
III. Progressive Discipline

A. Progressive Discipline Procedures

In cases where an employee displays inappropriate conduct or poor performance, and the activity does not call for automatic termination, Baldwin County follows a progressive discipline process. This is a system that consists of corrective action, documentation and adverse action. Personnel must be notified in advance of any disciplinary action.

The steps of progressive discipline may include:

- **Employee Counseling**– The first step is usually an employee counseling from the supervisor with the employee to identify the problem and to state the corrective action needed. The supervisor documents this step including dates, times and details of incidents of improper conduct or poor performance and the date the employee counseling was given. The supervisor sends this documentation to the Personnel Director who will review it and place it in the employee’s personnel file. The employee may submit a separate written statement for the file, if desired.
- **Written Warning** – The second step in the process is usually a written warning with specific examples cited. The supervisor prepares the “Notice of Disciplinary Action” form that states a specific time frame in which the employee must improve and gives the consequences of failure to improve. Prior to issuing the form, the supervisor must review it with his or her Appointing Authority or Appointed Department Head. A copy of the original form is forwarded to the Personnel Director for review and placement in the employee’s personnel file and a copy is given to the employee. The employee may submit a separate written statement for the file, if desired.
- **Adverse Action** – If attempts at corrective action fail to produce satisfactory results, some form of adverse action may be taken. The term “adverse action” means action involving suspension, in-voluntary demotion, or termination. Before any adverse action becomes effective, the supervisor must obtain the written approval from the appropriate Appointing Authority or Appointed Department Head.

Any employee who receives two (2) documented warnings for any reason within a twelve (12) month period may be subject to termination, unless automatic termination is justified. Depending on the circumstances surrounding a disciplinary action, any step of progressive discipline may be skipped and disciplinary action up to and including termination may be employed at any time. Furthermore, past performance and disciplinary action may be considered when determining disciplinary action to be taken.

In the event that the Personnel Director or the County Administrator determine that a request for disciplinary action is not appropriate under the circumstances, or in the event that a supervisor or Appointed Department Head fails to take appropriate disciplinary action against an employee, the Personnel Director and/or the County Administrator may, in his or her discretion, initiate new

or additional disciplinary action against an employee which shall be subject to the pre-disciplinary hearing and appeals process set forth below.

In the event that a classified employee is serving as an acting or interim Appointed Department Head in the absence of an Appointed Contract Employee serving as the Appointed Department Head, and in the event disciplinary action is required against the acting or interim Appointed Department Head, the Personnel Director or County Administrator may, in his or her discretion, initiate disciplinary action against the employee which shall be subject to the pre-disciplinary hearing and appeals process set forth below.

B. Administrative Leave with Pay Due to Potential Disciplinary Action

An employee may be placed on administrative leave with pay by the Appointing Authority or Appointed Department Head in consultation with the Personnel Director for up to one pay period during the course of an investigation to determine whether any disciplinary action should be initiated against the employee. The Personnel Director may approve up to an additional pay period to complete the investigation.

C. Suspensions without Pay

The Appointed Department Head, Revenue Commissioner or Probate Judge may suspend an employee without pay as a part of disciplinary action for up to two (2) pay periods.

Employees may not use annual leave or sick leave while on suspension.

The progressive discipline process will be followed prior to suspension, unless the situation warrants automatic suspension.

D. In-Voluntary Demotions

An in-voluntary demotion is an assignment to a job at a lesser basic pay rate. There are two kinds of in-voluntary demotions:

- In-voluntary demotion for cause; and
- In-voluntary demotion due to a reduction in workforce.

1. In-Voluntary Demotion for Cause: An in-voluntary demotion may be made for cause including, but not limited to, violations of rules, failure to perform job duties adequately, misconduct or neglect of duty. The progressive discipline process will be followed prior to demotion. An in-voluntary demotion with cause will result in a reduction of pay no less than 5%.

2. In-Voluntary Demotion Due to Reduction in Force: If an in-voluntary demotion is based on a reduction in force, the employee will be given consideration, based on seniority and work performance record, for future openings in higher job classifications. No progressive discipline process is necessary for an in-voluntary demotion based on reduction in force.

An In-Voluntary Demotion will result in the change of the employee's annual evaluation date to coincide with the date of the in-voluntary demotion.

E. Terminations

1. Immediate termination may be made for cause including, but not limited to, an employee's action or behavior that constitutes:
 - a. Insubordination (refusal to follow supervisor's instructions);
 - b. Endangering his or her own health or safety or the health or safety of other employees or citizens;
 - c. Theft, vandalism or willful destruction of County or employee property;
 - d. Making fraudulent statements on employee applications or job records;
 - e. Any violation of the County Alcohol and Drug Policy;
 - f. Conviction of a felony offense or of a crime involving moral turpitude;
 - g. Conviction of an offense that affects the employee's ability to perform his or her job duties or insurability, including, but not limited to, loss or suspension of licenses or other credentials; or
 - h. Any other infraction when termination is determined to be in the best interest of the County.
2. Terminations that follow the progressive discipline process are permitted for reasons that include, but are not limited to:
 - a. Misconduct;
 - b. Willful neglect of duties;
 - c. Absence from work without authorization or notification;
 - d. Failure to perform job duties;
 - e. Repeated tardiness or absence;
 - f. Violation of departmental rules;
 - g. Email abuse; or
 - h. Internet abuse.

Any employee who fails to correct deficiencies after two (2) documented warnings may be subject to termination, unless automatic termination is justified.

F. Appeals Procedures for Adverse Action

1. When an Appointing Authority or Appointed Department Head seeks to discipline an employee either through suspension without pay, involuntary demotion or termination, he or she will make a recommendation to the Personnel Director that such action be taken. The Appointing Authority or Appointed Department Head shall notify the employee in writing that he or she proposes disciplinary action in the form of suspension without pay, involuntary demotion or termination and the grounds for such proposed action. The employee will then have one (1) working day to request, in writing to the Personnel Director, a pre-disciplinary hearing before the County Administrator. In the event the County Administrator initiated the adverse action or otherwise has a conflict, then the pre-disciplinary hearing shall be held before the Clerk/Treasurer. If the employee does not request a hearing, the proposed discipline will become effective at the end of the one (1) working day period.
2. Should the employee request such a pre-disciplinary hearing, the County Administrator or Clerk/Treasurer, in the case of the County Administrator is the Appointed Department Head, will inform the employee of the date and time of such hearing which will be held within two (2) working days of the request, unless the County Administrator or Clerk/Treasurer, allows additional time. The hearing will be informal in nature. The employee may have a representative of his or her choosing present at his or her own expense.
3. Within two (2) working days after the pre-disciplinary hearing, the County Administrator or Clerk/Treasurer will issue a decision on the Appointing Authority or Appointed Department Head's recommendation. An employee may then appeal the hearing officer's decision to the Personnel Appeals Board as set out below.
4. Should the County Administrator be the direct supervisor who is proposing the discipline, the Clerk/Treasurer will make the decision on the proposed discipline using the same procedure as set out in the subsections one (1) through three (3) above. In the event the County Administrator and/or Clerk/Treasurer are conflicted from hearing the case, the Personnel Director shall appoint an alternate hearing officer to hear the case which shall be one of the Appointed Contract Employees, unless all such employees have conflicts which would disqualify such employee from hearing the case.

G. Appeals Process to the Personnel Appeals Board for Adverse Action

EMPLOYEES WHO HAVE NOT COMPLETED THEIR PROBATIONARY PERIOD HAVE NO APPEAL RIGHTS TO THE PERSONNEL APPEALS BOARD, BUT MAY PARTICIPATE IN THE INTERNAL GRIEVANCE PROCEDURES CONTAINED IN GENERAL POLICIES WITH RESPECT TO ANY ACTION THAT DOES NOT CONCERN THEIR TERMINATION, SUSPENSION WITHOUT PAY OR INVOLUNTARY DEMOTION.

1. An employee desiring to appeal any disciplinary action directed against him or her must first exhaust any administrative remedy provided as set out above. No employee shall be

penalized in any way for exercising his or her rights under the appeal procedures. An employee who has served a six (6) month probation period may exercise his or her rights by requesting an Appeals Board Hearing. A hearing may be requested for three (3) reasons which include termination, suspension without pay or involuntary demotion. An appeal may be withdrawn at any step without prejudice.

2. Upon exhausting the above administrative remedies to have a hearing before the County Administrator (or Clerk/Treasurer as is appropriate), an employee may file his or her appeal of discipline to the Personnel Appeals Board in writing with the Personnel Director. To be timely filed and considered by the Board, the appeal **must be delivered to the Personnel Director within seven (7) calendar days of the last final administrative action, and the employee must request a hearing before the Board.** Within seven (7) calendar days after the receipt of the appeal, the Personnel Director shall file with the chair of the Board and mail to the employee by certified mail a statement specifying the charges against the employee on which the disciplinary action (termination, suspension without pay or involuntary demotion) was based.
3. Upon the filing of the charges, the chair shall call a meeting of the Board to be held within thirty (30) days after the filing of charges to hear the appeal, and shall forthwith give notice by certified mail to the employee and the Board of the time and place of the meeting. The board shall have the authority to continue the hearing from time to time as may be necessary. In preparing for and conducting the hearing, the chair and secretary of the Board shall each have the power to administer oaths, to subpoena and require the attendance of witnesses and the production of books, documents and accounts pertaining to the appeal.

H. The Personnel Appeals Board

An employee who requests a hearing before the Appeals Board must have suffered one of the following forms of disciplinary action:

- Termination;
- Suspension without Pay; or
- Involuntary Demotion.

1. Establishment of Board

The Alabama Legislature established the Appeals Board of Baldwin County (hereinafter “the Board”) in Ala. Code §§445-2-120, et seq., (1975), as the same may be amended from time to time. The Board’s duties, powers and method of appointment are specified in Ala. Code §§445-2-120, et seq., (1975), as the same may be amended from time to time

- a. The Board hears all timely filed appeals by employees from final action of the County Administrator or Clerk/Treasurer, or such other individual hearing the case as a result of a conflict.

- b. The Board is composed of five (5) persons who are residents of the county. The members of the Board shall be appointed as follows: two (2) members shall be appointed by the County Commission; two (2) members shall be selected by the County classified employees using the procedure provided in this section. The fifth (5th) member shall be selected by the other four (4) members of the Board within thirty (30) days after the four (4) members of the Board are selected and take office. In the event the four (4) members of the Board cannot agree on the fifth member within thirty (30) days, then the fifth (5th) member shall be selected as follows: the members appointed by the County Commission shall nominate one (1) person and the members selected by the classified employees shall nominate one (1) person. From these two (2) nominees, the fifth (5th) member of the Board shall be selected by lot.
- c. The Personnel Department shall notify all classified employees that nominations for membership on the Board will be accepted for a period of ten (10) work days from that date and instructing all interested classified employees to submit nominations to the Personnel Director of Baldwin County within that period. Nominations shall be limited to persons who are classified employees of the County.
- d. The Personnel Director shall compile a list of the nominations and cause ballots to be prepared and distributed to all classified employees and shall further instruct all classified employees of their right to vote for one (1) name contained on the list of nominees.
- e. The employees shall be instructed to tender their ballots in sealed envelopes to their supervisors within five (5) work days for submission to the Personnel Director who shall make appropriate arrangements for their tabulation. Upon tabulation of the ballots, the Personnel Director shall obtain written certification executed by all the County employees who assisted during the counting of the ballots and shall submit the fully executed written certification to the Baldwin County Legislative Delegation following each election. The certification and ballots shall be retained by the Personnel Director as public records for twelve (12) months from the date of certification of results.
- f. In the event that any one (1) employee received a majority of all votes cast, he or she shall be elected to serve on the Board. In the event that no employee receives a majority of all votes cast, the names of the two (2) employees receiving the most votes on the initial ballot shall be placed on a run-off ballot and voted upon by the employees as set forth above. The employee then receiving the most votes in the run-off shall be deemed elected to membership of the Personnel Appeals Board.
- g. No person who holds elected office, is a candidate for elected office, or receives a salary from the County, except the elected employee Board members, shall serve on the Board. A Board member's term shall immediately terminate upon occurrence of any one of the foregoing conditions. A vacancy shall be filled in the same manner as the original appointment of a Board member as soon as possible after a vacancy occurs. A Board member shall be eligible for re-appointment to successive terms on the board.
- h. Each member shall serve a three (3) year term.

2. Hearings before the Board

- a. The Board shall follow administrative procedures adopted by the County Commission to implement the appeals process. The Personnel Department shall provide all necessary clerical and administrative support for the board. The Board shall meet as needed. Each year, Board members shall select from among themselves a chairperson and secretary of the board. Board members may be compensated as established from time to time by the County Commission.
- b. All testimony before the Board shall be under oath, and the Board has the power to subpoena witnesses and demand production of relevant documents. The Board has the authority to make recommendations to affirm, to revise or to amend any previous personnel decisions after a hearing.
- c. Subpoenas issued as herein provided shall be served and the fees and allowances for the services thereof shall be the same as provided by law for the service of subpoenas issued by the Circuit Court of Baldwin County. The fees and allowances in connection with the service of the subpoena issued at the request of the Commission upon request of the Board shall constitute reasonable and necessary expenses of the Board. Any subpoena issued at the request of the employee shall be served as aforesaid, but only after the employee shall have sufficient security with the Sheriff of Baldwin County or other recognized officer to guarantee payment of the fees and allowances for the service. Any person failing to obey any summons by either of the officers of the Board without good cause, to be determined by the Circuit Court of Baldwin County, may be punished by the Court in the same method and manner as is provided by law for contempt of the Court, and any person failing to obey any order or subpoena of the Court, may be proceeded against by the Court as is by law provided in the case of contempt of the Court. In addition, any employee of the County who fails to obey any of the orders or subpoenas may be disciplined, therefore.
- d. At the hearing before the Board, the employee and his or her Appointed Department Head or supervisor shall each have the right to be represented by counsel, with the County authorized to employ legal counsel to represent the interest of the County. The hearing shall be governed by rules of practice and procedure as shall be adopted by the Board, and in conducting the hearing, the Board shall not be bound by the technical rules of evidence. No informality of procedure in the conduct of the hearing shall invalidate any recommendation made by the Board.
- e. Within five (5) working days from the conclusion of the hearing, the Board shall recommend to the Commission the following: (1) that the disciplinary action taken against the employee be affirmed; (2) that the disciplinary action be reversed and that the employee be reinstated with full back pay at the normal rate of pay that would have been in effect for the employee had he or she not been suspended without pay; or (3) that the disciplinary action be reduced and that the employee be reinstated either with or without pay for any time suspended without pay. The recommendation shall be in writing to the Chair of the Commission, and the Commission shall act upon such recommendation at its next regular or special called meeting. At such meeting, the Commission shall vote its

approval or disapproval of the action of the Board with the action becoming a matter of its official and public record.

3. Administrative Procedure for Hearing

The procedure for hearings conducted by the Board shall be as follows:

- a. An employee should try to limit opening comments to fifteen (15) minutes to present his or her written appeal and any oral explanation. Employees may present their own appeal or designate a person of their choice to represent them.
- b. The Appointed Department Head or supervisor should try to limit opening comments to fifteen (15) minutes to present his or her written disciplinary action and any oral explanation. Appointed Department Heads may present their own decision or designate a representative of their choice.
- c. If applicable, each party may present witnesses. The employee shall have the right to compel attendance of witnesses or production of documents through exercise of subpoena power possessed by the Chairman or secretary of the Board. The Board may then ask questions of any parties present, request additional information or summon any related parties not present. The Board may set the hearing aside for research or consultation with expert witnesses, but must reconvene within seventy-two (72) hours, unless the parties otherwise agree.
- d. Upon completion of a hearing, the Board shall return its written decision within five (5) work days to the Personnel Director who shall immediately notify both parties. The Board shall recommend to the Commission one of the following: (i) that the disciplinary action taken against the employee be affirmed; (ii) that the disciplinary action be reversed and that the employee be reinstated with full back pay at the normal rate of pay that would have been in effect for the employee had he or she not be suspended without pay ; or (iii) that the disciplinary action be reduced, and that the employee be reinstated either without or with pay for any time suspended without pay.
- e. All decisions of the Board are recommendations to the Baldwin County Commission, which shall be acted upon by the Baldwin County Commission at its next regular or specially called meeting. From any adverse decision of the County Commission, the employee may appeal the decision to the Circuit Court of Baldwin County for a non-jury trial, provided he or she files the appeal within seven (7) days of the adverse decision.
- f. The Board may meet with three (3) members present and all decisions will be binding as if the full Board had been present.