



# Florida Highway Patrol Policy Manual

<b>SUBJECT</b> DISCIPLINE	<b>POLICY NUMBER</b> 08.02	<b>ISSUE DATE</b> 02/01/1996
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## **8.02.01 PURPOSE**

To provide guidance to management when imposing disciplinary action pursuant to a sustained allegation of misconduct.

## **8.02.02 AUTHORITY**

Section 110.227, Florida Statutes  
Chapter 60L-36, Florida Administrative Code  
FLHSMV Policy 3.06 and 3.08  
FLHSMV Disciplinary Procedures Manual

## **8.02.03 POLICY**

The Florida Highway Patrol may impose disciplinary action for improper conduct or behavior that violates state laws or Department or Division policies. Disciplinary action will be imposed in a manner that is fair and consistent for all employees. Minor work deficiencies or non-repetitive violations of Division directives will be handled through documented discussions, counseling, and training.

## **8.02.04 DEFINITION**

- A. **CORRECTIVE ACTION PLAN (CAP)** – When an employee is not meeting performance expectations during the evaluation period or when it is necessary to give an employee one or more final individual ratings below “Meets Expectation,” a corrective action plan is an appropriate documentation tool for timely informing the employee in writing of performance deficiencies and necessary corrective action. Such plan documents the specific steps or activities that the employee must take

prior to the end of the designated evaluation period to correct performance deficiencies that could result in an expectation rating of “Below” or “Unacceptable.” The plan will be for a defined period of time designated by the agency and should be an adequate length of time for improvement activities. This plan is documented in the People First system.

- B. **COUNSELING** – A discussion between the employee and the supervisor when the supervisor determines behavior is inconsistent with the Department's official or expected disciplinary standards. Counseling is not considered disciplinary action and cannot be used for the purpose of progressive disciplinary action. Counseling is used by a supervisor to inform the employee of inappropriate conduct with the objective that the conduct will not be repeated, and that disciplinary action will not become necessary. Counseling sessions should be documented in writing and placed in the employee's work file.
- C. **DISCIPLINARY ACTION** – An action taken by the agency to correct an employee's conduct or behavior that violates an offense listed in FLHSMV Policy 3.06, Disciplinary Process, and/or Chapter 60L-36, F.A.C., Conduct of Employees. Disciplinary actions include written reprimand, suspension, dismissal, reduction in pay, involuntary transfer of more than 50 miles by highway, or involuntary demotion.
- D. **DISCIPLINARY ACTION REVIEW BOARD (DARB)** – A board comprised of representatives from the applicable division, the affected chief, the affected troop/bureau commander(s) or their designee, the commander of the Office of Professional Compliance (OPC), the chief of Personnel Services or designee and any designee as determined by the director to review violations of the disciplinary standards for possible disciplinary action. The Office of Employee Relations (OER) and Office of General Counsel will provide support to the DARB.
- E. **DOCUMENTED DISCUSSION** – A process that enables learning and development to occur and thus performance to improve. Documented discussions bring minor performance issues to an employee's attention thereby assisting the employee to improve performance. The goal of these discussions is to work with the employee to improve work performance.
- F. **PROGRESSIVE DISCIPLINE** – A systematic approach to discipline in which the penalty for violation of a disciplinary standard will increase in severity each time the employee repeats a violation of the same disciplinary standard.

#### **8.02.05 OBJECTIVES**

- A. To provide procedures to ensure the fair and consistent application of discipline.
- B. To provide guidelines for employees wishing to appeal any disciplinary action which may have been imposed.

#### **8.02.06 RESPONSIBILITIES**

- A. The commander of the Office of Professional Compliance (OPC) shall maintain all records of disciplinary action. A periodic audit of disciplinary records will be provided to regional commanders and troop/bureau commanders to assist in providing uniformity and consistency of discipline. This audit will be statistical in nature and will not contain the names of employees that have been disciplined.
- B. The commander of the OPC is responsible for providing oversight of discipline on a statewide basis and ensuring that disciplinary action is being administered uniformly and consistently.

#### **8.02.07 PROCEDURES**

##### **A. NON-DISCIPLINARY ACTION**

- 1. Supervisors should attempt to resolve work deficiencies through documented discussions, counseling, and training and should be proactive in recognizing concerns. Corrective action such as documented discussions, training, counseling, or corrective action plans (CAPs) will NOT be construed as disciplinary action although they may precede discipline. Corrective action such as documented discussions, training, counseling, or CAPs will be documented in writing and placed in the employee's work file. Documentation of the corrective action training will also be placed in the member's training file. A copy of the documented discussion and/or counseling will be placed in the administrative investigations management system when appropriate.
- 2. Transfers may be used when it is deemed to be in the best interest of the Department and the member. However, transfers will not be used for disciplinary purposes.

3. Supervisors should be aware of the benefits and programs available under the Department's Employee Assistance Program (EAP). In situations where an employee's behavior can be corrected through the utilization of those services, the supervisor can make appropriate recommendations.

**B. DISCIPLINARY ACTION**

1. When disciplinary action is necessary, the action shall be in accordance with the requirements of the FLHSMV Policy 3.06, Disciplinary Process, the FLHSMV Disciplinary Procedures Manual, and Section 110.227, Florida Statutes.
2. The supervisor serving a disciplinary action letter to an employee should ensure the employee's immediate supervisor is present while administering the disciplinary action, when practicable.
3. When it is necessary to administer disciplinary action, a supervisory referral to the Department's EAP should be considered, if the nature of the offense indicates that such referral may deter future violations.
4. In an effort to ensure uniformity, consistency, and fairness in handling allegations of misconduct, supervisors shall obtain a comparable disciplinary action report from the OPC prior to taking action. Previous documented discussions and counseling sessions may also be considered for mitigating or aggravating factors.
5. In determining the severity of any disciplinary action, troop supervisors should take into consideration mitigating or aggravating factors that should include but not be limited to:
  - a. The seriousness of the conduct as it relates to the employee's duties and responsibilities.
  - b. Action taken with respect to similar conduct by other employees.
  - c. The previous employment record and disciplinary record of the employee.
  - d. Extraordinary circumstances beyond the employee's control.

6. The Department has established a "forgiveness" policy, whereby past disciplinary actions will not be considered for the purpose of progressive discipline, provided the time period for each category is met or exceeded. The "forgiveness" policy is as follows:
  - a. Crashes: Two years from the date of the most recent sustained crash.
  - b. Written Reprimand: Two years from the date the employee signed or received the written reprimand.
  - c. Suspensions of 24 hours or less: Three years from the date the employee signed or received the final suspension letter.
  - d. Suspensions greater than 24 hours: Five years from the date the employee signed or received the final suspension letter.
7. Agency Vehicle Crashes / Incidents
  - a. Upon reviewing the circumstances surrounding an agency vehicle crash or an incident involving agency vehicle damage, the Department may require training to reinforce an employee's driving knowledge and skills.
  - b. The Patrol Car Crash Disciplinary Action Scale shall determine the appropriate action for sustained crashes with agency vehicles.
  - c. The member may lose the privilege to take their patrol vehicle to their residence as part of their corrective action. In such cases, the member shall park their patrol vehicle at the station or other location determined by the troop commander. The member is expected to pick up their vehicle from the designated location at the beginning of their shift by the time their shift is scheduled to begin. The member will return the vehicle to the designated location at the end of their completed shift. If working an off-duty detail that requires the use of the patrol vehicle, the member will check out and return the patrol vehicle at the beginning and end of each day worked. Travel time to and from the location

in their personal vehicle will not count as time worked nor take away from the member's scheduled shift.

8. Complaints against employees that allege criminal violations will be grounds for bringing criminal charges if the evidence warrants. The criminal action will not serve to preclude the internal disciplinary process from dealing with the same matter concurrently.

#### C. DISCIPLINARY ACTION REVIEW

1. Upon the conclusion of a complaint investigation that was not resolved by a pre-investigative agreement with sustained findings/violations, the troop/bureau commander will forward the investigative findings to the OPC. The OPC will facilitate a pre-case closure conference of the complaint with the Office of General Counsel, the chief of Personnel Services or designee, applicable regional/bureau commander, and any designee as determined by the director.
2. In the event the complaint investigation documents sustained findings/violations, and the recommended disciplinary action is a suspension or greater, the OPC will schedule a Disciplinary Action Review Board (DARB) meeting. The DARB will review the case and make any recommendations for discipline, if applicable, prior to the OPC drafting the Notice of Proposed Action.

#### D. NOTICE OF PROPOSED ACTION

1. In the case of proposed discipline that exceeds a written reprimand, the troop/bureau commander will ensure, when practical, that a supervisor personally serves a copy of the Notice of Proposed Action to the employee.
2. The supervisor serving the notice will record on the Division's copy the time, date, and place the notice was served and sign the notice. If present at the time the proposed action is served, the first line supervisor should also sign the document as a witness. A signed copy will then be forwarded to the OPC. The first line supervisor will also receive a signed copy.

3. When disciplinary action of a suspension or dismissal is proposed, the Notice of Proposed Action shall follow the format set forth by the Office of Employee Relations.
4. The member will receive a full and complete copy of the investigative file along with the Notice of Proposed Action.
5. The Notice of Proposed Action will contain notice of the right of the employee to have access to a predetermination conference to answer, orally or in writing, the allegations.
  - a. The letter will contain instructions for requesting the predetermination conference.
  - b. It is the employee's responsibility to request a predetermination conference, if desired, within five working days of the date the notice was served to the employee.
  - c. The five working day period will begin on the employee's next regular workday after the notice is served.
  - d. If the employee requests the predetermination conference, the respective chief shall acknowledge receipt of the request and notify the employee of the time, date, and location where the conference will take place.

#### E. PREDETERMINATION CONFERENCE

1. Any predetermination conference will be held in accordance with Section 110.227, Florida Statutes.
2. Should the employee request and attend the predetermination conference, the OPC will ensure that the presiding officer has a complete file to review prior to the conference. At the conclusion of the conference, the presiding officer will discuss their findings with the OPC. The findings of the presiding officer should indicate whether any new, additional, or mitigating information was presented which could affect the agency's decision. The deputy director of the Office of the Executive Officer will make a recommendation to the director to affirm or alter the Notice of Proposed Action.

3. If the employee does not request a predetermination conference, or if the employee does not present any factors to cause the Department to modify or change its proposed action, the OPC shall draft and cause distribution of the Notice of Final Action.

F. NOTICE OF FINAL ACTION

1. As provided by Chapter 60L-36, Florida Administrative Code, an employee shall be given written notification by certified mail, returned receipt requested, or when possible, personal delivery of the Department's decision to proceed with a suspension or dismissal.
2. The Notice of Final Action will follow the format set forth by the Office of Employee Relations and state the effective date of the suspension or dismissal.
3. Such notice shall be delivered within five workdays from the date the action is effective.
4. The instructions for appealing or grieving the action shall be contained in the notification to the employee of the action to suspend or dismiss.
5. A statement as to the reason for suspension or dismissal shall be included in the final action letter, for all included and excluded class personnel.
6. The Bureau of Personnel Services will provide a statement of the status of fringe and retirement benefits to any employee dismissed from service.
7. Any updated case exhibits shall be provided to the member at the time the Notice of Final Action is served.

G. Extraordinary Dismissal

1. When possible, the troop/bureau commander will ensure that the notice of proposed dismissal is personally served.



2. The supervisor serving the proposed action will provide the employee with the proposed action letter along with the evidence supporting the charges. The employee will be provided the opportunity rebut the allegations prior to the delivery of the final action letter.
3. If the employee does rebut the charges, the supervisor will discuss their findings from the employee's rebuttal of charges with the deputy director(s) and OPC to discuss whether any new, additional, or mitigating information was presented which would affect the agency's decision. The deputy director(s) will make a recommendation to the director to affirm or alter the Notice of Proposed Action.

#### H. APPEALS AND GRIEVANCES

Availability of appeals and grievances and applicable procedural guidelines can be found in FLHSMV Policy 5.07 and the most recent collective bargaining agreement.