**Introduction:**

This handbook has been devised to use in conjunction with the Corrective Discipline Policy of the Government of Saskatchewan (PS-803) (the “policy”) and Guidelines.

This handbook includes detailed commentary and a review of the principles behind the process and procedures in the policy while following the path of the process from the point the manager is made aware of possible misconduct to where the selected discipline is administered.

It is important to understand that corrective discipline is by its nature a subjective matter.

As much as it might be desired, the policy, guidelines or this manual cannot replace a Manager’s judgment with a defined list of infractions and associated penalties. Each and every instance that might lead to employee discipline is unique and must be evaluated on its own merits using the principles and processes outlined in this manual.

This does not mean that the process need be lengthy and unwieldy if handled correctly. An investigation can be as simple as a single question. “Documenting” might simply be the answer noted in the Manager’s journal. Alternately, the issue could warrant a lengthy, formal investigation. As previously stated, each situation is unique.
Definitions /Common Terms and Phrases

1. **Administrative Leave Pending Investigation:** is the temporary removal of an employee from the place of duty, with or without pay, to facilitate an investigation. The allegations of misconduct must be of such significance that maintaining the employee in the workplace poses a serious risk to the employer and/or co-workers, or is necessary to maintain public confidence.

2. **Aggravating Factor:** Factors that when considered makes the employees conduct worse or even more severe than before thereby warranting an increase in the disciplinary penalty.

3. **Credibility:** is the quality of a witness which renders them worthy of belief. This can include their demeanor, honesty and impartiality, reliability of memory and the capacity and opportunity to make exact and accurate observations. The most important factor is the consistency of the individuals’ evidence/explanation with the preponderance of evidence in light of the surrounding circumstances. In short, does the information fit and make sense? Alternatively, if the story keeps changing and/or is vague and/or ambiguous, the person is not likely credible.

4. **Culpable Misconduct:** is inappropriate and/or unprofessional behavior or conduct where the employee;
   a) knows, or could reasonably be expected to know, the standards of conduct;
   b) is capable of meeting that standard;
   c) behaves in a manner that does not meet the standard.

5. **Disciplinary Suspension:** is the temporary removal without pay of an employee from the place of duty to stress upon the employee the seriousness of the misconduct and the need to correct the behavior.

6. **Dismissal:** is the termination, at the employer’s discretion, of an employee’s employment for cause.

7. **Insolence:** an offensive disrespectful impudent act which can include impertinence, discourteousness, rudeness, cheekiness.

8. **Insubordination:** means defiance of the employer’s authority. An employee has been insubordinate when three elements have been met: (1) there was a clear order which the employee understood; (2) the order was given by a person in authority; and, (3) the employee disobeyed the order. An employee who is abusive or insolent towards a supervisor or other authority of the employer can also be said to be insubordinate.
9. **Letter of Discipline:** is a written warning that the employee's conduct is unacceptable and must be corrected. A copy of the letter is placed on the Employee's file, becoming part of the employee's record.

10. **Mitigating Factors:** Factors or circumstances that, while not completely excusing misconduct, tend to lessen or reduce the extent of the penalty.

11. **Standards of Conduct:** are established work rules or orders set out by the Employer including the oath of office and the Information Technology Acceptable Use policy, or other (e.g. taking coffee breaks according to a posted rotational schedule, seeking advance approval for all absences). It also includes activity and behavior that an individual ought to reasonably know is inappropriate and unacceptable (e.g. theft, intentional damage to property, treating co-workers and the public with disrespect).

12. **Verbal Warning:** is a verbal warning that the employee has not conducted themselves appropriately and that it should not occur again.
What Is Corrective Discipline?

Corrective discipline is best described by Arbitrator Cromwell in *National Gypsum (Canada) Ltd. and I.B.E.W., Local 721/721B* (1990), 10 L.A.C. (4th) 59, at p.74:

“...The principle is that discipline will achieve its corrective purpose more effectively if penalties are imposed on a progressive basis, from the least serious for a first offence, through to the most serious for repeated infractions. Discipline which is imposed on a progressive basis also precludes any argument by the employee of surprise by the seriousness with which the employer views the misconduct.”

Corrective discipline has two primary objectives:

- to prompt and encourage the employee in adopting the required behavior; and
- to demonstrate to all employees the behavior that is required at work and to indicate that the employer is prepared to take steps to ensure employees conduct themselves appropriately.

The Corrective Discipline Policy is used to correct culpable misconduct. Culpable misconduct is inappropriate and/or unprofessional behavior or conduct where the employee:

- knows, or could reasonably be expected to know, the standards of conduct; and
- is capable of meeting that standard; and
- behaves in a manner that does not meet the standard.
Set Up for Success

To ensure disciplinary matters are handled quickly and appropriately, it is important to have the mechanisms identified ahead of time. Managers and Supervisors should be:

1. Aware of and know where to locate the policy and guidelines.
2. Informed of who to contact for advice (Superior Manager/Director, HR Consultant).
3. Trained in investigation and applying discipline.
The Corrective Discipline Process

The corrective discipline process begins after there has been a complaint or other discovery of misconduct. The procedure in the policy is as follows:

1. The Manager must inform employees of the standards of particular conduct which apply to the workplace.

2. When standards of conduct are not met, the Manager may initiate disciplinary action. The Manager must document all steps in the disciplinary action.

3. To determine the appropriate course of action, the Manager should contact their HR Consultant.

4. The Manager must hold a meeting with the employee before disciplinary action. If the employee is a member of the SGEU, prior to any meeting, the employee must be given notice of the right to Union representation. If an employee within the SGEU Bargaining Unit waives their right to Union representation, the employee must sign a waiver stating such\(^1\). For members of the CUPE bargaining Unit, attendance of a Union representative is mandatory. If possible, another out of scope employee should attend the meeting with the manager.

5. During the meeting the manager should:
   - ensure the employee is aware of the problem;
   - give the employee an opportunity to explain the circumstances surrounding the unsatisfactory performance or the breach of conduct;
   - determine if the employee's actions were merely a result of misunderstanding directions, or if the employee willfully broke the standards of conduct; and
   - explain to the employee how management is considering dealing with the misconduct.

6. The employee is encouraged to use the Employee Family Assistance Program (EFAP), particularly if the behavior may be resulting from personal issues. This should include providing the employee number for EFAP (306) 787-7567 or 787-7563). An employee is not required to reveal the nature of personal issues to the Manager.

\(^1\) Sample found in PS-803-D
7. Depending on the nature of the misconduct, the Manager may speak to witnesses.

8. The Manager makes notes of the interviews. These notes are not placed in the employee’s personnel file, but are kept by the Manager in a secure, confidential manner for future reference should the behavior continue.

9. After taking into account all information, including the employee’s version of events and the advice of the HR Consultant, the Manager determines the appropriate level of discipline (if any).
Standards of Conduct

Standards of Conduct are established work rules or orders set out by the Employer including the oath of office and the Information Technology Acceptable Use policy, or other (e.g. taking coffee breaks according to a posted rotational schedule, seeking advance approval for all absences). It also includes activity and behavior that an individual ought to reasonably know is inappropriate and unacceptable (e.g. theft, intentional damage to property, treating co-workers and the public with disrespect).

It is important that employees are aware of the rules of the workplace. It is the employer’s responsibility to ensure the employees have been advised of the rules and expectations of conduct.

In order for discipline to be upheld the employer should be able to demonstrate that the employee was aware of the standards and/or expected behavior and;

- they are clear and reasonable;
- consistent with collective agreement requirements;
- reviewed regularly to ensure they continue to apply to changing operational needs.

Employees should normally be informed of work rules by posting. Posted work rules are those which an employee would not normally be aware of unless informed.

New employees to the work unit should be informed of the rules. The rules should be accessible at a given location; e.g. specific bulletin board(s) etc. At any time work rules are revised, employees should be informed.

It is not necessary to post all rules applicable to the work site. Insubordination, theft, assault, fraud, etc. are contrary to normal social/legal conventions. In addition, all work rules cannot be anticipated in advance. Any misconduct that detrimentally affects the workplace or other employees may be dealt with via discipline.

Enforce the Standards of Conduct

Enforce all work rules - promptly, consistently and without discrimination. Where this has not been done, the misconduct may appear to have been condoned with the result that disciplinary action may be overturned at the grievance/arbitration stage.
Inform employees/union stewards of the employer's policy of Corrective Discipline; they should be aware of the employer's approach to discipline. Some examples of misconduct and their relative seriousness (where it is a first time offense) are identified on page 16. These are examples only and not all-inclusive. The type and seriousness of the misconduct will vary depending on the workplace and the established Standards of Conduct.

For example: being away from your post without permission. This is likely not a serious issue for a clerical position in the Ministry of Highways who has gone to get a cup of coffee, where it can have significant consequences if the employee is a Corrections Worker in charge of a group of inmates, or someone with the responsibility of Court Security.
The Investigation Process

Where there has been an incident/matter that may result in discipline, investigate immediately. Attempt to establish and verify the actual occurrence of an apparent disciplinary infraction.

Investigations can be as simple as a single question to the employee; i.e. What happened? If the infraction is minor and if the employee is up-front and honest, it might end there. Alternately, where there are more serious issues involved, they can be difficult and complex. It is advisable to seek advice and assistance from Human Resources. In either scenario, it is essential to conduct the investigation as quickly and thoroughly as possible.

The documentation also must reflect the level of investigation. While a formal report may not be required, the person conducting the investigation should keep notes of the investigation for future reference.

Initial Reporting/Discovery:

After an infraction is reported, the following steps should occur:

a) Obtain as much detail as possible from the person reporting the incident/situation and identify potential witnesses.

b) Meet with the employee after advising them of their right to Union representation, obtained a waiver of representation (SGEU), or ensuring a representative is present (CUPE 600).²

The employee should be allowed reasonable time to contact a union representative.

The proposed meeting should take place as soon as possible; i.e. same day. It is recommended that a Human Resource Consultant or another out-of-scope manager accompany the manager to the meeting, particularly if it is a serious infraction.

Seek Advice:

Consult with Human Resources, if necessary, they in turn may contact Labour Relations for further assistance.

Such contact should continue on an "as required" basis as the matter proceeds. Discipline penalties should not normally be applied until such advice is received.

² Failure to follow this part of the process could lead to the discipline being overturned through the grievance process.
Employee Status During the Investigation:

Normally, employees are able to continue their regular duties through the investigative process.

**Removal from the Workplace**

Sometimes the incident is of a nature that requires the employee be removed from the workplace temporarily. This can include suspicion of intoxication, fighting/assault, serious insubordination or other situation where the employee is in a volatile state or distraught to the point that there is little hope of a productive day. The removal is normally until the next scheduled shift and is usually with pay.

**Administrative Leave With or Without Pay**

On occasion the allegations of misconduct are of such significance that maintaining the employee in the workplace poses a serious risk to the employer and/or co-workers, or is necessary to maintain public confidence.

Where such allegations occur, the employee should be placed on an Administrative Leave with or without pay. This status should only be used for serious offenses such as serious theft/fraud, assault or other serious incidents, particularly those that could result in criminal charges.

Even so, prior to implementing the Administrative Leave, options that maintain employment while removing the risks should be weighed. This can include such measures as modifying the duties or a temporary transfer to a different location.

The decision to place an employee on Administrative Leave and whether it is with or without pay should be based of the following considerations:

a) the severity of the conduct;
b) the employee’s ability to perform the functions of their job until the outcome of the investigation is known;
c) the type of work being performed by the employee and the relationship to the matters under investigation;
d) potential impact to other employees;
e) public perception;
f) reputation of the employer;
g) safety of clients or other employees.

---

3 Sample Letter found in PS-803-F
**The Meeting**

A fact-finding meeting is held with the employee.

The employee is obligated to participate in the meeting and answer the questions posed. The employee should be advised that this is an investigation only to gather available evidence and no conclusions will be drawn until the investigation is complete. The conclusion will be based upon the evidence the employer receives and this is their opportunity to respond to the allegations and provide information to clarify, explain or refute them.

A refusal to answer or otherwise not cooperate with the investigation will be considered as an aggravating factor and should be noted.

At this meeting the Union representative’s role is as a witness to the proceedings to ensure the employee’s right to a fair and reasonable process is protected. They are permitted to take breaks and confer with the employee and ask clarifying questions.

Union representatives are not lawyers and this is not usually a criminal matter. They should not be counseling employees to refuse to answer questions or answering for them. If this occurs quote the advisement about being uncooperative and that you need the answer from the employee. Getting the answer straight from the employee is important to monitor the employee’s body language, demeanor and answers to questions which aid in establishing their credibility.

These meetings are often emotionally charged and stressful. Allow/take as many breaks as necessary to permit people to maintain calm.

The following areas should be covered in the meeting:

a) Advise the employee of the allegations

   ➢ Set out the evidence you have on the alleged misconduct and ask for the employee’s explanation. Ensure a clear understanding of the employee’s response.

b) Ask for and listen to the explanation

   ➢ Any explanation or absence of same should be noted. It may be advisable to rephrase their answers to ensure you have a clear understanding of their answers. Ask open-ended clarifying questions as required.

c) Ask if the employee has any witnesses.
d) Inform the employee that the matter will be investigated further and that disciplinary action could result.

**Interview Witnesses**

When interviewing witnesses it is important to establish the following:

a) Ensure the witnesses have direct knowledge of events. Ask open ended questions (example: Who was at the meeting? Rather than “Was Bob at the meeting?

Employees may often name people more as “character witnesses” rather than someone with knowledge of the events. Interviewing people who do not have direct knowledge of events generally is of no assistance. It can create angst and stress on the individuals and unnecessarily lengthen the investigation.

b) Attempt to verify any of the employee’s or other witnesses’ claims/statements.

The technical term is to look for “corroboration”. An example would be if the employee says he wasn’t present during the events under investigation, witnesses should be asked who they saw at the time.

c) Advise the witnesses of the need for confidentiality.

There are a number of reasons to ask the witnesses to keep matters confidential. The primary reason is to protect the integrity of the investigation. As the witness only has limited knowledge of what may or may not have happened, it protects the subject employee, the witness and other witnesses from rumors and innuendo being spread about the workplace.

d) Follow up with the employee if questions remain or new questions arise.

Sometimes through the course of the investigation you may need to meet with a witness for a second time. Usually this occurs when a question comes up (relevant to the investigation) that a witness might or should have had knowledge of and didn’t mention it previously.

**Review Documentation/Records**

Ensure documents or other records (timecards, client files etc.) that are relevant and may be evidence are reviewed and copies are available for the employee and their Union Representative.
**Maintain Objectivity**

It is especially important to the process that any disciplinary investigation results in a conclusion that is evidence based and can stand up under scrutiny. This is best accomplished by ensuring you remain objective and that this can be demonstrated. If an outside party can review the process you used, determine that the finding was reasonable and objective, it will assist greatly in having disciplinary measures upheld.

**Check Your Facts**

Never make assumptions for something that can be verified, particularly when it involves “hearsay”; e.g. if the employee says he was not at work that day and was with “Bob”, find “Bob” and see what he has to say; check with employees who were at work to see who they saw that day.

**Keep Notes**

Take notes of what occurred in the meetings and include objective observations of things like the employee’s demeanor/behavior; e.g. “while giving his answers, Bob was squirming in his chair and wouldn’t look anyone in the eye” or “Bob’s face was flushed and his eyes welled with tears” rather than Bob was upset. Things like this might be important later.

Be careful about making or wording opinionated comments on the notes. If they are ever required for evidence it could affect the outcome; e.g. it’s ok to have a comment on the notes such as “Bob was evasive in his answers”. It is not ok to put comments like “Bob is a LIAR”. Something like this could sway a third party to question your objectivity, therefore tainting the investigation.

The level of detail required in your notes is commensurate with the seriousness of the issue. A relatively simple issue may only be a one line comment in a journal. Serious issues will require a higher level of detail.

If it is concluded culpable misconduct occurred, it is sufficient to inform the employee that disciplinary action may be taken following further investigation/consideration.
Determine the Appropriate Discipline

Authorization and Roles

Out of Scope (OOS) Management is authorized to determine the appropriate Discipline. The delegation of authority for each Ministry is determined by the Permanent Head.\(^4\)

The in-scope supervisor, if there is one, is a part of the process by providing information, observations, opinions and recommendations to the Manager for their consideration. The Manager bears the responsibility for the actual decision to discipline and its issuance.

Disciplinary Measures

The Corrective Discipline Guidelines outline the typical progression of disciplinary measures or “steps” as follows:

a) verbal warning;
   b) letter of discipline;
   c) one day suspension;
   d) five day suspension;
   e) ten day suspension; and
   f) dismissal.

For an employee on probation, the progressive discipline process indicated above may be accelerated.

Incidents of serious misconduct (such as assault, theft or serious insubordination) may warrant serious disciplinary measures, and steps of the progressive discipline process may be by-passed and/or a longer period of suspension issued. Some instances may require the involvement of an outside agency such as the police or other regulatory/enforcement agency.

Disciplinary steps may be repeated on the advice of the Public Service Commission in cases involving significant mitigating factors.

\(^4\) Normally, the Permanent Head authorizes a dismissal. However, where it involves in-scope employees, that authority can be delegated.
Examples (not inclusive, situation dependant)

<table>
<thead>
<tr>
<th>Minor – typically results in Verbal Warning or Letter of discipline</th>
<th>Moderate - typically results in Letter of Discipline or Minor suspension</th>
<th>Serious – typically results in Longer suspension or dismissal</th>
<th>Very Serious – likelihood of Dismissal is high</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Infraction – 1\textsuperscript{st} time occurrence</th>
<th>Degree of seriousness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Late in reporting for work or leaving before the official end of the day without sufficient reason</td>
<td>Minor</td>
</tr>
<tr>
<td>Failure to notify when absent for sickness, or other reasons</td>
<td>Minor</td>
</tr>
<tr>
<td>Not making appropriate use of work time (shirking, malingering)</td>
<td>Moderate</td>
</tr>
<tr>
<td>Inappropriate computer use (using e-mail excessively for jokes/chain-emails)</td>
<td>Moderate</td>
</tr>
<tr>
<td>Away from assignment without permission</td>
<td>Serious</td>
</tr>
<tr>
<td>Failure to observe work site safety rules</td>
<td>Serious</td>
</tr>
<tr>
<td>Using obscene or profane language</td>
<td>Serious</td>
</tr>
<tr>
<td>Misuse of a government vehicle or property</td>
<td>Serious</td>
</tr>
<tr>
<td>Discourtesy in dealing with the public</td>
<td>Serious</td>
</tr>
<tr>
<td>Potentially dangerous pranks or horseplay</td>
<td>Serious</td>
</tr>
<tr>
<td>Inability to perform duties due to intoxication or use of drugs</td>
<td>Serious</td>
</tr>
<tr>
<td>Misuse of Government Computer – e.g. pornography, gambling</td>
<td>Serious</td>
</tr>
<tr>
<td>Refusal to obey an order - insubordination.</td>
<td>Serious</td>
</tr>
<tr>
<td>Breach of oath of office.</td>
<td>Very Serious</td>
</tr>
<tr>
<td>Negligence with serious or potentially serious consequences</td>
<td>Very Serious</td>
</tr>
<tr>
<td>Fighting</td>
<td>Very Serious</td>
</tr>
<tr>
<td>Fraud – e.g. Falsifying government record or expense account. Calling in sick when not</td>
<td>Very Serious</td>
</tr>
<tr>
<td>Theft</td>
<td>Very Serious</td>
</tr>
<tr>
<td>Forging of government document.</td>
<td>Very Serious</td>
</tr>
<tr>
<td>Assault</td>
<td>Very Serious</td>
</tr>
<tr>
<td>Bribery - offered or accepted.</td>
<td>Very Serious</td>
</tr>
<tr>
<td>Conviction of an indictable offence against the employer</td>
<td>Very Serious</td>
</tr>
</tbody>
</table>
Considerations

When considering the appropriate discipline, part of the review includes Mitigating Factors. Mitigating Factors means factors that are in the employees favor and may warrant a reduction in a proposed disciplinary penalty, or Aggravating Factors, which are factors that may warrant a more severe penalty.

In determining the appropriate discipline to address an employee’s misconduct, the following factors should be considered:

a) The employee’s length of service.

Is this an employee who has been with the employer for a long time, or someone who is relatively new? A longer term employee might be given some leniency if other mitigating factors are met (no disciplinary record, demonstrates remorse, apologizes etc.). Alternately, particularly if the matter is on the serious side, the situation might have been one where a longer term employee “should have known better”.

b) The employee’s performance.

In conjunction with a), a history of good or better performance can be considered as a mitigating circumstance. Alternately if the performance has been questionable or poor, it may not.

c) The employee’s past discipline record.

Has the employee been disciplined before? If they have been disciplined for something similar it may be time to increase the severity of the penalty. Even if it is something different, if the employee is not conducting themselves appropriately on a frequent/regular basis it may warrant an escalation of penalty.

d) The seriousness of the misconduct.

Generally, the more serious the offense, or if the offense could have had serious implications or consequences, a more severe penalty is warranted.

e) Was the employee given a chance to provide an explanation or his/her actions/version of the events?

Failure to provide this opportunity or failure to follow up to verify the version of events the employee relays can result in faulty investigation findings and/or the discipline being overturned through the grievance process.
f) The employee’s explanation.

Was this an honest mistake or momentary lack of judgment? (mitigating) Alternately, was this a pre-meditated act? (aggravating)

Was the employee forthcoming and honest in their explanation (mitigating), or were they evasive or otherwise non-cooperative, insolent or belligerent (aggravating).

  g) Are there any other mitigating or aggravating factors?

  h) Are there any other pertinent facts?

**Penalties**

**Verbal Warning**

For a minor offense it may be sufficient to deal with the matter via a Verbal Warning or Letter of Expectation. However, where this has failed or for a moderate first offense, formal disciplinary action may be appropriate.

A Verbal Warning is simply advising the employee that they have done something wrong and that it is not to happen again. This type of warning does not appear on the employee’s personnel file. The Supervisor (including in-scope Supervisors) keeps a note of the warning for future reference in case it happens again.

**Letter of Discipline**

Letters of Discipline are a written warning that the employee’s conduct is unacceptable and must be corrected. A copy of the letter is placed on the employee’s personnel file, becoming part of their record.

Letters of discipline should contain the following:

1. A confirmation of any previous verbal warnings.
2. A description of the incident/behavior.
3. Notification the incident/behavior must not occur again and the type or behavior/conduct required of the employee.
4. An advisory of potential future discipline should the employee fail to comply.
5. Information about the EFAP.

---

5 Sample found in PS-803-A
Disciplinary Suspension Without Pay

For incidents/issues where the employee has been warned previously, or is serious enough to warrant skipping the letter of discipline, the next penalty is the disciplinary suspension which is the temporary removal without pay of an employee from the place of duty to stress upon the employee the seriousness of the misconduct and the need to correct the behavior.

Depending upon the seriousness of the misconduct, suspensions usually progress through two or three incrementally increasing levels.

Comparatively minor infractions may begin with a one day suspension, followed by longer suspensions in the event of future misconduct.

The letter of suspension\(^6\) should follow the same format as the letter of discipline and is copied to the employee’s personnel file to become part of their record.

The suspension letter should also indicate:

1. The length of the suspension.
2. The start date.
3. The date the employee is expected to report back to work.

Suspensions should be served on consecutive working days. Where an employee is on suspension they should not be permitted to tag on vacation leave or time in lieu.

Where the employee holds another position with Executive Government, the manager of the second position should be notified that the employee is on a disciplinary suspension and should not be called in or otherwise permitted to volunteer to work.

Dismissal

Dismissal is the ultimate penalty in the disciplinary process. Often referred to as the “capital punishment” of the employment relationship it should be a last resort where less severe efforts to correct the misconduct have failed, or where the matter or the consequences of the misconduct are so serious that a continued employment relationship is not possible.

In the Government of Saskatchewan, normally the Permanent Head authorizes a dismissal. However, where it involves in-scope employees, that authority can be delegated. Labour Relations, through the HRST must be consulted in situations where dismissal is being considered.

---

\(^6\) Sample found in PS-803-B
Managers should provide as much information as possible to ensure the Permanent Head makes an informed decision.

A Permanent Head may consider dismissing an employee as the final step of progressive discipline, or as a result of one act of serious misconduct. In addition to those considerations mentioned earlier, the deliberations should include the following:

a) Why does the problem warrant dismissal?

   i.e. serious misconduct such as theft or fraud, or a progression of lesser but cumulative issues for which prior discipline has not had the desired corrective effect?

b) Are there precedents for dealing with similar incidents?

   What has the Ministry or other Ministries done previously in similar circumstances? Is there case law that might support the decision to dismiss?

c) Was it made clear to the employee that this offence may result in dismissal?

   Were there previous disciplinary steps with the appropriate warnings or was this a single, serious type of misconduct, which a reasonable person ought to have known it was wrong and might lead to serious consequences?

The letter of dismissal\(^7\) should clearly state the reasons for the dismissal, why further employment cannot continue and that dismissal of the employee is effective immediately.

\(^7\) Sample found in PS-803-C
The Disciplinary Meeting

Once the decision to discipline has been reached, the decision must be conveyed to the Employee. Formal discipline requires that a meeting be held with the Employee and (if applicable) their Union Representative.

At this stage the union's role is to serve as a witness to the decision that management has taken.

Do not get involved in arguments on the merits of management's decision. If the Employee initiates a grievance, that is the appropriate venue to debate the matter.

The Manager reviews the following with the participants and delivers the written notification of the discipline:

   a) what occurred and when;
   b) the employee's explanation;
   c) the results of your investigation;
   d) the disciplinary penalty management has chosen to impose;
   e) the behavior that will henceforth be required (except in dismissals);
   f) why that behavior is necessary (except in dismissal).

Some managers will read the disciplinary letter aloud, but it is not necessary. It can serve to increase the tension in the meeting and can be considered demeaning.
Aggravation and Mitigation

Aggravating Factors

Factors that when considered makes the employees conduct worse or even more severe than before thereby warranting an increase in the disciplinary penalty, or possibly a counter to any mitigating factors. Some examples are:

Belligerence

If the employee was insolent or insubordinate during the process or where insubordination is coupled with belligerence or insolence.

Evasiveness, Deception

If the employee does not provide straightforward answers, or tries to deceive the investigator in an effort to avoid discipline, the discipline may be increased. This includes a complete denial of involvement.

Refusal to cooperate

The employee refuses to attend meetings, answer questions or otherwise impedes the process. Sometimes accompanied by belligerence, evasiveness and/or deception.

Failure to recognize the actions as misconduct

Despite pending, or previously imposed disciplinary penalties, the employee fails to recognize they did something wrong, but accepts they were responsible.

Refusal to acknowledge misconduct or accept responsibility for actions

Employees, who refuse to acknowledge the misconduct, will not accept responsibility for their actions and/or attempt to shift the blame elsewhere.

History of previous discipline

In cases where the employee has a prior history of misconduct a more severe penalty may be warranted. It may also serve as an indicator if the proposed discipline will have the desired corrective effect. If they have been disciplined for something similar it may be time to increase the severity of the penalty. Even if it is something different, if the employee is not conducting themselves...
appropriately on a frequent and/or regular basis an escalation of penalty may be warranted.

**Mitigating Factors**

Mitigating Factors are factors or circumstances that, while not completely excusing misconduct, tend to lessen or reduce the extent of the disciplinary penalty. Examples of some common mitigating factors are;

**Substance or Alcohol Addiction/Abuse**

Substance or alcohol addiction or abuse can be a mitigating factor if it can be shown that there is a connection between the abuse and the misconduct; i.e. the fact the employee is an alcoholic may be considered a mitigating factor where the employee was involved in an accident while driving a Government vehicle and found to be impaired. The fact an employee may be an alcoholic likely wouldn’t be considered a mitigating factor where the employee conducted a well planned fraud.

**Illness/Disability**

Did an illness or disability contribute to the misconduct; e.g. is there a mental illness that may have caused the behavior? An example is the use of profane language, a person that has Tourette Syndrome can sometimes have involuntary vocal tics that involve profanities.

**Remorse**

Remorse can be considered as a mitigating factor provided it is immediate, sincere and heartfelt. Remorse demonstrated only after the employee has been dismissed may not be genuine remorse for the misconduct, but remorse for the consequence of dismissal.

An apology, without a correction in behavior, may not be genuine.

**Long Service**

Is this an employee who has been with the employer for a long time, or someone who is relatively new? A longer term employee might be given some leniency if other mitigating factors are met (no previous discipline, demonstrates remorse, apologizes, etc.). Alternately, particularly if the matter is on the serious side, the situation might have been one where a longer term employee “should have known better”.
Clean Disciplinary Record

When the employee has a clean disciplinary history, particularly if they are a long term employee, a reduced penalty may be considered.
Off Duty Conduct

Normally, what an employee does on their own time is of no concern to the employer.

Occasionally, an employee’s activities away from the workplace and outside working hours can impact the employer and/or the employee’s ability to perform their duties. This is commonly referred to as “Off Duty Conduct”.

Disciplinary action for off duty conduct should only be taken where it can be clearly established that the conduct is work-related in the sense of having a detrimental impact on the Employer’s business. Examples of where it might be appropriate to discipline for off-duty conduct are:

1. The conduct of the employee harms the Employer’s reputation or product.

2. The employee’s behavior renders the employee unable to perform his duties satisfactorily.

3. The employee’s behaviors lead to refusal, reluctance or inability of the other employees to work with him.

4. The employee has been found guilty of a serious breach of the Criminal Code, and thus rendering his conduct injurious to the general reputation of the Employer and its employees.

5. The conduct of the employee places difficulty in the way of the Employer properly carrying out its function of efficiently managing its works and efficiently directing its working forces.

e.g.: An employee whose duties require interaction with children on a regular basis is convicted of charges involving child pornography/abuse will likely draw a disciplinary response even if it did not occur at work.

It is recommended that the advice of Labour Relations is sought through the HRST where discipline for Off-Duty Conduct is being considered.
Culpable vs. Non-Culpable

(Using Corrective Discipline for Performance Related Issues)

Generally, the corrective discipline mechanisms are not used for performance problems which are primarily non-culpable reasons. Performance issues are normally addressed through the Performance Improvement Policy PS-804.

However, when dealing with performance issues, there are occasions where corrective discipline may be required.

For example, an employee who deals with the public and becomes chronically abusive with clients might need both corrective discipline (for the act of abuse) and performance improvement (communication skills development).

Another example is the employee who is deficient in performance but refuses to attend required training at the direction of their supervisor (insubordination).

Where issues of culpable behavior during performance improvement persist, it may evolve completely into a disciplinary matter. It is important that the distinction between the culpable and non-culpable behaviors is identified throughout the process.

It is recommended that the advice of the HRST and Labour Relations is sought in these types of situations.