

GOVERNMENT OF GUAM
OFFICE OF THE GOVERNOR
AGANA, GUAM

EXECUTIVE ORDER NO. 83-025

DEPARTMENT OF ADMINISTRATION
ADVERSE ACTIONS RULES AND REGULATIONS

WHEREAS, Section 4105, Title 4, Guam Code Annotated, provides that the Director of Administration shall adopt personnel rules and regulations governing selection, promotion, performance evaluation, demotion, suspension, and other disciplinary action;

WHEREAS, Section 4105, Title 4, Guam Code Annotated, further provides that such rules and regulations must be approved by the Civil Service Commission and be promulgated by Executive Order of the Governor;

WHEREAS, the Director of Administration has adopted such personnel rules and regulations relative to adverse actions; and

WHEREAS, the Civil Service Commission has approved said rules and regulations in its meeting on the 17th day of August 1983.

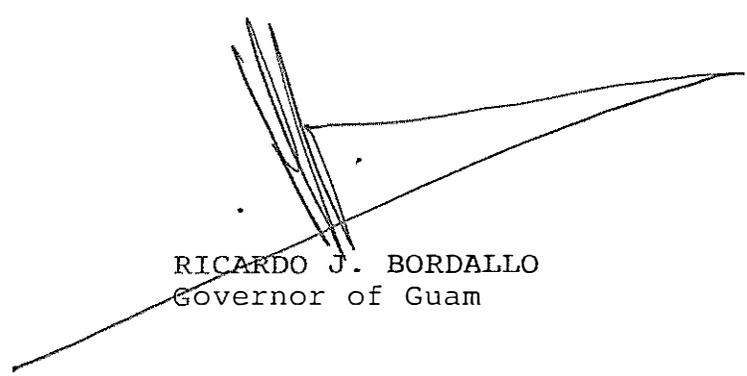
NOW, THEREFORE, I, RICARDO J. BORDALLO, Governor of Guam, by virtue of the authority vested in me by Section 4105, Title 4, Guam Code Annotated and by the Organic Act of Guam, do hereby order as follows:

1. The attached Personnel Rules and Regulations relative to Adverse Actions duly adopted by the Director of Administration and approved by the Civil Service Commission, are approved and promulgated, to be effective upon filing with the Legislative Secretary.

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 All prior rules, regulations, policies, memoranda or Executive Orders in conflict with this order are hereby superseded.

Signed and promulgated at Agana, Guam, this 22nd day of

November, 1983.



RICARDO J. BORDALLO
Governor of Guam

Countersigned:



EDWARD D. REYES
Lieutenant Governor

Attachment

14.10 **ADVERSE ACTION PROCEDURES:**

The following rules shall govern appointing authorities in taking adverse action against employees. Such actions may result in suspensions, demotions or dismissal. Appointing authorities are encouraged to exercise progressive discipline where appropriate in carrying out their action.

14.11 **DEFINITIONS:**

- a. 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 within twelve (12) months except for violations of Section 4376, Government Code of Guam.
- b. 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.
- c. Dismissal means the termination of an employee for the reasons authorized under these rules and other applicable laws.
- d. Appeal means a written statement directed to the Civil Service Commission by the employee or his representative answering the charges against him. (See CSC appeal procedures.)
- e. Day means calendar day unless otherwise specified.

14.12 **AUTHORIZED CAUSES FOR ADVERSE ACTION:**

Each of the following constitute cause for discipline of an employee:

- a. Fraud in securing appointment;
- b. Incompetence;
- c. Inefficiency;
- d. Inexcusable neglect of duty;
- e. Insubordination;
- f. Dishonesty;
- g. Drunkenness on duty;

- h. Intemperance;
- i. Addiction to the use of narcotics or habit-forming drugs;
- j. Inexcusable absence without leave;
- k. Conviction of a crime;
- l. Discourteous treatment of the public or other employees;
- m. Prohibited political activity;
- n. Willful disobedience;
- o. Misuse of government property;
- p. Refusal to take and subscribe to any oath or affirmation which is required by law in connection with his employment;
- q. Acts prohibited by Section 4376 of the Government Code of Guam relating to strikes against the government; and
- r. Other failure of good behavior either during or outside of duty hours which of such a nature that it causes discredit to his agency or his employment.

14.13 PROHIBITIONS:

A department may not take an adverse action against an employee except for the reasons authorized by these rules. 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.

14.14 EMPLOYEES COVERED:

All employees in the classified service covered by these rules shall be subject to these rules except the following:

- 1. Regular contract employees whose contracts are not renewed upon expiration;
- 2. Employees whose employment is on a limited term basis such as temporary, seasonal, intermittent, part-time, provisional, or only for a specific project;

3. Employees who are exempted by law or other legal authority from the jurisdiction of the Civil Service Commission with regards to adverse actions.

4. Probationary employees serving original appointment.

14.15 ADVERSE ACTION COVERED:

These rules apply to the following adverse action:

1. Dismissal;
2. Suspension; and
3. Demotion (For discipline only)

14.20 PROCEDURES FOR ADVERSE ACTION-DEPARTMENT LEVEL:

14.21 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. A copy of such action shall be filed by the department with the Department of Administration not later than the next working day following the issuance of the Proposed Adverse Action.

14.22 EMPLOYEE'S ANSWER:

An employee is entitled to seek reconsideration of the proposed adverse action by answering any charges, orally or in writing, within ten (10) days after receipt of the notice. In answering, the employee may request a conference with the department/agency head within the same ten (10) days at which time the department/agency head shall make himself available. The employee may be represented by a person of his choice. If the employee answers, the department or agency head must consider his answers in reaching a decision.

14.23 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 twenty (20) working 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.)

- a. 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.
- b. Suspension is necessary to eliminate the possibility of deliberate damage to equipment, property or important documents.
- c. The employee's unauthorized absence prevents the issuance of notice of proposed adverse action and the department/agency's attempt to contact the employee was unsuccessful.
- d. Suspension under this section is a separate adverse action and it is appealable to the Commission within twenty (20) days of the effective date of the action. 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.
 - (1) Suspension during the proposed notice period shall be reviewed by the Commission regardless whether it is appealed by the employee or not.
 - (2) If the Commission sustains the department's action in suspending the employee during the 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 final days of suspension be more than thirty (30) working days.

14.24

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 or acts which constitute a crime, the department head may order the employee on administrative leave of absence with pay not to exceed fifteen (15) working days. The administrative leave may be terminated by the department head by giving twenty-four (24) hours notice in writing to the employee.

14.25 EMPLOYMENT STATUS DURING IMPRISONMENT:

An employee who is imprisoned pending judgment by the court, and who does not have any accrued annual leave, may be granted leave without pay.

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 from taking adverse action against an employee during imprisonment.

14.26 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 right to appeal to the Civil Service Commission; and inform him of the time limit within which an appeal may be submitted as provided in Rule 14.33.

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

14.30 PROCEDURE FOR APPEAL TO THE CIVIL SERVICE COMMISSION:

14.31 RIGHT TO APPEAL:

- a. 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 Rule 14.15. An employee who has been appointed to a permanent position and who has satisfactorily completed his probationary period holds a permanent appointment.
- b. 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 Rule 14.15 during the term of his contract. Non-renewal of contract by the Government of Guam is not adverse action subject to appeal.

14.32 CONTENTS OF APPEAL:

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

14.33 TIME LIMIT FOR FILING APPEAL:

An appeal must be submitted to the Civil Service Commission within twenty (20) days of the effective date of the action.

14.34 PURSUIT OF APPEAL:

An employee, in presenting his appeal, shall:

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

14.40 HEARING OF APPEAL:

Matters relating to appeals shall be governed by the procedures adopted by the Civil Service Commission. (See CSC appeal procedures.)

14.50 PENALTIES FOR VARIOUS OFFENSES:

Standard penalties shall apply to adverse actions for specific offenses. However, a more severe penalty may be issued than that which appears in the schedule 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. Refer to the attached schedule.

ATTACHMENT

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 offense 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 maximum penalty specified for an offense may be imposed.
4. Suspension penalties on this schedule apply to work days and paid holidays.
5. Although the schedule shows 5 or 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, but not to exceed 30 working days within twelve (12) months.
6. Depending on the gravity of the offenses, dismissal proceedings may be instituted against an employee for any number of offenses committed.
7. Although demotion in rank and/or reduction in pay is not listed in the Schedule of Penalties, such penalty may be imposed by the appointing authority.

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
<u>CONDUCT</u>						
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. Falsification, misstatement, or concealment of material fact in connection with any official record.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal
12. False testimony or refusal to testify in an inquiry, investigation or other official proceedings.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal
13. Knowingly making false or malicious statements with the intent to harm or destroy the reputations of authority, or official standing of individuals or organizations.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal
14. Gambling or unlawful betting during working hours.	Reprimand	2 days	Reprimand	5 days	Reprimand	Dismissal
15. Promotion of gambling on Government premises.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal
16. Willful damage to Government property or the property of others.	Reprimand	5 days	5 days	Dismissal	10 days	Dismissal
17. Engaging in prohibited acts covered in Section 4376 of the Government Code of Guam.	Penalty - See Section 4377 Government Code of Guam.					
<u>DISCRIMINATION</u>						
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

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.	Reprimand	5 days	5 days	Dismissal	10 days	Dismissal
a) Where life or property is endangered.	Reprimand	Dismissal	5 days	Dismissal	10 days	Dismissal

27. Unauthorized use or possession of, loss of or damage of Government property or the property of others.	Reprimand	2 days	5 days	Dismissal	10 days	Dismissal
<u>SAFETY</u>						
28. 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
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

NOTE: Days identified within the schedule denotes suspension penalty covering working days and paid holidays.

November 3, 1983

Memorandum

Ref: GOV 84-9

To: Chief of Staff, Office of the Governor
From: Attorney General
Subject: Section 14.21 of the Proposed Adverse Action Rules and Regulations

This office is in receipt of your memorandum dated October 4, 1983 requesting the following.

REQUEST: Are Government of Guam employees entitled to notice of proposed adverse action as provided for in Section 14.21 of the proposed adverse action rules and regulations?

ANSWER: Yes.

STATEMENT OF FACTS:

The Civil Service Commission's proposed adverse action rules and regulations have been submitted to the Governor for his approval. Section 14.21 of the proposed rules and regulations provides that a Government of Guam employee is entitled to notice of proposed adverse action.

4 GCA Section 4406 sets forth the adverse action procedure and appeals, and the statute does not provide for notice of proposed adverse action. The Governor's Chief of Staff is inquiring whether it is appropriate to require the Government to notify an employee of proposed adverse action when such notice is not required by statute.

DISCUSSION:

Due process requires certain pre-removal safeguards for a permanent civil service employee. Such safeguards must include, as a minimum, notice of the proposed adverse action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in

November 3, 1983

Page 2

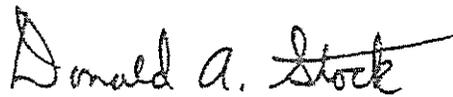
writing, to the authority initially imposing discipline. 15A Am Jur 2d Civil Service § 68; Nyhus v. Civil Service Board, 232 N.W.2d 779 (Minn. 1975); Skelly v. State Personnel Board, 539 P.2d 774 (Cal. 1975); and Williams v. County of Los Angeles, 586 P.2d 956 (Cal. 1978).

Thus, even though Guam law does not require that a permanent civil service employee be given notice of proposed adverse action, such notice is required by the due process clause of the U.S. Constitution and the Organic Act of Guam. Sections 14.21 and 14.22 of the proposed adverse action rules and regulations offer the minimum procedural safeguards mandated by due process.

When making further inquiry regarding this memorandum or to the same subject matter, please make reference to the above file number. In an effort to expedite your inquiry those requests referencing the file number will be given preferential consideration.

OFFICE OF THE ATTORNEY GENERAL

By:



DONALD A. STOCK
Assistant Attorney General

cc: Civil Service Comm. ✓
gct