

**Section 212.266 Discipline and Discharge**  
**EMERGENCY**

- a) Termination at the Discretion of the Executive Director: Probationary employees who have not obtained certified status and Executive Employees in the Office may be terminated at any time without notice, cause or any right to a hearing, upon the recommendation of the Director of the employee's organizational unit, at the discretion of the Board and/or the Executive Director. Probationary employees who have not obtained certified status in the Office do not have any right to progressive corrective discipline procedures, as set forth in this Section.
- b) Progressive Corrective Discipline
  - 1) Unless grounds clearly are present warranting immediate discharge or suspension pending decision on discharge, employees shall be subject to corrective discipline progressively applied utilizing counseling, warnings, and/or suspensions as the facts and circumstances dictate, prior to discharge. If an employee's work or work-related conduct remains unacceptable after the application of progressive corrective discipline, the employee may be discharged in accordance with the appropriate rules below. This subsection does not apply to employees subject to subsection (a) above.
  - 2) Grounds warranting immediate discharge or suspension pending decision on discharge shall include, but are not limited to, violence within the workplace resulting in harm to another person, flagrant insubordination, or threat of violence causing imminent fear of physical harm.
- c) Discipline – Written Warnings: A Director or his designee may warn an employee either orally or in writing as a disciplinary measure. A copy of any written warning shall be signed by the appropriate Director and placed in the employee's personnel file. A copy of the written warning shall be delivered within three working days of the warning in person or sent by certified mail, return receipt requested, to the last address of the employee appearing in the personnel file. An employee shall have the right to respond to the warning in writing within ten calendar days of its receipt and any such response shall be included in the employee's personnel file.
- d) Suspension: A Director or the Executive Director may suspend an employee without pay for up to thirty working days in any twelve month period. A longer suspension may be approved by the Executive Director. The Director or the Executive Director shall provide the employee with written reasons for the suspension in person or sent by certified mail, return receipt requested, to the last address of the employee appearing in the personnel file. The written charges shall be signed by the Director or the Executive Director and contain a clear and concise statement of facts showing cause for the suspension. One copy of the

notice of suspension shall be placed in the employee's personnel file and one copy shall be delivered to the Director of Administrative Services. Unless delay will result in clear harm or damage to a division, the employee shall be informed in writing of the proposed suspension and the reasons therefore at least four working days prior to the effective date of the suspension. The employee shall have two working days after being informed of the proposed suspension within which to deliver to the Director or the Executive Director written rebuttal to the reasons given for the suspension. A decision not to suspend the employee shall be rendered in writing before the proposed suspension date by the Director or the Executive Director. In the Executive Director's absence, his designee shall render a decision.

- 1) The Executive Director shall have final approval on the decision to suspend or not to suspend an employee; unless
- 2) The employee to be suspended is a Director, the Executive Director shall follow the procedure in subsection (d) above and notify the Board of the intention to suspend. The Board shall have final approval on the decision to suspend or not to suspend a Director.

e) Discharge of Certified Employee

- 1) Cause for Discharge: The Director of an employee's organizational unit, with the concurrence of the Executive Director, shall determine if there is cause for discharge consisting of some substantial shortcoming supported by disciplinary documentation which renders the continuance of an employee of the Office in some way detrimental to the discipline and/or efficiency of the Office and which the law or sound public policy recognizes as good cause for the employee to no longer being held in that position.
- 2) Pre-Termination Notification and Procedures: Before charges for discharge may be brought against any certified, non-Executive Employee, the employee shall be apprised of the basis for such action by the Director and the Executive Director and provided with an opportunity to respond to the charges in accordance with the following standards:
  - A) The employee shall be notified in writing by the Director and the Executive Director of the intended discharge.
  - B) A statement of charges in support of the proposed action, full and complete to the Office's knowledge at the time it is drawn, shall be given to the employee, including the name of any known witness and a copy of any document pertinent to the charges.

- C) The employee shall have five working days after receipt of the charges in which to respond to them orally or in writing.
  - D) The Director and the Executive Director shall receive the response of the employee, whether it is oral or written.
  - E) The employee is entitled to be present and may be accompanied by a representative of his choice in any meeting. Only such other persons as the Executive Director deems necessary shall be entitled to attend the meeting.
  - F) The employee, pending the response may not necessarily be permitted to work or to be present at the Office.
  - G) The employee or the employee's representative shall be permitted access to a designated, secure area of the work place to investigate the charges and, upon request, be provided a copy of other pertinent documents. Such documents may be inspected only in the presence of an authorized employee as designated by the Executive Director.
  - H) The employee or the employee's representative shall be given the opportunity to interview witnesses prior to the Pre-Termination Meeting.
  - I) The failure of the employee to respond to the charges within the time limits, mentioned in subsection (e)(2)(C) above, shall not bar the Office from proceeding with the discharge.
  - J) When the investigation of the charges causes them to be altered in fact, form, context, or reference from those given the employee at the time the notice was issued and for which the employee has not had an opportunity to respond, a second notice and opportunity for response shall be given to the employee within five working days. Employees shall be given the opportunity to respond to the notice within five working days.
- 3) Suspension Pending Decision on Discharge: The Executive Director may suspend any employee for up to thirty working days pending the decision on whether charges for discharge shall be approved against such employee. The Executive Director shall, at the time of this suspension, provide the employee with written reasons therefore in person or by certified mail, return receipt requested, at the employee's last address appearing in the employee's personnel file. The Executive Director shall promptly investigate the facts and circumstances and render his decision. Should the Executive Director determine that the facts and circumstances

do not warrant disciplinary suspension or charges for discharge, the employee shall be made whole pursuant to subsection (i) below. Should the Executive Director determine that discharge of the employee is appropriate, subsection (e)(4) shall apply in its entirety.

- 4) Discharge of Certified Employee: The Executive Director or his designee may, after compliance with subsection (e)(2), initiate discharge of a certified employee by filing signed written charges for discharge. Written charges shall contain a clear and concise statement of facts showing good cause for discharge, and shall be accompanied by a copy of the employee's evaluations. The final notice of discharge shall contain a statement that the response of the certified employee has been considered before a final decision was made, or that no response was submitted. Notice of approved charges for discharge shall be served on the employee, in person or by certified mail, return receipt requested, at the employee's last address appearing in the personnel file.
- f) Discharge of Probationary Employee: Upon recommendation of the Director of the employee's organizational unit, the Executive Director may approve the discharge or suspension of a probationary employee who has not attained certified status in the Office. Written notice of discharge or suspension shall be delivered to the employee in person or by certified mail, return receipt requested, at the employee's last address appearing in the personnel file.
- g) Employee Obligations: Upon receipt by the employee of any disciplinary suspension or charges for discharge, the employee shall immediately leave the place of employment and return to the Director of his organizational unit any State Board of Elections identification or keys. The Office shall withhold the employee's final paycheck or take other such action to insure compliance.
- h) Hearing – Certified Employees: Certified employees who have been served with approved charges for suspension or discharge may appeal to the Grievance Review Committee by submitting a request for hearing in writing within fifteen calendar days of receipt of the approved charges for suspension or discharge. No later than ten working days prior to the hearing, the employee shall submit a written statement to the Executive Director setting forth his or her position unless the time is extended in writing by the Executive Director.
- i) Reinstatement From Suspension or Discharge: An employee reinstated for the period for which he or she was suspended or discharged shall receive full compensation for such period if subsequent investigation results in reversal of the charges. Full compensation shall mean compensation the suspended or discharged employee would have earned in the position during the period of suspension or discharge less any amounts earned by the employee from any other source and any unemployment compensation payments received during such period.

- j) Suspension/Discharge Resulting from Arrest or Criminal Indictment
- 1) The arrest or criminal indictment of any employee shall not necessarily result in immediate grounds for suspension or discharge. The facts resulting in of either an arrest or criminal indictment may be grounds for suspension or discharge if they meet one or more of the following criteria:
    - A) resulted from an employee's conduct in the course of employment duties, including failure to perform such duties; or
    - B) occurred on or proximate to Office premises and as a result of the employee's conduct thereon; or
    - C) raises reasonable doubt concerning the employee's suitability for continued Office employment in the present assignment or position.
  - 2) If an employee is not subject to suspension or discharge under this subsection, upon recommendation of the Director of the employee's organizational unit, the Executive Director may, depending upon the needs of the Office, at the request of the employee, place such employee on indefinite leave status, without pay, pending a final court determination of the charges.
- k) When the Executive Director is the Director of an employee's organizational unit then the Executive Director may perform any actions provided for in this Section relative to the employee without any required recommendation of any other Director.