

<b>GEORGIA DEPARTMENT OF CORRECTIONS</b> <b>Standard Operating Procedures</b>		
<b>Policy Name:</b> Adverse Actions (Unclassified Employees)		
<b>Policy Number:</b> 104.65	<b>Effective Date:</b> 10/4/2017	<b>Page Number:</b> 1 of 6
<b>Authority:</b> Commissioner	<b>Originating Division:</b> Administration & Finance Division (Human Resources)	<b>Access Listing:</b> Level I: All Access

- I. Introduction and Summary:** All unclassified employees are employed at-will and serve at the discretion of the Department of Corrections. Adverse Actions may be taken against Unclassified Employees in a consistent manner according to this procedure.
- II. Authority:**
- A. State Personnel Board Rule: 478-1-.15;
  - B. GDC Standard Operating Procedures (SOP): 104.01 Delegation of Authority, 104.24 Promotions and Demotions, and 104.28 Suspension Without Pay; and
  - C. ACA Standards: 2-CO-1C-01, 1-CTA-1C-01, and 4-4048.
- III. Definitions:**
- A. **Adverse Action** - An action that results in the suspension without pay, demotion, reduction in salary, or dismissal of an employee. Adverse Actions do not include staff reductions taken due to lack of work, lack of funds, economic slowdowns, technological or structural changes in the agency’s operations, or to ensure the financial health and viability of the agency.
  - B. **Appointing Authority** - The person authorized to make employment decisions (such as hiring or adverse actions). In this Department, the Commissioner is the Appointing Authority and any person designated by the Commissioner pursuant to SOP 104.01 (“Delegation of Authority”).
  - C. **Business Days** - Monday through Friday with the exception of holidays.
  - D. **Commissioner’s Designee for Adverse Action** - The Commissioner’s specific Designee who reviews adverse actions and has the authority to conduct further investigations, countermand or delay a proposed adverse action, and issue a Notice of Final Determination.
  - E. **Fair Labor Standards Act (FLSA) Exempt Employees** - Employees that are exempt from the minimum wage and overtime provisions of the FLSA by meeting both the salary basis test and duties test.
  - F. **Field Appointing Authority** - Wardens and individuals specifically designated by the Commissioner.

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G. **Unclassified Employee** - An employee in the unclassified service. This is defined as employment-at-will and includes all employees except those in the classified service.

IV. **Statement of Policy and Applicable Procedures:** Adverse Actions regarding Unclassified Employees shall adhere to this policy unless the Commissioner, in his or her discretion, authorizes the use of another procedure. Failure to follow this or any other authorized procedure will not invalidate an adverse action.

A. **An Appointing Authority may use an Adverse Action as discipline regarding an Unclassified Employee's behavior or actions. In addition, all employees are subject to dismissal based on their at-will employment relationship with the Department. Only the Director, Human Resources may approve and effectuate an at-will dismissal.**

1. Adverse Actions against an Unclassified Employee based on the employee's behavior or actions.

a. Examples of behaviors or acts that may result in adverse action include:

- Negligence in performing assigned duties;
- Inefficiency in performing assigned duties;
- Inability to perform assigned duties;
- Unfitness to perform assigned duties;
- Insubordination;
- Misconduct;
- Conduct reflecting discredit on the Department;
- Commission of a felony or other crime involving moral turpitude;
- Chronic Tardiness;
- Chronic Absenteeism;
- Failure to report for work;
- Failure to remain at work;
- Failure to timely process Performance Management Reviews; or
- Political activity in violation of Rule 3 of the State Personnel Board.

b. A Field Appointing Authority shall effectuate an Adverse Action regarding an employee's behaviors or actions as follows:

1) The Field Appointing Authority or Designee will enter the Adverse Action in SCRIBE, which must include the following information:

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- Name, job title, position, employee identification number, hire date of the employee and employment status (i.e. unclassified);
- Description of the incident, including the date of the incident, any witnesses to the incident, and any policies or procedures violated by the incident;
- Summary of prior disciplinary actions involving this employee; and
- Recommended Adverse Action.

- 2) The Field Appointing Authority or Designee will forward all supporting documentation to the appropriate Region Director who will make a recommendation and forward the documents to Legal Services. Legal Services will review the information and recommend an Adverse Action, if warranted. Divisions that do not fall under a Region will send documents directly to Legal Services.

**NOTE:** If a Field Appointing Authority disagrees with the Legal Services Representative's recommendation, the Director, Human Resources will make the final determination.

2. An Unclassified Employee may be dismissed according to their at-will employment relationship with the Department. At-will dismissals are made as deemed necessary to meet the needs of the agency. Only the Director, Human Resources may approve and effectuate an at-will dismissal.

**B. Issuing the Adverse Action:**

1. The Field Appointing Authority will give the employee written notice of the Adverse Action. This Notice of Adverse Action will include:

- a. The effective date of the adverse action;

**NOTE:** The effective date for FLSA-exempt employees must be coordinated **directly** with the CHRM Adverse Action Coordinator (except for dismissals).

- b. A notice that the employee may request a review of the action by contacting the Commissioner's Designee for Adverse Action **within five**

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**business days of the receipt** of the Notice of Adverse Action (this review will not delay the effective date of the adverse action);

**NOTE:** This notice will advise the employee that he/she may give their personal response to the action in person, in writing, or both.

- c. The signature of the Field Appointing Authority taking the action; and
- d. A blank line for the employee's signature and date notice was received.

**NOTE:** If the employee refuses to sign and date the notice, the Field Appointing Authority or a witness will date and sign the notice and indicate the employee refused to sign.

2. A Notice of Adverse Action based on an employee's behavior or acts shall briefly reference the behavior resulting in discipline (e.g. failed to successfully complete BCOT; failed drug test; failed to return from a leave of absence).
3. A copy of the Notice of Adverse Action will be forwarded to:
  - Appropriate Assistant Commissioner (Chief of Staff for those Units reporting directly to the Commissioner);
  - Department Human Resources Director;
  - Appropriate Region Director (if applicable);
  - Commissioner's Designee for Adverse Action;
  - Legal Services Office;
  - CHRM Adverse Action Coordinator; and
  - Director of the Certification Division, POST Council (for POST Certified employees).
4. The Field Appointing Authority must also submit a personnel action with the appropriate action/reason codes to the CHRM Adverse Action Coordinator, who will take action necessary to effectuate the adverse action.

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**NOTE:** If the Adverse Action is time limited, the Field Appointing Authority is also required to submit a personnel action to return the employee to the original status.

**C. Employee Response:**

1. The employee may file a request for review with the Commissioner's Designee for Adverse Action. The request must be filed within five business days of the employee's receipt of the Notice of Adverse Action. The filing of a request for review will not stay or delay the effective date of the Adverse Action.
2. The Commissioner's Designee for Adverse Action will review the Adverse Action and issue a Notice of Final Determination within 10 business days after receipt of the employee's request for review. If the Commissioner's Designee for Adverse Action fails to meet the 10-day requirement, the action will not be delayed or invalidated.
3. If the Commissioner's Designee for Adverse Action determines that more than 10 business days is needed to make a determination. The period may be extended. The employee must be notified in writing of the extension period.

**D. Final Determination:**

1. The Commissioner's Designee for Adverse Action may uphold, reverse or modify the adverse action. If the Commissioner's Designee determines that additional charges, substantially different charges, or a more severe penalty are appropriate, the original action will be revoked by written notice to the employee. The Commissioner's Designee will notify the Field Appointing Authority to institute a new action against the employee.
2. The Commissioner's Designee will issue a Notice of Final Determination, which must include the:
  - a. Final action; and
  - b. Brief reference to the behavior for which action is taken.

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3. Copies of the Notice of Final Determination must be submitted as designated in IV.B.3. of this procedure.
4. The CHRM Adverse Action Coordinator will take action necessary to effectuate any changes to the adverse action.

**V. Attachment:**

Attachment 1, Notice of Adverse Action Sample Letter

**VI. Record Retention of Forms Relevant to this Policy:**

Attachment 1 - Notice of Adverse Action Sample Letter, Retain permanently in the official and local personnel files.