

I. PURPOSE

To establish guidelines for fair and consistent discipline, and to ensure that employees are provided with due process of law.

II. GENERAL POLICY

VTA strives to establish and maintain standards of employee conduct and supervisory practices that support and promote effective operations. It is VTA's policy to motivate employees to perform effectively by positive encouragement, recognition, and reward. However, unacceptable work performance, misconduct, or violations of VTA policy or practice may result in disciplinary action. Disciplinary action, when necessary, shall be fair, constructive, and appropriate. Supervisors shall administer discipline progressively whenever possible, in accordance with the following principles.

Supervisors shall:

- Employ constructive efforts to help employees achieve satisfactory standards of conduct and job performance.
- Attempt to correct employee performance problems or problem behavior to the extent possible before administering discipline.
- Document counseling and disciplinary warnings given and corrective measures taken.
- Administer discipline progressively when appropriate, (that is, from less severe to more severe discipline), depending upon the seriousness of the issue.
- Provide, whenever possible, sufficient notice to an employee that discharge may result from continued violation of standards of conduct or unsatisfactory job performance.

III. APPLICATION OF POLICY

This policy applies to all non-represented employees. This policy does not apply to at-will employees, unclassified employees, temporary employees, or employees who have not completed their initial probationary period. Such employees have no appeal rights relative to discipline.

IV. TYPES OF DISCIPLINE.

Discipline may progress from oral reprimand to written reprimand to suspension to demotion or discharge. Not every offense requires a progression, or the same progression.

Informal Discipline. Informal discipline consists of oral or written reprimands. Oral or written counseling is not considered discipline. However, a copy of any written counseling shall be given to the affected employee prior to placing a copy in the employee's personnel record.

Employees receiving written reprimands may file a written response to the reprimand, which shall be placed in the employee's personnel record together with the reprimand. However, the decision of the supervisor issuing the reprimand is final. Copies of reprimands and responses shall also be filed with the Office of Civil Rights and Employee Relations.

Formal Discipline. Formal Discipline consists of suspension, demotion, or termination.

Employees exempt from the overtime requirements of the Fair Labor Standards Act shall not have their predetermined salary reduced during a workweek in which they performed any work, except for infractions of security regulations of major significance, or for infractions of safety rules of major significance intended to prevent serious danger to the workplace or to other employees.

V. PROCEDURE

Before formal disciplinary action may be taken, the employee must be given:

- 1) Notice of the proposed action (discipline). The notice of proposed discipline shall be delivered to the affected employee either in person, by having the employee sign a copy indicating receipt (if the employee refuses to sign, the supervisor shall so note on the personnel file copy) or by regular *and* certified mail, return receipt requested.
- 2) The reason for the proposed action (that is, the charges against the employee). This shall be a detailed statement of the alleged conduct of the employee that prompted the proposed discipline.
- 3) A copy of the charges and materials upon which the proposed action is based. In addition, the employee shall be provided with a copy of this policy
- 4) The right to respond orally or in writing to the person who proposes to impose the discipline. The supervisor proposing the discipline shall specify in the Notice to the employee a date for a Formal Review should the employee elect to respond orally to the charges. The employee shall be given at least 5 working days' notice of the Formal Review. If the notice is given by mail, the Formal Review shall be scheduled at least 7 working days from the date of mailing.

The foregoing procedure does not apply to informal discipline.

VI. FORMAL REVIEW PROCEDURE

The employee may bring to the Formal Review one person to observe the proceedings or to consult with or assist the employee. Any VTA employee who serves in this capacity shall be paid for a reasonable amount of work time spent at the Formal Review.

VII. IMPOSITION OF DISCIPLINE

After considering the employee's response to the Notice of Proposed Disciplinary Action, the supervisor shall prepare a written Notice of Disciplinary Action, or, if no discipline is imposed, a Notice of Decision. The Notice of Disciplinary Action shall summarize the charges against the employee, state the discipline to be imposed, specify

the effective date of the discipline, explain the reasons for the imposition of discipline, and contain a summary of the employee's appeal rights. *An appeal filed by the employee shall not delay the timely carrying out of the discipline imposed.*

In cases of discharge, the Manager, Office of Civil Rights and Employee Relations and the department head or designee of the supervisor imposing discipline shall review the Notice of Disciplinary action before it is served on the employee.

The employee shall be served with a copy of the Notice personally or by mail.

VIII. APPEAL AND APPEAL HEARING

An employee dissatisfied with the supervisor's decision may, within 10 working days from receipt of the decision, file with the Office of Civil Rights and Employee Relations (OCR/ER), an appeal requesting a formal hearing before a neutral hearing officer. Appeal forms shall be provided by OCR/ER for that purpose.

During the pendency of an appeal from a demotion or termination, the vacancy in the position may not be filled by a permanent appointment.

The employee may select a Hearing Officer from among a panel of three persons determined by VTA. A mutually agreeable date for the hearing shall be selected from those offered by the Hearing Officer.

The hearing shall allow for testimony, cross examination of witness, and full presentation of evidence. The order in which evidence is presented and witnesses are called shall be determined by the Hearing Officer. Strict rules of evidence shall not apply, but the rules of law regarding the burden of producing evidence shall apply. The presentation of closing arguments or written briefs, if any, shall be within the discretion of the Hearing Officer. The employee may be represented by an attorney or another person.

VTA shall provide a suitable room for the hearing, which shall be held on VTA premises. The hearing may be tape recorded by either party. Either party may have the hearing transcribed by a Court Reporter at the party's own expense.

Employee representatives and witness shall be released from their duties to attend the hearing, if VTA receives at least 5 days advance written notice of the request. Travel

time for witnesses, costs of representatives and other costs shall be borne solely by the party calling the witness or utilizing representatives.

Cancellation fees paid to a Hearing Officer for canceling or postponing a hearing shall be paid by the party requesting the postponement or cancellation.

IX. DECISION

The hearing officer shall prepare and submit a written report to the General Manager or General Counsel, as applicable, setting forth findings, the factual basis for the findings and recommendations. Copies of the report shall be served on the employee, and his or her representative or attorney.

After receiving the report and recommendations, the General Manager or General Counsel, as applicable, shall render a final decision on the appeal, and shall uphold, overturn, or modify the Disciplinary Action. The Manager, Office of Civil Rights and Employee Relations, shall ensure that the final decision is implemented.

The General Manager's or General Counsel's decision shall be final and subject only to the judicial review afforded any employee under Code of Civil Procedure Section 1094.5, and subject to Section 1094.6, which provides for a statute of limitation of 90 days within which a petition for judicial review of a final VTA decision suspending, demoting, or discharging an employee may be filed by the employee.