

Employer Proposal
 Without Prejudice
 ALL UNITS – Article 8
 Provided to CUPE 3903 via email August 28, 2023

Note: Revisions to Employer's July 31, 2023 are *highlighted and italicised*

ARTICLE 8 – DISCIPLINE – *August 28, 2023*

8.01.1 JUST CAUSE

The employer shall not discipline, suspend or discharge an employee unless there is just cause. In any grievance over disciplinary action, the burden of proof of just cause lies with the employer.

8.01.2 The employer agrees that an employee shall not be disciplined solely for failure to perform their duties because they are arrested and/or incarcerated provided that the employee notifies their supervisor of the arrest and/or incarceration and the expected duration thereof as soon as possible. Further, it is understood that loss of salary for failure to perform scheduled duties shall not constitute discipline in the context of this article.

8.02.1 PROGRESSIVE DISCIPLINE

The employer accepts and gives effect to the concept of progressive discipline by adopting the procedures set forth below.

8.02.2 The employer may impose discipline only in accordance with the provisions of this article, and any discipline imposed which does not accord with this article shall be null and void.

8.02.3 CONFIDENTIALITY

The fact and substance of disciplinary investigations shall be treated as confidential by the employer and the union. It is a violation of confidentiality for the employer to disclose the fact and/or substance of a disciplinary investigation to people being interviewed as part of that investigation. It is no violation of confidentiality to divulge pertinent information to those necessarily involved in the investigation and the processing of the complaint.

8.03.1 Subject to 8.03.3:

STEP ONE: NOTICE OF MEETING

- (i) Prior to any consideration of discipline, the Chair/*Director*, ~~or~~ Dean, or designate *will notify an employee of a meeting to informally discuss the matter giving rise to the complaint/concern that may be of a disciplinary nature, which may include* ~~who has received a Formal Complaint under the University's Procedures for Dealing With Complaints of Harassment or Discrimination, or a complaint or concerning regarding the professional performance and/or conduct of an employee which is inappropriate to the employment relationship, including sexual and/or gender or racial and/or ethnic harassment, shall, within twenty one calendar days of receiving the complaint, notify the employee and the union and schedule a meeting to discuss the subject matter of the complaint informally. (Where there has been a Formal Complaint under the University's Procedures for Dealing With Complaints of~~

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~~Harassment or Discrimination, it is understood that an investigation into such a complaint can require a longer process. It is agreed that any such investigation shall be conducted as expeditiously as possible so as to be completed within 90 calendar days of the initial Stop One Meeting, or such longer time as the parties may mutually agree.~~ Such Notice of Meeting shall be in writing using a letter or letters similar to the form contained in Appendix C and shall contain a brief but clear statement of the ~~allegations which form the basis of the~~ complaint or concern **that is to be informally discussed**, of the employee's right to union representation at the meeting, as well as the time, place and date of the meeting, and shall inform the employee that they may request an alternative meeting time.

- (ii) If the ~~matter complaint~~ is not dismissed or otherwise resolved as a result of the meeting referred to in 8.03.1(i), or where the employee waives explicitly, or implicitly by not attending, their opportunity for such meeting, and the Chair/~~Director~~, Dean/~~Director~~ or designate determines that further action is warranted, they shall do one of the following:
- (a) where the employee concerned is within two years of the start date of their first appointment in Unit 2, establish a Competence and Ability Review Period (CARP) subject to Article 12.09.2 of the Unit 2 collective agreement;
 - (b) initiate a formal evaluation pursuant to Article 13;
 - (c) send a Letter of Warning to the employee.

NOTE: If an employee, who by not attending implicitly waives their opportunity for such meeting, notifies the Chair/~~Director~~, Dean/~~Director~~ or designate as soon as possible of reasonable cause for non-attendance, the action per (a), (b), or (c) shall not apply unless and until the opportunity for a second meeting is provided.

- (iii) The decision to establish a CARP or to initiate a formal evaluation (per (a) or (b) above) shall be communicated in writing to the employee within fourteen ~~(14)~~ calendar days of the meeting date or the date scheduled for the meeting. Where a letter respecting establishment of a CARP or initiation of a formal evaluation is sent to an employee, the union, the hiring unit, the Office of the Dean, and the Office of ~~the Director, Faculty Relations the Assistant Vice President (HR&ER)~~ shall be the only parties to receive a copy.
- (iv) The decision to establish a CARP or to initiate a formal evaluation (taken per (a) or (b) above) shall not be construed as discipline and shall not form part of the employee's disciplinary record, and cannot be used against an employee in any decision made with respect to their present or future employment, other than as specified in Article 8.03.1(i) and Article 8.03.4.

8.03.2 STEP TWO: LETTER OF WARNING

- (i) The decision to send a Letter of Warning (per **8.03.1(ii)(c)** above) shall be communicated in writing to the employee within fourteen ~~(14)~~ calendar days of the meeting date or the date scheduled for the meeting. Where a Letter of Warning is sent to an employee, the union, the hiring unit, the Office of the Dean, and the Office of the ~~Executive~~ Director, Faculty Relations shall be the only parties to receive a

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copy.

- (ii) The Letter of Warning shall state that discipline may be considered, in accordance with the procedures herein contained, following a repetition of the act or omission which is the subject matter of the **Letter of Warning** ~~complaint~~ and/or, where the ~~complaint~~ **matter** concerns the standard of the employee's work, if the employee fails to bring their work up to a reasonable standard by a given date. Such date shall give the employee reasonable opportunity to correct the problem(s) referred to in the Letter of Warning.
- (iii) The decision to send a Letter of Warning [taken per 8.03.1(ii)(c)] shall not be construed as discipline and shall not form part of the employee's disciplinary record, and cannot be used against an employee in any decision made with respect to their present or future employment, other than as specified in Article 8.03.1(i) and Article 8.03.4.

8.03.3 Notwithstanding 8.02.1, 8.03.1 and 8.03.2, it is understood that the employer retains the right, in exceptional circumstances, to discipline an employee for just cause without having first issued such a **Letter of Warning** ~~written warning~~, subject to Articles 6 and 7 and to the procedures outlined below.

8.03.4 It is further understood that the employer is not precluded by this article from relying on and introducing as evidence at any stage of the grievance and arbitration procedure the employee's previous disciplinary record. Any relevant warnings previously issued can only be introduced as evidence that the employee has received Notice as specified in 8.03.1 (ii).

8.04.1 STEP THREE: DISCIPLINE MEETING

Prior to imposing discipline, and within fourteen days of becoming aware of circumstances which, in their opinion, provide prima facie grounds for disciplinary action, the Dean or their designate shall notify the employee and the union in writing of the time and place of a meeting to discuss the matter and shall advise the employee of their right to union representation. Such notice shall contain sufficient information and details of the complaint to enable the employee to make adequate response to the allegations.

8.04.2 NOTIFICATION OF ACTION

The Dean or designate:

- (i) shall within fourteen days of such meeting advise the employee in writing, with a copy to the union, of their decision, and shall include the reasons for such decision if disciplinary action is to be taken;
- (ii) shall, where the discharge or the suspension without pay of the employee is being considered, delay the imposition of discipline for seven calendar days (pro-rated for the sessions other than fall/winter, but not fewer than three working days), on request from the union and/or the employee.

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- 8.05 It is agreed that the employer has the right in exceptional circumstances to suspend an employee during the period of its consideration of the matter, including the delay in 8.04.2 (ii), and prior to the imposition of any other discipline. In all such cases the suspensions shall be with pay.
- 8.06 Notwithstanding 8.03.4, any discipline or warning shall not be used against an employee after a period of twenty-four months from the date of the warning or discipline.
- 8.07 ~~If the employee wishes to grieve their discipline, when the disciplinary action is not a discharge, the grievance may be initiated at Step Three. If an employee they wishes to grieve their discipline or discharge, it may shall be initiated directly at Step Four Two.~~ In either case, the grievance shall be presented within fourteen calendar days of the date of the letter provided for in 8.04.2 (i).
- 8.08 Any of the time allowances set out in this article may be extended if mutually agreed to in writing by the employer and the union. Such agreement shall not be unreasonably withheld by either party.
- 8.08.1 (i) No bargaining unit member in a supervisory capacity will invoke the disciplinary provisions of this collective agreement on any other bargaining unit member employee. The member in a supervisory capacity shall refer all complaints in which discipline may be ~~indicated~~ warranted to their immediate supervisor (e.g., the Chair). The employer retains the right to interview the member prior to proceeding further.
- (ii) No bargaining unit member in a supervisory capacity shall be required to attend pre-disciplinary (per 8.03.1) or disciplinary (per 8.04.1) hearings.
- (iii) No bargaining unit member in a supervisory capacity shall be held responsible for the act or omission that is the subject of a complaint or discipline, or any consequences deriving there from, of any other employee. This in no way relieves the bargaining unit member of any of their supervisory duties and responsibilities.
- (iv) No bargaining unit member in a supervisory capacity shall suffer any penalty in their employment or academic standing for exercising their rights under this article.