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Subject: FW: DPSST Commision
Date: Monday, May 16, 2022 3:32:33 PM
Attachments: [Draft Concept Guide Schuback 5-16-22.pdf](#)

From Commissioner Schuback for the agenda

From: Steven Schuback <schuback@prhlaborlaw.com>
Sent: Monday, May 16, 2022 2:32 PM
To: Boss Frederick <fred.boss@doj.state.or.us>
Subject: DPSST Commision

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Fred,

Good afternoon. Is there an agenda for the May 19th meeting?

I would please like to add to agenda and for discussion a sample concept guide that I have prepared as attached. Can you please send it out in advance for members to see?

Please let me know of any procedural issues.

Thanks,
Steven

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Draft Concept

State of Oregon Disciplinary Guide/Matrix

PURPOSE AND SCOPE: (for example:)

This state wide guide provides rules and regulations for imposing discipline upon sworn law enforcement officers for all law enforcement agencies in Oregon consistent with applicable law. This guide is initiated on *(date/2022)* and will be further developed in time to cover a broader scope. Currently, this guide, at a minimum, is intended to address categories of conduct enumerated by ORS 243.812. For matters of misconduct not addressed by this guide, law enforcement agencies may impose levels of disciplinary action consistent with their agency practices, so long as consistent with applicable law and this guide.

As a matter of public interest, this guide it to provide for the following:

- Accountability
- Clarity
- Consistency
- Correct Behavior
- Improve Trust with Community
- Improve Trust for Employees and Employer

PRINCIPLES (for example:)

A. MENTAL STATE:

Employees are responsible for their actions and conduct. Consistent with the principles and categories of conduct of this guide, an employee's mental state may be relevant to their conduct and potential disciplinary action. This guide defines the following mental states:

- Negligent: an officer fails to use reasonable care, which is the degree of care and judgment used by reasonably careful police officers in the management of their own affairs to avoid harming themselves, others, or property. See Uniform Civil Jury Instruction 20.02.
- Reckless: an officer is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable police officer would observe in the situation. See ORS 161.085(9).
- Intentional: an officer acts with a conscious objective to cause the result or to engage in the conduct so described. See ORS 161.085(7).
- Application of any mental state is done using the standard of a reasonable person within their job classification at the time the act or omission occurs.

B. CATEGORIES OF CONDUCT:

(discuss potential categories which generally align with disciplinary sanctions)

For example: Categories 1-5.

Also, for most law enforcement agencies, formal disciplinary actions are: written reprimand, suspension without pay, demotion, and termination.

C. AGGRAVATING AND MITIGATING FACTORS (for example:)

Aggravating factors are circumstances that increase the severity of the impact of the directive violation.

Mitigating factors are circumstances that do not excuse or justify the conduct but decrease the severity of the impact of the directive violation.

*Aggravating or mitigating factors are applied only **after** the sustained finding(s) for the totality of the conduct found and after any due process meeting. These factors are only used to alter a corrective action level. Aggravating and mitigating factors do not alter the category of conduct.

D. STEPS TO DETERMINE APPROPRIATE DISCIPLINARY ACTION: (for example:)

Step 1: Review the type of conduct to determine the appropriate category. Apply the higher category for conduct that violates one or more policies and that falls into more than one category. The highest category is (x).

Step 2: Identify presumptive "level" of corrective action associated with the category identified at Step 1. For multiple sustained violations, the presumptive action level initiates with the higher presumptive action level.

Step 3: Apply mitigating and aggravating factors as relevant to determine if a greater or lesser corrective action than the presumptive level applies. Aggravation and mitigation do not change the category, but change the level of discipline within the same category. Aggravation and Mitigation only allow level of disciplinary action imposed to be change to a value specified in the guide. Aggravation and Mitigation factors are only applied after Step 1 and Step 2 have been concluded and those not alter the category of conduct.

For discussion: Education Based Alternatives/Remedial measures.

Thought: maybe the guide can acknowledge remedial measures and allow individual agencies to use those with limitations.

E. ADDITIONAL CONDITIONS/ACKNOWLEDGEMENTS: (for example:)

Should a disciplinary action imposed upon an law enforcement officer be grieved to an arbitration, the arbitrator is bound the terms of the Corrective Action Guide and by ORS 243.706(3) and ORS 243.808 et seq.

The appropriate "Category" for the alleged misconduct is a question of proof, by a preponderance of the evidence, by the employer consistent with ORS 243.808(1)(a) inclusive of a showing by the City of just cause under ORS 236.350. If the Arbitrator determines that City has not proven any policy violation, then the Arbitrator has the authority to rescind the discipline.

If the Arbitrator determines that the City has proven the alleged policy violations, the Arbitrator shall uphold the disciplinary action, unless the Arbitrator finds that the disciplinary action is arbitrary and capricious as required by ORS 234.808(1)(b). For termination cases, the Arbitrator is further subject to ORS 243.808(1)(c).

This Guide is effective: *(discuss statute).*

DISCIPLINARY GUIDE CATEGORIES AND ACTIONS (for example only)

- Category 1 *Intended for misconduct less than termination, but not suspension
(for example: written reprimands)*
- Category 2 *Intended for misconduct less than termination, with initial suspension
Mitigation could lead to written reprimand*
- Category 3 *Intended for misconduct less than termination, with initial suspension
Mitigation could lead to lessor suspension
Aggravation could lead to enhanced suspension*
- Category 4 *Intended for misconduct less than termination, with enhanced suspension
Aggravated factors lead to termination*
- Category 5 *Intended for "cross the line" misconduct and termination*

CATEGORY 1: (FOR EXAMPLE)

STEP 1

Determine category

Conduct in violation of policy
or law including but not limited to:

Example: Single car fender bender

Example: Rude or dismissive comment

STEP 2

Presumptive sanction

Written Reprimand

STEP 3

Mit/Agg factors

If mitigated:
non-disciplinary
counseling

draft concept

CATEGORY 2: (FOR EXAMPLE)

STEP 1

Determine category

Conduct in violation of policy
or law including but not limited to:

-Violation of employer harassment
policy

STEP 2

Presumptive sanction

10 hour suspension
without pay

STEP 3

Mit/Agg factors

If mit: Reprimand
If agg: 20 hours

draft concept

CATEGORY 3: (FOR EXAMPLE)

STEP 1

Determine category

Conduct in violation of policy or law including but not limited to:

- Serious violation of employer sexual harassment policy
- Discriminatory or harassing conduct based on protected class status*
- Discriminatory conduct based on violation of employer policy

* For the purposes of this state guide, protected class includes: race, ethnicity, national origin, sex, gender identity, sexual orientation, religion, homelessness.

STEP 2

Presumptive sanction

40 hour suspension without pay

STEP 3

Mit/Agg factors

If mitigated: 20 hours
If agg: 80 hours

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CATEGORY 4: (FOR EXAMPLE)

STEP 1

Determine category

STEP 2

Presumptive sanction

STEP 3

Mit/Agg factors

Conduct in violation of policy or law including but not limited to:

120 hour suspension without pay

If mitigated: 80 hours
If agg: Termination

-Severe violation of employer drug and alcohol policy

-Physical assault (civil) in violation of employer policy

-Egregious violation of employer sexual harassment policy

-DUII diversion
(discuss failed diversion)

-Discriminatory or harassing conduct based on protected class status that shocks the conscience of a reasonable person;

-Unjustified/Out of Policy or Training use of force resulting in serious physical injury

-Violation of the Duty to Intervene

CATEGORY 5: (FOR EXAMPLE)

STEP 1

Determine category

STEP 2

Presumptive sanction

STEP 3

Mit/Agg factors

Conduct in violation of policy or law including but not limited to:

Termination

Not applied

- Felony Crime Conviction
- Felonious Misconduct
 - including sexual assault*
 - including assault*
- Misdemeanor Assault
- Domestic Violence
- DUII conviction (non-including diversion)
- Criminal Conviction that is DPSST disqualifying event
- Out of Policy use of deadly force
- Out of Policy use of force leading to
- Use of controlled substance or alcohol on duty in violation of employer policy. *(need to discuss MJ)*
- Untruthfulness
- Violations of DPSST standards of moral character requiring decertification
- Intentional misuse of police authority based on protected class status
- Pervasive and continual violation of policy with elements of progressive discipline

*Sexual Assault and Assault as defined by ORS criminal statute.

(should discuss misdemeanor convictions)

Aggravating and Mitigating Factors.

<i>Note: The mitigating and aggravating factors are used only to alter a corrective action level within a specified category, and these factors do not alter the category of conduct. An aggravating or mitigating factor will not be considered if already considered in determining the category.</i>	CALCULATION
Aggravating Factors - Add point/s	Points
Intentional conduct	2
Significant impact on community member or City operations/mission	2
Significant property damage or serious physical injury	2
Does not accept responsibility if policy violation is undisputed	1
Delay in reporting	1
Attempt to cover up conduct or behavior	2
Motivated by personal interest	1
Failure to meet documented expectations	1
Supervisory Position	1
Other (specified on a case-by-case basis) (Only to be used by final decision maker)	1
Total:	14
Mitigating Factors - Subtract point/s	Points
Unintentional conduct	1
No impact on community member or City operations/mission	1
No property damage or physical injury	1
Self-reported the violation	1
Attempt to ameliorate or correct the error (but not done to hide the error)	2
Positive attitude; accepts responsibility	2
Motivated by public interest or wellbeing of others	2
Positive work history	1
No repeated or other sustained violations	2
Other (specified on a case-by-case basis) (Only to be used by final decision maker)	1
Total:	14
CALCULATION	14
Each factor that applies receives a corresponding point value. Factors that do not apply receive no point value. Subtract mitigation total (green) from aggravation total (red). If the number is negative, corrective action is mitigated. If the number is positive, the violation is aggravated. If the number is 0, the violation is neither mitigated nor aggravated. Aggravating and mitigating factors apply to the totality of the conduct sustained. Note: An aggravating or mitigating factor will not be considered if already considered in determining the category.	0