

<b>Policy Title:</b>	<b>Applies to:</b>	<b>Reference #</b>
<b>CORRECTIVE DISCIPLINE</b>	All Employees	128-HR-09
<b>Approved by:</b>	<b>Dates:</b>	<b>Total # of Pages</b>
Executive Leadership Team	<b>Effective:</b>	01-JAN-2009
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<b>Authority:</b>		
People and Organizational Culture		

## 1.0 Purpose

To correct inappropriate culpable behaviour of employees through the application of disciplinary action designed to encourage and promote the proper behaviour required for effective job performance.

## 2.0 Scope

All City of Regina Employees.

This policy is to be observed and administered by all management personnel, including in-scope unionized employees functioning in supervisory capacities. Departments are responsible for delegating authority with respect to the administration of discipline.

## 3.0 Definitions

## 4.0 Policy

Employees are responsible for their own behaviour. The employer will respond to culpable behaviour by employees through the application of discipline. The purpose is to bring about the behaviour required for effective job performance, advise the employee of the behaviour required and to indicate the seriousness with which the employer views the problem.

Corrective discipline is a process through which the employer provides employees with an adequate opportunity to correct behaviour. It is based on the principle that more serious offences warrant more serious disciplinary action. It is also based on the principle that less serious offences, when repeated, may justify more serious disciplinary action. In short, it is a mechanism which emphasizes rehabilitation.

A disciplinary situation is essentially a problem for the employee to resolve. Failure to do so will place employment at risk.

## **CORRECTIVE DISCIPLINE GUIDELINES:**

1. Kinds of Behaviour to Which Corrective Discipline Applies
2. Preventing the Disciplinary Situation
3. Dealing with the Disciplinary Situation
4. Types of Discipline
5. Administrative Procedures

### **1. KINDS OF BEHAVIOUR TO WHICH CORRECTIVE DISCIPLINE APPLIES**

Corrective discipline attempts to correct inappropriate behaviour. The primary objectives are:

- To induce the employee in adopting the required behaviour.
- To demonstrate to all employees the behaviour that is required and to indicate the employer is prepared to take steps to ensure such behaviour is forthcoming.
- To reinforce/deter.

Culpable behaviour is behaviour for which one is responsible and within their control. This policy is applied only to behaviour with the following characteristics:

- The employee knows or could reasonably be expected to know, what is required.
- The employee is capable of carrying out what is required.
- The employee chooses to perform in a manner other than as required.

Where deficient behaviour does not meet these characteristics, then Corrective Discipline is inappropriate. Other methods to improve behaviour may be used such as counseling, employee assistance, goal setting and action plans.

#### **Common Situations Where Corrective Discipline Would Not Apply**

Non-culpable behaviour does not warrant a disciplinary response. Non-Culpable behaviour is behaviour for which one is not responsible and within their control.

The employee who tries hard but does not succeed is not dealt with via the employer's discipline policy; the employee may know what is required, but is not capable. The employee inadequately directed may be capable, but does not know what is required; discipline would not be appropriate. Only where the employee knows and is capable, but chooses to disregard work rules or prescribed performance standards, does Corrective Discipline apply.

Discipline would not apply when:

- The employee is not competent – insufficient occupational, personal or mental capabilities to perform at the prescribed performance standards.
- The employee is incapacitated – physical/mental deficiency, condition or illness preventing an employee from performing at the prescribed performance standards.

#### **Distinguishing Between Incompetence, Incapacity, “Personal Problems” and Culpable Behaviour**

Only the employee can help the employer distinguish between incompetence, incapacity, personal problems and culpable behaviour by providing explanations and reasons for unacceptable performance. The supervisor/manager will fully investigate and, based on the results of the investigation, decide whether Corrective Discipline is appropriate.

The question that must be answered is: "In consideration of the explanation provided by the employee, and as otherwise determined, would a reasonable person conclude that the unacceptable behaviour was avoidable?"

Assistance may be provided to the employee in the form of coaching, formal counseling, additional supervision, offering the Employee and Family Assistance Program, providing training required to meet the expected standards, finding alternate work opportunities, granting unpaid leave of absence, or implementing a performance improvement program.

A common example of non-culpable behaviour is excessive absenteeism for injury or illness which is often referred to as innocent absenteeism. Refer to the Attendance Management policy for further information regarding this complex issue.

In seeking an answer, the supervisor/manager should, whenever possible, discuss the case with his/her Human Resources Consultant before deciding how to deal with the matter.

If it is determined to be non-culpable behaviour a Performance Improvement Program may be considered. (See Appendix D)

## **2. PREVENTING THE DISCIPLINARY SITUATION**

Informing Employees of Work Rules:

NOT ALL RULES HAVE TO BE POSTED. Insubordination, theft, assault, fraud, etc. are contrary to normal social/legal conventions. Nor can all work rules be anticipated in advance. Certain misbehaviour may be peculiar to specific circumstances. If the behaviour detrimentally affects the work performance of the employee or other employees, it may be dealt with via discipline.

DISCIPLINARY ACTION IS TAKEN WHERE AN EMPLOYEE VIOLATES THE EMPLOYER'S WORK RULES. It is important that supervisors/managers bring to the attention of employees, the work rules and that they must be obeyed.

Apply the following as your guide:

FORUMLATION:

- Are the proposed work rules clear and reasonable?
- Can you demonstrate the connection between the rules and how they contribute to operational effectiveness?
- Do the rules clarify the required behaviour?
- Will the rules be seen as being equitable by employees?
- Are the work rules consistent with collective agreement/legislative requirements?

**COMMUNICATION:**

- Have the work rules been posted in a convenient location or explained in a clear manner?
- Are new employees informed of the work rules?
- Have all revised rules been passed on to employees?

**ENFORCEMENT:**

- Are all work rules enforced promptly, consistently, not arbitrarily, in good faith and without discrimination?

**3. DEALING WITH THE ACTUAL DISCIPLINARY SITUATION**

**SEVEN (7) STEPS TO EFFECTIVE DISCIPLINE**

Minor offences may be dealt with through non-disciplinary informal discussion. Where that has failed, or for a moderately serious first offence, a verbal warning may be appropriate. Follow these steps in numerical order in handling the actual case:

1. Determine What Occurred
2. Seek Advice on the Case
3. Establish the Employee's Explanation
4. Investigate the Employee's Explanation
5. Consider Mitigating Factors
6. Assess Findings of the Investigation and Make a Determination Based on the Balance of Probabilities
7. Give Management's Decision

**Procedures When an Incident Occurs**

Departments may supplement these procedures to fit their operational realities.

As you proceed through Steps 1 to 4, make and maintain a complete written record. This record will be needed when assessing and seeking advice on the case. In addition, if the case ultimately goes to grievance/arbitration, you will be a witness and you will be allowed to consult the written record. The record of the investigation should be retained by the supervisor/manager for use in the event of grievance/arbitration action.

**Step 1 - Determine What Occurred**

Isolate What Occurred. If you witness unacceptable behaviour, order the employee to stop. Shortly thereafter, meet with the employee in private and obtain his/her explanation. State how the employee must behave, that the matter will be investigated further and that disciplinary action may result. Immediately after the meeting, record what occurred: what you saw, the order you gave, the employee's response, the time/date of occurrence, witnesses, etc. This written description is of critical importance and should be complete. You may choose to be accompanied by another management representative.

Where the apparent offence is reported to you by a third party, obtain a complete explanation of what occurred. You may wish to have a witness when such a report is

made. Ask clarifying questions as required and record all responses; read back what you have recorded to ensure clear understanding. Depending on circumstances, you may wish to speak to other parties to verify the report you have been given: i.e. include fellow employees, supervisors, and members of the public. Such responses should also be recorded. In some circumstances you may choose to request a signed written statement. If there is reason to believe an employee who is being interviewed may be subject to discipline, inform the employee that he/she may have a union representative present if it is a unionized setting.

Summary: You are attempting to establish and verify the actual occurrence of an apparent disciplinary infraction.

## **Step 2 – Seek Advice on the Case**

If the findings of the investigation indicate an apparent disciplinary infraction, it is important to ensure the situation is handled in a manner that is consistent throughout the City of Regina. When in doubt, consult your immediate supervisor and/or with your Human Resources Consultant on how to proceed.

Review the relevant clauses in the Agreement, if applicable.

On determination that unacceptable behaviour has occurred, it is sufficient to inform the employee that disciplinary action may be taken following further investigation.

There are instances where it may be necessary to remove an employee immediately from the work place, due to the nature of the incident.

The following may be used where it is necessary to immediately remove the employee from the workplace pending a determination if discipline is appropriate:

### **Removal from Work**

The temporary and immediate removal of the employee from the workplace without pay; the employee is instructed to report the next day. The typical case is where the employee appears to be intoxicated at the work-site, fighting with a co-worker, etc. The situation is one where productive performance for the remainder of the day is unlikely or remaining at the work-site might prompt a repeat of the undesired behaviour. Note: Ensure the employee is safe to get home on their own. If they are not capable make the necessary transportation arrangements.

The employee should be confronted with the offence, informed that disciplinary action may result, escorted off the work-site and told to whom to report on the following day. What transpired should be recorded immediately – who, what, when, where and why. Record the statements of witnesses. On the employee's return to the work-site, initiate the Corrective Discipline procedure. If the investigation reveals that discipline is not warranted, the employee should be paid for his/her period of absence.

### **Suspension Pending Investigation**

The temporary and immediate removal of the employee from the work-place without pay pending the outcome of an investigation of an alleged offence. This is normally

undertaken where suspension or discharge is possible. Such removal is normally undertaken where remaining on the premises could:

- Lead to a repetition of the offence.
- Seriously affect performance or morale of other employee.
- Detrimentally affect relationship with the clients.
- Result in the employee having the opportunity to tamper with evidence or otherwise impede the discovery of facts through investigation.

Such a suspension should not be used where it is possible to place the employee in another work setting, performing duties equivalent to his/her normal duties, where such adverse consequences would not occur.

Confront the employee with the alleged offence and determine his/her explanation; inform him/her that disciplinary action could result and order him/her off the work-site. What transpired should be recorded immediately.

Follow-up with a letter to the employee indicating the alleged offence and suspension without pay pending further investigation and advise that the employee will be informed of management's decision upon completion of the investigation. (Appendix A4). A copy of this letter is to be distributed in accordance with the Administrative Procedures.

The suspension pending further investigation should be conducted in a comprehensive and timely manner. Initiate the Corrective Discipline procedures. If investigation reveals that a suspension is not warranted, or where a verbal warning or a written reprimand is imposed, the employee should be paid for his/her period of absence. Where it is determined that discipline is not appropriate, a follow-up letter should be sent advising there will be no disciplinary action as a result of the findings of the investigation.

Summary: You are seeking advice on how to respond to the case.

### **Step 3 –Establish the Employee's Explanation – the Critical Step**

This step is a critical phase in your investigation of the case. Your objective is to determine what occurred and to obtain the employee's explanation so that an objective decision can be made. To a significant degree, your success is dependent on how you conduct the hearing. The following may serve as a guide:

Remember to focus on the behaviour, not the employee. As a supervisor your job is to correct operational problems; the disciplinary situation should be treated like any other operational difficulty. Do not focus on the employee as a person; rather, concentrate on the behaviour. Through your acts, it should be made clear that any employee would be treated in a similar manner in the face of the apparent infraction, all things being equal.

Be respectful and never touch an employee in a disciplinary setting; such touching can easily be misconstrued.

Inform the employee you wish to meet him/her in private to discuss an apparent disciplinary infraction. In a unionized setting, inform the employee that he/she may have a Union representative present. As required, allow the employee time to contact a Union representative. However, the proposed meeting should take place as soon as possible, preferably the same day.

A Union representative may observe during Step 3 when the employer is investigating the employee's explanation, but cannot interfere.

At the hearing you may choose to be accompanied by another management representative. Set out the evidence you have gathered concerning the alleged misbehaviour and ask for the employee's explanation.

Allowing the employee to explain is important. The purpose of the disciplinary hearing is to allow the employee to advance an explanation in the face of an apparent offence. State what you believe to be the situation in general terms and allow the employee to verify, refute or provide background detail. As the explanation is provided, ask clarifying questions. Do not narrow your focus to an exclusive pursuit of "proving" the offence; in this circumstance the employee may simply answer your questions and not advance other relevant information. Remember, as the term implies, a hearing is your opportunity to listen and the employee's opportunity to explain.

Any explanation or absence of same should be recorded in full. In some circumstances you may choose to request a signed written statement. At the end of the hearing read back the essence of what you have recorded to ensure a clear understanding. Inform the employee that the matter will be investigated further and that disciplinary action could result.

Cool off before you deal with the disciplinary situation. Never attempt to conduct a hearing when you are upset or angry. In such a state, it is highly unlikely that you will obtain the employee's explanation. At a hearing there is a tendency for employees to become emotional. You can reduce this emotional content if you are calm and rational and will more likely receive a more complete explanation.

The disciplinary situation is essentially the employee's problem. The employee who contravenes a work rule assumes the risk of a disciplinary response and places their employment in jeopardy. The hearing is the employee's opportunity to advance an explanation for his/her actions, in the face of evidence presented by management, so that an objective decision can be made. Failure to respond during the investigation may lead to a negative inference.

Summary: You are attempting to verify what occurred and obtain the employee's explanation.

#### **Step 4 - Investigate the Employee's Explanation**

Verify, to the degree possible, the employee's explanation. Interview and obtain oral statements from any party who may have knowledge of the event. If there is reason to believe an employee who is being interviewed may be subject to discipline, inform the employee that he/she may have a union representative present if it is a unionized setting. You may choose to be accompanied by another management representative. Record such statements and request the party to sign the statement. In some circumstances you may choose to request a signed written statement.

Obtain and retain any document related to the misbehaviour – i.e.: work sheets, time schedules, etc.

Summary: You are determining the validity of the employee's explanation and carrying out further investigation of surrounding circumstances.

### **Step 5 – Consider Mitigating Factors**

Mitigating factors are those circumstances that may result in a lesser disciplinary sanction being imposed or determine whether a disciplinary response to the situation is appropriate. (See: Appendix B)

### **Step 6 – Assess Findings of the Investigation and Make a Determination based on the Balance of Probabilities**

Summarize and assess the findings of the investigation and provide copies to the Manager, Director and to Human Resources.

Consult with your management team and your Human Resources Consultant.

Consider Mitigating factors (See Appendix B) and review previous similar occurrences. Determine the appropriate disciplinary response.

Consider Arbitral Concepts Underlying Disciplinary Action (See Appendix F)

Summary: You are determining the appropriate disciplinary response.

### **Step 7 – Give Management’s Decision**

Meet with the employee in private. In a unionized setting, inform the employee of his/her right to Union representation. State the following points:

- What occurred and when.
- The employee’s explanation.
- The results of your investigation.
- The disciplinary response management has chosen to impose.
- The behaviour that will henceforth be required.

Provide the employee with the letter of discipline. At this stage, in a unionized setting, 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; the employee’s appropriate redress is grievance action. In a unionized setting, provide of a copy of the letter to the Union.

Focus on the responsibility of the employee to perform according to required expectations, practice and work norms. Corrective Discipline results from choices that an employee has made. The supervisor is not doing something to the employee. It is the employee’s choice that results in corrective discipline.

Summary: You are giving management’s decision on the case.

## **4. TYPES OF DISCIPLINE**

Disciplinary action is not intended as punishment. It is rehabilitative in nature and is intended to have results – correct the behaviour.

Using Corrective Discipline, one selects the disciplinary response appropriate to the misbehaviour in question. Subject to the severity of the offence, the use of disciplinary action is progressive – stronger disciplinary action is used when lesser measures prove ineffective.



A severe offence may warrant dismissal for cause even if it is a first offence. The question to ask is "Is the behaviour of such a serious nature it irreparably destroys the employment relationship or the trust necessary in the employment relationship."

In every disciplinary situation, management should consult with their immediate supervisor and/or the Human Resources Department and must fully take the following factors into account in arriving at the appropriate discipline sanction:

- The seriousness of the offence.
- The disciplinary record of the employee.
- Mitigating circumstances surrounding the misbehaviour in question. (See Appendix B)

In essence, the discipline response must be tailored to the case at hand.

### **NON DISCIPLINARY INFORMAL DISCUSSION**

Just as all supervisors/managers advise their employees of paper work requirements, safety methods, documentation, start and stop times, so too can this same style of advice or direction be used to correct behaviour that, if continued, could lead to the application of discipline. For example, a new employee who arrives late for work is instructed as to the expected arrival time. Such lapses by employees are usually incidental; pointing out the deficiency in a non-disciplinary manner most often leads to its correction.

Supervisors/managers should keep personal notes to record their observations and informal discussions pointing out such deficiencies, (who, what, when, where). The personal notes should be maintained separate and apart from the employee's personnel file. In a unionized setting a union representative is not required when a non-disciplinary informal discussion occurs.

The following are the principle disciplinary responses to be applied in the Corporation of the City of Regina for incidents of misbehaviour:

### **VERBAL WARNING**

Sometimes unacceptable behaviour continues. A pattern develops. A verbal warning may be appropriate. The supervisor/manager should take the following steps:

- Meet with the employee in private.
- Distinguish the work rule or norm being contravened.
- Determine the employee's explanation for the behaviour.
- Describe the required behaviour and why it is necessary.
- Ask if the employee understands. Ensure your message is conveyed back to you.
- Follow up in writing (See Appendix A1 sample letter).

A copy of the letter must be given to the employee and is distributed in accordance with the Administrative Procedures. (Appendix A 2 sample letter). Verbal warnings can be repeated, if you feel it will correct the behaviour.

THE PURPOSE OF A VERBAL WARNING AND THE INTERVIEW IS TO POINT OUT THE REQUIRED STANDARD OF BEHAVIOUR. IF, LATER, FURTHER CORRECTIVE DISCIPLINE IS REQUIRED, THE VERBAL WARNING WILL SERVE TO SHOW THAT THE EMPLOYEE WAS AWARE OF THE REQUIREMENT HE/SHE HAS CHOSEN TO CONTRAVENE.

### **WRITTEN REPRIMAND**

This is the disciplinary response that is applied when a verbal warning fails or for a moderately serious first offence. The written reprimand contains the following information:

- A description of the misbehaviour.
- The employee's explanation of his/her act(s).
- Results of management's investigation and decision.
- The consequence of non-compliance.

A copy of the letter must be given to the employee and is distributed in accordance with the Administrative Procedures. (Appendix A 2 sample letter). Written reprimands can be repeated, if you feel it will correct the behaviour.

### **SUSPENSION**

The temporary removal of an employee from the work place for a definite period without pay. This disciplinary response is used where lesser disciplinary action has failed or for a serious first offence. The content and distribution of the letter is the same as set out for written reprimand with the inclusion of the beginning and terminating dates of the suspension. (Appendix A 3 sample letter) Suspensions can be repeated and/or extended if you feel it will correct the behaviour. (E.g. 1 day, 3 days, 5 days)

### **DISMISSAL**

Dismissal is the involuntary termination of employment. Dismissal is normally used for a very serious first offence, i.e. theft, assault, gross insubordination, serious illegal or destructive acts while on the job or in those circumstances where the employee's behaviour meets one or more of the following criteria:

- The offence and the employee's work record indicate he/she is no longer fit for employment.
- There is little likelihood the employee will rehabilitate.
- Earlier corrective efforts by management have failed.

Arbitration Boards/Arbitrators are extremely reluctant to sever employment unless the criteria listed are fully met. Dismissal is effected by a letter to the employee. Ensure the supervisor/manager has been delegated the authority to dismiss. The content and distribution of the letter is the same as set out for written reprimand with the deletion of the future behaviour required and the inclusion of the date considered last day of employment. (Appendix A 5 sample letter)

## **5. ADMINISTRATIVE PROCEDURES**

The following administrative procedures must be followed when applying corrective discipline.

The supervisor/manager provides a disciplinary letter to the employee when giving the employee management's decision.

A copy of management's decision of the disciplinary response is sent to:

- The employee's immediate supervisor, Manager, Director and General Manager as deemed necessary.
- If it is a unionized setting, provide a copy to the Union. If the employee chose not to have union representation at the meeting, a copy of the letter is still sent to the Union. If the employee is dismissed for misconduct, some collective agreements specify that the letter of dismissal is to be sent to the City Manager.
- Human Resources who will ensure a copy is entered into the employee's personnel file.
- In the case of a suspension without pay, Human Resources will advise Payroll branch of the suspension under separate correspondence to maintain confidentiality of the specific incident.
- In the case of a dismissal, Human Resources will advise the Pension Administration department and the Payroll branch under separate correspondence to maintain confidentiality of the specific incident. Payroll will require the appropriate code for the reason for dismissal.

The supervisor/manager sends complete written record of the investigation for future reference to Human Resources for proper filing and maintenance of confidentiality.

The Manager/Director places a copy of the summary of the investigation in the discipline incident file. Copies are to be sent to the Manager, Director and to Human Resources.

Throughout an employee's employment, management should maintain a checklist of items that must be returned to the employer in the case of dismissal (keys, access cards, p card, cell phone etc,) and collect same at the time of dismissal. If deemed necessary, this may be required at the time of a suspension pending investigation. Contact your Human Resources Consultant for further information such as monies owing for such items like return for service commitments for apprenticeship, tuition subsidy, re-location assistance etc.

### **5.0 Roles & Responsibilities**

Employees shall:

- Act in accordance with work rules and prescribed performance standards.
- Understand that contravention of work rules or prescribed performance standards may result in disciplinary action up to and including dismissal.
- Actively work to improve inappropriate behaviour.

Supervisors/Management shall:

- Create, communicate and enforce work rules for employees.
- Actively assist, encourage and acknowledge effective work performance.

- Implement a consistent application and enforcement of workplace discipline in cases of inappropriate behaviour.

Human Resources shall:

- Maintain this policy and the training of management/supervisory personnel in its application.
- Advise and provide guidance to management on the consistent application on this policy.

Union's shall:

- Assess whether the discipline was warranted and whether the discipline was excessive. Such determination is subject to the scrutiny of the grievance procedure. Accept the role of the Union in a unionized setting. The role of the Union representative is similar to that of a public defender.

## 6.0 Related Forms

- Anti Violence
- Attendance Management
- Duty to Accommodate
- Harassment
- Performance Development Program
- Reasonable Suspicion Guidelines
- Return to Work Guidelines

## 7.0 Reference Material

- Appendix A - Sample Letters
  - A1 - Verbal Warning
  - A2 - Written Reprimand
  - A3 - Suspension
  - A4 - Suspension Pending Investigation
  - A5 - Dismissal
- Appendix B – Mitigating Factors
- Appendix C – Probationary Employees
- Appendix D – Performance Improvement
- Appendix E – Insubordination
- Appendix F - Arbitral Concepts Underlying Disciplinary Action

## 8.0 Revision History

Date	Description of Change	(Re)-Approval Required (y/n)
March 1990		

**APPENDIX "A 1" - VERBAL WARNING**

July 5, 2007

Mr. Larry Robinson  
Roadways Department  
Public Works Division

Dear Mr. Robinson:

Re: Verbal Warning

This memo will summarize the results of our meeting of July 2, 2007.

As we discussed at that time, your job requires that you arrive promptly at the 8:00 a.m. starting time. Given the nature of your duties, a late arrival delays the work activities of other employees in the Unit.

You stated you would make every effort to report at the 8:00 a.m. starting time.

You were advised that this was a verbal warning and any incident of a similar nature will result in more severe disciplinary action.

Yours truly,

E. Keys  
Supervisor

cc:     Manager  
          Union (if in a unionized setting)  
          Human Resources

**APPENDIX "A 2" - WRITTEN REPRIMAND**

July 19, 2007

Mr. Larry Robinson  
Roadways Department  
Public Works Division

Dear Mr. Robinson:

Re: Written Reprimand

This is to confirm our discussion of July 16, 2007 concerning your lateness of July 13, 2007.

As pointed out and acknowledged by you at our meeting, you reported at 10:30 a.m. on July 13, 2007. You will also recall our meeting of July 2, 2007 where I pointed out to you that the arrival time at this Unit is 8:00 a.m. You explained your late arrival of July 13, 2007 by the fact that your bus did not arrive on time. I have determined from Transit authorities that this was not the case.

In view of the foregoing, I am directing you to arrive at work at 8:00 a.m. henceforth. Your failure to report on time results in the delay of work by other employees. Actions such as this cannot be condoned.

This letter is to be considered a written reprimand. Be advised that continued lateness will result in more severe disciplinary action up to and including dismissal.

Yours truly,

E. Keys  
Supervisor

cc: Manager  
Union (if in a unionized setting)  
Human Resources

**APPENDIX "A 3" - SUSPENSION**

December 12, 2007

Mr. Larry Robinson  
Roadways Department  
Public Works Department

Dear Mr. Robinson:

Re: Suspension

This is to confirm our discussion of December 10, 2007 concerning your late arrival on December 6, 2007.

As pointed out at our meeting, you arrived at 9:50 a.m. on December 6, 2007. You were scheduled to report for duty at 8:00 a.m. Your only explanation was that you find it difficult to get up in the morning. I do not find this an acceptable explanation.

At our meeting we discussed your earlier incidents of lateness and in particular a verbal warning on July 2, 2007 and a written reprimand for lateness which was issued to you on July 19, 2007. Your punctuality has not improved. I reiterated that it is essential for you to arrive at the 8:00 a.m. starting time so as not to adversely affect the work of this unit. Actions such as this cannot be condoned.

In order to impress upon you the seriousness with which the employer views this matter, you are hereby suspended without pay for one (1) day - December 14, 2007. Be advised that unless your punctuality improves, you will be subject to further disciplinary action up to and including dismissal.

Yours truly,

R. Lancaster  
Manager

cc: General Manager  
Director  
Supervisor  
Union (if in a unionized setting)  
Human Resources

**APPENDIX "A 4" – SUSPENSION PENDING INVESTIGATION**

July 6, 2007

Mr. Wayne Harris  
Parks Department  
Community and Protective Services Division

Dear Mr. Harris:

Re: Suspension Pending Investigation

This is further to our meeting of July 5, 2007 and will confirm our discussions at that time.

As you are aware, a number of thefts have occurred from the Parks Department. On July 5, 2007, you were found in the parking lot in possession of tools from that department. You offered no explanation.

Given the seriousness of this matter, you are suspended without pay from your duties pending the outcome of an investigation by management. Pending the results of the investigation, disciplinary action up to and including dismissal may be forthcoming. It is expected that this investigation will be completed before July 17, 2007 and you will be informed of management's decision on or about that date.

You are not to appear at the work place except when so requested by management. If you have a requirement to communicate with management, you may contact Mr. Reed at 777-3434.

Yours truly,

R. Whitehouse  
Manager

cc: General Manager  
Director  
Supervisor, (G. Reed)  
Union (if in a unionized setting)  
Human Resources  
(Reminder to manager: get keys/cards etc if deemed necessary).



**APPENDIX "A 5" - DISMISSAL**

February 19, 2008

Mr. Larry Robinson  
Roadways Department  
Public Works Division

Dear Mr. Robinson:

Re: Dismissal

This is to confirm our meeting of February 15, 2008 concerning your late arrival on February 12, 2008.

At our meeting you admitted arriving at 11:00 a.m. on February 12, 2008 and offered no explanation. At that time, a complete review was made of your disciplinary record in regard to punctuality - verbal warning July 2, 2007, written reprimand of July 19, 2007 and suspensions of one day (December 12, 2007), three days (January 4 - 6, 2008), and five days (January 25 - 29, 2008). You were advised that unless your punctuality improves you will be subject to disciplinary action up to and including dismissal.

You have failed to satisfy the clearly established reporting requirements of the Roadways Department.

As a result you are dismissed for cause from the City of Regina effective immediately. Your last day at work will be February 19, 2008.

Yours truly,

A. Ford  
Director

cc: General Manager  
Manager  
Supervisor  
Union (if in a unionized setting)  
Human Resources  
City Manager  
(Reminder to manager: get keys/cards etc).

## APPENDIX B - MITIGATING FACTORS

The following factors must be considered when disciplinary action is contemplated. The answers to these questions may result in the application of a lesser disciplinary response than would normally apply or in no disciplinary action being taken.

- What is the length and nature of the employee's previous work and disciplinary record? Where this record is of long service and good performance it will stand in the employee's favour; where not, the opposite. Consideration should also be given to whether the offence is an isolated incident within the employee's overall employment record.
- Was the employee aware of the rule contravened? Was it posted, generally known and enforced consistently? Is there any evidence that the employee is being discriminated against singled out for disciplinary action?
- Was the misbehaviour promptly dealt with? Failure to respond promptly to offence leads one to question the seriousness of the offence itself and may mislead the employee as to what is acceptable behaviour.
- Was the employee given the opportunity to explain his/her behaviour? Was the explanation investigated and was it valid?
- Was the misbehaviour provoked?
- Are there any circumstances, which suggest that deficient behaviour was not fully deliberate? Was the employee under emotional strain due to personal problems – marital, financial, the employee misunderstood the order, etc?
- How serious is the offence?
- Was the behaviour premeditated or committed at the spur of the moment as a result of a momentary observation?
- Did the grievor genuinely acknowledge the behaviour was inappropriate and did the grievor sincerely apologize?

## **APPENDIX C - PROBATIONARY EMPLOYEES**

The purpose of the probationary period is to permit the employer to review suitability of the employee. Typically, a probationary employee is subject to the test of general suitability, which is a less rigorous test than just cause. To terminate the employment of a probationary employee, the employer must show the employee is unsuitable for the job prior to the completion of the probationary period. The onus is on the employer to justify the termination of employment.

A probationary employee cannot be dismissed for any reason whatsoever. The employer cannot terminate the employment of a probationary employee arbitrarily, in bad faith or for reasons that amount to discrimination under human rights law. The employer does not need to establish just cause, but must be able to demonstrate that it acted reasonably and objectively. If the behaviour is as a result of a disability, the employee must be accommodated to the point of undue hardship.

An employer can terminate employment prior to the end of the probationary period if in a position to know in advance that an employee is not working out. However, the employer must provide the employee an opportunity to meet reasonable expectations. The same principles apply to a casual employee who has not yet attained seniority.

A probationary employee must be advised of the standards expected, be provided guidance and direction regarding the nature of the work, be provided timely feedback if there is a behaviour or performance issue (quality, completeness, accuracy and timeliness, of the work, productivity, efficiency, attendance, overall character, conduct, judgement and attitude) and advise the employee where improvement is required and that insufficient improvement may result in termination of employment. The expected standards must be reasonable.

## **APPENDIX D - PERFORMANCE IMPROVEMENT**

- Performance improvement is implemented, at the discretion of the supervisor, when it becomes necessary to help an employee improve his/her performance. The intent is to help the employee succeed, set goals, establish measures, conduct review sessions and chart progress.
- State the performance to be improved.
- State the level of work performance expectation and that it must be performed on a consistent basis.
- Specify the support and resources you will provide to assist the employee.
- Identify the communication mechanism for providing feedback to the employee (include meeting times, with whom and how often).
- Make the employee aware of the criteria and measurements you will consider in evaluating progress.
- Advise the employee of possible consequences if performance standards are not met.
- Provide sources of additional information that may be available.

## APPENDIX E – INSUBORDINATION

Insubordination is defined as the refusal of an employee to carry out the direct order of a supervisor/manager. Employees are required to carry out such orders if reasonable and safe. Employees may disagree with such orders. However, the proper employee response is to obey the order and seek redress via grievance action. In a unionized setting the rule of “work now – grieve later” is well founded in arbitration decisions.

Note that the “work now – grieve later” rule does not apply to all orders given by supervisors/managers. Some exceptions:

- Where the direct order given is not related to work – e.g.: deliver my personal mail as opposed to deliver departmental mail, etc. An employee may be directed to perform work duties not found in their job description. However, the employee might later grieve the assignment of these duties.
- Where it is unsafe to perform the direct order.
- Where the direct order given is against the law.
- Where the direct order is given by someone without authority. Note, however, that all orders need not be given by ones’ immediate supervisor/manager. Where the employee knows that the order is being given by his/her supervisor/manager’s superior, such orders must be followed.

### Insubordination Process

Among disciplinary offences, insubordination is common. To have an employee refuse an order can be unsettling for a supervisor/manager. As a result, the following approach is suggested:

- Give the order in the normal manner – e.g.: “Please go now and help Joe”. The employee refuses.
- Determine the employee’s reason for refusal.
- Determine if the employee’s refusal is valid on its face.
- If not, inform the employee you will give a formal/direct order and failure to comply could result in disciplinary action.
- IF FEASIBLE, inform the employee you will give him/her three (3) to five (5) minutes to consider their response to the order you will give.
- On return or when you give the formal/direct order, it is desirable to be accompanied by another supervisory representative or employee if possible. This person will act as a witness.
- Clearly repeat the order – e.g.: as your supervisor, I am ordering you to help out; failure could result in disciplinary action.
- If the employee continues to refuse, inform them that the matter will be investigated further and disciplinary action could result.
- Record all of the above in writing immediately after the event; note complete details i.e.: the exact order you gave, the exact words of refusal, the time of the order, etc. Have your witness add his/her comments.
- Initiate Corrective Discipline procedures.

## **APPENDIX F – ARBITRAL CONCEPTS UNDERLYING DISCIPLINARY ACTION**

If disciplinary action is grieved and proceeds to arbitration, the arbitration board will consider the case using certain arbitral concepts. When you are contemplating disciplinary action, you must also take these concepts into account.

### **Just Cause:**

Disciplinary action can only be taken for just cause. Establishing that management had just cause for disciplinary action is satisfied by advancing evidence to show the following:

- that unacceptable behaviour did, in fact, occur
- that the unacceptable behaviour warranted a disciplinary response
- that the disciplinary response applied was appropriate to the offence.

Arbitral review will be directed at establishing that these three conditions have been fully satisfied.

### **Balance of Probabilities:**

In defense of your decision to impose a disciplinary response, the misbehaviour by the employee need not be proven outright. The level of proof required is not as is required in criminal cases – beyond a shadow of a doubt. Rather, the case can be decided on what the overall evidence indicates. The test is – what would a reasonable person conclude in the face of the accumulated evidence? If the balance of proof is not in management's favour, the disciplinary action will be rescinded. This is the standard of proof required at arbitration and must be the standard you follow if you are contemplating disciplinary action.

### **Burden of Evidence:**

In that management initiates the disciplinary action, the onus is on management at arbitration to advance evidence to show that disciplinary action was warranted and the response applied was appropriate. In advancing the case to grievance/arbitration, the Union need only claim that discipline was not warranted; management must demonstrate that it was. This emphasizes the vital importance of a thorough investigation, documentation and consultation with personnel advisors by management before disciplinary action is taken.

### **Culminating Incident:**

This concept provides for a review of the employee's overall record in order to reach a decision on the appropriate disciplinary response. The employee must be aware that this record exists. The offence that prompts a review of the overall employment record must first be proven before the record can be introduced. This should serve to indicate that disciplinary offenses must be recorded and brought to the employee's attention. Where this is not done it is highly unlikely that management will be able to introduce such evidence.

### **Double Jeopardy:**

Arbitrators are consistent in their view that once management imposed a disciplinary response for a specific incident of misbehaviour, it cannot impose a more severe response than initially imposed. In essence, there is to be misbehaviour. A stronger response might only be permissible where management came into the possession of new facts, or where such facts behind the original misbehaviour are not easily obtained at the time the original discipline was imposed. Note, however, that warning the employee that discipline may be imposed or a suspension pending investigation or removal from work is not considered discipline. With the latter, a disciplinary response may or may not result from their application. Finally, this concept emphasizes the importance of thorough investigation before responding to the situation.