

## CHAPTER 6

### DISCIPLINE AND DISMISSAL

This chapter describes policies and procedures for discipline and dismissal to be used in cases of unsatisfactory performance or misconduct. Just-cause standards (see 6.03.3.b) apply to all disciplinary actions involving loss of pay and dismissal actions taken under the provisions of this chapter.

Lapses in performance or misconduct do not necessarily lead to discipline or dismissal. If performance reviews, counseling, or other communication between the employer and the employee alleviate the problem to the employer's satisfaction, there is no necessity to proceed to formal sanctions. However, if lapses in performance or misconduct continue, discipline or dismissal shall be considered. In egregious situations, the employer may proceed directly to discipline or dismissal.

Lapses in performance or misconduct may also result from a disability or personal problem. If the employer knows, or has reason to know, that either of these is or could be a factor affecting the employee's work situation, the employer shall consult with the Equity and Diversity Resource Center for disabilities or the Employee Assistance Office for personal problems before proceeding.

#### 6.01 Grounds for Discipline and Dismissal

1. *Unsatisfactory Performance.* An academic staff employee shall be subject to discipline or dismissal for unsatisfactory performance. Insufficiently productive or timely output, insufficient creative effort, or failure to communicate effectively with individuals or groups important to the work processes are examples of unsatisfactory performance. An employer (immediate supervisor, principal investigator, department chair, or unit head) is responsible for clearly communicating to each employee under his or her supervision what the employee's duties are and how the performance of those duties will be evaluated (see ASPP 2.02). Before ending an appointment for unsatisfactory performance, the employer must inform the employee in writing about areas of performance deficiency and must make efforts to work with the employee to improve performance to a satisfactory level (see ASPP 10, Performance Reviews).
2. *Misconduct.* An academic staff employee who has violated a university rule or policy or has engaged in conduct that adversely affects the staff member's performance of his or her obligations to the university shall be subject to discipline or dismissal for misconduct.

#### 6.02 Discipline

1. *Definition.* Discipline refers to any sanction short of dismissal imposed by the university against an academic staff member for unsatisfactory performance or misconduct, including but not limited to a letter specifically identified as a reprimand, reduction in salary, change of appointment status, or suspension without pay. Performance reviews, letters of counseling, administrative leave with pay, merit-pay determinations, and the like are not considered discipline and should normally precede any disciplinary actions by an employer, unless the

unsatisfactory performance or misconduct is egregious or intolerable in the workplace.

## 2. *Disciplinary Procedures*

- a. *Investigation.* Prior to taking disciplinary action, the employer shall conduct an investigation to determine whether the allegations of inappropriate performance or conduct have substance. The length and scope of the investigation shall be at the discretion of the employer. The employer may place the employee on administrative leave with pay during the investigation. Just-cause standards apply (see 6.03.3.b) for disciplinary actions involving loss of pay. The employer may meet with the employee to ask questions about the allegations as part of the investigation. If the employer concludes that there is no basis for disciplinary action, the employer shall inform the employee immediately.
  - b. *Predisciplinary Meeting.* If, after the investigation, the employer believes that grounds for discipline may exist, the employer shall meet with the employee. Prior to the meeting the employer shall provide the employee with notice in writing of the grounds for possible discipline, the range of discipline being considered, the time and place of the predisciplinary meeting, and the employee's right to respond to the allegations and possible disciplinary sanction at the meeting. After taking into account the employee's response at the predisciplinary meeting, the employer will determine whether to proceed with disciplinary action. The employer may conclude (1) that discipline is warranted, (2) that discipline is not warranted, or (3) that further investigation is required in which case, another predisciplinary meeting must be held after completing the additional investigation if the employer believes discipline is appropriate.
  - c. *Notification of Disciplinary Action.* When the employer determines that discipline is appropriate, the employer, upon approval by the dean, director, or designee, shall inform the employee in writing. This notification shall clearly state that it is a letter of discipline, shall include a description of the employee's unsatisfactory performance or misconduct, shall state what discipline is imposed, shall inform the employee of his or her appeal rights, and shall include a copy of ASPP 6, 7, and 9.
3. *Appeal Process for Disciplinary Actions.* Disciplinary actions may be grieved using the procedure described in ASPP 7. The Academic Staff Appeals Committee shall use the tests provided in 6.03.3.b to determine whether just cause exists in cases of disciplinary action involving loss of pay.

## 6.03 Dismissal

1. *Dismissal for Cause of Academic Staff with Fixed-Term and Probationary Appointments (see also UWS 11.11 and 11.12)*
  - a. *Grounds for Dismissal.* No academic staff member shall be subject to dismissal except for just cause based upon a determination of either unsatisfactory performance or

misconduct (see 6.01.1 and 6.01.2). Layoffs (ASPP 5) and nonrenewals (ASPP 3) are not dismissals for cause.

- b. *Investigation.* The employer shall conduct an investigation to determine whether allegations of unsatisfactory performance or misconduct have substance. The length and scope of the investigation shall be at the discretion of the employer. The employer may place the employee on administrative leave with pay during the investigation. Just-cause standards apply (see 6.03.3.b). The employer may meet with the employee to ask questions about the allegations as part of the investigation. If the employer concludes that there is no basis for dismissal, the employer shall inform the employee immediately.
- c. *Predismissal Meeting.* If, after the investigation, the employer believes that grounds for dismissal may exist, the employer shall meet with the employee. Prior to the meeting the employer shall provide the employee with notice in writing of the grounds for possible dismissal, the time and place of the predismissal meeting, and the employee's right to respond to the allegations and level of disciplinary sanction at the meeting. After taking into account the employee's response at the predismissal meeting, the employer will determine whether to proceed with dismissal. The employer may conclude (1) that dismissal is warranted; (2) that dismissal is not warranted, but a disciplinary action is; (3) that neither dismissal nor discipline is warranted; or (4) that further investigation is required, in which case another predismissal or predisciplinary meeting must be held after completing the additional investigation if the employer believes grounds exist for either dismissal or discipline.
- d. *Notification.* When the employer decides dismissal is necessary, he or she must obtain approval of the dean, director, or designee to proceed with the dismissal. If the dean, director, or designee approves the dismissal, the academic staff member shall be notified in writing of the effective date of the dismissal, with a copy to the department chair or unit head and the Secretary of the Academic Staff, 270 Bascom Hall. This notification shall include a statement of the grounds for dismissal, inform the employee that he or she has the right to request a review by the dean, director, or designee, and include a copy of ASPP 6 and 9. Notification shall be served personally or by certified mail, return receipt requested. If service cannot be made within 15 working days, service shall be accomplished by first-class mail and by publication as if the statement of charges were a summons and the provisions of section 262.06(1)(c), Wis. Stats., were applicable. Dismissal may occur only after the academic staff member has received written notification.
- e. *Review by Dean or Director.* Upon receipt of dismissal notification the employee shall have 20 working days to submit a written request to the dean or director for a review, including a summary of the facts and circumstances concerning the allegations. The academic staff member shall have the opportunity to make a personal presentation to the dean, director, or designee. The dean, director, or designee shall make a determination of just cause for dismissal and notify the employee of the decision in writing within 15 working days after the receipt of the request for a review or 15 working days after the personal presentation, whichever is later. If the dismissal is upheld by the dean, director, or designee, the notification shall inform the employee of his or her right to appeal to the

Academic Staff Appeals Committee under 6.03.3. If there is no response by the dean or director to the written request for a review within the designated time period, the employee may appeal to the Academic Staff Appeals Committee within 20 working days of the expiration of the designated period.

- f. *Effective Date of Dismissal.* If the academic staff member does not submit a request for a review by the dean or director within 20 working days, the dismissal shall be effective on the date specified in the original notification letter with no further appeal rights. If the academic staff member submits a request for review within 20 working days and the dismissal is upheld, the dean, director, or designee shall determine the effective date of dismissal and inform the employee in writing of the date.
- g. *Time Limits.* Steps in the appeal process must be initiated and completed within the designated time periods except when modified by mutual consent. If the employee fails to initiate the next step in the appeal process within the designated time period, the appeal will be considered resolved by the decision at the last completed step.
- h. *Suspension of Duties.* The dean, director, or designee may suspend an academic staff member with a fixed-term or probationary appointment with or without pay even if the review is in process.

2. *Dismissal for Cause of Academic Staff with Indefinite Appointments (see also UWS 11.01-11.10)*

- a. *Grounds for Dismissal.* No academic staff member holding an indefinite appointment shall be subject to dismissal except for just cause, based upon a determination that the academic staff member's conduct or performance directly and substantially affects adversely the ability to carry out satisfactorily his or her responsibilities to the university. Layoff (ASPP 5) is not dismissal for cause. In contrast to the procedure for fixed-term academic staff in 6.03.1, only the chancellor, in consultation with the appropriate dean or director, has the authority to begin the dismissal process.
- b. *Investigation.* When the chancellor receives an allegation concerning an academic staff member holding an indefinite appointment which appears to be substantial and which, if true, might lead to dismissal, an investigation shall be conducted within a reasonable time by the appropriate dean or director or other chancellor's designee. The employer may place the employee on administrative leave with pay during the investigation. Prior to initiating a dismissal, the dean or director, in consultation with the chancellor, shall investigate the allegation, offer to discuss it informally with the individual, and provide information of rights to which members of the academic staff are entitled under this chapter and UWS 11. Just-cause standards apply (see 6.03.3.b). In those cases where the immediate supervisor of the academic staff member concerned is a dean or director, the chancellor shall, to avoid potential prejudice, designate an appropriate administrative officer to act for the dean or director under this section.
- c. *Predismissal Meeting.* If, after the investigation, the dean or director believes that grounds for dismissal exist, the dean or director shall provide the employee with a

written statement of the specific charges, the possibility of dismissal, the time and place of the predissmissal meeting, and the employee's opportunity to respond to the allegations and possible disciplinary sanction at the meeting. After taking into account the employee's response at the predissmissal meeting, the dean or director will determine whether to proceed with dismissal. The dean or director may conclude (1) that dismissal is warranted; (2) that dismissal is not warranted, but a disciplinary action is; (3) that neither dismissal nor discipline is warranted; or (4) that further investigation is required, in which case another predissmissal or predisciplinary meeting must be held after completing the additional investigation if the dean or director believes grounds exist for either dismissal or discipline. *Notification.* When the dean or director decides dismissal is warranted, he or she shall notify the academic staff member in writing of the effective date of the dismissal with a copy to the department chair or unit head, the Academic Personnel Office Secretary of the Academic Staff, and the chancellor. The notification shall include a statement of the grounds for dismissal, inform the employee that he or she has 20 working days in which to request a hearing before the Academic Staff Appeals Committee, and include copies of ASPP 6 and 9. Notification shall be served personally or by certified mail, return receipt requested. If service cannot be made within 15 working days, service shall be accomplished by first-class mail and by publication as if the statement of charges were a summons and the provisions of section 262.06(1)(c), Wis. Stats., were applicable. Dismissal may occur only after the academic staff member has received written notification.

- d. *Effective Date of Dismissal.* If the academic staff member does not submit a timely appeal under 6.03.3.a, the dismissal shall be effective on the date specified in the original notification letter with no further right of appeal. If the academic staff member submits a timely appeal and the dismissal is upheld, the effective date of the dismissal will be determined by the chancellor and shall be stated in his or her decision.
- e. *Suspension of Duties.* Pending the final decision as to dismissal, an academic staff member with an indefinite appointment shall not be relieved of duties unless the chancellor determines that substantial harm may result if the staff member is continued in his or her position. If such determination is made, the staff member may be relieved of his or her duties immediately or be assigned to another administrative unit, but his or her salary shall continue until the chancellor makes a decision as to dismissal.

### 3. *Appeal Process for Dismissals of Fixed-Term, Probationary, and Indefinite Appointees*

- a. *Hearing Before the Academic Staff Appeals Committee.* The academic staff member shall have 15 working days from receipt of the notification (20 working days if notice is by first-class mail and publication) to file an appeal with the Secretary of the Academic Staff, which will forward the files to the Academic Staff Appeals Committee, the Academic Personnel Office, and the dean or director within five working days. The dean or director shall provide the employing department and employee's supervisor with a copy of the academic staff member's request for a hearing by the Academic Staff Appeals Committee. The Academic Staff Appeals Committee shall conduct a hearing in accordance with ASPP 9.

- i. *Access to the Evidence.* An academic staff member who files an appeal shall have the right to review all evidence the employer used to make the dismissal decision. All additional information the employer uses or plans to use to support the decision shall also be provided to the appellant in a reasonable time prior to a hearing. Likewise, the employer shall have the right to review all materials to be presented by the appellant. The exchange shall take place within a reasonable time prior to a hearing.
  - ii. *Representation.* The presence of a representative or other third party designated by the employee is permitted at any stage during the appeal process.
  - iii. *Burden.* The employer has the burden to show by a preponderance of the evidence that each of the seven tests of just cause listed below in 6.03.3.b has been met.
- b. *Tests of Just Cause.* For purposes of this chapter, there are seven tests of just cause to be considered by the Academic Staff Appeals Committee.
  - i. *Notice.* Was the employee aware or should the employee have been aware of the possible or probable consequences of the employee conduct or performance?
  - ii. *Reasonable Rule or Expectation.* Were the employer's rules or expectations reasonably related to a) the orderly, efficient and safe operation of the work unit and b) the performance that the employer might properly expect of the employee?
  - iii. *Investigation.* Did the employer, before taking disciplinary action or dismissing the employee, make an effort to discover whether the employee did in fact engage in the conduct or performance in question?
  - iv. *Fair Investigation.* Was the employer's investigation conducted fairly and objectively?
  - v. *Proof.* At the investigation, did the employer obtain substantial evidence or proof that the employee did engage in the conduct or performance in question?
  - vi. *Equal Treatment.* Has the employer applied the rules, orders and penalties evenhandedly?
  - vii. *Penalty.* Was the employer's action reasonably related to a) the seriousness of the employee's proven conduct or performance deficiencies and b) the record of the employee during his or her service to the university?
- c. *Notification and Disposition.* The Academic Staff Appeals Committee shall forward its findings of fact with a recommendation to the chancellor or designee and shall send a copy to the Secretary of the Academic Staff, dean or director, department chair or unit head, and employee. Within 30 working days of receipt of the Committee's

recommendation, the chancellor or designee shall implement the recommendation or give the appellant and the Committee written reasons for any decision to modify the recommendation. The employee, department chair or unit head, dean or director, Secretary of the Academic Staff, and the Committee shall be notified of the decision of the chancellor or designee, which is final. If the decision of the chancellor or designee has not been issued within 30 working days, the recommendation of the Academic Staff Appeals Committee becomes final. As an exception, an indefinite appointee may request a review by the Board of Regents under UWS 11.10.

- d. *Time Limits.* Steps in the appeal process must be initiated and completed within the designated time periods except when modified by mutual consent. If the employee fails to initiate the next step in the appeal process within the designated time period, the appeal will be considered resolved by the decision at the last completed step.