

MUNICIPALITY OF THE COUNTY OF ANNAPOLIS POLICY AND ADMINISTRATION MANUAL		AM - 2.4.2
Section Standards of Performance	Subject Managing Unsatisfactory Performance	

1. APPLICATION

The Managing Unsatisfactory Performance Policy (Policy) applies to all employees of the Municipality of the County of Annapolis (the Municipality).

2. GOVERNING LEGISLATION

Municipal Government Act, SNS 1998, c 18, ss 30-31

AM-1.5.1 Authority and Responsibilities of the Chief Administrative Officer Policy

3. AUTHORITY AND RESPONSIBILITIES

(1) Municipal Council

The Municipal Council exercises its authority and responsibility for approval of all policies and programs administered by the Municipality.

(2) Chief Administrative Officer

The Chief Administrative Officer (CAO) has authority, pursuant to *AM-1.5.1 Authority and Responsibilities of the Chief Administrative Officer*, to discipline employees. This includes the authority to suspend or terminate employment. The CAO may further delegate this authority at his or her discretion.

(3) Managers

Managers implement the Municipality’s policies at the employee level. Within their designated level of authority, they administer and ensure compliance with this Policy, and any other relevant policy of the Municipality. They are responsible for the appropriate documentation of all matters related to the administration or use of this Policy. As necessary, they are responsible for notifying the Payroll Supervisor, and for ensuring that copies of documentation are placed in the confidential personnel files maintained for each employee.

4. PURPOSE

The purpose of this Policy is to enhance communication between the Municipality’s managers and employees regarding employee performance. Managers are responsible for using this Policy to link employee performance with the achievement of the Municipality’s goals – to encourage employee development and participation in the collective efforts of the Municipality.

Managers serve an important role in supporting the Municipality’s obligation to operate an efficient workplace. By using this Policy, managers ensure that employees perform their required duties to the performance level expected for that position.

This Policy outlines the process a manager should follow when an employee’s performance is unsatisfactory or the employee commits some misconduct in the workplace. To promote the effective use of this Policy and contribute to the Municipality’s successful operation, managers should address performance issues in a way that is timely, consistent, and fair. With that in mind, the response required by a manager will vary depending on the circumstances unique to the employee and/or the performance issue in question. Managers should use their discretion as appropriate.

5. GUIDING PRINCIPLES

The guiding principles discuss the objectives that managers should consider when dealing with unsatisfactory performance of employees in the workplace. These guiding principles are:

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Reduce the Need for Discipline in the First Place

Managers have an opportunity to prepare for, and perhaps reduce, the need to resort to discipline in the future. Managers should approach performance management with an understanding of their role in contributing to the success, motivation, and job satisfaction of their employees. Managers can promote a healthy workplace by providing a thorough orientation for new employees, establishing clear expectations for behaviour and performance, and providing adequate training, mentoring, and coaching.

(1) Use a Problem Solving Approach

A problem solving approach requires managers to step-back and evaluate the situation before taking action to address a performance issue. This includes investigating the facts and identifying factors that caused or contributed to the performance issue.

A “just cause” for discipline should be established before disciplinary action is taken. This ensures that discipline is applied fairly and consistently, and reduces the risk that the discipline will be overturned. Some points for a manager to consider in determining if there is “just cause” for discipline include:

- If the employee was made aware of the performance expectation before the misconduct or unsatisfactory performance occurred;
- If the performance expectation is applied consistently in the workplace;
- If an investigation occurred to determine how and why the employee failed to meet the performance expectation; and
- If the investigation was conducted fairly.

(2) Focus on Employee Rehabilitation

Managers must understand that the goal is to rehabilitate employees and improve their performance. Discipline should not be considered a form of punishment for unsatisfactory performance. Employees must be advised of their unsatisfactory performance on a timely basis and given every opportunity to improve.

Managers should be aware of their own behaviour and how it impacts an employee’s response to discipline. Punitive actions, condonation, or inconsistent responses to performance issues hinder rehabilitation efforts and may contribute to more serious performance issues.

(3) Understand and Use Progressive Discipline Effectively

Progressive discipline is a structured, incremental approach to correcting unsatisfactory performance. It features increasingly formal efforts to provide feedback to employees and an opportunity to correct the behaviour, attitude, or problem causing the unsatisfactory performance. It provides notice to employees of the consequences for failure to improve, and allows for more severe discipline if the problem persists or is particularly serious. This creates an incentive for employees to improve performance and contribute positively to the workplace. Using progressive discipline correctly may reduce the Municipality’s exposure to appeals of disciplinary action or claims for wrongful dismissal or discrimination.

While there are incremental steps to follow, managers should still consider the circumstances unique to the performance issue or misconduct in question. Managers have latitude to tailor the discipline to the situation, and can choose a less or more severe form of discipline depending on the circumstances. What is required in every performance management situation is that managers apply progressive discipline timely, consistently, and in correlation to the performance issue it serves to correct.

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6. STEPS IN APPLICATION OF DISCIPLINE

Documentation is imperative at each step in managing unsatisfactory performance. This is true even in situations where ultimately no disciplinary action is taken. A manager should be diligent and ensure that all documentation is made both accurately and completely. This includes documenting all relevant facts and discussions with reference to the Municipality's policies, procedures, organizational practices, and performance objectives specific to the employee's position.

In the event that an employee is not performing satisfactorily or there is an incidence of misconduct in the workplace, the following steps should occur:

(1) Identification

When a manager becomes aware of a performance issue, the first step is to gather all pertinent facts. Where possible, the manager should make efforts to verify the accuracy of the established facts.

Managers should be familiar with their authority for proceeding once the facts are gathered. For serious matters of employee performance or misconduct, the Municipality requires a manager to consult with the CAO before proceeding to the investigation and application of discipline steps.

(2) Investigation

At the investigation step, a manager should inform the employee that an investigation is under way. This should be done without delay. The investigation itself is not disciplinary, but it serves to gather the details of the performance issue or misconduct and determine the appropriate disciplinary response.

During the investigation, a manager should be familiar with any departmental or administrative policies in effect which may influence what and how discipline is applied.

(3) Discussion

The manager should be the point of contact who initiates discussion of the performance issue or misconduct with the employee. In discussing the matter with the employee, a manager should consider the following:

- The discussion should respect the employee's right to privacy;
- The employee should be informed of the problem and the timeline for which an investigation will occur;
- The employee should be given an opportunity to provide feedback or reasons for his or her performance issues or misconduct; and
- The employee should be informed that pending the outcome of the investigation, the appropriate discipline, if any, will be discussed with the employee and imposed once the investigation concludes.

(4) Determination

Determination of the type of disciplinary action is necessary should be made with reference to **Section 7 – Degree of Discipline**. As appropriate, the manager should direct the employee to, and encourage the use of, the Municipality's Employee and Family Assistance Program (EFAP). If the investigation concludes that no discipline is warranted, this should be communicated to the employee at this step.

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A manager should review all information provided by the employee as a result of the discussion, as well as the relevant facts obtained through the investigation. If necessary, and depending on the severity of the discipline to be applied, a manager should discuss and obtain approval for the suggested discipline with the CAO.

(5) Application

The next step is to actually apply the discipline. It is important that discipline is applied as timely as possible once the decision to discipline is made.

A manager should document the details of the performance issue or misconduct, as well as the discipline applied. The documentation should include the following:

- Details of the performance issue or misconduct;
- The type of discipline applied;
- The timeline for implementing the discipline (for example, where a suspension is applied, the dates during which the suspension will be served);
- Any mitigating factors that lessen the severity of the discipline;
- Any aggravating factors that increase the severity of the discipline; and
- Remedial action to be taken to improve employee performance going forward (for example, coaching, training, or making use of EFAP services).

7. DEGREE OF DISCIPLINE

(1) Types of Performance Issues or Misconduct

Managers should know that performance issues or misconduct fall within two general categories that warrant disciplinary action – acute and chronic. Determining the appropriate category will assist managers to decide the appropriate disciplinary action.

In categorizing performance issues or misconduct, a manager must use his or her discretion regarding the facts specific to the situation. Any performance issue or misconduct can be considered serious and warrant a more severe disciplinary response if it disrupts or could disrupt the orderly, safe, and efficient functioning of the workplace.

(a) Acute

Acute performance issues or misconduct are those which are immediately identifiable and require an immediate response from a manager. Some examples of acute offences include: misappropriation of funds or property belonging to the Municipality; harassment or violence in the workplace; and violation of the Municipality’s substance abuse policy.

Depending on the seriousness of the performance issue or misconduct, a more severe disciplinary action may be required. The acute category requires that the appropriate level of discipline be applied without delay.

(b) Chronic

Chronic performance issues or misconduct are those where there is an observed pattern or occurrence of undesirable employee behaviour. Some examples of chronic offences include: insubordination; tardiness; absenteeism; failure to follow the Municipality’s policies or the instructions of a manager; and consistent substandard work or failure to meet established performance expectations for the job.

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Managers should identify and address chronic performance issues as early as possible. The goal is to provide sufficient opportunity for an employee to improve his or her performance before the problem increases. The nature of chronic offences is such that they are appropriate to address by moving through the incremental steps of progressive discipline.

(c) Examples of Performance Issues or Misconduct

Concerns with an employee’s performance or an alleged incident of misconduct will vary depending on the employee’s individual circumstances, employment history, discipline record, and the nature of the employment position. The following are some examples of behaviours and offences that may warrant discipline:

- Failure or refusal to perform an assigned task or duty;
- Failure or refusal to adhere to the Municipality’s workplace policies;
- Absenteeism without just cause;
- Repeated tardiness;
- Abusive or insubordinate treatment of others;
- Gross neglect of job responsibilities;
- Dishonest or unethical conduct;
- Harassment or discrimination; and
- Fraudulent or criminal activity.

(2) Criteria for Administration of Discipline

(a) Action should be timely

There should be as little delay as possible between identifying a performance issue and taking the necessary action to correct.

(b) Action should be consistent

Within each workplace, managers should ensure there is a consistent standard applied across the employees under their supervision. Managers are encouraged to discuss application of discipline with the CAO as necessary and to clarify any concerns regarding what discipline is appropriate.

(c) Action should be fair

The discipline used should relate, and be appropriate to, the nature of the performance issue or misconduct in question, the effect that the discipline will have on the employee and the workplace, and the employee’s previous record.

(d) Action should be defensible

Managers must keep in mind that employees are free to appeal any disciplinary action to the CAO. As well, an employee has a right to commence a legal action (for example if the employee alleges he or she was wrongfully dismissed) or file a complaint with the Human Rights Commission (for example if the employee alleges he or she was discriminated against based on a ground protected by the *Nova Scotia Human Rights Act*). Therefore, it is important that a manager’s decision to discipline an employee is defensible. This includes establishing a “just cause,” conducting an appropriate investigation, and deciding on discipline in accordance with the criteria identified above.

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(3) Disciplinary Measures

(a) Coaching

As the least severe form of discipline, coaching allows a manager to provide direction, feedback, or clarification of duties and responsibilities to an employee. It is effective at the early stages of declining or unsatisfactory performance, and for resolving any misunderstanding regarding the performance expectations for particular job duties. A summary of the coaching provided, including the date and instructions given to the employee, should be recorded in writing for inclusion in the employee's personal file.

(b) Verbal Warning

A verbal warning is more severe than coaching. It is a formal procedure in which the employee is required to appear before his or her manager. The manager should inform the employee of the performance issue or misconduct and why it is unacceptable. The employee should be told that he or she is being given a verbal warning and provided with notice that further discipline may be imposed if the unsatisfactory performance or misconduct continues. The manager should specify a date or timeline for when improvement is expected, and how such improvement will be measured. These details, along with the date that the verbal warning was given, should be documented and included in the employee's personal file.

(c) Written Warning

A written warning is appropriate for repeated minor violations or more serious performance issues. The content of the written warning should include the same details as a verbal warning, but be provided in a written statement from the employee's manager (or the CAO as appropriate). The written warning should clearly identify what further steps (such as suspension or dismissal) may occur if the employee fails to improve his or her performance.

The written warning should be personally delivered to the employee. The employee should be asked to sign a copy, indicating that they have read and understood the warning. The signed copy should be placed on the employee's personal file. If the employee is unwilling to sign the written warning, this should be noted, along with the date and time of delivery to the employee, on the copy placed in the employee's personal file.

(d) Suspension With Pay

Suspensions (both with and without pay) should be reserved for more serious issues or misconduct. Suspension without pay occurs when it is necessary to remove an employee from the workplace, but where a further investigation is required. A suspension with pay must be authorized by the CAO or his or her designate.

Employees may be suspended for such time as necessary, but the suspension should be in keeping with the seriousness of the performance issue or misconduct. Typically, suspensions with pay should not exceed five working days. Suspensions must not continue indefinitely – an employee should either be exonerated or disciplined as timely as possible.

As with a written warning, an employee should be informed in writing of the suspension with pay. The written notice should include details of the alleged performance issue or misconduct, a timeline for the investigation, and the dates for which the suspension must be served. A copy of the notice of suspension should be placed in the employee's personal file, along with a notation of the date and time it was provided to the employee.

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(e) Suspension Without Pay

Suspension without pay is the most serious form of discipline that can be imposed before an employee is dismissed. This disciplinary step should only be imposed by the CAO at the conclusion of an investigation. In the absence of the CAO, his or her designate should consult with the Municipality’s solicitor. Because suspension without pay is a financial penalty, there should be conclusive evidence of an employee’s guilt if it is used for acute performance issues or misconduct. If suspension without pay is sought for chronic performance issues or misconduct, then there should also be a well-documented record of previous disciplinary action on the employee’s personal file.

Again, an employee should be informed in writing of the suspension without pay. The written notice should include details of the reasons for suspension, the dates for which the employee will serve the suspension, and confirmation that the period of suspension is without pay. The notice should also include the date the employee is requested to return to the workplace once the suspension concludes. A copy of the notice of suspension should be placed in the employee’s personal file, along with a notation of the date and time it was provided to the employee.

(f) Dismissal

Dismissal of an employee usually results when it is determined that it is impossible or undesirable to continue the employment relationship. This is reserved for the most serious of performance issues or misconduct, particularly where retention of the employee would prevent the safe, efficient, and orderly operation of the workplace.

The decision to dismiss an employee should be made by the CAO. The employee should be notified of the dismissal in writing, approved by the CAO. A copy of the notice of dismissal, including the date it was provided to the employee, should be maintained in the employee’s personal file.

Municipal Clerk’s Annotation for Official Policy Book	
I certify that this policy was adopted by Municipal Council as indicated below:	
<i>Seven (7) Day Notice</i>	<i>November 13, 2018</i>
<i>Council Approval</i>	<i>December 18, 2018</i>
<i>Carolyn Young</i>	<u>December 18, 2018</u>
Municipal Clerk	Date
At <u>Annapolis Royal</u> Nova Scotia	

**Effective 98/05/20; Amended May 15, 2012;
Repealed & Replaced September 18, 2018**