

GOVERNMENT OF GUAM
OFFICE OF THE GOVERNOR
AGANA, GUAM

EXECUTIVE ORDER NO. 79-30

CIVIL SERVICE COMMISSION RULES AND REGULATIONS
REGARDING DEMOTION, SUSPENSION, DISMISSAL AND
APPEAL OF SUCH ADVERSE ACTION

WHEREAS, Section 4006, Government Code of Guam, provides that the Civil Service Commission shall adopt rules and regulations for matters relating to administrative appeals to the Civil Service Commission; and

WHEREAS, on 19 May 1972, the Governor, at the recommendation of the Civil Service Commission, promulgated Executive Order 72-19 setting forth the rules and regulations on demotion, suspension, dismissal and appeal of such adverse actions to the Civil Service Commission; and

WHEREAS, the current rules and regulations have been criticized as complicated, subject to conflicting interpretations; and

WHEREAS, certain basic employment rights are vested in employees such that their removal can only be taken only for reasonable cause as will promote the efficiency of the service; and

WHEREAS, rules and regulations are necessary to prescribe fair and orderly procedures for effecting disciplinary action, and to provide guidelines for appellate review by the Commission for such action; and

WHEREAS, the Civil Service Commission has made some revisions on the current rules and regulations on adverse action with the intent of clarifying those areas where departments/agencies and employees have problems in applying said rules and regulations; and

WHEREAS, the departments and agencies were requested to review and submit inputs on the draft proposal; such proposal was publicly heard on June 7, 1979;

NOW, THEREFORE, by virtue of the authority vested in me by the Organic Act of Guam, the rules and regulations attached hereto are hereby approved and promulgated as a standard policy for all employees covered in the said rules and regulations.

All prior rules, regulations, policies, memoranda or Executive Orders in conflict with this Order are hereby superseded.

This Order shall not apply to adverse actions initiated prior to the effective date of this Order.


This Order shall be effective upon approval by the Governor.

Signed and promulgated at Agana, Guam, this 26th
day of December, 1979.



PAUL M. CALVO
Governor of Guam

Countersigned:



JOSEPH F. ADA
Lieutenant Governor

Attachment

CIVIL SERVICE COMMISSION
GOVERNMENT OF GUAM

RULES GOVERNING ADVERSE ACTIONS
AGAINST EMPLOYEES

CSC-100 DEFINITIONS:

1. Suspension means the temporary removal of an employee from his position with loss of pay as a disciplinary measure not to exceed thirty (30) working days in one(1) calendar year.
2. Demotion means the involuntary reduction of an employee for cause from a position which he occupies in a specific class to a position in another class where the maximum rate of pay is less than the maximum rate of pay for the class which he had held or a reduction to a lower salary increment in the same class.
3. Dismissal means the separation, discharge, or removal for cause of an employee from his position.
4. Appeal means request by an employee for reconsideration of an adverse action against him.
5. Appellate decision means a decision made by the Civil Service Commission which completes action on the appeal at that level by sustaining the original decision, modifying the original decision by substituting a less severe action, or reversing the original decision.
6. Day means a calendar day.

CSC-105 AUTHORIZED CAUSES FOR ADVERSE ACTION:

By law (P.L. 9-86), each of the following constitutes cause for discipline of an employee:

1. Fraud in securing appointment;
2. Incompetence;
3. Inefficiency;
4. Inexcusable neglect of duty;
5. Insubordination;
6. Dishonesty;
7. Drunkenness on duty;
8. Intemperance;
9. Addiction to the use of narcotics or habit-forming drugs;
10. Inexcusable absence without leave;

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11. Conviction of a felony or of a misdemeanor involving moral turpitude;
12. Discourteous treatment of the public or other employees;
13. Improper political activity;
14. Willful disobedience;
15. Misuse of government property;
16. Refusal to take and subscribe to any oath or affirmation which is required by law in connection with his employment; and
17. Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to his agency or his employment.

CSC-110 PROHIBITIONS:

A department may not take an adverse action against an employee except for such cause as will promote the efficiency of the service. A just substantial cause is necessary as a basis for an adverse action and the action must be determined on the merits of each individual case. Among such causes as will promote the efficiency of the service are the authorized causes for adverse action listed in Section CSC-105 of these rules.

CSC-115 EMPLOYEES COVERED:

All employees in the classified service of the Executive Branch of the Government of Guam are covered by these rules except the following:

1. Regular contract employees whose contracts are not renewed upon expiration;
2. Employees whose employment is temporary, seasonal, intermittent, part-time or only for a specific purpose;
3. Employees who are exempted by law or other legal authority from the jurisdiction of the Commission;
4. Probationary employees.

CSC-120 ADVERSE ACTIONS COVERED:

These rules apply to the following adverse actions:

1. Dismissal;
2. Suspension; and
3. Demotion.

PROCEDURE FOR ADVERSE ACTION-DEPARTMENT LEVEL

CSC-125 A. NOTICE OF PROPOSED ADVERSE ACTION:

An employee against whom adverse action is sought is entitled to immediate written notice stating any and all reasons, specifically and in detail, for the proposed action. The written notice must make it clear that it concerns only proposed action and not a matter already decided.

B. EMPLOYEE'S ANSWER:

An employee is entitled to 10 calendar days to answer charges contained in the written notice of proposed adverse action. If the employee answers, the department must consider his answer in reaching its decision. The employee is entitled to answer orally or in writing and may make any representations which the employee believes might sway the final decision on his case. The employee shall have the right to counsel and may be represented by a person of his choice. When the employee requests an opportunity to answer personally, the department head shall make himself or his representative(s) available to hear the employee's answer.

C. SUSPENSION DURING NOTICE PERIOD:

An employee against whom adverse action is proposed, must be retained in active duty status during the notice period; however, in an emergency situation, an employee may be immediately suspended during the notice period, but not to exceed 20 days under the following conditions: (The reasons for not retaining the employee in an active duty status must be included in the notice of suspension. The Commission shall review separately the sufficiency of the department's reasons for suspending the employee during the notice period).

1. The continued presence of the employee would interfere with the efficient operation of the department/ agency, or the health or safety of the employee or others.

2. Suspension is necessary to eliminate the possibility of deliberate damage to equipment, property or important documents.
3. The employee's unauthorized absence precludes notice of proposed adverse action and the department/agency has attempted to contact the employee.
4. Suspension under this section is a separate adverse action and it is appealable to the Commission. A copy of the suspension notice shall be provided to the Civil Service Commission not later than the working day next following the effective date of the suspension.
 - (a) Suspension during the proposed notice period shall be reviewed by the Commission regardless whether it is appealed by the employee or not.
 - (b) If the Commission sustains the department's action in suspending the employee during the proposed notice period, the number of days of suspension under this Section shall be considered part of the final disciplinary penalty and in no case shall the total days of suspension be more than 30 working days.

D. LEAVE PENDING INVESTIGATION:

In cases requiring investigations of allegations against an employee involving misappropriation of public funds or property, mistreatment of persons in a government institution, acts which would constitute a felony, or a misdemeanor involving moral turpitude, the department head may order the employee on administrative leave of absence with pay not to exceed 15 days. The administrative leave may be terminated by the department head by giving 48 hours notice in writing to the employee.

E. EMPLOYMENT STATUS DURING IMPRISONMENT:

An employee who is incarcerated pending disposition of a case by the court, or sentenced to imprisonment by the court, and who does not have any accrued annual leave, may be granted leave without pay.

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When the employee is released from incarceration or imprisonment, the Department head shall determine whether the employee shall be returned to duty or whether to take adverse action against an employee so imprisoned. Nothing in this Section shall preclude the department head for taking adverse action against an employee so imprisoned.

F. FINAL NOTICE OF ADVERSE ACTION:

An employee is entitled to written notice of the department's decision within ten (10) days after receipt of the employee's answer to the charge(s). The decision shall be made by the department or agency head and shall be delivered to the employee at or before the time the action will be made effective. The notice shall be in writing; be dated; state the specific facts found upon which such action is based; inform the employee of his rights to appeal to the Civil Service Commission; and inform him of the time limit within which an appeal may be submitted as provided in Section CSC-130 C.

Copies of the final notice of adverse action shall be filed by the department with the Civil Service Commission not later than the working day next following the effective date of the action.

PROCEDURE FOR APPEAL TO THE CIVIL SERVICE COMMISSION

CSC-130 A. RIGHT TO APPEAL:

1. Any employee holding a permanent appointment, except one who is exempted by law or other legal authority from the jurisdiction of the Civil Service Commission, in the classified service is entitled to appeal to the Civil Service Commission from an adverse action, covered by Section CSC-120. An employee who has been appointed to a permanent position and who has satisfactorily completed his probationary period holds a permanent appointment.
2. A regular contract employee occupying a permanent position in the classified service is entitled to appeal

to the Civil Service Commission from adverse actions covered by Section CSC-120 during the term of his contract. Non-renewal of contract by the Government of Guam is not adverse action subject to appeal.

B. CONTENTS OF APPEAL:

An appeal shall be in writing and shall set forth the employee's reasons for contesting the adverse action decision.

C. TIME LIMIT FOR FILING APPEAL:

An appeal must be submitted within twenty (20) calendar days after receipt of the department's final notice of adverse decision.

D. PRESENTATION OF APPEAL:

An employee, in presenting his appeal, shall:

1. Be assured freedom from restraint, interference, coercion, discrimination, or reprisal.
2. Have the right to be accompanied, represented, and advised by a representative of his own choosing.
3. Be assured a reasonable amount of official time to prepare his case if he is in an active duty status.

HEARING OF THE APPEAL

CSC-135 A. ENTITLEMENT:

An employee is entitled to a hearing on his appeal before the Civil Service Commission. The employee is entitled to appear at the hearing personally, or accompanied by or through his representative.

B. PLACE AND TIME OF HEARING:

The Commission shall set the place, date, and time of hearing as expeditiously as possible.

C. CONDUCT OF HEARING:

1. Attendance at the hearing is open to the public.
2. The hearing will be conducted so as to bring out pertinent facts, including the production of certain records.

3. Decisions on the admissibility of evidence or testimony are made by the presiding officer of the Commission without polling the Commission members, except that when a member objects to a decision of the presiding officer, a ruling on the admissibility of the evidence or testimony in question is by a majority vote of the Commission with minority views recorded.
4. Testimony is under oath or affirmation.
5. Each party shall have the right to call and examine witnesses, to introduce exhibits and to cross-examine opposing witnesses on any matter relevant to the issues. If the employee does not testify on his behalf, he may be called and examined by the Commission as if under cross-examination. Any member of the Commission may direct questions at either party or any witness at any time during the proceedings.
6. Rules of evidence are not applied strictly, but the Commission may exclude irrelevant or unduly repetitious testimony.
7. The presiding officer shall give the parties opportunities to examination of witnesses for both sides.

D. THE BURDEN OF PROOF:

The appointing authority shall present evidence to establish the charges on which the adverse action was based. If, at the conclusion of its presentation, the appointing authority has, in the opinion of the Commission, presented sufficient evidence to support the charges, the employee shall then be afforded the opportunity of presenting his case.

The order of presentation in the hearing shall be as follows:

1. Opening statements by the parties;
2. Presentation by the appointing authority, or his counsel, of evidence in support of the charges, followed by examination by the appellant;

3. Presentation by the appellant, or his counsel, of such evidence as he may wish to offer in his defense, followed by examination by appointing authority;
4. Closing statement of appointing authority;
5. Closing statement of appellant;

E. WITNESSES:

1. Both parties are entitled to produce witnesses.
2. The Commission may request additional witnesses; request documents and recall witnesses.
3. Any department shall make its employees available as witnesses before the Civil Service Commission when (a) requested by the Commission after consideration of a request by the employee and (b) it is administratively practicable to comply with the request of the Commission. The Commission reserves the right to subpoena any witness from any department. If the department determines that it is not administratively practicable to comply with the request of the Commission, it shall submit for inclusion in the employee appeal file its written reasons for the declination.
4. An employee is on duty status during the time he is made available as a witness. An employee who serves as a witness beyond his regular work time or on his off duty time is entitled to compensatory time off. The Civil Service Commission shall furnish the head of the department or agency in which he is employed a certificate or certificates showing the time devoted to the hearing.
5. The department shall assure witnesses freedom from restraint, interference, coercion, discrimination, or reprisal in presenting their testimony.

F. RECORD OF HEARING:

Oral evidence shall be taken under oath or affirmation and testimony may be tape recorded. It shall be transcribed only at the request and expense of the party concerned.

The testimony and exhibits admitted in the hearing, together with all pleading, exceptions, motions, requests, and papers filed by the party or parties involved, shall constitute the complete and exclusive record.

CSC-140 A. TERMINATION OF APPEAL:

The Civil Service Commission may terminate an employee's appeal.

1. At the appellant's request;
2. When an appellant failed to furnish required information necessary to proceed with the advancement of his appeal. However, instead of terminating for failure to prosecute, the Commission may adjudicate the appeal if sufficient information for the purpose is available.

The Commission may reopen a closed appeal under this paragraph, but not later than six months after termination of the appeal, only on a showing by the employee that circumstances beyond his control prevented him from prosecuting his appeal.

B. DEATH OF APPELLANT:

When an appeal has been filed properly before the death of the employee, the Commission shall process it to completion and adjudicate it. The Commission may provide for amendment to show retroactive restoration and the employee's continuance on the rolls on active duty status to the date of death.

APPELLATE REVIEW AND DECISION

CSC-145 A. SCOPE OF APPELLATE REVIEW:

The scope of the appellate review shall include, but shall not be limited to:

1. A review of the issues of fact;
2. A review of compliance with procedural requirements for affecting the adverse action.

B. COMMISSION BOARD DECISION:

The Commission shall consider the evidence presented in executive session. The Commission may sustain, modify or

revoke the order of suspension, demotion or dismissal, as in its judgement, is equitable and in the interest of the government service. The Commission shall issue a written decision within 20 days after the hearing is completed and shall send copies thereof to the affected department/agency head and the appellant. If the order of the department/agency head is sustained by the Commission, the effective date of said order shall stand as issued by the appointing authority. If the order of the appointing authority is modified by the Commission, compensation and other benefits shall be in accordance with and in proportion to the extent of such modification. If the appointing authority's action is revoked by the Commission, all compensation and other benefits which would have accrued to the employee from the effective date of said order shall be restored to him.

CSC-150 DEPARTMENT/AGENCY ACTION WHEN COMMISSION RECOMMENDS CORRECTIVE ACTION:

The decision of the Commission is final and compliance with its recommendation for corrective action is mandatory. The department or agency head must report, within five working days after receipt of the decision, that it has carried the decision into effect.

CSC-155 PENALTIES FOR VARIOUS OFFENSES (Attachment):

Standard penalties shall apply for specific offenses. However, a more severe penalty may be issued than that which appears in the table pertaining to penalties for various offenses, if it is felt necessary. Consideration will be given to the severity of the offense, the cost involved, the time interval between violations, the length and quality of service record, and the ability of the employee concerned.

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STANDARD SCHEDULE OF DISCIPLINARY OFFENSES AND PENALTIES

1. This list is not intended to cover every possible type of offense. Penalties for offenses not listed will be prescribed by the department head.
2. Many of the items listed on this schedule combine several offenses in one statement, connected by the word "OR". Usage of the word "OR" in a charge makes it nonspecific. Use only the items which describe the employee's actual conduct and leave out parts which do not apply.
3. Penalties for disciplinary offenses will, in general, range from the minimum penalty to the maximum indicated. In unusual circumstances, depending on the gravity of the offense, the past record, and the position of the employee, a penalty outside the general range may be imposed.
4. Suspension penalties on this schedule apply to work days and holidays.
5. Although the schedule shows 10 days as a normal maximum suspension penalty, a suspension of greater length may be imposed where the penalty of dismissal is also provided for that offense.
6. Depending on the gravity of the offenses, dismissal proceedings may be instituted against an employee for any number of offenses committed.

RANGE OF PENALTIES FOR STATED OFFENSES
(Reprimands - Suspensions - Dismissals)

NATURE OF OFFENSE	1st OFFENSE		2nd OFFENSE		3rd OFFENSE	
	Min.	Max.	Min.	Max.	Min.	Max.
1. Excessive unauthorized absence.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal
2. Falsifying attendance record for oneself or another employee.	Reprimand	5 days	5 days	Dismissal	10 days	Dismissal
3. Leaving job to which assigned at any time during working hours without proper permission.	Reprimand	5 days	5 days	10 days	10 days	Dismissal
4. Unexcused or unauthorized absence on one or more scheduled days of work or assigned overtime.	Reprimand	2 days	1 day	5 days	5 days	Dismissal
5. Unexcused tardiness.	Reprimand		Reprimand	1 day	Reprimand	2 days

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CONDUCT

6. Actual or attempted theft of Government property or the property of others.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal
7. Criminal, dishonest, infamous or notoriously disgraceful conduct adversely affecting the employee/ employer relationship (on duty or off duty).	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal
8. Disobedience to constituted authorities, or deliberate refusal to carry out any proper order from any supervisor having responsibility for the work of the employee; insubordination.	Reprimand	5 days	5 days	Dismissal	10 days	Dismissal
9. Disorderly conduct; fighting, threatening or attempting to inflict bodily injury to another; engaging in dangerous horseplay; or resisting competent authority.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal
10. Disrespectful conduct; use of insulting; abusive, or obscene language to or about other personnel.	Reprimand	5 days	5 days	Dismissal	10 days	Dismissal
11. Failure to honor just debts or legal obligations without good cause.	Reprimand		Reprimand		Reprimand	Dismissal
12. Falsification, misstatement, or concealment of material fact in connection with any official record.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal
13. False testimony or refusal to testify in an inquiry, investigation or other official proceedings.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal

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14. Knowingly making false or malicious statements with the intent to harm or destroy the reputations authority, or official standing of individuals or organizations.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal
15. Gambling or unlawful betting during working hours.	Reprimand	2 days	Reprimand	5 days	Reprimand	Dismissal
16. Promotion of gambling on Government premises.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal
17. Willful damage to Government property or the property of others.	Reprimand	5 days	5 days	Dismissal	10 days	Dismissal

DISCRIMINATION

18. Discrimination against an employee or applicant because of race, color, religion, sex, national origin, or age or any reprisal action against employee.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal
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INTOXICANTS

19. Reporting for duty or being on duty under the influence of intoxicants, unauthorized possession of or attempting to bring intoxicants on Government premises.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal
20. Reporting for duty while under the influence of a narcotic or dangerous drug, or use of same on Government property or on duty.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal
21. Unauthorized sale or transfer of narcotic or dangerous drug on Government property or during duty hours.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal

PERFORMANCE

22. Careless workmanship resulting in spoilage or waste of materials or delay in production.	Reprimand	5 days	5 days	10 days	10 days	Dismissal
23. Covering up or attempting to conceal defective work; removing or destroying same without permission.	Reprimand	2 days	1 day	5 days	5 days	Dismissal
24. Failure or delay in carrying out orders, work assignments, or instructions of superiors.	Reprimand	2 days	1 day	5 days	5 days	Dismissal
25. Loafing, wasting time, or inattention to duty.	Reprimand	2 days	1 day	5 days	5 days	Dismissal
26. Sleeping on duty. a) Where life or property is endangered.	Reprimand Reprimand	5 days Dismissal	5 days 5 days	Dismissal Dismissal	10 days 10 days	Dismissal Dismissal
27. Unauthorized use or possession of, loss of or damage to Government property or the property of others.	Reprimand	2 days	5 days	Dismissal	10 days	Dismissal

SAFETY

Failure to observe precautions for personal safety posted rules, signs, written or oral safety instructions, or to use protective clothing or equipment.	Reprimand	2 days	1 day	5 days	10 days	Dismissal
29. Violation of safety regulations which endangers life or property.	Reprimand	5 days	2 days	Dismissal	10 days	Dismissal

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30. Endangering the safety of or causing injury to personnel through carelessness.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal
31. Failure to observe no smoking regulations or carrying matches in restricted areas.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal
32. Violating traffic regulations, reckless driving on Government premises, or improper operation of Government motor vehicles.	Reprimand	2 days	Reprimand	5 days	5 days	10 days

ADVERSE ACTION PROCEDURES

PROPOSED ADVERSE ACTION
(CSC-125 A)

Department written notice stating all reasons for proposed adverse action to the employee.

EMPLOYEE'S REPLY
(CSC-125 B)

Employee is entitled to 10 calendar days to answer proposed action. Department will review the employee's answer before issuing final decision.

DEPARTMENT/AGENCY FINAL
DECISION OF ADVERSE ACTION
(CSC-125 F)

Department has 10 days after receipt of employee's response to give final notice of decision.

EMPLOYEE APPEAL TO THE
CIVIL SERVICE COMMISSION
(CSC-130 A)

Employee has the right to appeal to the Civil Service Commission within 20 days after receipt of Department's decision.

HEARING OF THE APPEAL
(CSC-135 A)

Employee is entitled to a hearing on his appeal before the Civil Service Commission.

CIVIL SERVICE COMMISSION
DECISION (CSC-145 B)

Commission shall issue decision within 20 days after the hearing is completed to the Department and the employee.

DEPARTMENT/AGENCY
(CSC-150)

Decision of the Commission is final and compliance with it's recommendation is mandatory. Department head must report to the Commission within 5 days after receipt of the decision that corrective action has been carried into effect.