Massachusetts Department Of Correction **POLICY**	Effective Date 1/25/2023 Annual Review Date 1/25/2023	Responsible Division Deputy Commissioner, Career & Professional Development
Policy Name 103 DOC 230 DISCIPLINE AND TERMINATIONS	M.G.L. Reference: M.G.L. c.124, §§ 1 (c) and (q). DOC Policy Reference: 103 DOC 270 ACA/PREA Standards: 1-CTA-1C-01; 2-CI-6D-5; 2-CO-1C-04	
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Public Access Yes ☒ No ☐	Location: Department's Central Policy File Each Institution's Policy File Department's Personnel Policy Manual	

PURPOSE:
To establish a Department of Correction (Department) policy concerning employee discipline and terminations.

RESPONSIBLE STAFF FOR IMPLEMENTATION AND MONITORING OF POLICY:
Director of Employee Relations
Director of Administrative Hearings
Assistant Deputy Commissioners
Superintendents and Division Heads

CANCELLATION:
103 DOC 230 cancels all previous Department policy statements, bulletins, directives, orders, notices, rules or regulations regarding discipline and terminations which are not consistent with this policy.

SEVERABILITY CLAUSE:
If any part of 103 DOC 230 is, for any reason, held to be in excess of the authority of the Commissioner, such decision shall not affect any other part of this policy.

TABLE OF CONTENTS

230.01	Definitions	3
230.02	Tenure	4
230.03	Just Cause	5
230.04	Progressive Discipline	5
230.05	Disciplinary Action	7
230.06	Disciplinary Action for Violations of Sexual Harassment and Abuse Policies	9
230.07	Serious Disciplinary Infractions	9
230.08	Appeal of Disciplinary Action	10

ATTACHMENTS

Attachment #1	Suggested Form for Formal Written Warning/Reprimand	11
Attachment #2	Massachusetts General Laws Chapter 31 Sections 41-45	12
Attachment #3	Suggested Form of Letter to Commissioner Recommending the Demotion, Termination or Suspension for More Than Five Days of Civil Service Tenured Employee	25
Attachment #4	Office of Employee Relations Memorandum #85-8	26
Attachment #5	Waiver of Right to Appeal Disciplinary Action	28

230.01 DEFINITIONS

Appointing Authority: The Commissioner or designee of the Department.

Collective Bargaining Unit: One of eleven (11) statewide units, established by the Commonwealth's Department of Labor Relations, into which state employees with similar work responsibilities/related job functions represented by a union are grouped for purposes of collective bargaining.

Commissioner: The Chief Executive Officer of the Department.

Division Head: The administrator responsible for the operations of a particular division within the Department.

Probationary Period:

a. That period of time a new or rehired bargaining unit employee shall be employed, as specified in the various collective bargaining agreements, before the employee may file a grievance challenging disciplinary action taken against the employee.

b. The period of time that a promoted employee shall serve in the grade to which the employee has been promoted, as specified in the various collective bargaining agreements, during which the employee may be returned to a previous job title without recourse to the grievance procedure.

Provisional Employee - An employee in a civil service position, who does not have any civil service status.

Statutory Tenure: An employee with statutory protection in their position including the following subcategories:

a. Permanent civil servants - persons who have passed an examination and have been certified in permanent positions subject to M.G.L. c. 31.

b. Veterans – veterans, as defined by M.G.L. c. 31, Section 1, who have held an appointment to a non-civil service permanent or temporary position for three (3) years or more.

c. Institutional quota employees - nurses and non-professionals who have worked in permanent non-civil service institutional positions for nine (9) months or more.

d. Institutional teachers - teachers in state institutions who have worked in a permanent non-civil service position for three (3) years or more.

e. Others, special tenure - persons in positions who have been granted tenure through a special act of the Legislature.

Superintendent: The chief administrative officer of a state correctional institution.

230.02 TENURE

1. A tenured employee has the right to appeal a disciplinary action taken against him/her/they through the Commonwealth's civil service system, if the employee has statutory tenure, or through a collective bargaining grievance procedure, if the employee has collective bargaining tenure. An employee with both statutory and collective bargaining tenure may choose to appeal under the civil service procedure or the grievance procedure but cannot appeal under both.

2. A statutory tenured employee has statutory protection in their position.

3. An employee who has been employed in a position in a collective bargaining unit for nine (9) or more consecutive months, or three (3) consecutive years for institution schoolteacher or six (6) or more consecutive months for the positions of Agent for State Industries, Administrative Assistant for State Use Industries, Industrial Instructor and Recreation Officer, has collective bargaining tenure.

4. A non-tenured employee has very limited appeal rights and such an individual may be disciplined by being informed in writing of the action to be taken and the reasons for such action.

5. A tenured employee has much more extensive appeal rights. Therefore, the following elements shall be present when disciplining such an employee:

   a. "Just cause" shall exist to discipline the employee.

   b. The harshness of the penalty shall fit the seriousness of the offense.

   c. In the case of less serious infractions, where "progressive discipline" is appropriate, clear unequivocal warnings shall be given to the employee stating the exact areas in which the employee's performance and/or behavior is unacceptable and the consequences of continuing such performance.

230.03 JUST CAUSE

A basic underlying principle of the disciplinary process is the concept of "just cause." All the collective bargaining agreements between the Commonwealth and the unions representing state employees provide that no employee that has served a specified probationary period can be discharged, suspended or demoted for disciplinary reasons without "just cause."

The existence of "just cause" includes but may not be limited to an examination of the following factors:

1. Was there fair notice to the employee that the conduct in question could result in disciplinary action?
2. Was the rule or policy prohibiting the conduct reasonably related to the employer's operational needs?
3. Was there an investigation to determine if the conduct actually occurred?
4. Was the investigation conducted in a fair and objective manner?
5. Did the employer obtain sufficient evidence to conclude that the conduct occurred?
6. Was the rule or policy applied consistently to all employees?
7. Was the degree of discipline commensurate with the offense?

230.04 PROGRESSIVE DISCIPLINE

1. It is the policy of the Department to utilize progressive discipline, whenever appropriate, for employees who commit disciplinary infractions. Generally, progressive discipline shall be utilized for less serious disciplinary infractions. The purpose of "progressive discipline" is to address employee misconduct incrementally, where appropriate, in an effort to correct the employee's behavior.

2. Whenever progressive discipline is appropriate, the Department shall administer it incrementally. Generally, progressive discipline shall follow a continuum beginning with an oral warning, then proceeding to a written warning, and subsequently suspension(s).

3. Warnings:

   Generally, progressive discipline begins with an employee receiving an informal verbal warning from his/her/their supervisor. If the employee continues to engage in the conduct which precipitated the verbal warning, the Commissioner, Deputy Commissioners, Assistant Deputy Commissioners, General Counsel, Superintendents, Directors, Chiefs or

Division Heads may issue formal letters of warning or reprimand, which are to be placed in the employee's personnel file. However, nothing herein shall prohibit the Department from issuing a written letter of reprimand for a second offense, even though the conduct at issue differs from the conduct that was the subject of the verbal warning.

a. Informal Warnings

The following procedures shall be followed whenever an informal verbal warning is issued:

i. a structured conversation at a time and place set aside from the regular work site detailing the charges of misbehavior and how the employee may improve his/her/their performance;

ii. an acknowledgment by the employee that the charges of misbehavior are understood as well as the supervisor's expectations as to how he/she/they may improve his/her/their performance within an agreed period of time;

b. Formal Warnings or Reprimands

Formal Warnings or Reprimands begin the disciplinary process, but they are not considered against employees for transfers or promotions.

The following procedures shall be followed whenever a formal written warning or reprimand is issued:

i. a letter given to the employee citing the content of the previous verbal warning (if applicable) and that, if within a specific period of time, performance does not improve or the undesirable behavior is repeated, the employee may be suspended or discharged;

ii. the letter shall be delivered in hand to the employee who shall acknowledge receipt through his/her/their signature or some other written means;

iii. the letter shall become a part of the employee's permanent record.

4. If an employee receives an informal verbal warning for a specific occurrence of misconduct, upon re-offense of the same or similar misconduct the Department may proceed to the formal written warning

procedures, however, if the misconduct is deemed too severe for a formal written warning, the Department may proceed to a more serious disciplinary action.

5. An employee may receive a formal written warning or reprimand without receiving an informal verbal warning if the Department deems the misconduct too serious for a verbal warning but not severe enough to proceed to a more serious disciplinary action.

6. Written warnings or Reprimands that have been placed into the personnel record of employees in bargaining units 1, 3, 4A (Captains) and 6, which are more than two and one-half (2 ½) years old from the date of the issuance of the reprimand and reprimands issued to employees in Unit 9 more than three (3) years old shall be removed from the personnel file provided there has been no subsequent discipline imposed.

230.05 DISCIPLINARY ACTION

The Department shall consider an employee's discipline history prior to a transfer, promotion or reassignment and they may be denied such action based on the date of the incident which resulted in discipline being imposed.

1. In instances where disciplinary action greater than a letter of reprimand is warranted there are several options from which to choose, such as: suspension, demotion, discharge and in some cases transfer/reassignment. However, it is essential that the tenure status of the employee be determined prior to taking disciplinary action, as this status shall dictate the procedures to be followed.

2. In the case of an employee with statutory tenure or an employee with both statutory and collective bargaining tenure, the following procedures shall be adhered to:

   a. Suspension without pay for five (5) days or less (the Commissioner, Deputy Commissioners, Assistant Deputy Commissioners, General Counsel, Superintendents, Directors, Chiefs or Division Heads may impose this type of suspension.)

   Within twenty-four (24) hours after the suspension, which may have been a verbal and/or "on the spot" suspension, the employee shall be given a written notice which includes the following: (see Attachment #1):

      i. The specific reason(s) for the suspension

ii. A statement that the employee may, within forty-eight (48) hours of receipt of the notice, file a request with the appointing authority for a hearing on the question of whether there was just cause to suspend him/her/they; and,

iii. A copy of M.G.L. c. 31, §§ 41 through 45 (see Attachment #2).

b. Suspension without pay for more than five (5) days, demotion or discharge:

i. The appointing authority shall receive a written request for a Commissioner's Hearing to determine whether disciplinary action is appropriate from the Commissioner, Deputy Commissioners, Assistant Deputy Commissioners, General Counsel, Superintendents, Directors, Chiefs or Division Heads, to include the specific reasons for the request (see Attachment #3).

ii. The employee shall be given a three (3) day written notice of a hearing before the appointing authority's designated hearing officer to include a statement of the specific reasons for the contemplated disciplinary action, and a copy of M.G.L. c. 31, §§ 41 through 45.

iii. Within seven (7) days after receiving the hearing officer's report, the appointing authority shall give a written notice of his/her/their decision including the reason thereof.

NOTE: Saturdays, Sundays and legal holidays shall not be counted in the computation of any time period.

3. In the case of an employee without civil service tenure, the Commissioner, Deputy Commissioners, Assistant Deputy Commissioners, General Counsel, Superintendents, Directors, Chiefs or Division Heads may impose the disciplinary sanction of five (5) days or less. However, Superintendents, Directors, Chiefs or Division Heads should obtain approval from the appropriate Assistant Deputy Commissioner, Deputy Commissioner or Commissioner prior to imposing such discipline. The employee being disciplined shall receive a letter which contains the specific reason for the discipline and the disciplinary action imposed. A suspension of more than five (5) days, a demotion, or a discharge may only be imposed by the Commissioner or his/her/their designee. Prior to the imposition of such discipline, a Commissioner's Hearing should be

held in accordance with the procedures set forth in 103 DOC 230.05(2)(b).

4. Pursuant to M.G.L. c. 31, § 41, a provisional employee who has been employed for nine (9) months or more may request an informal hearing before the appointing authority or his/her/their designee in the event he/she/they is discharged. The Commissioner, Deputy Commissioners, Assistant Deputy Commissioners, General Counsel, Superintendents, Directors, Chiefs or Division Heads discharging the employee shall give said employee a written notice of the discharge informing the employee that he/she/they is entitled upon the employee's written request, to an informal hearing within ten (10) days of the discharge. The decision of the appointing authority is final and binding, and notification shall be sent to all concerned parties within ten (10) days of the hearing.

230.06 DISCIPLINARY ACTION FOR VIOLATIONS OF SEXUAL HARASSMENT AND ABUSE POLICIES

1. Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

2. Termination shall be the presumptive disciplinary sanction for staff members who have engaged in sexual abuse.

3. Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

4. All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

230.07 SERIOUS DISCIPLINARY INFRACTIONS

Serious disciplinary infractions including, but not limited to, such offenses as refusal to work, stealing, or striking a supervisor warrant immediate suspension or discharge without the necessity of prior warnings. This is because employees are presumed to know that such serious offenses shall result in disciplinary action. When immediate disciplinary action is warranted, the Commissioner, Deputy

Commissioners, Assistant Deputy Commissioners, General Counsel, Superintendents, Directors, Chiefs or Division Heads shall follow the procedure detailed in 103 DOC 230.05, Disciplinary Action.

230.08 APPEAL OF DISCIPLINARY ACTION

1. An employee with statutory tenure that has been suspended, demoted, discharged or transferred/reassigned pursuant to M.G.L. c. 31, § 41 may, within ten (10) days after receiving notice of the appointing authority's decision (exclusive of Saturdays, Sundays, and legal holidays), request a hearing, in writing, before the Civil Service Commission or a designated hearing officer.

   NOTE: As stated in Section 103 DOC 230.01 (7) (b) Tenure, the tenure rights of a veteran who has held a permanent or temporary non-civil service position for at least three (3) years only extend to discharge.

2. An employee with collective bargaining tenure who has been suspended, demoted, discharged, transferred/reassigned may appeal the disciplinary action imposed by filing a grievance in accordance with the grievance procedure in his/her/their collective bargaining agreement. Department Policy 103 DOC 270, *Labor Relations - Employee Grievance Procedures* should also be consulted for information regarding this procedure.

3. An employee with both statutory and collective bargaining tenure may choose to appeal under the civil service procedure or the grievance procedure, but not under both. Moreover, the employee shall waive any and all rights to appeal the disciplinary action to any other forum (see Attachment #5).

Attachment #1

SUGGESTED FORM FOR FORMAL WRITTEN WARNING/REPRIMAND

Date

Dear _____:

On _____in my office I warned you informally about your tardiness. At that time, we mutually agreed that you would improve your required attendance during established hours of work by _____. During this period, it has come to my attention that you have been late (number of times) times: on _____. If your conduct does not significantly improve by _____, you may be suspended without pay for _____days.

This letter is the formal warning that such action against you is being considered. Please acknowledge your receipt of this warning/reprimand. You may file a counter statement.

Very truly yours,

Commissioner/ Deputy Commissioners/Assistant Deputy Commissioners/ General Counsel/Superintendents/Directors/
Chiefs/Division Heads

Signed: _____
Employee

Part I ADMINISTRATION OF THE GOVERNMENT

Title IV CIVIL SERVICE, RETIREMENTS AND PENSIONS

Chapter 31 CIVIL SERVICE

Section 41 DISCHARGE; REMOVAL; SUSPENSION; TRANSFER; ABOLITION OF OFFICE; REDUCTION OF RANK OR PAY; HEARINGS; REVIEW

Section 41. Except for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be discharged, removed, suspended for a period of more than five days, laid off, transferred from his position without his written consent if he has served as a tenured employee since prior to October fourteen, nineteen hundred and sixty-eight, lowered in rank or compensation without his written consent, nor his position be abolished. Before such action is taken, such employee shall be given a written notice by the appointing authority, which shall include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five, and shall be given a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority. The appointing authority shall provide such employee a written notice of the time and place of such hearing at least three days prior to the holding thereof, except that if the action contemplated is the separation of such employee from employment

because of lack of work, lack of money, or abolition of position the appointing authority shall provide such employee with such notice at least seven days prior to the holding of the hearing and shall also include with such notice a copy of sections thirty-nine and forty. If such hearing is conducted by a hearing officer, his findings shall be reported forthwith to the appointing authority for action. Within seven days after the filing of the report of the hearing officer, or within two days after the completion of the hearing if the appointing authority presided, the appointing authority shall give to such employee a written notice of his decision, which shall state fully and specifically the reasons therefor. Any employee suspended pursuant to this paragraph shall automatically be reinstated at the end of the first period for which he was suspended. In the case of a second or subsequent suspension of such employee for a period of more than five days, reinstatement shall be subject to the approval of the administrator, and the notice of contemplated action given to such employee shall so state. If such approval is withheld or denied, such employee may appeal to the commission as provided in paragraph (b) of section two.

A civil service employee may be suspended for just cause for a period of five days or less without a hearing prior to such suspension. Such suspension may be imposed only by the appointing authority or by a subordinate to whom the appointing authority has delegated authority to impose such suspensions, or by a chief of police or officer performing similar duties regardless of title, or by a subordinate to whom such chief or officer has delegated such authority. Within twenty-four hours after imposing a suspension under this paragraph, the person authorized to impose the suspension shall provide the person suspended with a copy of sections forty-one through forty-five and with a written notice stating the

specific reason or reasons for the suspension and informing him that he may, within forty-eight hours after the receipt of such notice, file a written request for a hearing before the appointing authority on the question of whether there was just cause for the suspension. If such request is filed, he shall be given a hearing before the appointing authority or a hearing officer designated by the appointing authority within five days after receipt by the appointing authority of such request. Whenever such hearing is given, the appointing authority shall give the person suspended a written notice of his decision within seven days after the hearing. A person whose suspension under this paragraph is decided, after hearing, to have been without just cause shall be deemed not to have been suspended, and he shall be entitled to compensation for the period for which he was suspended. A person suspended under this paragraph shall automatically be reinstated at the end of such suspension. An appointing authority shall not be barred from taking action pursuant to the first paragraph of this section for the same specific reason or reasons for which a suspension was made under this paragraph.

If a person employed under a provisional appointment for not less than nine months is discharged as a result of allegations relative to his personal character or work performance and if the reason for such discharge is to become part of his employment record, he shall be entitled, upon his request in writing, to an informal hearing before his appointing authority or a designee thereof within ten days of such request. If the appointing authority, after hearing, finds that the discharge was justified, the discharge shall be affirmed, and the appointing authority may direct that the reasons for such discharge become part of such person's employment record. Otherwise, the appointing authority shall reverse such discharge, and the allegations against such person shall

be stricken from such record. The decision of the appointing authority shall be final, and notification thereof shall be made in writing to such person and other parties concerned within ten days following such hearing.

Any hearing pursuant to this section shall be public if either party to the hearing files a written request that it be public. The person who requested the hearing shall be allowed to answer, personally or by counsel, any of the charges which have been made against him.

If it is the decision of the appointing authority, after hearing, that there was just cause for an action taken against a person pursuant to the first or second paragraphs of this section, such person may appeal to the commission as provided in section forty-three.

Saturdays, Sundays and legal holidays shall not be counted in the computation of any period of time specified in this section.

Notice of any action taken under this section shall be forwarded forthwith by the appointing authority to the personnel administrator.

Part I	ADMINISTRATION OF THE GOVERNMENT
Title IV	CIVIL SERVICE, RETIREMENTS AND PENSIONS
Chapter 31	CIVIL SERVICE
Section 41A	DISCHARGE, REMOVAL OR SUSPENSION; HEARING BEFORE DISINTERESTED HEARING OFFICER; REVIEW

Section 41A. Upon the request of the appointing authority and a tenured employee, who is entitled to a hearing pursuant to the first paragraph of section forty-one, a hearing before a disinterested hearing officer, designated by the chairman of the commission, may be held in lieu of a hearing before the appointing authority. Such hearing officer shall make findings of facts and may make recommendations for decision to the commission. Following the decision of the commission, there shall be no appeal pursuant to the provisions of section forty-three; provided, however, that a petition to review may be filed pursuant to the provisions of section forty-four. All requirements relative to written notice and the holding of hearings pursuant to this section shall be governed by those set forth in section forty-one.

Part I	ADMINISTRATION OF THE GOVERNMENT
Title IV	CIVIL SERVICE, RETIREMENTS AND PENSIONS
Chapter 31	CIVIL SERVICE
Section 42	COMPLAINTS; HEARINGS; JURISDICTION; FILING OF CIVIL ACTION

Section 42. Any person who alleges that an appointing authority has failed to follow the requirements of section forty-one in taking action which has affected his employment or compensation may file a complaint with the commission. Such complaint must be filed within ten days, exclusive of Saturdays, Sundays, and legal holidays, after said action has been taken, or after such person first knew or had reason to know of said action, and shall set forth specifically in what manner the appointing authority has failed to follow such requirements. If the commission finds that the appointing authority has failed to follow said requirements and that the rights of said person have been prejudiced thereby, the commission shall order the appointing authority to restore said person to his employment immediately without loss of compensation or other rights.

A person who files a complaint under this section may at the same time request a hearing as to whether there was just cause for the action of the appointing authority in the same manner as if he were a person aggrieved by a decision of an appointing authority made pursuant to all the

requirements of section forty-one. In the event the commission determines that the subject matter of such complaint has been previously resolved or litigated with respect to such employee, in accordance with the provisions of section eight of chapter one hundred and fifty E, or is presently being resolved in accordance with said section eight, the commission shall forthwith dismiss such complaint. If said complaint is denied, such hearing shall be conducted and a decision rendered as provided by section forty-three.

The supreme judicial court or the superior court shall have jurisdiction over any civil action for the reinstatement of any person alleged to have been illegally discharged, removed, suspended, laid off, transferred, lowered in rank or compensation, or whose civil service position is alleged to have been illegally abolished. Such civil action shall be filed within six months next following such alleged illegal act, unless the court upon a showing of cause extends such filing time.

Part I ADMINISTRATION OF THE GOVERNMENT

Title IV CIVIL SERVICE, RETIREMENTS AND PENSIONS

Chapter 31 CIVIL SERVICE

Section 43 HEARINGS BEFORE COMMISSION

Section 43. If a person aggrieved by a decision of an appointing authority made pursuant to section forty-one shall, within ten days after receiving written notice of such decision, appeal in writing to the commission, he shall be given a hearing before a member of the commission or some disinterested person designated by the chairman of the commission. Said hearing shall be commenced in not less than three nor more than ten days after filing of such appeal and shall be completed within thirty days after such filing unless, in either case, both parties shall otherwise agree in a writing filed with the commission, or unless the member or hearing officer determines, in his discretion, that a continuance is necessary or advisable. If the commission determines that such appeal has been previously resolved or litigated with respect to such person, in accordance with the provisions of section eight of chapter one hundred and fifty E, or is presently being resolved in accordance with such section, the commission shall forthwith dismiss such appeal. If the decision of the appointing authority is based on a performance evaluation conducted in accordance with the provisions of section six A and all

rights to appeal such evaluation pursuant to section six C have been exhausted or have expired, the substantive matter involved in the evaluation shall not be open to redetermination by the commission. Upon completion of the hearing, the member or hearing officer shall file forthwith a report of his findings with the commission. Within thirty days after the filing of such report, the commission shall render a written decision and send notice thereof to all parties concerned.

If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee, by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.

Any hearing pursuant to this section shall be public if either party so requests in writing. The person who requested the hearing shall be allowed to answer, personally or by counsel, any of the charges which have been made against him.

The decision of the commission made pursuant to this section shall be subject to judicial review as provided in section forty-four.

Saturdays, Sundays and legal holidays shall not be counted in the computation of any period of time specified in this section.

Part I ADMINISTRATION OF THE GOVERNMENT

Title IV CIVIL SERVICE, RETIREMENTS AND PENSIONS

Chapter 31 CIVIL SERVICE

Section 44 JUDICIAL REVIEW

Section 44. The commission may institute appropriate proceedings in the superior court for enforcement of its final orders or decisions. Any party aggrieved by a final order or decision of the commission following a hearing pursuant to any section of this chapter or chapter thirty-one A may institute proceedings for judicial review in the superior court within thirty days after receipt of such order or decision. Any proceedings in the superior court shall, insofar as applicable, be governed by the provisions of section fourteen of chapter thirty A, and may be instituted in the superior court for the county (a) where the parties or any of them reside or have their principal place of business within the commonwealth, or (b) where the commission has its principal place of business, or (c) of Suffolk. The commencement of such proceedings shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Part I ADMINISTRATION OF THE GOVERNMENT

Title IV CIVIL SERVICE, RETIREMENTS AND PENSIONS

Chapter 31 CIVIL SERVICE

Section 45 REIMBURSEMENT FOR DEFENSE EXPENSES

Section 45. A tenured employee who has incurred expense in defending himself against an unwarranted discharge, removal, suspension, laying off, transfer, lowering in rank or compensation, or abolition of his position and who has engaged an attorney for such defense shall be reimbursed for such expense, but not to exceed two hundred dollars for attorney fees for each of the following: (1) a hearing by the appointing authority; (2) a hearing pursuant to section forty-two or forty-three; (3) a judicial review pursuant to section forty-four; and not to exceed one hundred dollars for each of the following: (1) summons of witnesses; (2) cost of stenographic transcript; (3) any other necessary expense incurred in such defense.

Any person seeking such reimbursement shall file with his appointing authority a written application therefor within thirty days after final disposition of his case. The appointing authority shall, within thirty days after receipt of such application, pay such reimbursement from the same source as that from which the salary of the person seeking the

reimbursement is paid, but only upon receipt of satisfactory proof that such expenses were actually incurred for the purposes set forth in this section.

Saturdays, Sundays, and legal holidays shall not be counted in the computation of any time period specified in this section.

Attachment #3

SUGGESTED FORM OF LETTER TO THE COMMISSIONER RECOMMENDING THE DEMOTION, TERMINATION OR SUSPENSION FOR MORE THAN FIVE DAYS OF A CIVIL SERVICE TENURED EMPLOYEE.

Date

Dear Commissioner:

On _____, I warned _____ informally about his/her/their tardiness. As the employee's performance in this area did not improve, I wrote the employee a first formal warning on _____ (copy attached) and a second formal warning on _____ (copy attached, then on _____ the employee was suspended without pay for _____ days. In the letter of suspension (see attached) _____ was warned that further incidents of tardiness might result in more severe disciplinary action up to and including termination. Since the employee's suspension, the employee has been late on _____.

As the employee's continued tardiness impairs the performance of this institution/department/office, I respectfully request that you schedule a hearing to consider the employee's termination.

Very truly yours,

Commissioner/Deputy Commissioners/Assistant Deputy Commissioners/General Counsel/Superintendents/Directors/Chiefs/Division Heads

Attachment #4

OER MEMORANDUM #85-8

To: All Agency Heads, Appointing Authorities, and Labor Relations Personnel

From: Daniel J. Sullivan, Director

Re: PRE-TERMINATION CONFERENCE WITH EMPLOYEES

Date: September 17, 1985

The United States Supreme Court has recently decided a case [1] which requires procedural steps to be taken before discharging or terminating certain public employees.

Failure to follow the simple procedure outlined herein could result in reinstatement, with full back pay, regardless of the existence of "just cause" for the termination.

In the Loudermill case, the Supreme Court has ruled that public employees who have a "property interest" or "property right" in continued employment must be afforded "some kind of hearing" prior to discharge. Otherwise, the employee's constitutionally protected property interest in his employment is violated. Thus, the "pre-termination hearing" assures compliance with the Due Process Clause of the U.S. Constitution in that the employee is given both "notice" and an "opportunity to be heard."

The court stated that the employee's "property interest in his employment" is created not by the Constitution, but rather by existing rules or understandings that stem from an independent source such as state law. Thus, for employees of the Commonwealth, it would appear that both permanent, tenured employees under ch. 31 (Civil Service) and non-Civil Service employees who are covered by the "just cause" provisions of the various collective bargaining agreements have acquired a "constitutionally protected property interest in their employment." (Probationary employees would appear to be exempt).

Accordingly, any appointing authority contemplating discharge of such an employee should afford the employee "some kind of hearing prior to discharge." To quote from the Court's decision such "hearing:"

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[1]Cleveland Board of Education v. Loudermill, 105 S.Ct. 1487.
_____US _____. (1985)

1. Need not be elaborate. A full evidentiary hearing not required.

2. The pre-termination hearing need not definitely resolve the propriety of the discharge. It should be an initial check against mistaken decisions - essentially a determination of whether there are reasonable grounds to believe the charges against the employee and true and support the proposed action.

3. The essential requirements are notice and an opportunity to respond. The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. To require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee.

Thus, as can be seen, the pre-termination conference need not be formal or lengthy. It must simply comply with #3 above to provide the fundamentals of due process. Naturally, after the termination, the employee's right to challenge the dismissal under the grievance procedure or the civil service law continue in full force and effort.

This requirement for a pre-termination conference for the employee is in effect immediately. Please take the necessary steps to ensure that the provision of this memorandum are understood and available by all persons with authority to terminate.

Attachment #5

WAIVER OF RIGHT TO APPEAL DISCIPLINARY ACTION

I wish to submit the attached grievance under Article 23A, Grievance Procedures and Article 23, Arbitration of Disciplinary Action, appealing my demotion, suspension or discharge effective on _____ and pursuant to Article 23, Section 4 of the Agreement between the _____ and the Commonwealth of Massachusetts dated _____ I hereby waive any and all rights to appeal this disciplinary action to any other forum including the Civil Service Commission.

I have not initiated any other appeal of this disciplinary action.

Date:_____ Signed:_____
Employee

Signed:_____
Union Representative