Employee Relations (20.073)

Introduction
The Employee Relations Policy outlines the steps that supervisors should take to immediately address critical work performance and behavioral issues. The steps included are not intended as rigid procedural requirements that must be applied in every situation. Instead, the steps are intended to establish guidelines to help supervisors ensure staff members consistently meet expectations.

Key content of this policy is organized as follows:

Distinction Between Performance Management and Corrective Discipline

- Work Performance
- Corrective Disciplinary Action
- Probationary Period Employees
- Referral to the Faculty/Staff Assistance Program

Procedures

- I. Work Performance
  - Informal Feedback, Coaching and Counseling
  - Formal Performance Management Measures
  - Performance Improvement Plan (PIP)
  - Termination
- II. Corrective Disciplinary Action
  - Informal Feedback, Coaching and Counseling
  - Formal Corrective Measures
  - Termination
- III. Documentation Guidelines

Policy Statement
The Employee Relations Policy offers guidance for managing critical job performance and behavioral issues that require immediate or ad hoc attention beyond that afforded within the context of the annual performance appraisal and goal setting process.

In many cases, it may be difficult to discern whether work performance or corrective disciplinary action should be used to manage an employee relations matter. In such cases, supervisors are encouraged to consult a Human Resources Generalist or the Director of Labor and Employee Relations. And finally, this Policy only applies to regular full-time and part-time employees in non-union positions below grade 13, who have completed their probationary periods.

Distinction Between Performance Management and Corrective Discipline. Supervisors frequently ask when to use performance management or corrective disciplinary action. As a general rule, corrective disciplinary action is used to correct behavior that we can reasonably expect the employee to correct immediately and with little, if any, training or follow-up. By contrast, performance management is designed to address performance issues that may require time, clarification, and training to correct. In many cases, it may be difficult to discern whether performance management or corrective disciplinary action should be used to manage an employee relations matter. In such cases, supervisors are encouraged to consult with their assigned Human Resources Generalist. Additional
detail follows differentiating the Employee Relations processes:

- **Work Performance.** Brown University encourages supervisors and managers to set clear expectations for acceptable work performance. The use of informal feedback is encouraged as an initial way to correct unsatisfactory work performance. If informal feedback does not correct a problem, more formal measures should be taken to improve the staff member’s work performance.

- **Corrective Disciplinary Action.** Brown University encourages the use of informal measures to correct unacceptable behavior. If informal feedback does not correct the problem, more formal corrective measures should be used. The Corrective Disciplinary steps should be used to correct misconduct and/or failure to comply with departmental or University policy. Examples of unacceptable behavior include, but are not limited to, the following:
  1. Tardiness
  2. Absenteeism, and/or
  3. Failure to meet work-related reporting requirements.

  Corrective action for unacceptable behavior is normally imposed on a progressive basis; however, it is not a rigid process. In this regard, steps may be omitted or repeated depending on the frequency, severity, and/or nature of the behavior. For example, in instances of serious misconduct, immediate termination of employment may be appropriate.

- **Probationary Period Employees.** Probationary periods allow the University with an opportunity to closely assess newly hired staff members’ performance and suitability for their new positions. During their probationary periods, new staff members may be terminated without notice and/or prior warnings without regard to the procedures outlined in Sections I and II above. Probationary terminations must be reviewed and approved by the Director of HR Services and the Director of Labor and Employee Relations.

- **Referral to the Faculty/Staff Assistance Program.** If a supervisor believes a staff member’s performance or behavior is being adversely impacted by personal matters, the supervisor may refer the staff member to the Faculty/Staff Assistance Program. In certain limited circumstance, a staff member may be required to contact the Faculty/Staff Assistance Program and comply with any recommended treatment as a condition of continued employment. The Director of Labor and Employee Relations must approve any such requirement.

All steps outlined herein in addressing either performance and/or disciplinary issues should be considered in consultation with the Director of Labor and Employee Relations or a Human Resources Generalist. The University reserves the right to discipline, suspend, or discharge employees or take any other appropriate action necessary to protect the rights and safety of members of the Brown Community regardless of any University policy.

Nothing contained in this section is intended to alter the at-will employment relationship between the University and its employees or to create legally enforceable contractual rights.

Procedures
This section contains procedures for the following:

I. **Work Performance**

II. **Corrective Disciplinary Actions**

III. **Documentation Guidelines**

I. **Work Performance.** The following procedures offers guidance for managing work performance that require immediate or ad hoc attention beyond that afforded within the context of the annual performance appraisal and goal setting process.
**Informal Feedback, Coaching and Counseling.** These components of the Employee Relations Policy follow:

- **Informal Feedback:** Supervisors have a responsibility to reinforce and clarify work expectations for staff members. Key steps include:
  - Employees should be given timely, balanced, and constructive feedback identifying areas in which performance meets or exceeds expectations, as well as those issues that require improvement.
  - Supervisors are encouraged to use coaching and counseling because it often corrects unacceptable work performance and avoids the need for more formal measures.

- **Coaching.** Coaching components follow:
  - Supervisors should coach staff members by providing informal but specific guidance, instruction and/or training to reinforce and clarify work expectations.
  - Supervisors should remember to document when and why he/she has coached a staff member about his/her work performance and should maintain documentation of coaching in their personal files.
  - Please note that the staff member does not receive written documentation of coaching.

- **Counseling.** If coaching does not solve the problem, supervisors should counsel staff members. Counseling components follow:
  - Counseling consists of a more explicit explanation of the work performance concern. The counseling phase should also reinforce and clarify work performance expectations.
  - Supervisors should provide written confirmation of the details of the counseling session, including the specifics of the expected level of performance (e.g., an email summarizing the discussion) to the staff member.
  - Supervisors should maintain a copy of the written confirmation in their personal files.

- **Formal Performance Management Measures.** If informal coaching and counseling fail to solve the problem, supervisors, after consulting with the Director of Labor and Employee Relations and/or a Human Resources Generalist, should initiate formal measures to correct the problem. Steps in the Formal Performance Management Process follow:
  - **Written Notice of Performance Expectations.** Written notice of performance expectations is generally the first formal written document measure in the formal performance management process. It is a document designed to explicitly communicate performance issues and job expectations as well as the consequences of failing to meet expectations. Written Notice of Performance Expectations is designed to:
    - Describe the desired performance standards,
    - Describe the staff member's work performance gaps using specific illustrative examples,
    - Describe the steps the staff member must take to meet his/her work performance expectations,
    - Explicitly communicate the need for immediate and sustained improvement;
    - Establish regularly scheduled meetings with the staff member and the supervisor to ensure an ongoing dialogue about performance expectations, and
    - Notify the staff member that his/her job "may be in jeopardy" if his/her work performance does not improve.

*Please note that Written Notice of Performance Expectations may also be used outside of the scope of the Performance Management Policy to clarify job responsibilities when:

- A staff member's duties have changed as a result of a departmental reorganization,
- A new work process has been introduced, or
- A staff member is assigned to a project that includes new job duties and responsibilities or is
assigned to a new supervisor.

*Written Notice of Performance Expectations must be issued only after consulting with the Director of Labor and Employee Relations and/or a Human Resources Generalist.

- **Performance Improvement Plan (PIP).** As a general rule, a Performance Improvement Plan (PIP) is used to clearly and explicitly communicate to staff members when their work performance has not sufficiently improved following their receipt of Written Notice of Performance Expectations. A PIP should provide:
  - Clear notice to the staff member that his/her employment is in jeopardy and failure to demonstrate immediate and sustained improvement will result in termination from the University. A PIP should contain the following components:
    - Identify specific details of the issue or concern;
    - Explain how the performance (or action) is falling short of expectations;
    - Detail expectations for improvement and the corresponding time-frame;
    - Identify measurements, resources, and support for the employee to improve performance;
    - Include a statement that if the unacceptable performance continues, or other problems occur, the staff member will be terminated.
  - An established timeline (usually 30 to 90 days) during which the staff member’s performance must improve and be sustained at an acceptable level.
    - This period should include regular meetings (weekly or bi-weekly) between the staff member and the supervisor to review problems, concerns and/or answer questions that may arise about work performance.
  - A progress report must be offered the Staff Member, at or near the end of the PIP period, as well as a decision as to whether his/her performance has sufficiently improved to be retained in the current position.
    - If the staff member either does not take steps to improve performance within the time period stated in the PIP and/or does not demonstrate immediate and sustained improvement, the staff member is subject to termination.
    - The department is required to consult with a Human Resources Generalist or the Director of Labor and Employee Relations prior to the termination of his/her employment.
  - New and/or serious performance concerns that arise during the PIP period may result in escalation of the performance management process including, but not limited to, discipline or immediate termination after consultation with a Human Resources Generalist or the Director of Labor and Employee Relations.
  - PIPs must be issued in consultation with the Director of Labor and Employee Relations and/or a Human Resources Generalist.

- **Termination.** If a staff member’s work performance does not improve following adequate notice of the area(s) of concern as well as a sufficient opportunity to improve performance, his/her employment with the University will be terminated.
  - The Director of Labor and Employee Relations must pre-approve involuntary terminations.

**II. Corrective Disciplinary Action.** The following procedures offer guidance for managing Corrective Disciplinary Action that requires immediate attention in modifying employee behaviors to meet Brown expectations.

- **Informal Feedback, Coaching and Counseling.** These components of the Employee Relations Policy follow:
  - **Informal Feedback.** Supervisors are encouraged to use counseling throughout the year as an informal means to correct unacceptable behavior.
Our goal is to correct unacceptable behavior with counseling before more formal measures are necessary.

○ **Coaching.** Supervisors should coach staff members who engage in behavior that is unacceptable, but does not necessarily warrant counseling.
  - For example, supervisors should coach staff members to address the first time they report late for work.
  - Supervisors should remember to document when and why he/she has coached a staff member.
  - Supervisors should maintain documentation of coaching in their personal critical incident files.
  - Please note that the staff member does not receive written documentation of coaching.

○ **Counseling.** If coaching does not solve the problem, supervisors should counsel staff members.
  - For example, supervisors should counsel staff members to address the second time they report late for work.
  - Counseling consists of an explicit explanation of the unacceptable behavior, why it is unacceptable and the consequences of the staff member's failure to correct the unacceptable behavior.
  - Supervisors should provide written confirmation to the staff member reiterating the details of the counseling session (e.g., e-mail confirmation of the counseling session).
  - Supervisors should maintain documentation of counseling in their personal files.

Please note that egregious acts of misconduct or violations of policy should not be addressed using informal corrective disciplinary measures; instead, such matters should be immediately addressed with formal measures after consulting with the Director of Labor and Employee Relations and/or a Human Resources Generalist.

• **Formal Corrective Measures.** If informal counseling fails to solve the problem, supervisors, in consultation with the Director of Labor and Employee Relations or a Human Resources Generalist should initiate formal corrective disciplinary measures to correct the unacceptable behavior. Steps in the Formal Corrective Disciplinary Process follow:
  ○ **Written Warning:** A written warning is appropriate when a staff member has failed to correct unacceptable behavior after being counseled. A written warning may also be appropriate to address a first offense if a staff member knowingly violates a University policy or engages in more serious behavior. In general, the written warning should:
    - Describe the standard for acceptable behavior;
    - Describe and/or provide examples of the unacceptable behavior;
    - Reference prior counseling that addressed similar behavior;
    - Outline the University's expectations moving forward; and
    - Notify the staff member failure to correct the problem will result in further discipline, up to and including termination.

Written warnings must only be issued after consulting with the Director of Labor and Employee Relations and/or a Human Resources Generalist.

• **Final Written Warning:** A final written warning is a staff member's last chance to correct unacceptable behavior. A final written warning is appropriate to address recurring offenses that continue despite prior counseling and warnings (e.g., chronic absenteeism or tardiness), egregious behavior and/or serious violations of policy. In general, a final written warning should contain the following components:
  - Describe and/or provide examples of the unacceptable behavior;
Reference prior coaching, counseling and written warnings that addressed similar behavior;
- Describe the University's expectations moving forward; and
- Notify the staff member failure to correct the problem will result in further discipline, up to and including termination.

Final written warnings must only be issued after consulting with the Director of Labor and Employee Relations and/or a Human Resources Generalist.

- **Termination**: If after receiving a final written warning, the staff member's unacceptable behavior persists, his/her employment with the University should be terminated. Such circumstances may include, but are not limited to:
  - Grossly unethical, inappropriate, and/or criminal behavior (e.g., misuse of University funds, release of confidential information, acts of workplace violence, etc...);
  - Actions or behavior that have a severe negative impact on the department's or the University's credibility (e.g., violation of the University's Conflict of Interest Policy);
  - Inability or unwillingness to adhere to conditions of employment (e.g., I-9 verification);
  - Misrepresentation of facts (e.g., educational qualifications, criminal record, etc...); and
  - Severe disregard for University policy (e.g., sexual harassment, failure to comply with safety and environmental regulations).
- Please note the following regarding termination:
  - A staff member's employment may be terminated without prior counseling or warnings in certain circumstances.
  - No severance pay is awarded when employment is involuntarily terminated under the circumstances listed above

The Director of Labor and Employee Relations must pre-approve involuntary terminations.

### III. Documentation Guidelines

Documentation of the formal performance management and corrective disciplinary measures in Sections I and II above should be placed in an employee's personnel file in Human Resources. When or if documentation of a formal corrective disciplinary and/or performance management measure should be removed from an employee's personnel file, removal will be evaluated on a case-by-case basis.

Materials that document informal measures (coaching and counseling) should not be placed in an employee's personnel file. Instead, supervisors should maintain such documentation in their critical incident files.

Related Information: List of UHR Generalists
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