

State Police Commission



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Transmittal Sheet No. 22

Subject: Revision and Adoption of State Police Commission Rules 12.3(a) and 12.7(a)

Issue Date: April 29, 1998

At its April 20, 1998 meeting, the State Police Commission voted to revise and adopt State Police Commission Rules 12.3(a) and 12.7(a). Attached hereto is a complete copy of Chapter 12 of the Rules. Please post this notice in a prominent place, accessible to all employees of the Office of State Police. If you have any questions, please feel free to contact me.

Sincerely,

Debra L. Johnson

Debra L. Johnson
Director

Attachment

Chapter 12

Disciplinary Actions, Removals and Resignations

12.1 Appointing Authority.

Disciplinary and other actions authorized by this chapter may be taken only by the appointing authority or his or her designee.

12.2 Cause; Disciplinary Actions.

- (a) A permanent employee may only be disciplined for cause.
- (b) Disciplinary actions include only the following: dismissals, suspensions without pay, reductions in pay, involuntary demotions and written reprimands.

12.3 Restrictions On Suspensions Without Pay and Reductions in Pay.

- (a) Except as provided by Rule 12.5 or as ordered by the Commission or agreed to under Chapter 13 or Chapter 16, a suspension without pay may not exceed 720 working hours.
- (b) No disciplinary reduction in pay may bring an employee's pay below the minimum of his pay range or below minimum wage.

12.4 Administrative Leave Pending Investigation.

- (a) Where, in the judgment of the appointing authority, there is reason to suspect that an employee has engaged in conduct which would warrant disciplinary action, but the appointing authority does not then possess sufficient facts to support a disciplinary action, and the employee's continued presence on the job or performance of his duties reasonably poses a significant hazard or danger to the general health or safety or the efficiency of the public service, the employee may, either verbally or in writing, be placed on Administrative Leave with pay. Such leave shall not reduce the employee's annual or compensatory leave.
- (b) When an employee is placed on Administrative Leave under the provisions of this rule, if feasible, the employee shall first be informed of the intended action and the reasons therefor and the employee shall be given an opportunity to respond verbally at that time. If such is not feasible, or will reasonably significantly endanger the general health or

safety or the efficiency of the public service, such shall not be required and, in that case, the employee shall merely be informed of the action.

- (c) Within fifteen (15) calendar days after the action provided for by this rule, the appointing authority shall provide the employee with such facts which support the action as are then available and which will not violate any confidence between the appointing authority and the investigating, arresting and/or prosecuting authority.
- (d) An action taken under this rule shall not exceed thirty (30) calendar days without the prior approval of the Director. Upon sufficient reasons provided to her by the appointing authority, the Director may allow an extension of the Administrative Leave for an additional thirty (30) calendar days.
- (e) Upon completion of the investigation, the Director and the employee shall be notified in writing of the outcome of the investigation. Should the appointing authority find that cause does not exist for further action against the employee, the employee shall immediately be returned to duty. Should, however, the employee then be disciplined, the employee shall then be given all notices required by Rule 12.7 and/or Rule 12.8.
- (f) Notwithstanding any other provision of these Rules, an Administrative Leave Pending Investigation is not a disciplinary action and may not be appealed to the Commission, except on the basis of discrimination or a violation of the Article or these Rules.

12.5 Suspension or Administrative Leave Pending Criminal Proceedings.

- (a) Upon the arrest or indictment of, or the issuance of a criminal summons to an employee, at the request of the appointing authority, the Commission may allow the suspension of the employee during the pendency of the criminal proceedings. This suspension may be for such duration and under such conditions as the Commission may allow.
- (b) In such cases, the request of the appointing authority shall contain all the details required by Rule 12.8 as are then available to the appointing authority and which will not violate any confidence between the appointing authority and the investigating, arresting and/or prosecuting authority. Such request shall be furnished to the employee at or prior to the time it is furnished to the Commission.

- (c) Prior to approving a suspension under this rule, the Commission shall allow the employee or his attorney a reasonable opportunity to appear before the Commission and respond.
- (d) At the time it considers such request, the Commission may decline the request for the suspension and, instead, place the employee on Administrative Leave with pay during the pendency of the criminal proceedings. Should the Commission do so, such action shall not be appealable to the Commission, except on the basis of discrimination or a violation of the Article or these Rules.

12.6 Non-disciplinary Removals.

- (a) An employee may be removed under the following conditions:
 - 1. When he or she holds more than one position in the state service and the multiple employment causes an employing agency to be liable for overtime payments under the Fair Labor Standards Act and, after having been provided an opportunity to do so, the employee has refused to resign from one of the positions; or
 - 2. When the reason for the dismissal is not the employee's fault or conduct, or when the employee fails to obtain or loses, as a result of conduct that was not work related, a license, commission, certificate or other accreditation that is legally required for his job.
- (b) An employee removed under this rule shall be furnished with the same notice required for dismissals under Rule 12.8, and he or she shall have the same right to appeal such as if it were a disciplinary dismissal.
- (c) When an employee is removed under this rule, the appointing authority shall designate the dismissal as non-disciplinary on all forms used to report such dismissal, and the adverse consequence of Rules 6.5(c), 7.5(a)4, 8.9(c), 7.24(a), 8.18(d), 11.18(b), and 17.24 shall not apply.

12.7 Pre-dismissal, Removal Or Discipline Procedure.

- (a) A permanent employee may not be dismissed or removed or subjected to any discipline, other than a letter of reprimand until he has been given written notice of the proposed action and the reasons therefor, a description of the evidence supporting the proposed action and a reasonable opportunity to respond thereto.

- (b) In the case of a suspension pending the outcome of criminal proceedings, the notice provided to the employee under the provisions of Rule 12.5(b) shall satisfy the requirements of paragraph (a) of this rule.

12.8 Written Notice.

- (a) Except as provided by Rule 12.5, a permanent employee who is disciplined shall be given prior written notice of the action which:
 - 1. States the action which is being taken and the effective date and time thereof;
 - 2. Contains such information as will fully inform the employee of the conduct on which the action is based and which will enable him or her to prepare a defense, including, where pertinent, the date, time and place of such conduct and the names of persons directly involved in or affected by such conduct (unless their identities are protected by law, in which case, identification shall be made as permitted by law);
 - 3. Contains the following notification: "You have the right to appeal this action to the State Police Commission. The time limits and procedure for appealing are contained in Chapter 13 of the State Police Commission Rules."; and
 - 4. Advises the employee that a copy of Chapter 13 of the State Police Commission Rules can be obtained from the State Police Commission and provides the Commission's current mailing address and telephone and fax numbers.
- (b) Written notice is considered given:
 - 1. Upon delivery to the employee or a person of suitable age and discretion who resides with the employee; or
 - 2. On the 7th calendar day after it is mailed to the employee, with correct postage, at the most recent address furnished by the employee in writing to the Human Resources Office.

12.9 Letters Of Counseling and/or Warning; Responses.

- (a) A letter of counseling or warning is not a disciplinary action. Such letters may be maintained in a supervisory or investigatory file,

however, they shall not be included in any record which is accessible to the public.

Such a letter is not appealable to the Commission except on the basis of discrimination or a violation of the Article or these Rules.

- (b) The employee may submit a written response to any letter of counseling or warning issued to him or her, and such response shall be attached to each copy of the letter of counseling or warning that is maintained by the employing agency.

12.10 Removal Of Sick Or Disabled Employees.

- (a) Upon exhaustion of their sick leave and upon their request, an employee absent from duty because of a physical and/or mental disability or condition which prevents performance of the usual duties shall thereafter be placed on any type of paid leave then available to them and, upon the exhaustion of such paid leave, the employee shall then be placed on unpaid leave.

The period of leave provided for by this rule shall be until the exhaustion of the employee's sick leave or the leave provided for by the Family Medical Leave Act (FMLA) or one(1) year, whichever is longer.

- (b) After such employee has been absent from duty because of such physical and/or mental disability or condition for the period provided for by Rule 12.10(a), and the employee has exhausted all of his or her sick leave or leave available under FMLA and the employee's job must be performed without further interruption, the appointing authority, may, for these reasons, remove such employee. Such removal shall not disqualify the former employee from non-competitive reemployment, as provided for by Rule 8.18.
- (c) Notice of the removal of an employee under the provisions of subsection (b) shall be given pursuant to the provisions of Rule 12.8.
- (d) An employee removed under this rule shall have a right of appeal only based upon discrimination and/or the violation of the Article or these Rules.

12.11 Resignations.

- (a) Upon the termination of the services of a permanent or probationary employee by voluntary resignation, the appointing authority shall request that the employee submit a letter of resignation or complete other appropriate agency "exit" forms. Where it is not possible to secure the letter or form, the appointing authority shall prepare and maintain a written explanation of the reason(s) for the resignation, if known, and the reason that a letter of resignation or exit form was not obtained.
- (b) The resignation of an employee, submitted orally or in writing, shall become an accomplished fact upon:
 - 1. Its acceptance by the appointing authority or his or her designee, notwithstanding that it may include a prospective effective date; or
 - 2. The occurrence of the effective date and time specified by him in his statement of intention to resign.
- (c) When signed by the appointing authority or his or her designee, a personnel status change form which reports to the Director the resignation of an employee shall constitute one type of acceptance of the resignation.
- (d) An employee may not rescind or withdraw his resignation subsequent to:
 - 1. Its acceptance by the appointing authority unless the appointing authority agrees thereto;
 - 2. The effective date and time specified in the resignation; or
 - 3. The terminal date and hour specified in the personnel status change form mentioned in sub-section (c) hereof.
- (e) By mutual agreement between an employee and the appointing authority, an accepted resignation may be withdrawn and rescinded at any time prior to the effective date and time specified by the employee in the resignation.
- (f) When an employee resigns after receiving the notice required under Rule 12.7 that his dismissal has been proposed, the SF-1 form

reporting the resignation shall so indicate. At the time the SF-1 form reporting the resignation is mailed or delivered to the Director, a copy thereof shall be mailed to the employee at the last known address furnished by the employee to the Human Resources Office.