

**HUMAN RESOURCES
POLICIES AND PROCEDURES**



Policy:	Discipline Policy	
Date: January 1, 2024	Revision Date:	Approved by: Human Resources

I. POLICY STATEMENT

It is the policy of Eastern Municipal Water District (EMWD) to maintain an atmosphere of positive motivation and discipline with its employees; to treat all employees fairly; and to administer disciplinary action, when necessary, in a manner that is both fair and corrective.

All employees are expected to conduct themselves in a positive and professional manner in performing their jobs and in their relationships with other employees.

Occasionally situations may arise where individual behavior or work performance does not meet EMWD’s standards as defined in Conditions of Employment Section within the Memorandum of Understanding (MOU). Such situations require that supervisors take necessary action to correct the problem at hand. Such corrective discipline will normally be handled on a progressive basis. Progressive discipline may include, where appropriate, counseling, oral reprimands, written reprimands, suspension, temporary or long-term reduction in pay, demotion, or discharge. An employee may request that in lieu of a reduction in pay equivalent to a certain number of days of suspension without pay, they take the days off with no pay. Approval will be at the discretion of the Director of Human Resources, in consultation with the department director.

All incidents of employee counseling and verbal reprimands must be documented with a copy to the supervisor's file. All instances of written reprimands, suspensions, reduction in pay, demotions, or discharges will be a part of the employee's personnel file maintained by the Human Resources Department. The employee must sign and receive a copy of the documented disciplinary action. If the employee refuses to sign the disciplinary action, that fact should be noted in writing by the supervisor.

All written notices of proposed disciplinary action (i.e., suspension without pay, reduction in pay, demotion, or discharge) will be prepared by the employee’s department head, Assistant General Manager, Deputy General Manager or General Manager as appropriate to the situation. All forms of formal discipline (i.e., written reprimands, suspensions, reductions in pay, demotions, and discharges) must be reviewed by the Director of Human Resources, or designee, before being given to the employee.

All written orders of disciplinary action (i.e., suspension without pay, reduction in pay, demotion, or discharge) will be prepared by the Human Resources Department with final approval by the General Manager or designee.

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At any point in the progressive discipline process the employee may be represented by anyone of their choosing (i.e., union representative, attorney, another employee, etc.). During any of the progressive discipline steps should an employee request representation; the meeting should be suspended and rescheduled at the earliest time the employee's representation is available.

With the exception of department directors hired subject to an at-will agreement, the Deputy General Manager, Assistant General Managers, and the General Manager, all employees with regular status are subject to the disciplinary procedures contained in this policy.

Employees working in a temporary or initial probationary status may be discharged, demoted, or otherwise disciplined without right to review or appeal at any time, without cause.

This policy shall be implemented through the procedures and specific guidelines which follow:

Disciplinary actions shall be appropriate to the infraction.

Implementation of discipline to be successful should be:

- Prompt - initiate personnel investigation within 24 hours in most situations, or as soon as possible after the incident occurs.
- Impartial - all employees should be treated fairly.
- Consistent - similar offenses should be treated in a similar manner.
- Fair - with regard to employee's past record and responsibilities.
- Corrective - intent should be to prevent future problems.
- Given with Advance Warning - employees should know that specific actions or omissions will result in disciplinary action up to and including discharge.
- Followed Through - enforcement is consistent.

Key Factors in Analyzing Disciplinary Problems:

- Seriousness of the problem
- Length of employment
- Frequency and nature of the problem
- Employee's work history
- Mitigating factors

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- Degree of orientation, training, or experience previously provided the employee
- Existing disciplinary practices and guidelines
- Implications for other employees
- Management policies
- Safety implications for other employees and/or the public

II. COMMON OFFENSES

Disciplinary action shall be commensurate with the seriousness of the offense and be based upon any of the following:

a. Non-approved absence

Being absent from the workplace without proper authorization for a period of time less than the normal workday, a full workday, or a shift (not including protected leave). Each occurrence shall be considered a separate offense.

b. Discourtesy to the public, a supervisor, or another employee

Verbal or physical conduct that displays or exhibits a lack of respect to members of the public, a supervisor, or another employee.

c. Failure to follow directions or procedures

Failure to follow a specific direction given or a known and routine procedure in the course of their duties without willful intent where such direction or procedures involve minor or routine matters.

d. Failure to perform assigned work

The failure to perform work assigned or required in the accomplishment of job duties in a timely manner.

e. Improper political activity

Use of EMWD time or materials to promote a specific political position or candidate.

f. Loss of minor equipment through neglect

To misplace or lose minor EMWD equipment through negligence or lack of safeguarding same. Minor equipment is defined as equipment valued at \$999.99 or less.

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g. Misuse of EMWD time

The use of EMWD time for activities inappropriate in the workplace (i.e., horseplay, loafing, creating disruption between employees, etc.).

h. Misuse or damage of EMWD property or equipment

The use of EMWD property or equipment for purposes not intended, or in such a manner for which the equipment is not designed, or which is unsafe, or damage to property or equipment due to negligence.

i. Conducting non-EMWD related activities on EMWD time

The conduct of non-EMWD related activities on EMWD time to the extent it interferes with the performance of assigned duties.

j. Tardiness

Failure to report to work or return from breaks or meals at scheduled times.

k. Untruthfulness

Providing false information or withholding accurate and complete information from a supervisor when such information would be routinely provided as a function of normal job duties or as specifically requested.

l. Possession of an open alcoholic beverage container or use during the working hours

The possession of an open alcoholic beverage container or use of alcohol during working hours or on EMWD property.

m. Violation of EMWD rules, regulations, policies, and procedures except for unauthorized use of EMWD vehicles

See EMWD policies, rules, and ordinances for specifics.

n. Violation of federal, state, or local laws

The conviction of minor infractions and misdemeanors committed while on duty.

o. Chronic absenteeism/tardiness

Frequent and continuous unscheduled absences for reasons other than absences resulting from on-the-job injuries or protected leaves, where such continuous absences substantially reduce the reliability and dependability of the individual to perform their assigned duties, and where they exceed the established standards of the organization.

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p. Conviction of an act defined as a felony

To be convicted of committing an act which is defined as a felony under the laws of the State of California or the United States. The nature of the conviction would determine the appropriate disciplinary action.

q. Conviction of an act defined as a misdemeanor involving moral turpitude

To be convicted of an act which is defined as a misdemeanor involving moral turpitude under the laws of the State of California or the United States. The nature of the conviction would determine the appropriate disciplinary action.

r. Falsifying official reports

An intentional presentation of inaccurate, incomplete, or false data on any report or other work product. Those reports which have a legal status (i.e., police reports, official statements, etc.) shall be considered a more serious category within this offense.

s. Fraud in securing and/or maintaining employment

To falsify any information provided or to be misleading by the information provided, including omissions, in an attempt to gain, secure, or maintain employment with EMWD.

t. Illegal drug possession or use

The possession or use of any illegal drug.

u. Selling or dispersion of drugs

The attempt, intent, or actual sale or dispersion of drugs to another individual.

v. Working under the influence of an intoxicating substance

Being on EMWD property or operating EMWD vehicles or equipment while under the influence of an intoxicating substance, which includes but is not limited to, alcohol or any other drug, glue, paint thinner, etc.

w. Improper conduct toward the public

To act in an insulting, provocative, intimidating or flagrantly discourteous manner toward any member of the public.

x. Inexcusable neglect of duty

To perform a duty or act in a negligent manner or to fail to perform assigned or known duties and obligations which are critical in nature.

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y. Insubordination

Actions which clearly and obviously indicate a resistance or defiance of a supervisor's authority or clearly treat the supervisor with disrespect, including the use of obscene or threatening language or acting in a violent or intimidating manner.

z. Loss of major equipment through neglect

Loss of major equipment through a negligent act or failure to safeguard said equipment. Major equipment is defined as equipment valued at \$1000 or more.

aa. Physical assault or battery

To physically intimidate or attack another individual through the use or intended use of force.

bb. Sexual harassment

See EMWD Policy Statement.

cc. Theft

The theft of EMWD property or property of another individual.

dd. Willful disobedience

The intentional and willful failure of an individual to follow specific verbal or written directions or instructions of a supervisor.

ee. Vehicle accident

A vehicle accident involving EMWD equipment in which the investigating law enforcement agency determines the employee was at fault, and where the resulting damage was minor or major in nature.

ff. Violation of an EMWD safety regulation

The violation of any of the regulations specified in the EMWD Safety Ordinance, as amended.

gg. Violation of traffic laws

See Ordinance No. 49 as amended.

hh. At fault major accident including driver or second party injury - Same as 32), but the accident results in injury

ii. Carelessness or neglect that results in a safety or health hazard to another employee or the public

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jj. Failure to carry out responsibilities and/or authority as set forth in Safety Ordinance

Any inappropriate action or failure to act in accordance with an employee's responsibilities and/or authority as set forth in the EMWD Safety Ordinance, as amended.

kk. Failure to maintain minimum job requirements

The failure to maintain required skills, abilities and certifications as stipulated in official District job description for the employee's classification.

ll. Incompetence

The inability to meet the standards of performance established for the position held due to lack of skills, knowledge, or ability.

III. TYPES OF DISCIPLINARY ACTION

Discipline should be administered at the lowest level and progress to more serious level(s) as needed depending on the situation, however each instance will require review and discipline may be immediately implemented at a more serious level depending on past actions, incidents, and the egregiousness of the situation, up to and including termination. Progressive discipline is usually administered as follows:

1. Counseling
2. Oral Reprimand
3. Written Reprimand
4. Suspension Without Pay for 5 Days or Less
5. Suspension Without Pay in Excess of 5 Days
6. Reduction in Pay
7. Demotion
8. Discharge

IV. INFORMAL DISCIPLINE

Disciplinary action involving counseling, or oral reprimand, does not require that the employee be given a right to a hearing but, nevertheless, the employee is entitled to be apprised of the action, given the reasons for that action, given a copy of any supporting documentation, and given a meaningful chance to respond to the action, either orally or in writing.

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a. Counseling

This step in the progressive disciplinary process includes any informal discussion with an employee designed to assist the employee to fully develop skills and abilities. When there is a disciplinary problem, counseling is usually the first action taken to assist the employee in clarifying and resolving the problem. The discussion may clarify standards, evaluate the employee's strengths and weaknesses, or seek information. It is especially important that this step be taken promptly to avoid the need to escalate disciplinary action.

Counseling is usually done by the immediate supervisor but may be done by any departmental supervisory staff up to and including the department head. At any point in the progressive disciplinary process should the employee request representation, the meeting should be suspended and rescheduled at the earliest time the employee's representation is available.

1. The Counseling Interview

- a) Before the interview-Investigate the incident or situation. Be sure you have all the facts. Arrange to talk to the employee in private.
- b) During the interview
 - i. Specifically state the problem and the required change in performance.
 - ii. Give the employee a chance to respond and listen to what the employee has to say.
- c) After the interview
 - i. Document that a counseling interview has taken place. The documentation should include the time, date, and the contents of the interview.
 - ii. The written summary of the interview is to be retained by the department in the supervisor's file.
 - iii. No record is placed in the employee's personnel file. The employee should sign and be given a copy for their information.
- d) Follow-up to the interview
 - i. If the employee corrects the situation or if there is no recurrence of the problem, be sure to acknowledge that fact to the employee.
 - ii. If there is a recurrence, or the problem persists, you may try additional counseling sessions or proceed to an oral reprimand.

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b. Oral Reprimand

Oral reprimands should be given by supervisors when counseling has failed to produce the desired changes. The supervisor should follow the same procedures as in the counseling interview but must also inform the employee that an oral reprimand is being given.

An oral reprimand may be given by the immediate supervisor or any departmental supervisory staff up to and including the department head.

1. Before the meeting
 - a) Investigate the situation or problem.
 - b) Be sure you have all the facts.
 - c) Review the situation and the employee's record to make sure the action you are taking is appropriate.
2. During the meeting
 - a) Specifically state the problem and what must be done to correct it.
 - b) Ask for the employee's comments and listen to the responses.
 - c) Let the employee know the consequences if the problem continues or recurs.
 - d) Advise the employee that for record keeping only, you are making a brief notation of the meeting, including the employee's responses, if any, and the record will be retained in the supervisor's file.
3. Disposition of the oral reprimand
 - a) A copy is given to the employee.
 - b) A copy is retained in the supervisor's file.
 - c) No record is placed in the employee's personnel file.
4. After the meeting
 - a) If the employee corrects the situation or if there is no recurrence of the problem, be sure to acknowledge that fact to the employee.
 - b) If there is a recurrence, or the problem persists, you must either issue another oral reprimand or proceed to a written reprimand.

V. FORMAL DISCIPLINE

Discipline as set forth below, which is punitive in nature or may result in financial detriment to the employee requires that due process be observed before the action is taken. Due process requires that the employee be given notice of the proposed action, be given a copy of the charges or reasons upon which the proposed action is based, be given copies of any written materials supporting the charges and be advised of their right to a meeting with their respective Deputy General Manager or Assistant General Manager on the charges/reasons before the action is taken.

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a. Written Reprimand

If counseling and oral reprimands have failed to resolve a problem, a written reprimand is the next step in progressive disciplinary action.

A written reprimand is a formal notice to the employee that further disciplinary action may be taken unless performance or behavior improves.

A written reprimand may be presented by any supervisor up to and including the department head.

The contents of the written reprimand are essentially the same as that of the oral reprimand. The employee is advised in writing of the consequences of failing to improve performance or behavior. The reprimand should contain the following:

- What occurred.
- Date and time.
- Specific rule or policy broken or violated.
- Reference to previous conversations and oral reprimands regarding the problem.
- What the employee is directed to do to correct the situation. Be specific and give a definite time limit if appropriate.

1. Before the meeting

- a) Investigate the incident, review notes, oral reprimands, and other essential materials.
- b) Make a short agenda of the meeting.
- c) Arrange to speak to the employee in private.
- d) Advise the employee that the intent of the meeting is for the purpose of disciplinary action.

2. During the meeting

- a) Review previous counseling and oral reprimands.
- b) Present the written reprimand.
- c) Specifically state the problem and the required change in performance.
- d) Provide an opportunity for the employee to respond.
- e) Unless the explanation indicates otherwise, state that a written reprimand will be placed in the employee's file in the Human Resources Department.
- f) Confirm that the employee understands the required changes.
- g) State that failure to improve may result in more serious disciplinary action, up to and including discharge.
- h) Give the employee an opportunity to review the reprimand and to sign or initial indicating they have seen it, and to file a written response to the charges within a reasonable time.

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3. Disposition of the Written Reprimand

- a) A copy is given to the employee.
- b) A copy is retained by the supervisor.
- c) A copy is filed in the employee's personnel file in the Human Resources Department, along with any written response filed by the employee.

b. Suspension Without Pay

This form of discipline normally would be the next step where counseling and reprimands have failed to achieve correction of unacceptable behavior, although it may be used as a first form of discipline for some offenses. This action shall only be initiated upon the department head's review and approval in consultation with the Director of Human Resources or designee. An employee may be put on Administrative Leave with pay where the employee's continued presence constitutes a danger to the safety of the employee or others in the opinion of their supervisor or in the opinion of any superior in the chain of command above their supervisor. It should be noted, however, that an employee may be suspended with pay at the time a Notice of Proposed Disciplinary Action (as set forth below) is delivered to them and that said suspension may remain in effect pending completion of the disciplinary proceeding.

1. Before Suspension

- a) Investigate the incident or situation. Be sure of all the facts.
- b) Review the action you are taking to make sure it is appropriate to the situation.
- c) Discuss the recommendation and the reasons for it with your immediate supervisor.

2. Preparation of the Notice of Suspension Without Pay

- a) State the duration and the effective dates of the suspension, including starting and ending dates and times.
- b) State the reason for the proposed suspension. Be specific.
- c) Give a summary of prior disciplinary action taken for the same or related offenses by the employee.
- d) Advise the employee that they may respond within a reasonable period of time if it is felt the action is not appropriate.
- e) Copies of any documents which support the proposed action must be attached to the Notice of Proposed Suspension Without Pay.

3. Distribution of the Notice

- a) The original signed Notice of Proposed Suspension Without Pay shall be hand delivered by the Human Resources Department to the employee and the date and time of delivery noted on the copy which shall be signed by

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the employee, signed by the person delivering the original and retained by the Human Resources Department. If personal delivery to the employee cannot be obtained for any reason, the Notice should be sent by certified mail with a request for return receipt made.

b) A copy of the Notice shall be placed in the employee's personnel file.

c. Demotion or Reduction in Pay

1. Demotion to a position with a lower salary range or a reduction in pay to a lower paying salary step shall be used primarily in response to an employee's failure to maintain minimum job requirements, incompetence, or an inability to perform the essential duties of a position. It may also be used, however, for any form of misconduct; such action shall only be proposed after review and approval by the employee's department head in consultation with the Director of Human Resources, or designee, and finalized as a written order of discipline approved by the General Manager or designee.

d. Discharge

1. Action to permanently terminate an employee's employment with EMWD shall only be proposed after review and approval by the employee's department head in consultation with the Director of Human Resources, or designee, and finalized as a written order of discipline approved by the General Manager or designee.

e. Proposed Notice of Discipline

Notice of Proposed Disciplinary Action shall be prepared and delivered to the employee at least five (5) working days (counting the day of delivery as the first (1st) day) before the proposed disciplinary action will become effective.

Contents - The Notice of Proposed Disciplinary Action shall include the following information:

1. A description of the disciplinary action proposed to be taken;
2. The date on which that action will become effective (if known) which shall be no sooner than the beginning of the sixth (6th) working day after delivery of the Notice, counting the day of delivery as the first (1st) day;
3. A statement of the charge(s) upon which the proposed action is based, including a reference to or description of the specific District rule or policy violated; and

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4. A statement that the employee has a right to meet with his their respective Deputy General Manager, Assistant General Manager, or designee, to respond to the charges either orally or in writing at any time before the proposed disciplinary action is to become effective if the employee feels the proposed action is not appropriate (this right is separate from the right to request a hearing); In cases where the employee's department head reports directly to the General Manager, the General Manager may designate an available Assistant General Manager or the Deputy General Manager to hear an employee's response to the charges.

f. Order of Discipline

On the sixth (6th) day after Notice of Proposed Disciplinary Action is served, it will become effective unless the proposed action is modified or rescinded as a result of consideration of the employee's oral or written response per Subparagraph (iv.) above, if any:

Contents - The Order of Disciplinary Action shall include the following information:

1. A description of the disciplinary action being taken;
2. The date on which that action will become effective;
3. A statement of the charge(s) upon which the proposed action is based, including a reference to or description of the specific EMWD rule or policy violated;
4. A statement that the employee has the right to a hearing on the charge(s), exercisable by filing a written request for hearing, dated, and signed by the employee, with the Human Resources Department before 5:00 P.M. on the fifth (5th) working day after the Order is delivered to the employee (counting the day of delivery as the first (1st) day);
5. A statement that the employee requesting a hearing is entitled to be represented at the hearing by an attorney, by a Union Representative or by anyone else of their choosing; and
6. A statement that in the absence of a timely written request for hearing, all rights to a hearing are waived.

g. The Post-Disciplinary Hearing

1. Voluntary Resignation

At any time during the disciplinary process, EMWD will accept a written resignation from the employee.

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2. Disciplinary Review Committee

The hearing shall be conducted by the Disciplinary Review Committee (DRC) composed of two Assistant General Managers or their designees, and one Union designated. The Union designated panel member may consist of an active employee or former EMWD employee who separated on favorable terms and is a current IBEW Local 1436 dues-paying member. The Union provides information as to the status of the Union designated panel member. The Assistant General Manager directly involved in the disciplinary action being heard by the Committee will be excluded and an alternative member not involved in the proposed action shall be designated by the remaining DRC members. The Director of Human Resources or designee will serve in an advisory capacity to the Committee in matters of procedure and will attend all hearings to ensure that the Committee's recommendations to the General Manager or designee are properly documented. When the parties are represented by legal counsel, the Committee may also have legal counsel to advise the Committee.

Should the employee wish to request a mutually acceptable third-party arbitrator, who will serve in the capacity of a hearing officer in-lieu of a review by the DRC, and when approved by the Union, the costs of the third-party arbitrator will be borne entirely by the Union.

The Union and District may by mutual agreement select an arbitrator to serve as a hearing officer. In lieu of mutual agreement, the California State Mediation and Conciliation Service shall be requested to submit a list of seven (7) persons qualified to act as hearing officers to EMWD and the employee. Within ten (10) days following receipt of the list of hearing officers, the parties shall meet to select the hearing officer. The parties shall alternatively strike one (1) name from the list of hearing officers (the right to strike the first name to be determined by lot) until one (1) name remains, and that person shall be the hearing officer.

h. Format for Hearing

The Hearing shall be closed to members of the public unless the employee requests that it be an open hearing. The Hearing shall be conducted in substantially the following manner:

1. The case in support of the disciplinary action shall be first presented by the department head initiating the disciplinary action or their designated representative. The employee's case in response shall then be presented followed by rebuttal evidence on behalf of EMWD, if any, followed by rebuttal evidence on behalf of the employee, if any; at that point, the matter will be deemed submitted for decision.

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2. Oral evidence shall be taken only on oath or affirmation.
3. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, and to impeach any witness regardless of which party first called the witness to testify. The foregoing notwithstanding, if the employee does not testify on their own behalf, they may not be called and examined on behalf of EMWD.

i. Committee/Hearing Officer Recommendation

After the case has been submitted and after examining the facts and weighing the responses from all parties involved, the DRC Committee will, by majority vote, reach a decision and make a written recommendation to the General Manager or designee regarding the disciplinary action within two (2) working days of the conclusion of the Hearing. Said recommendation may support the disciplinary action or recommend that said action be rescinded; the Committee cannot at that point recommend that a more severe form of discipline be imposed. Any member of the DRC Committee not agreeing with the majority vote may write a dissenting opinion and submit that written opinion to the General Manager or designee, along with the committee's recommendation regarding the disciplinary action, within two (2) working days of the conclusion of the Hearing. If a third-party arbitrator was used, a written recommendation from the arbitrator will be submitted to the General Manager or designee. The General Manager or designee shall decide after review of the recommendation and report submitted by the DRC Committee/Hearing officer within a reasonable period of time. The General Manager or designee may take any of the following actions after receiving the recommendations of the DRC Committee/Hearing officer: 1) They may follow the recommendation of the Committee/Hearing officer; 2) They may refuse to follow said recommendation and uphold the Order of Discipline; or 3) They may modify the recommendation in any way that they determined to be warranted and does not impose a greater form of discipline than that found in the Order of Discipline.

j. Notice of Decision

The General Manager or designee will advise the Director of Human Resources or designee of the General Manager's or designee's decision, and the latter shall then prepare a Notice of Findings and implement authorized changes, if any.

k. Emergencies

Under emergency circumstances, an employee may be removed or ordered from the workplace without following the procedures for due process outlined above and be

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placed on Administrative Leave if in the opinion of the employee's department head or other superior officer, the continued presence of the employee gives rise to a risk of harm to the employee or to others. In such case, the employee's department head shall document the circumstances which give rise to said risk of harm. After the emergency has passed and in the event that disciplinary action against the employee is to be pursued, the guidelines for disciplinary action set forth above shall be followed.

I. Removal of Documentation Regarding Disciplinary Actions from Personnel File

An employee may request the removal of all documentation regarding disciplinary action from the employee's file by submitting a request for removal in writing to the Director of Human Resources, or designee. Such a request shall not be accepted until on or after the anniversary of the date disciplinary action was imposed.

The Director of Human Resources, or designee, will review the request with the appropriate department head and Deputy General Manager or Assistant General Manager. The documentation relating to disciplinary action will only be removed from the employee's main personnel file with the approval of the involved department head and Deputy General Manager or Assistant General Manager who shall make said decision after considering the age and severity of the discipline, subsequent recurrences of the misconduct, if any, and overall work performance and behavior. If approved, the items removed will be placed in a separate "incident" file which may only be accessed by Human Resources staff with the approval of the Director of Human Resources, but may be used in subsequent disciplinary actions, should they occur.

AUTHORIZED SIGNATURES ON FILE