



FIJIAN CIVIL SERVICE

Discipline Guideline

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JANUARY 2017

1. OBJECTIVES

The objectives of this guideline are to:

- 1.1. Enable Permanent Secretaries to apply their Constitutional responsibilities to “institute disciplinary action” and to “remove employees” fairly, consistently and equitably where necessary.
- 1.2. Ensure consistency in the application of fair and transparent Discipline across the Fijian Civil Service.

2. BACKGROUND

- 2.1. The Fijian Constitution s.127 (7), states that the Permanent Secretary of each Ministry shall have the authority to appoint, remove and institute disciplinary action against all staff of the Ministry, with the agreement of the Minister responsible for the Ministry.
- 2.2. The Fijian Constitution also mandates the “cultivation of good human resource management and career development practices, to maximise human potential”, specifically s.123(h). This requires all Government employees to adhere continuously to the required level of conduct and job performance.
- 2.3. This guideline applies to all current staff in Ministries, including General Wage Earners, temporary and project staff.
 - 2.3.1. Where a contract lapses during discipline action, the contract will not be extended and the disciplinary action will also lapse.
- 2.4. Disciplinary action can only be undertaken by the Permanent Secretary of the employee’s Ministry.
- 2.5. The Guideline supports the requirement for employees to understand their responsibilities fully with regard to relevant ministry codes of conduct, Public Service Values and individual standards of work performance.
- 2.6. The purpose of Discipline is to correct behaviour and to improve poor performance. Any disciplinary action is not intended to be used to punish or embarrass an employee.
- 2.7. In principle, any Disciplinary action that is undertaken must be:
 - 2.7.1. Prompt;
 - 2.7.2. Transparent;
 - 2.7.3. Fair and impartial;
 - 2.7.4. Consistent;
 - 2.7.5. Made with the employee’s understanding and, where appropriate, after the employee is given the opportunity to improve.
- 2.8. This guideline does not replace any role provided by the Office of the Solicitor General in providing legal advice on the action to be taken with regard to disciplining employees. Permanent Secretaries may seek legal opinion from the Office of the Solicitor General with

regard to any potential disciplinary action.

3. DEFINITIONS

- 3.1. Discipline in the workplace is the means by which supervisory personnel address poor or underperformance, failure to uphold the Public Service Values, breaches of the Code of Conduct or failure to follow the General Orders and/or established Civil Service and Ministry policies and procedures.
 - 3.1.1. Underperformance or poor performance is performance of duties at a lesser standard than that which is required in the job description;
 - 3.1.2. The Public Service Values are as identified in S123 of the Fijian Constitution;
 - 3.1.3. The Code of Conduct is the Public Service Code of Conduct in the Public Service Act and any other Code of Conduct issued through legislation;
 - 3.1.4. Established Civil Service and Ministry policies and procedures are those issued in writing by authorised officers in the Civil Service.
- 3.2. “Institute Disciplinary Action” commences after a case to answer is confirmed and includes providing warnings of the need to amend behaviour or performance and formally notifying the PSTD of a case for their adjudication.
- 3.3. “Remove” is defined as invoking the contractual clause to remove an employee from the workplace and terminate the contract.
- 3.4. A trained Investigation Panel member is a current Civil Servant who has completed an approved Investigation Panel Training program:
 - 3.4.1. Training programs will be approved and provided by the CSRMU during implementation and transition;
 - 3.4.2. Training programs will be approved and provided by the Ministry of Civil Service through the Core Skills Training Unit following transition and implementation.
- 3.5. An employee is a current staff member of a Ministry, either with a current contract or who is permanently employed:

4. NATURAL JUSTICE – GUIDING PRINCIPLE

- 4.1. All disciplinary processes will incorporate the principle of Natural Justice.
- 4.2. The principle of Natural Justice requires that investigations, and any related decisions, are fair and reasonable.
- 4.3. In the context of Workplace Discipline, Natural Justice requires that employees have the right to:
 - 4.3.1. Be informed of the details of the allegation;
 - 4.3.2. Be provided with the opportunity to respond to the allegation;
 - 4.3.3. Be given adequate time to respond to the allegation;
 - 4.3.4. Be given the opportunity to have support or representation during the investigation, such support will not be from a legal representative.

5. INSTITUTING A PERFORMANCE IMPROVEMENT PROGRAM

- 5.1. Where a supervisor identifies that an employee is not performing to the required standard, the supervisor will:
 - 5.1.1. Advise the employee of the areas where their performance does not meet the required

standard;

- 5.1.2. Confirm for the employee what the required standard is;
- 5.1.3. Identify with the employee reasons for the underperformance;
- 5.1.4. Confirm with the employee actions required of the employee to improve their performance and the timeline for such improvement;
- 5.1.5. Document the discussion and agreed plan for improvement;
- 5.1.6. Advise the PS of the action taken and agreed plan for improved performance.
- 5.2. Timelines for a performance improvement plan will vary depending on the nature of the improvement required, but should not exceed three months.
- 5.3. The supervisor will monitor the employee's performance and provide ongoing feedback to the employee on their progress in meeting the required standards of performance.
- 5.4. Within 5 days of conclusion of the period given for improvement, the Supervisor will collate all documentation and report on progress to the Permanent Secretary with a recommendation on whether to conclude or continue the performance improvement program, or institute formal disciplinary action.
 - 5.4.1. The supervisor will advise the employee of their recommendation and give the employee an opportunity to comment on the recommendation.
- 5.5. The Permanent Secretary will, within five days of receipt of the report, decide appropriate action and advise the employee and supervisor accordingly.

6. CONFIRM A DISCIPLINARY CASE TO ANSWER

Where an issue that could result in a need for disciplinary action is identified, within five days of identification the Permanent Secretary will follow a process that covers the principles of Natural Justice and includes the following broad steps:

- 6.1. Notify the employee that an investigation is to be undertaken and how that process will work.
- 6.2. Appoint an investigation panel of at least three, trained members, who are at or above the level of the employee being investigated:
 - 6.2.1. All investigation panels will have gender balance.
 - 6.2.2. Investigation panel members must be current civil servants and may come from any Ministry in the Civil Service.
 - 6.2.3. Appointment to an investigation panel is considered to be official duty, and is part of the employee's corporate responsibility. No additional allowances are payable.
 - 6.2.4. Appointment of the investigation panel will be in writing and will include the timeframe within which the investigation and reporting are to be completed.
- 6.3. The investigation panel will:
 - 6.3.1. Establish the facts of the case and collect all relevant evidence related to the case;
 - 6.3.2. Interview relevant people, including the employee concerned;
 - 6.3.3. Review relevant information;
 - 6.3.4. Provide a report giving the details of their investigation and conclusions on whether the allegations are well founded or not;

6.3.5. Make a recommendation on whether to institute disciplinary action or remove the employee.

6.4. Within 10 days of receipt of the report the Permanent Secretary will determine whether to accept the panel's recommendations, in agreement with their Minister:

6.4.1. The employee and their supervisor will be advised of the Permanent Secretary's decision and any further action that will be taken.

7. SUSPENSION OF AN EMPLOYEE

7.1. The Permanent Secretary may suspend the employee at any stage during the process. In determining whether suspension is warranted, the Permanent Secretary will consider whether:

7.1.1. The presence of the employee could compromise safety in the workplace;

7.1.2. The presence of the employee could compromise or hinder the investigation;

7.1.3. There are concerns about the preservation or integrity of Ministry information, property or service to the public.

7.2. If a decision to suspend is made by the Permanent Secretary, the employee will have the decision confirmed in writing. The written advice will include all relevant details of the suspension.

7.3. Any period of suspension while the matter is under investigation by the Ministry is on full pay.

7.4. If the decision is made to institute Disciplinary Action, any suspension will initially be on no pay:

7.4.1. The period of no pay will commence from the date the case is referred to the Public Service Disciplinary Tribunal (PSDT);

7.4.2. Payment of any salary once the case is referred to PSDT will be determined by the PSDT following a request by the employee to it in accordance with their procedures;

7.4.3. Where an employee occupies staff quarters, they may be required to vacate the staff quarters within one month from the date the case is referred to PSDT;

7.4.4. Any reasonable expenses incurred in vacating the staff quarters will be borne by the Ministry.

8. INSTITUTE DISCIPLINARY ACTION

Where the Permanent Secretary decides there is a case to answer, the Permanent Secretary, in agreement with their Minister, may institute Disciplinary Action in the following ways.

8.1. Where the offence is such that the investigation recommends that no immediate penalty be applied but that the employee be formally notified of the need to change their behaviour or performance, the Permanent Secretary may issue a formal written warning to the employee.

8.2. Formal warnings will be in writing and will include:

8.2.1. Confirmation of the circumstances leading to the warning;

8.2.2. The nature of the behaviour or performance that is to be amended;

8.2.3. The consequences of not improving or repeating the behaviour or performance that is to be amended.

8.3. Where a warning is not appropriate, but where the case does not warrant removal of the employee, the Permanent Secretary will package all relevant information and send same to the PSDT for determination.

8.3.1. Submissions will conform to the format prescribed by the PSDT.

9. REMOVE AN EMPLOYEE

9.1. The Permanent Secretary, in agreement with their Minister, may remove any contracted employee in accordance with the terms of their contract and having complied with the principles of Natural Justice and confirmed a case to answer in accordance with Section Six of this guideline.

10. IMPLEMENT THE DECISION OF PSDT

10.1. The PSDT will determine the outcome of discipline cases forwarded to it.

10.2. The PSDT will advise the Permanent Secretary of the outcome of relevant discipline cases, and any penalty to be imposed.

10.3. Should the Permanent Secretary disagree with the decision of the PSDT, the Permanent Secretary may request the Solicitor General to appeal the decision to the High Court:

10.3.1. The Solicitor General will determine whether to appeal and will advise the Permanent Secretary accordingly.

10.4. Where there is no appeal of the decision of PSDT, the Permanent Secretary will implement the decisions of the PSDT.

11. EMPLOYEE APPEALS

11.1. Where an employee is unhappy with the Ministry process they may follow the grievance procedures under the Employment Relations Act.

11.2. Any decision of the PSDT is reviewable by the High Court (Constitution s.120(10)).

12. MAINTAINING CONFIDENTIALITY

12.1. When addressing disciplinary issues including poor performance or misconduct all those involved must respect and maintain confidentiality of the information obtained.

13. CRIMINAL, FRAUD AND CORRUPTION MATTERS

13.1. Any potentially criminal matter is to be referred to the Police.

13.2. Any potentially fraudulent or corrupt matter (including any criminal matter that is potentially corrupt) is to be referred to FICAC.

13.3. Any internal disciplinary action may be carried out independently and parallel to any investigation by the relevant authorities.

14. PROFESSIONAL BODIES

14.1. Where licensing, membership of, or registration by, a professional body (e.g. Chief Registrar, Medical Council) is a pre-requisite for an employee holding a specific position in their Ministry the employee's continued employment is dependent on maintaining that standing with their professional body.

14.2. The relevant professional body may investigate alleged breaches of the member's professional conduct in accordance with their own governing legislation.

14.3. Once the professional body has completed their enquiries, a separate and independent employment investigation may be carried out.

- 14.4. Should an employee's membership or registration be revoked, this will result in their immediate removal from office or a recommendation to PSTD for dismissal of permanent employees.

15. TRANSITION AND IMPLEMENTATION

- 15.1. This Guideline will be effective from the date of approval by the Public Service Commission.
- 15.2. A transition period of six months will be in effect from date of approval of the guideline.
- 15.3. During transition, all discipline cases which have commenced as at the date of approval will continue following the Ministry's existing disciplinary procedures:
- 15.3.1. This clause does not prevent the Permanent Secretary from closing a current disciplinary action and commencing a new action under this guideline.
- 15.4. All new disciplinary cases will be dealt with following the principles and requirements of this guideline.
- 15.5. The CSRMU will advise all stakeholders of the content of the guideline and the implications for Ministry internal discipline procedures.
- 15.6. Within three months of approval of the Guideline, Ministries will review their internal procedures to comply with the Guideline:
- 15.6.1. Ministries will ensure that all staff are provided with awareness materials covering any changes to internal discipline procedures.
- 15.7. During transition, if there are no suitably trained investigation officers available, investigations may be conducted by officers appointed by the Permanent Secretary who have previously undertaken similar discipline investigations:
- 15.7.1. Such investigation panel members must be briefed on the contents of this guideline prior to commencing their investigation.;
- 15.7.2. Discipline Investigation Panels may be supported by Technical Advisers or Consultants during transition.
- 15.8. The CSRMU will develop and provide training for discipline investigation committee members.
- 15.8.1. Such training will be practical and competency based;
- 15.8.2. Such training materials will be developed in conjunction with the Ministry of Civil Service Core Skills Training Unit and will be handed over to this unit following transition and implementation of this guideline.
- 15.9. A review of this guideline will be commenced by CSRMU three months after completion of the transition period. The results of the review will be advised to all Permanent Secretaries and the Public Service Commission within one month of completion of the Review.