

3.03

CRAIG POLICE DEPARTMENT
Office of Chief of Police
General Order

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Subject: Employee Discipline

Reference: CACP STD. 50.3

TO: ALL OFFICERS

I POLICY:

This General Order is designed to provide a fair and just means for appropriate action when an employee's conduct reflects unfavorably on the department's ability to provide service or is detrimental to effective and efficient operations. The procedures set forth here are intended to provide reasonable means for correcting misconduct prior to resorting to dismissal. It is the department's policy to impose corrective and disciplinary action fairly and impartially and to offer adequate appeal procedures to ensure that the rights of employees are protected. In addition to the provisions of this Order, employees are subject to the provisions of the city personnel policy manual. In case of conflict, the procedures in this Order will prevail.

II DEFINITIONS:

Cause - is defined as any situation when a employee fails (with or without fault) to comply with or satisfy the legitimate performance expectations of the Craig Police Department, whether the expectations be written, verbal or established through customs, traditions or practices.

Seven principles provide a functional definition of cause. They are:

1. Employees received advance notice (expressed verbally or in writing) of what is required or prohibited and the consequences for failure to comply with such practices.
2. A rational relationship exists between what is required and the efficient, effective, and safe operations of the Craig Police Department. It is to be assumed that all directives of management are reasonable and rational until proven otherwise by the employee contesting them.
3. Fact-finding efforts were made to determine the employee's failure before action was taken against the employee.
4. A fair and objective investigation was held to determine the facts, and the employee was given an opportunity to be heard, represented, present evidence or challenge such facts.

5. Substantial evidence exists to sustain the allegations brought against the employee. (Substantial evidence means evidence that would lead a reasonable person to believe that it is true.)
6. Discipline or dismissal actions are applied without unlawful discrimination.
7. The level of discipline or decision to terminate is reasonably related to the seriousness of the proven offense as well as the employee's employment and work history.

Days - The term "days" as used herein, shall mean calendar days provided, however, that if the last day of any time period mentioned herein is a Saturday, Sunday or holiday, the time period shall be extended to the next working day.

Suspension from duty - An administrative action by a supervisor, whereby a subordinate employee is temporarily relieved from performing his/her duties. This suspension may be with or without pay.

Discipline - Discipline is a process of imposing formal sanctions which will help train or develop an employee, preferably through constructive rather than punitive measures. Discipline in the department involves training, counseling and as a last resort, punitive action. Discipline is to be administered equally, regardless of rank, race, creed, color, sex, or political affiliation.

III PROCEDURES:

A. Consistency in Discipline

1. The department abides by the philosophy that discipline should be applied consistently and uniformly.
2. The department does not provide employees with lists of specifically prohibited behavior. A list of examples of such behavior appears in this policy, but no list can be all-inclusive. Employees are expected to have a reasonable perception of what constitutes proper behavior, based on department values, policies, academy training, community expectations and the observance of the behavior of officers in general.
3. In relation to the seventh principle of Cause, the Five Factors of Equity will be taken into consideration in determining what level of disciplinary action will be taken or whether termination will occur. Each decision will be made on a case-by-case basis.

The Five Factors of Equity

- a. The seriousness of the offense as it relates to the nature and extent of damage or the potential damage or future liability to the Craig Police Department as an employer.
- b. The deterrent effect (i.e., message) that needs to be conveyed to other employees to prevent similar infractions or to ensure that similar infractions will not occur or be tolerated.
- c. The degree of employee culpability (i.e., fault), if any, and the employee's attitude about acknowledging wrong doing and making a commitment to improve; this includes the employee's cooperation in the investigation and resolution processes.
- d. The employee's previous disciplinary and performance records to include, but not limited to: time between other offenses, the nature of other offenses, work productivity, attendance rates, cost of supervision, and types of performance errors.
- e. The employee's seniority.

Should employees believe that the level of action taken against them is excessive for the proven offense, they are encouraged, or may be directed, to respond in writing to each of the five considerations above stating why, in their opinion, a lesser action is justified.

B. Incompetent Performance and Misconduct

1. Incompetent performance is defined as performance that fails to satisfy the standards either set by management or required for the job. Consequently, all performance failures are classified as incompetent performance.
2. Misconduct is defined as any action or inaction (includes violations of verbal and/or written directives as well as customs or practices of the Craig Police Department) by an employee for which a rational person could reasonably expect to be sanctioned. The term misconduct implies that incompetent performance occurred, at least in part, because of the employee's negligence or intent. The employee either intended to do the wrong thing or did not care enough to intend to do the right thing. Substantial evidence suggests that the employee made a deliberate choice to work against the standards of the Craig Police Department. The Five Standards of Equity will work against the employee in these cases.
3. Incompetent performance occurring as a result of an employee's lack of knowledge, skills, abilities, or fitness to perform is not misconduct. The employee tried to comply but failed to perform to expectations. The Five Standards of Equity will work for the employee in these cases, if possible.

Caution: Certain economic situations such as reductions in work force or violations of directives such as fighting, theft, falsifying reports, harassment and similar activities can lead directly to termination without the benefit of alternate discipline. Management will not make every effort to help an employee save a job position when an unreasonable risk of negligent retention is at issue or when the employee fails to accept the responsibility to bring about an effective and lasting change in an area of deficient conduct, behavior or performance.

C. Non-Disciplinary Steps

Not every supervisory interaction or intervention with an employee is to be construed as discipline. Except in cases of direct intent to do wrong (or failure to do right), correcting undesirable conduct, behavior or work performance is at times best handled by the immediate supervisor in a non-formal “consulting” atmosphere. This means taking the employee aside and discussing the problem candidly and openly. These actions may or may not be formally documented depending on the supervisor’s discretion. Facts to be considered in making these decisions will include, but will not be limited to, the employee’s intentions to do well, the employee’s appreciation of the supervisory consultation and the employee’s immediate actions to correct the problem.

D. Infractions and Punishments

Except for gross breaches of discipline, supervisors should attempt to begin employee discipline with the least punitive measures. If these do not work, then increasingly more severe measures may be required. While this process may take some time, it is important that each employee be dealt with justly and in a manner which clearly indicates that the positive, constructive measures to change behavior or performance preceded the imposition of more negative sanctions.

All formal disciplinary action will be recorded and placed in the employee’s personnel file.

Unacceptable conduct is divided into three categories according to severity of misbehavior. The examples given are illustrative only, they are not meant to be all inclusive and other related behavior may be added to any appropriate category. If the offense charged does not appear in the examples listed, the Chief of Police will determine which category is most appropriate.

1. Category I

Examples:

- a. Excessive absences, tardiness.

- b. Abuse of duty time (too much time away from established duties; too much time for personal business).
- c. Use of indecent, profane, or harsh language in the performance of duties, or in the presence of the public.

Category I offenses are the misdemeanors of misbehavior yet require correction in the interest of maintaining a productive and well managed department that serves the public's needs.

Category I offenses normally result, in the first offense, in informal measures such as counseling. Two Category I offenses in one year may result in a written reprimand or suspension of up to five days. A third instance in one year shall provide grounds for denial of merit pay increase, demotion or dismissal.

2. Category II

Examples:

- a. Failure to follow supervisor's instructions or perform the duties of rank or assignment in the manner required by agency policies, procedures, directives, and regulations, either willfully or through negligence, incompetence, or cowardice.
- b. Violating safety/security rules without a threat to life, injury or property damage.
- c. Unauthorized time away from work assignments.
- d. Failure to report to work without proper notice to a supervisor.
- e. Unauthorized use, rough or careless handling, or misuse of department or public property.
- f. Refusal to work required overtime.
- g. Chargeable/avoidable motor vehicle accident on the job.
- h. Willfully or negligently damage or destroy public property.

Category II offenses include more severe acts and misbehavior.

Category II offenses normally result, on the first instance, in issuance of a written reprimand. A subsequent Category II infraction within two years may result in a suspension for up to two (2) calendar weeks, demotion, denial of merit pay increase, dismissal or any combination thereof.

3. Category III

Examples:

- a. Unauthorized absence from duty assignment.
- b. Use of any narcotic, hypnotic, barbiturate or somnifacient drug, except according to prescription and under the supervision of an accredited and licensed medical doctor or dentist.
- c. Reporting to work under the influence of, or when ability is impaired by, alcohol or the use of controlled substances.
- d. Falsification of any reports such as, but not limited to, receipts, vouchers, official reports, time records, leave records or knowingly making any false official statement(s).
- e. Theft or unauthorized removal of department records or public/employee property.
- f. Conduct unbecoming an officer. Conduct unbecoming shall include that which brings the department into disrepute or reflect discredit upon the employee as a member of the department, or that, which impairs the operation, or efficiency of the department or employee.
- g. Acts of physical violence or fighting (except official enforcement actions).
- h. Violating safety/security rules where there is a threat to life, injury, property damage or escape.
- i. Sleeping on duty, or intentionally making oneself unavailable for assigned duties.
- j. Participating in any kind of work slowdown or sit-down or any other concerted interference with governmental operations.
- k. Unauthorized possession or use of firearms, dangerous weapons or explosives.
- l. Threatening or coercing city employees or supervisors.
- m. Criminal convictions for acts of conduct occurring on or off the job which are plainly related to job performance or are of such magnitude that to continue the employee in the assigned position could constitute negligence in regard to the department's duties to the public.

- n. Failure to take physical or mental examination as required. The Chief of Police may require mental or physical examinations of an employee by a designated psychiatrist, psychologist or physician when, in the Chief's estimation, it is in the best interest of the employee or the department.
- o. Using public office for private gain.
- p. Engaging in criminal conduct on or off the job.
- q. Engaging in dishonest, immoral, offensive or disorderly conduct that undermines the effectiveness of the department's activities or employee performance, whether on or off the job.
- r. Willful disobedience of the lawful command of a supervisor, or insubordination or serious breach of discipline.
- s. Disclosure of confidential information to any person except those who are entitled to such information.
- t. Taking any action which will impair the efficiency or reputation of the department or its employees.
- u. Acceptance of any bribe, gift, token, money or other things of value intended as an inducement to perform or refrain from performing any official act, or any action of extortion or other means of obtaining money or anything of value through their position.
- v. Manifesting cowardice, feigning illness, failing to follow orders issued by a doctor or otherwise attempting to shirk official duty.
- w. Involvement in any compromise between persons accused of a crime and the person or persons who may have suffered from criminal acts with the purpose of allowing the accused to escape punishment or justice.
- x. Failure to answer questions specifically directed and related to official duties or job fitness (unless criminal prosecution is contemplated).
- y. The use of unnecessary force during an arrest/custody procedure, or the mental or physical abuse of any person in custody.
- z. Deviation from established procedures in the disposition of summons or arrest cases.
- aa. Acts of unlawful discrimination or sexual harassment in violation of State or Federal Law.

- bb. Inadequate or unsatisfactory job performance. (Failure to perform the duties of rank or assignment in the manner required by agency policies, procedures, directives, and regulations, either willfully or through negligence, incompetence, or cowardice.)
- cc. Disruptive behavior.
- dd. Harassment or intimidation of any person, including harassment or intimidation based on race, creed, color, sex, age, religion, national origin or ancestry, physical or mental disability, or sexual orientation.
- ee. Any sexual conduct while on-duty.

Category III offenses include acts of such severity as to merit suspension or dismissal at a single occurrence. Category III offenses may be punished by a written reprimand, a suspension for up to two (2) calendar weeks, denial of merit pay increase, dismissal, demotion or any combination thereof.

E. Probationary Employees

New employees that are on probation shall be governed by city policy, Article 7, Section 7.5, (A).

F. Sanctions

The following sanctions are available.

1. Corrective counseling and training.
2. Written reprimand.
3. Demotion or suspension.
4. Dismissal from department.

G. Corrective Counseling and Training

At times, personal problems may interfere with the member's ability to perform normally. When the results are not serious enough for discipline but call for a more formal type of intervention than consulting with the member, formal counseling is the proper tool to help the member. Corrective counseling is not discipline, but is the last tool management has available to correct a problem prior to discipline.

All corrective counseling must be documented and will serve as proof that the member was formally warned to correct the problem or face progressive disciplinary action up to and including termination.

The following steps shall be observed:

1. At the time of counseling, the employee shall be counseled as to correct behavior, and advised a record shall be maintained in the computerized employee file maintained by the Sergeants' for documentation. In addition the supervisor may annotate this action in the Sergeants' folder, located in the home drive, concerning the counseling and the employee may request to read the record
2. The employee shall be further advised that they have the right to make a written response to the record of counseling and or the Sergeants' folder setting forth the employee's position in case of a disagreement.
3. The employee's supervisor shall record the counseling in writing and forward this letter to the appropriate Division Commander, or for lesser forms of counseling in the computerized Sergeants' folder. Written letters of counseling will reflect the following:
 - a. Employee's name.
 - b. Date of counseling.
 - c. Summary of reasons for counseling.
 - d. Summary of employee's response.
 - e. Suggestions for improvement or specific actions suggested.
 - f. Name of the supervisor and employee and their signatures.
 - g. The employee's signature reflects that they understand the following:
 - (i) That a written record of the counseling shall be maintained.
 - (ii) That the employee has a right to review the record and respond in writing.
 - (iii) That the employee is required to acknowledge the counseling by signing the record.
4. The counseling may involve remedial training. Such training may be deemed necessary to rectify the improper behavior. Remedial training may include attendance of basic academy classes, in-service or other training specifically created to accomplish the department's recommended employee actions to correct or modify behavior. Remedial training is reasonably offered until the employee can demonstrate proficiency in the corrected behavior. All training shall be documented.
5. As a general rule, supervisors are expected to counsel employees regularly. Most counseling is informal, positive, supportive and perhaps undocumented.

H. Steps of Progressive Discipline

Progressive discipline theory holds that the level of disciplinary action taken against a member should be commensurate with the Five Standards of Equity as expressed above. Discipline can progress incrementally from the lowest to the highest level; be reversed if infractions show improvement over previous infractions; and, depending on circumstances, steps can be skipped, particularly if the offense creates a serious result or liability for the Craig Police Department. Each case requires a case-by-case analysis.

The steps comprising the progressive discipline system for the Craig Police Department consist of the written reprimand and suspension. All steps related to progressive discipline must be documented.

1. Written Reprimand

A written reprimand is typically the least intrusive step in the progressive discipline system; however, it may be skipped if warranted by the Five Standards of Equity.

If counseling has been given, and sufficient time provided for improvement, yet the employee's conduct has not improved, a written reprimand should be given. The reprimand will be in the form of the memorandum titled, "Written Reprimand". As a general rule, the reprimand should be given within 30 days of notification of the incident. This does not prevent one being issued at a later date if there are extenuating circumstances. It shall state the nature of the problem or misconduct, what must be accomplished to correct the behavior, and what further action will be taken if improvement is not made.

The memorandum and ways and means to improve or correct behavior will be discussed with the employee by the presenting supervisor. The employee shall sign a copy of the letter acknowledging that it has been received and discussed. The employee will receive the original and the signed copy will be retained in his/her department personnel file. Should the employee refuse to sign the reprimand, the supervisor will attach a written explanation which indicates the reason, if known, for the refusal.

Employees may attach a written response to the reprimand, in cases of disagreement.

2. Suspension

Suspensions are serious in nature and occur when a member fails to respond positively to lesser forms of corrective action, or the nature of the violation is serious enough to justify skipping lower levels of discipline. This means the offense is serious enough that corrective counseling or a written reprimand would send the wrong message to others or is likely to have little or no affect on the offending employee's conduct or behavior.

The Chief of Police or his designee may suspend an employee without pay for any single offense or for multiple offenses arising out of the same incident.

a. **Authority to Suspend (with pay)**

Supervisors have the authority and the duty to suspend immediately, with pay, any department employee for any violation set forth in this policy under "Infractions and Punishments" that indicates, after investigation, that discharge, demotion or suspension would be in order. Further, a suspension shall be imposed whenever a supervisor questions an employee's physical or psychological fitness for duty. An internal affairs investigation may follow.

b. **Procedure for Suspension (with pay)**

If an employee is suspended under the authority set forth above, the suspending supervisor shall immediately notify the Chief of Police of the action taken and grounds for doing so.

Before ending his/her tour of duty, the suspending supervisor shall prepare a detailed written report to the Chief setting forth the reasons for suspension. This report will be available to the Chief on his next regular working day.

The employee, suspended under the provisions set forth above, will appear before the Chief on his/her next regular working day for instructions and/or disposition of the matter.

3. Notice

Whenever disciplinary action occurs, the employee is informed in writing of the following specific elements:

- a. The exact offense violated.
- b. How the violation affects the Craig Police Department's ability to be an effective, efficient or safe employer.
- c. What the member must do to avoid future disciplinary action.
- d. How much time the member has to demonstrate that the problem has been corrected.

- e. What further disciplinary action, possibly including termination, will occur if performance does not improve.

I. Discipline Deactivation

In the absence of any other specific agreement between the Craig Police Department and its employees, the following discipline deactivation period is established.

- Verbal warnings will be in effect for nine months.
- A written reprimand for a Category I offense will be in effect for two years.
- A written reprimand for a Category II or III offense will be in effect for three years.
- Suspensions will be in effect for thirty-six months.

If no further performance problems occur during the active period, the discipline procedure will be formally deactivated at the end of the appropriate time period. It is the employee's responsibility to request deactivation by written request. The Chief of Police will approve or disapprove the request and shall notify the employee. If the request is disapproved, the Chief will explain in writing the reasons for denial and provide guidelines for future deactivation request. This letter, along with the request letter will be placed in the employee's personnel file until approval is granted.

Notice: Deactivating a disciplinary record does not invalidate its use when a termination decision is involved. In termination decisions, the employee's complete employment history will be taken into consideration.

J. Fitness for Duty Evaluation (FFDE):

1. A psychological FFDE is a formal, specialized examination of an incumbent employee that results from (1) objective evidence that the employee may be unable to safely or effectively perform his or her duties (2) may be a direct threat to themselves or others, and (3) a reasonable basis for believing that the cause may be attributable to psychological factors. The central purpose of an FFDE is to determine whether the employee is able to safely and effectively perform his or her essential job functions. (An objective basis is one that is not merely speculative but derives from direct observation, credible third-party report or other reliable evidence.)
2. A fitness for duty evaluation shall only be conducted when it is determined to be job-related and consistent with a business necessity or when the employee may pose a direct threat to themselves or others.

3. Informed Consent: the department requires a report from the psychologist that contains a description of the rationale for the FFDE, the methods employed, and whenever possible, a clearly articulated opinion that the employee is presently fit or unfit for unrestricted duty, and not a threat to themselves or others. All other communication between the employee and the psychologist is considered confidential.
4. Any other Medical Fitness for Duty Examination may only be required if they are job related and consistent with business necessity as it relates to the essential functions of the job.

K. Termination

1. All members are subject to termination for cause. Cause can occur with or without fault on the member's part. Fault and non-fault terminations include, but are not limited to, situations that involve:
 - Resignations.
 - Reductions in work force.
 - Lay-offs.
 - Abandonment of the position. (If the employee is absent without permission for more than three consecutive work days from the last day of actual work.)
 - Disability.
 - Loss of job qualifications or competencies.
 - Death.
 - Discipline.
2. Terminations for reductions in work force or lay-offs result from many factors including reduced operating budgets and events that increase current operational expenses. These events may include excessive overtime costs, damage awards, and unplanned management costs, among others. In such cases, it is management's intent to make termination decisions based on effective, efficient and safe continued operations. In lieu of other controlling authority, seniority is the determining factor in work force reductions and lay-offs if all other factors (which include, but are not limited to, performance ratings, work histories, possession of essential skills) between members are similar.

3. Disciplinary terminations occur when the member's act is serious enough or persistent enough in nature that future retention would impose an undue burden on the Craig Police Department, create a heavy liability issue, or would effectively destroy the member's credibility with peers, supervisors or members of the community.
4. Immediate disciplinary terminations can result from such things as: insubordination, threatening a supervisor, fighting and assaults, provoking a fight or assault, forbidden harassment, endangering another, drug or alcohol abuse, theft and false reporting or witnessing. In these cases, management attempts to establish, through substantial evidence, that the member had culpability, in other words, that the member acted purposefully, knowingly, recklessly or negligently.
5. Progressive disciplinary terminations can result when there are chronic problems, substantial impairment of the employment relationship, situations where performance is not reasonably expected to improve or where problems are not expected to be resolved in a reasonable time.

Chronic problems include such things as being excessively absent from duty (particularly non-scheduled absenteeism), disgruntled or problematic work attitudes that promote discord and affect work place morale, or a consistent failure to meet productivity standards--"soldiering" (i.e., loafing or a deliberate reduction of output, wasting time, only doing enough to get by).

Examples of substantial impairment of the employment relationship include unreasonable disruption of normal operations of the organization, endangering the organization's mission purpose, actions or inactions that contribute to an unnecessary risk to the public image, creating conflicts of interest, committing repeated offenses different in nature but when bundled together demonstrate irresponsible behavior, and acts of disloyalty that cause supervisory and command personnel to lose trust, faith and confidence in the member's ability to work in non-directly supervised manner.

6. When fault (or member culpability) is an element of an offense, an administrative investigation is initiated to determine the extent of the member's culpability. The degree and amount of culpability will be used, in part, to determine whether disciplinary action or termination is warranted.
7. When fault is not an element, a performance evaluation will be conducted to determine the extent of development the employee needs to perform properly in the future.

8. If the employee should be terminated (with or without fault), the member will be informed of the following:
 - a. The reasons for the termination.
 - b. Whether the termination will be classified as “with fault” or “without fault.”
 - c. The effective date of termination.
 - d. Whom to contact regarding status of fringe and retirement benefits.
 - e. A statement that the content of the employee’s record relating to the termination will be made available to them according to law.
 - f. To whom to appeal.

The Craig Police Department does not intend to illegally discriminate against current employees, potential employees or employee groups on the basis of sex, ethnic background, race, religion, color, age or physical handicap in any disciplinary or termination proceeding.

K. Appeals

Appeals to disciplinary action will be governed by the City Personnel Policy Manual.

Approved by:



Walter K. Vanatta
Chief of Police