR will guide supervisors through this process.

Those present for the re-termination hearing include only 1) the supervisor of the employee recommended for termination, 2) the employee recommended for termination, 3) another person of the employee's choosing, and 4) a representative from HR.

### **How will the appeal process work?**

Appeals need to be submitted to the HR office within seven business days of the written disciplinary action. The HR office coordinates and tracks the appeal process. The documentation is forwarded to the “reviewing supervisor” (i.e. the supervisor of the supervisor who imposed the disciplinary action—whether that is the direct or indirect supervisor). The reviewing supervisor then has seven days to review all materials and issue a written document indicating whether or not the discipline was appropriate, and, if necessary, issue a letter outlining appropriate discipline.

When an employee (either the disciplined employee OR the supervisor who imposed the discipline) is dissatisfied with the reviewing supervisor's decision, he or she may appeal the decision to the “final supervisor” (i.e. the supervisor of the reviewing supervisor). The request for appeal is submitted to HR and provided to the final supervisor. The final supervisor has seven business days to make a decision and issue written documentation. In all cases except termination, the final supervisor's decision is final.

When termination is recommended, and the employee has exhausted all other internal appeal options, the employee who is dissatisfied must request an appeal to the President through HR within seven

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business days. HR provides documentation to the President who reviews the materials. The President may, at his or her discretion, discuss the matter with those involved. The President issues a final decision within seven business days. Employees who are dissatisfied with the President's decision may utilize the Rules of Practice for Contested Cases.

### **Does the appeal process apply to at-will employees?**

The appeal process does not apply to at-will employees. However, a supervisor who would like to terminate an at-will employee must consult HR for guidance per 6.1.4P Employment—Separation Procedure.

### **What if the President *is* the reviewing supervisor in my disciplinary action?**

If the employee is positioned in the hierarchy such that the disciplinary action is levied or reviewed by the President or someone reporting to the President, the appeal rights are truncated, i.e. the number of appeals available is limited by the number of reviewing supervisors available in the org structure. If there are no appeal rights available in a termination decision, the employee would utilize the Rules of Practice for Contested Cases to appeal.

### **As the reviewing supervisor, what should I consider when I am asked to review an appeal?**

The reviewing and final supervisors have an important role. The following are examples of just a few questions that the supervisor should consider.

- Is the level of discipline appropriate for the level of the performance or conduct issue?
- Should the employee reasonably know that the behavior, conduct or performance would result in disciplinary action? How would the employee know?
- Have other employees who have engaged in similar behavior, conduct or performance been disciplined in a similarly appropriate and fair manner?
- Did the supervisor follow policy and procedure?

HR guidance for supervisors also applies to reviewing supervisors. Reviewing supervisors are also encouraged to review the list of questions and guidance provided to supervisors.

# Disciplinary Guidance

When unacceptable conduct or performance occurs, review the following considerations before proceeding.

The discipline provisions of the Procedure 6.10P—Employee Conduct and Discipline (effective 4/2/14) apply to contracted faculty, professional staff and administrators as well as legacy employees. Use of the disciplinary actions with at-will employees does not impact the at-will employment relationship.

Employee Conduct and Discipline allows for both progressive discipline and for initiating discipline at a higher level depending on the nature of performance issue or inappropriate conduct. The following guidelines help supervisors decide at what level to apply discipline.

Consider **Performance Coaching** when:

- This is the first time the employee has engaged in the unacceptable behavior.
- You're not certain that the employee knows that the behavior is unacceptable. Ask yourself "how would the employee know?"

Consider a **Verbal Warning** when:

- Previous attempts at performance coaching have been unsuccessful. Ask yourself "How does the employee know?" "Do I have notes on previous performance coaching?"
- The behavior appears on the Employee Conduct and Discipline list of behaviors "that will result in discipline" even if it is the first time that the employee has engaged in this behavior.

Consider a **Written Warning** when:

- Previous disciplinary actions have been unsuccessful in correcting the behavior or performance issue.
- You consider this behavior serious even in the absence of other issues. Ask yourself: "How would I react if my top performer engaged in this behavior?"

Consider a **Performance Improvement Plan (PIP)** when:

- There are multiple behaviors that need to be corrected.
- A written warning is being issued and the supervisor also needs to address additional behaviors that may or may not rise to the level of a disciplinary action on their own.

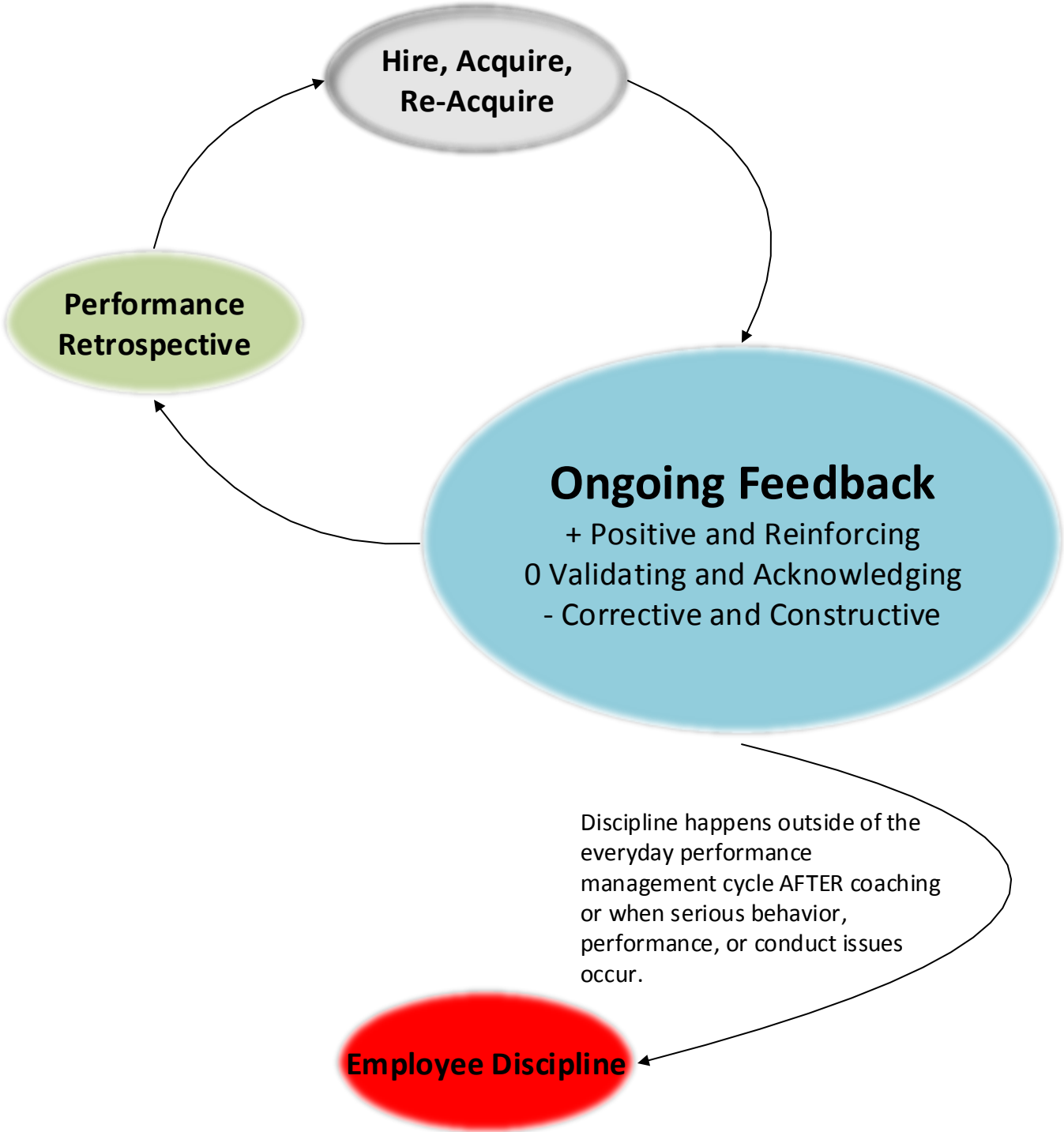
Consider **Suspension** when:

- The employee's presence in the workplace creates a threat to health or safety.
- A punitive measure less than termination is necessary.
- The employee might impede an investigation.

Consider **Termination** when:

- Previous disciplinary actions have been unsuccessful in correcting the performance or behavioral issues.
- In the extremely rare instance when a specific behavior is sufficiently egregious to warrant automatic termination.

# Performance Management Cycle



Performance Management Tools Available to Supervisors—Fill in the Blank Fields in the table

	Type of Action	Benefits	Limitations	What happens	When to use	Special Considerations
Tools used in the Regular Performance Management Cycle	Annual Review	Opportunity to reflect on the previous year's accomplishments and challenges and create a plan for next year	May only cover what has <i>already</i> been covered throughout the year			
	Performance Coaching (positive feedback)				"on the fly" or as a part of a regularly scheduled check in.	If you make notes in your working supervisor file, you have material for your annual review.
	Performance Coaching (Neutral Feedback)	Supervisor and employee have an opportunity to talk about ongoing projects and their status.			As a check in—The supervisor or the employee might initiate this through a regular meeting.	
	Performance Coaching (corrective feedback)			A supervisor lets the employee know that he or she is not meeting expectations and engages the employee in a conversation about how to correct the situation.		If you make notes in your working supervisor file, you have material for your annual review.
Tools used in the Disciplinary Process	Verbal Warning		Not effective on its own if there are multiple issues to address. Not as strong as a written warning.			Although it is a "verbal" warning, documentation of the action is placed in the employee's file in HR.
	Written Warning	The employee is made aware of the issue and seriousness of the situation.			After repeated coaching or when the behavior or conduct is very serious.	
	Performance Improvement Plan	Helps supervisors and employees identify a clear path to correcting the issues and becoming successful			With another disciplinary action when there are multiple issues. On its own when there are a large number of issues that don't rise to the level of another disciplinary action.	
	Suspension			The employee is notified either in writing or verbally followed by a written notification of suspension.		Seek guidance from HR prior to written notification.
	Termination		For extreme circumstances only! Only used when other corrective actions are inappropriate or impractical.	Hearing notice sent out, hearing occurs according to the procedure. Employee notified of decision		
Follow Up	Memo Re: Completion of Corrective Action		May only be used when corrective actions have actually been completed.	The supervisor places a memo in the employee's file indicating that the corrective actions identified have been completed and that the employee is no longer in a disciplinary status.		