It is expected that managers and supervisors will use multiple strategies to establish a climate in which employees willingly follow established policies and procedures. Such strategies may include clear communication, feedback and leading by example. When such actions are not successful, additional strategies may be necessary. One such strategy is corrective progressive discipline. Corrective discipline principles, described below, apply to represented and non-represented permanent classified employees.

I. Definition

Progressive discipline is a formal process to give employees opportunities to correct unacceptable behavior that violates the University of Wisconsin Classified Employees Work Rules (see Appendix 18-A). Progressive discipline is the application of increasingly serious consequences for repeated failure to change behavior that violates one of the work rules.

II. Procedure

Classified employees may be disciplined for violation of Work Rules for Classified Employees if there is just cause (see section E. JUST CAUSE CHECKLIST). Contact your employing unit personnel manager or representative to find out who is authorized in your work unit to conduct investigations, pre-disciplinary meetings and make the final decision to discipline. The rest of this section describes the steps of the procedure.

A. INVESTIGATION

When the employer becomes aware that a work rule or policy/procedure related to a work rule may have been violated, it is necessary to gather information. Pertinent written information, such as applicable policies,
records and/or written communications, should be collected. Who was involved, when, where, and any extenuating circumstances, as well as any witnesses, should be identified. It may be necessary to conduct investigatory meetings with witnesses and the employee(s) who allegedly violated the rules to obtain information.

The United States Supreme Court has ruled that an employee has a right to a union representative at an investigatory meeting if he or she requests one, and if he or she reasonably believes that discipline may result from the meeting. Collective bargaining agreements also grant this right.

Classified employees who are not represented may have a representative of their own choosing present at an investigatory meeting.

Notes should be taken by management to record the information learned at any interviews and kept with other factual records that are being considered while management decides whether or not a work rule infraction occurred. It is recommended that any witnesses date and sign any pertinent statements attesting that the written information accurately reflects the information they have provided.

B. PRE-DISCIPLINARY MEETING

If, after review of the record which resulted from the investigation, it is tentatively determined that there is just cause for discipline (see section E. JUST CAUSE CHECKLIST), a pre-disciplinary meeting is scheduled to give the employee an opportunity to respond (refer to Appendix 18-B for sample pre-disciplinary meeting letter). If represented, the employee may have a designated union steward present at this meeting. Non-represented employees may have a representative of their own choosing. Typically, management gives a verbal summary of the reasons management has tentatively decided to take disciplinary action. The employee and steward or representative may then present additional information, refute the facts, explain mitigating circumstances, etc. Further investigation may be necessary before a final decision is made if new information is obtained. If no new information is obtained, management proceeds to self-check to see if there is just cause for the discipline. If the answer is yes, a letter of discipline is issued (see section D. below and Appendix 18-C).

C. LEVEL OF DISCIPLINE
1. **Non-exempt Employees**—Typically the progression is: written reprimand, progressively increasing suspensions without pay (one-day, three-day, five-day), discharge.

2. **FLSA exempt employees**—Due to a court ruling, employees who are subject to disciplinary suspensions without pay for periods of less than a full workweek (that is, five work days) must be considered to be "non-exempt" employees under the Fair Labor Standards Act (FLSA) and therefore must be paid premium pay (time and one-half) for overtime hours worked. Because of this ruling, classified employees who are "exempt" should not be docked pay for less than five days. Five-day suspensions must be in consecutive five-day blocks and must coincide with the employee’s work week. If a one- or three-day suspension is merited, the letter should state something similar to: "Although we believe your conduct would merit a [one- or three-day] suspension without pay, this [second or third] letter of reprimand is being issued instead of a [one- or three-day] suspension in order to maintain the FLSA exempt status of your position. However, you are advised that any future violations of the work rules may result in a full work-week suspension without pay or other discipline up to and including discharge."

D. **LETTERS OF DISCIPLINE** (Refer to APPENDIX 18-C for a sample letter.)

After the decision is made to take disciplinary action, the employee must be notified in writing. The letter of discipline must include the following:

1. The type of action to be taken *This is a letter of reprimand, or This is a letter of suspension.*

2. If a suspension, state the date(s) the employee is suspended and the date s/he is expected to return to work.

3. The specific work rule violated and a precise statement of the reason(s) for the action.
4. A statement of the employee’s statutory or contractual appeal rights.

5. Copy to local union, if represented.

E. JUST CAUSE CHECKLIST

Just cause is a standard of fairness which is established when the employer can answer "yes" to all of the following questions. These are the standards against which the disciplinary action will be measured upon appeal. A "no" to any one question will likely result in the action being overturned upon appeal.

1. Did the employer give the employee warning about the possible discipline?

   The employee must have been forewarned that the particular behavior would result in discipline. This may have occurred verbally, or by means of a policy which stated the consequences of noncompliance or the Work Rules for Classified Employees.

2. Was the employer’s order or rule related to the safe and efficient operation of the work unit or institution?

   The broken rule or disobeyed directive must be reasonably related to the University’s mission or business.

3. Did an investigation take place to find out if the employee actually violated the order or rule, and if so, the reasons for it?

   Refer to A. INVESTIGATION above.
4. Was the employer’s investigation fair and objective?

   The employer should interview all witnesses and consider all available information not just information that supports the discipline. In case of conflicting accounts, the employer may have to make credibility determinations.

5. Was substantial evidence present to establish that a violation took place?

   The evidence cannot be mere rumor or unsupported accusations.

6. Did the employer apply its rules equally?

   If it appears that other similarly situated employees have been treated differently, the employer must be able to provide reasonable explanations for what appears to be unequal treatment.

7. Was the penalty reasonable?

   The degree of discipline must be related to the seriousness of the offense and to the employee’s record of progressive discipline. Typically, the employer’s failure to take corrective discipline earlier will not be viewed by an arbitrator as justification for skipping a disciplinary step and taking more severe discipline.

F. GRIEVANCES /APPEALS

   Contact your personnel representative to find out who is authorized to conduct grievance meetings.

1. Non-represented employees
Prior to using these steps  The employee must have received notice of possible consequences for improper conduct. This could be accomplished verbally, in writing or by receiving a copy of the Classified Employee work rules.

Written reprimands may be grieved through the non-contractual grievance process (reference Wisconsin Administrative Code ER 46). This is a three-step process. The first two steps are in the employing unit. The third step is the Classified Personnel Office. There is no appeal of a written reprimand for non-represented employees beyond this step.

Suspensions and discharges are directly appealable to the Wisconsin Employment Relations Commission.

2. Represented employees

Prior to using these steps  The employee must have received notice of possible consequences for improper conduct. This could be accomplished verbally, in writing or by receiving a copy of the Classified Employee work rules.

Reprimands--refer to the applicable contract for grievance steps. Written reprimands may be grieved beginning at the first written step in the employing unit.

Suspensions and discharges are grieved directly to the Classified Personnel Office.

Arbitration--after the third-step hearing, disciplines may be appealed to arbitration. An arbitrator’s decision is final and binding.

G. COMMON PROCEDURAL ERRORS

Some common reasons for losing on appeal are as follows:

1. Lack of documented evidence of misconduct.

2. Failure to be specific in describing reasons for the disciplinary action. Sometimes in an attempt to make the discipline more palatable, an employer will gloss over the specific reasons or
indicate only a portion or a representative sample of misconduct or unsatisfactory performance.

3. Failure to indicate supporting facts to substantiate the action. If the disciplinary action results from a culmination of a number of incidents and attempts have been made to counsel the employee, or if the employee has been disciplined previously for similar behavior and this action results from the employee’s failure to improve, say so in the disciplinary letter. Unless supporting evidence is mentioned in the letter, it may not be admitted at a hearing later.

Because disciplinary actions are extremely important, we request that you initially contact your personnel manager or the Classified Personnel Office (262-3233) for assistance when you anticipate taking disciplinary action.

August 2003

CPPP Appendix 18-B January 2002

SAMPLE PRE-DISCIPLINARY MEETING LETTER

Date
Dear (Employee):

A pre-disciplinary meeting will be held on (date/time/location) to give you an opportunity to explain why you should not be disciplined for violation of work rule(s) (cite specific rule(s)).

(Provide enough detail so the employee can come prepared to discuss the issues, provide his/her version and/or additional information.)

(for represented employees)
Since this meeting may result in discipline, you may have a union steward present at this meeting. Arrangements will be made to have a steward present unless you put in writing that you wish to decline this option.

(for nonrepresented employees)
Since this meeting may result in discipline, you may choose to have someone present with you at the meeting. Inform me if you plan to bring someone.

Sincerely,

(Note: The WSEU collective bargaining agreement requires that a copy of this letter be sent to the appropriate local, 171 or 2412.)
Address

Dear (Employee):

Choose A or B

A. For employee covered by FLSA (non-exempt)
   This is notification of a (written reprimand, or x-day suspension, or discharge) for violation of University Work Rule # (text of work rule).

B. For employee not covered by FLSA (exempt)*
   This is notification of a (written reprimand, a written reprimand in lieu of a one or three-day suspension, or a five day suspension) for violation of University Work Rule # (text of work rule.)

   *(For an explanation of treatment of FLSA exempt employees, refer to Chapter 18.01, II.C 2)

(For all employees receiving actual days off without pay)
C. Your suspension without pay will be (dates). You are expected to return to work on (date) at (time).

Sections D-H to be included in all letters.

D. *(Briefly summarize the facts on which the discipline is based.)
   Example: You requested vacation on July 3, and the request was denied. When you called in on July 3 to say you were too ill to come to work, you were required to bring in a medical verification that you were unable to perform your job tasks. When you returned to work, you told everyone about the canoe trip you had taken.

E. *(Briefly summarize what happened at the pre-discipline meeting.)
Example: At the pre-discipline meeting held on … and attended by… you asked for more time to provide the verification. It was agreed to extend the time for five working days. You still have not provided the information.

F. (Summarize previous notice to employee of expected conduct or discipline, if any, which is part of this progressive chain.)
   Example: Attendance was discussed with you in October xx,xxxx. You received a written reprimand November xx, xxxx.

G. (Warning about future misconduct)
   Please note that future violation of this work rule or other work rules will lead to further discipline up to and including discharge.

H. (Statement of appeal right choose: H1, H2, or H3.)

   H1. (For represented employees – all discipline steps including discharge.)
   If you do not believe this decision was based on just cause, you may grieve this action through the grievance procedure of your collective bargaining agreement.

   H2. (For non-represented employees – written reprimands and written reprimands in lieu of one-day and three-day suspensions)
   If you do not believe this decision was based on just cause, you may grieve this action through the non-contractual grievance procedure.

   H3. (For non-represented employees – five-day suspensions including discharge)
   If you do not believe this decision was based on just cause, you may appeal this action to the Wisconsin Employment Relations Commission.

Sincerely,

(Appointing Authority, or as delegated)

Attachment (Employee Assistance Program information)

Classified Personnel Office
Local Union (if represented) August 2003