

# Wisconsin Human Resources Handbook

## Chapter 410

### Employee Work Rules and Discipline Procedure

|              |   |              |  |
|--------------|---|--------------|--|
| Sec. 410.010 | Introduction                                    | Sec. 410.090 | Probationary Employees                               |
| Sec. 410.020 | Statutory Authority                             | Sec. 410.100 | Removal of Disciplinary Letters from Personnel Files |
| Sec. 410.030 | Work Rules - General                            | Sec. 410.110 | Letters of Expectation                               |
| Sec. 410.040 | Administrative Policies and Procedures          | Sec. 410.120 | Administrative Information                           |
| Sec. 410.050 | Progression Schedule                            | Attachment 1 | Sample Letter of Expectation                         |
| Sec. 410.060 | Cumulative Disciplinary Actions                 | Attachment 2 | Sample Discipline Letter                             |
| Sec. 410.070 | Disciplinary Actions Documents Requests         | Attachment 3 | Sample Termination Letter                            |
| Sec. 410.080 | Coordination and Review Of Disciplinary Actions | Attachment 4 | Sample Probation Termination Letter                  |

---

#### Sec. 410.010 Introduction

Section 230.01(2)(bp), Wis. Stats., states “It is the policy of this state to retain employees on the basis of the adequacy of their performance, to correct inadequate performance when possible and appropriate, and to separate from state service employees whose performance and personal conduct is inadequate, unsuitable or inferior.” This chapter sets the standards for implementing this policy.

#### Sec. 410.020 Statutory Authority

1. Section 230.04 (13m), Wis. Stats. provides in part “[t]he administrator shall establish standards for progressive discipline plans...The standards established under this subsection shall allow an appointing authority to accelerate progressive discipline if the inadequacy, unsuitability, or inferiority of the personal conduct or work performance for which an employee is being disciplined is severe.”
2. Section 230.34 (1)(a), Wis. Stats., states: “An employee with permanent status in class or an employee who has served with the state as an assistant district attorney or an assistant state public defender for a continuous period of 12 months or more may be removed, suspended without pay, discharged, reduced in base pay, or demoted only for just cause. It is just cause to remove, suspend without pay, discharge, reduce the base pay of, or demote an employee for work performance or personal conduct that is inadequate, unsuitable or inferior, as determined by the appointing authority, but only after imposing progressive discipline that complies with the administrator’s standards under s. 230.04 (13m). It is just cause to remove, suspend without pay, discharge, reduce the base pay of, or demote an employee without imposing progressive discipline for any of the following conduct:
  1. While on duty, harassing a person.
  2. While on duty, intentionally inflicting physical harm on another person.
  3. While on duty, being intoxicated or under the influence of a controlled substance, as defined in s. 961.01 (4) or a controlled substance analog, as defined in s.961.01 (4m).
  4. While on duty, being in possession of a controlled substance, as defined in s.961.01 (4), or a controlled substance analog, as defined in s. 961.01 (4m), without a prescription.
  5. Falsifying records of the agency.
  6. Theft of agency property or services with intent to deprive an agency of the property or services permanently, theft of currency of any value, felonious conduct connected with the employee's

employment with the agency, or intentional or negligent conduct by an employee that causes substantial damage to agency property.

7. A conviction of an employee of a crime or other offense subject to civil forfeiture, while on or off duty, if the conviction makes it impossible for the employee to perform the duties that the employee performs for the agency.
  8. Misuse or abuse of agency property, including the intentional use of the agency's equipment to download, view, solicit, seek, display, or distribute pornographic material.
  9. A serious violation of the code of ethics established by the director under s. 19.45 (11)(a), as determined by the director.”
3. Section 230.34 (1)(am), Wis. Stats., states, “If an employee fails to report for work as scheduled or to contact his or her supervisor, the appointing authority may discipline the employee. If an employee fails to report for work as scheduled, or to contact his or her supervisor for a minimum of 3 working days during a calendar year, the appointing authority shall consider the employee's position abandoned and may discipline the employee or treat the employee as having resigned his or her position. If the appointing authority decides to treat the position abandonment as a resignation, the appointing authority shall notify the employee in writing that the employee is being treated as having effectively resigned as of the end of the last day worked.”

### Sec. 410.030 Work Rules - General

State of Wisconsin Work Rules are established by the Division of Personnel Management, within its discretion, to regulate the personal conduct of all state employees while on the job. The State of Wisconsin enforces work rules outside of work hours when an employee’s conduct is detrimental to the interests of the state as an employer. These rules are established so the State of Wisconsin can fulfill its objectives in an orderly and efficient manner.

Violation of any of the work rules may result in disciplinary action ranging from a suspension to discharge, depending on the seriousness and frequency of the infraction. In all cases, the State of Wisconsin considers discipline as corrective. Specifically, all employees of the State of Wisconsin are prohibited from committing any of the following acts:

1. Falsification of records, knowingly giving false information or knowingly permitting, encouraging or directing others to do so. Failing to provide truthful, accurate and complete information when required.
2. Failure to comply with written agency policies or procedures.
3. Disobedience, insubordination, inattentiveness, negligence, failure or refusal to carry out written or verbal assignments, directions, or instructions.
4. Failure to observe all health, safety and sanitation rules and practices, including failure to report accidents which involve injuries or damage to state equipment or property.
5. Failure to report promptly at the starting time or leaving the place of duty before the quitting time without proper authorization, or failure to promptly notify the proper authority of impending absences or tardiness.
6. Unexcused or excessive absenteeism or tardiness.

**Note:** Agencies may also develop an attendance policy to clarify Work Rule #6.

Absences that are considered no call/no shows, while subject to discipline, may result in job abandonment. Refer to *Wisconsin Handbook* Chapter 408 – Job Abandonment for additional information.

7. Misuse or abuse of leave benefits.

8. Failure to observe time limits for lunch or break periods.
9. Stealing, unauthorized use, neglect or destruction of government-owned or leased property, materials, equipment or supplies. Includes theft or intentional destruction of personal possessions of staff or others on government-owned or leased property.
10. Unauthorized use, abuse, or misuse of state or private property, materials, facilities and equipment including but not limited to copy machines, computers, mail services, telephone system, fax machine or other electronic media.
11. Unauthorized audio and video recording and photography on state property or while conducting state business.
12. Unauthorized access, disclosure, destruction or use of information or records that could be reasonably considered confidential.
13. Threatening or attempting to inflict, or inflicting bodily harm to or mental anguish to another person.
14. Intimidating, interfering with, harassing, demeaning, treating discourteously, or bullying; or using profane or abusive language in dealing with others.
15. Possession of a controlled substance or analogue without a prescription while on duty; manifesting signs of having consumed alcohol, or illegal drugs; or reporting to work or working in an impaired condition so as to be unsafe to the employee, others, or physical property.
16. Engaging in unauthorized activities while on duty, including but not limited to gambling, operating a personal business, soliciting, playing games, horseplay or disorderly conduct or other disruptive or unsafe behavior.
17. Making false, inaccurate or malicious statements about another person or the employer.
18. Unauthorized possession, misuse or mishandling of weapons, ammunition or explosives.
19. Entering or permitting others to enter restricted areas without authorization, including unauthorized entry outside assigned work hours or unauthorized entry into restricted areas.
20. Failure to comply with or violating any rule, regulation or order of a professional licensing agency when the license or certification is related to the employee's position.
21. Failure to comply with the provisions of the state code of ethics.
22. Unclean, unkempt, inappropriate dress or grooming which adversely affects proper performance of duties or the image of the employer.
23. Failure to submit to the inspection of items taken from or into work premises.
24. Unauthorized possession, lending, borrowing, destruction or duplicating of keys, access cards, passwords, or other security or access devices.
25. Engaging in any outside activities (including violations or convictions of criminal or other laws) which may impair the employee's independence of judgment or impair the employee's ability to perform his/her duties as an employee of the state.

**Sec. 410.040 Administrative Policies and Procedures**

The State of Wisconsin work rules, as provided in section 410.030 of this chapter, do not constitute the entire list of violations which govern the conduct of employees, contractors, paid or unpaid interns, and volunteers. Other rules may be provided by statute, administrative code, and by administrative policies and procedures established by agencies. Additional work rules may be established by agency management to address unique requirements of the agency or as circumstances require. Violations of these rules may also result in appropriate disciplinary action. Specific agency policies and procedures may escalate the level of progression up to and including termination. Such rules and policies require review and approval by the Bureau of Employee Management (BEM) prior to implementation and for any modification.

**Sec. 410.050 Progression Schedule**

If it is determined a work rule violation has occurred, the appointing authority will consider all of the following factors in determining the appropriate level of discipline:

1. Aggravating or mitigating circumstances surrounding the violation;
2. Progression schedule;
3. Specific agency policies and procedures; and
4. Just cause for discipline: Per Section 230.34 (1)(a), Wis. Stats., "...It is just cause to remove, suspend without pay, discharge, reduce the base pay of or demote an employee for work performance or personal conduct that is inadequate, unsuitable or inferior, as determined by the appointing authority, but only after imposing progressive discipline that complies with the administrator's standards under s. 230.04 (13m).

The schedule of progressive discipline below will be followed unless the facts of the specific situation warrant a different level of discipline. The department may accelerate the level of discipline, but may **not** repeat a level or issue a lower level of discipline.

The progression schedule outlined below applies to all disciplinary actions.

| <u>Work Rule Violations</u> | <u>Corrective Disciplinary Action</u> |
|-----------------------------|---------------------------------------|
| First Violation             | 1-day suspension without pay          |
| Second Violation            | 3-day suspension without pay          |
| Third Violation             | 5-day suspension without pay          |
| Fourth Violation            | Termination                           |

There will be no letters in lieu of suspension issued with the exception of employees who are categorized as exempt employees under the federal and state overtime laws and regulations. For exempt staff with **attendance violations only**, the first and second level of discipline (1-day suspension without pay and 3-day suspension without pay) will be a written reprimand in lieu of a 1-day suspension without pay and a written reprimand in lieu of a 3-day suspension without pay, respectively. Written reprimands in lieu of a period of suspension will have the same weight and effect for progressive discipline purposes as if the employee had served the comparable period of suspension without pay.

### **Sec. 410.060 Cumulative Disciplinary Actions**

The effective date of the discipline is the date of the letter. Disciplinary actions are cumulative from the effective date of the first violation until the employee is free from any further discipline for 12 months. If an employee is not disciplined for 12 months after the effective date of the last discipline, the employee's level of discipline will repeat rather than moving to the next higher level of progression unless the circumstances of the infraction warrant an acceleration of the level of discipline. For each additional consecutive 12 months the employee remains discipline free, the level of discipline is reduced by one level unless the circumstances of the infraction warrant an acceleration of the level of discipline.

The following examples demonstrate the application of these provisions: An employee receives a 3-day suspension through progression, effective March 5, 2016. Subsequently, the employee is disciplined. If the effective date of the discipline occurs on each of the following, the resulting discipline is as noted:

- February 1, 2017: The employee will receive a 5-day suspension following progression. The progression continues because the employee was not discipline free for 12 months from the effective date of the 3-day suspension (March 5, 2016).
- April 1, 2017: The employee will receive a 3-day suspension following progression. In this example, the employee has been discipline free for one year from March 5, 2016 so the progression is repeated and does not move up a level.
- April 1, 2018: The employee will receive a 1-day suspension following progression. The employee in this example has been discipline free for two years resulting in the level of progression dropping back two levels.

### **Sec. 410.070 Disciplinary Action Documents Request**

After a disciplinary action has been imposed the employee may request in writing, and the agency will provide (within 5 days from the date of the request) documents which management used in determining the disciplinary action.

### **Sec. 410.080 Coordination and Review of Disciplinary Actions**

The Human Resources Director must review and approve any request for employee discipline including an employee on permissive, promotional or original probation. The Human Resources Director may select a designee provided the designee serves as the Deputy Human Resources Director or as the primary human resources professional assigned to employment relations matters for the agency.

### **Sec. 410.090 Probationary Employees**

Probationary employee without restoration rights: After a structured fact finding is conducted and it is found that there are work rule violations for misconduct, the employee's probationary period and employment will be terminated. A structured fact finding must include interviews of all witnesses and a review of all evidence.

Probationary employee with restoration rights: After a formal investigation and pre-disciplinary hearing is conducted and it is found that there are work rule violations for misconduct the employee will be disciplined or the employee's probation will be terminated and the employee will be restored to his or her previous position. Termination of employment may occur if misconduct is egregious or if the violation is one of the nine acts of misconduct identified in s. 230.34 (1)(a), Wis. Stats.

**Sec. 410.100 Removal of Disciplinary Letters from Personnel Files (P-Files)**

Pursuant to s. 230.06(4), Wis. Stats., letters of discipline shall be filed in the employee's personnel file and may not be removed unless ordered by a court or by the appointing authority, administrator or commission during the grievance process under s. 230.445, Wis. Stats. pursuant to a settlement agreement, or by other legal action.

Progressive discipline will transfer with an employee when the employee transfers, promotes, demotes or otherwise moves to subsequent positions, regardless of agency.

**Sec. 410.110 Letters of Expectation**

Management may utilize "Letters of Expectation" for violation of work rules or work performance issues when the behavior of the employee is not severe enough to warrant following the progressive discipline schedule as outlined in this chapter.

Letters of Expectation are not considered discipline and will not impact an employee's cumulative disciplinary record.

The Human Resources Director or their designee must review and approve any request to issue a Letter of Expectation. Letters of Expectation may be issued to employees who are serving a probationary period.

Letters of Expectation shall be filed in the employee's personnel file. Letters of Expectation will transfer with an employee when the employee transfers, promotes, demotes or otherwise moves to subsequent positions, regardless of agency.

**Sec. 410.120 Administrative Information**

This chapter was issued in July 2016. This chapter was updated in August 2016 to add sec. 410.080 – Disciplinary Action Documents and to modify "Letters of Instruction" to "Letters of Expectation."

This chapter was updated in September 2018 to move information on job abandonment to the newly created Chapter 408 and to clarify discipline for probationary employees. Additionally, the Bureau of Compensation and Employment Relations has formally been reorganized into two separate bureaus, Classification & Compensation and Employee Management and references have been updated.

**SAMPLE LETTER OF EXPECTATION**

DATE:  
TO: [insert name, classification]  
FROM: [insert name, classification]  
SUBJECT: [insert suspension #]  
DELIVERY METHOD: [insert delivery method]

This non-disciplinary letter of expectation is being issued to provide direction on the expectations regarding [performance, attendance, work schedule, etc.]. This letter is not considered discipline and will not impact your cumulative disciplinary record but will be retained in your personnel file.

This letter is being issued due to [brief description of the issue in no more than a few sentences]. Accordingly, we are affirming the following expectations.

- Bulleted list of expectations.

Failure to meet these expectations may result in discipline, up to and including termination from your position.

**EAP Information:** I also want to make you aware of the Employee Assistance Program which serves as a free, confidential referral service for obtaining services that support your well-being and resilience in work and life. Information about the program is available through FEI Workforce Resilience, phone 866-274-4723 website is <https://www.feieap.com>, use SOWI as the username.

Sincerely,

[insert name, title]

cc: Personnel File  
[other]

Attachment #2

**SAMPLE LETTER OF DISCIPLINE**

DATE:  
TO: [insert name, classification]  
FROM: [insert name, classification]  
SUBJECT: [insert suspension #]  
DELIVERY METHOD: [insert delivery method]

This letter is your official notice of a [insert #] unpaid suspension for violating State of Wisconsin work rules and policies [if applicable]. This suspension will be served starting [insert date/s]. You are not to perform any of your job duties while suspended.

This discipline is being imposed because of your misconduct, which violated the following State of Wisconsin Work Rules and Department Policies:

- [List specific work rules violated. see WHRHC 410]
- [List specific Department Policies violated]
- [List 230.04(13m) serious acts of misconduct violations if applicable]

[Brief summary of misconduct]

This behavior is unacceptable and will not be tolerated. In the future, you are expected to **(Describe future expectations)**. Future violation of this work rule or other work rules may lead to further disciplinary action up to and including discharge.

[list employee previous discipline, LOE, etc. that are applicable to the issued discipline]

[EAP Information] I also want to make you aware of the Employee Assistance Program which serves as a free, confidential referral service for obtaining services that support your well-being and resilience in work and life. Information about the program is available through FEI Workforce Resilience, phone 866-274-4723 website is <https://www.feieap.com>, use SOWI as the username.

[Grievance filing information] If you believe that this action is not based on just cause, you may appeal it through the grievance procedure set forth in Wis. Stat. s. 230.445 and the Wisconsin Human Resources Handbook Chapter 430 Employee Grievance Procedure, [if applicable, insert agency grievance policy information]. Grievances must be submitted using the DPM Adverse Employment Action Grievance form (DOA-15802) available on the Division of Personnel Management website at [https://dpm.wi.gov/Pages/How\\_Do\\_I/FileAGrievance.aspx](https://dpm.wi.gov/Pages/How_Do_I/FileAGrievance.aspx) [if applicable, insert agency link]. The grievance must be received by [insert agency protocol (i.e. where to file)] no later than 14 days after the employee becomes aware of, or should have become aware of, the decision that is the subject of the complaint.”

Sincerely,

[insert name/title]

cc: Personnel File  
Payroll



Attachment #3

**SAMPLE TERMINATION LETTER**

DATE:  
TO: [insert name, classification]  
FROM: [insert name, classification]  
SUBJECT: [insert suspension #]  
DELIVERY METHOD: [insert delivery method]

This letter is official notice of your termination for violating State of Wisconsin work rules and policies [if applicable]. This termination is effective immediately.

This termination is being imposed because of your misconduct, which violated the following State of Wisconsin Work Rules and Department Policies:

- [List specific work rules violated. see WRRHC 410]
- [List specific Department Policies violated]
- [List 230.04(13m) serious acts of misconduct violations if applicable]

[Brief summary of misconduct]. In most cases this should not exceed a paragraph.

This behavior is unacceptable and will not be tolerated.

[List employee previous discipline, LOE, etc. that are applicable to the issued discipline.]

[Sick leave information:] Ss. ER 18.03(5), Wis. Adm. Code, states, "Termination from the service for misconduct or delinquency shall cancel all unused accumulated sick leave." The phrase "shall cancel" means that any sick leave that an employee had accumulated before a termination for misconduct or delinquency **cannot** be restored upon subsequent employment or converted for paying health insurance premiums.

[EAP Information] I also want to make you aware of the Employee Assistance Program which provides free, confidential referrals for obtaining services that support your well-being and resilience in work and life. Information about the program is available through FEI Workforce Resilience, phone 866-274-4723 website is <https://www.feieap.com>, use SOWI as the username. The Employee Assistance Program is available to you for 12 months following employment separation.

[Grievance filing information] If you believe that this action is not based on just cause, you may appeal it through the grievance procedure set forth in Wis. Stat. s. 230.445 and the Wisconsin Human Resources Handbook Chapter 430 Employee Grievance Procedure, [if applicable, insert agency grievance policy information]. Grievances must be submitted using the DPM Adverse Employment Action Grievance form (DOA-15802) available on the Division of Personnel Management website at [https://dpm.wi.gov/Pages/How\\_Do\\_I/FileAGrievance.aspx](https://dpm.wi.gov/Pages/How_Do_I/FileAGrievance.aspx) [if applicable, insert agency link]. The grievance must be received by [insert agency protocol (i.e. where to file)] no later than 14 days after the employee becomes aware of, or should have become aware of, the decision that is the subject of the complaint."

[Public records information] - As required by law, anything meeting the definition of "public record" in s. 16.61, Wis. Stats. is property of your employing agency. Unless authorized by an applicable Records Disposition Authorization (RDA), you may not destroy public records or take your agency's only copy of a public record. If you wish to take duplicates of public records with you upon your departure, you must obtain prior approval from your supervisor.

Sincerely,

[insert name/title]  
cc: Personnel File  
Payroll

Attachment #4

**SAMPLE TERMINATION LETTER- PROBATIONARY EMPLOYEE [Misconduct or Performance]**

DATE:  
TO: [insert name, classification]  
FROM: [insert name, classification]  
SUBJECT: [insert suspension #]  
DELIVERY METHOD: [insert delivery method]

Dear [insert name]:

This letter is to inform you that the [insert division/agency/office/board/etc.] is terminating your probationary employment as a [insert classification], effective as of the date of this letter. The reason for this termination is that your job performance did not meet the expectations for your position as a [insert classification].

This action is being taken as a result of your (**Example:** excessive absenteeism and insubordinate behavior – specifically, your failure to adhere to agency work rules regarding notification when unable to appear for work. violation of the following State of Wisconsin Work Rules and agency policies:

- Work Rules #: “.”
- Work Rules #: “.”
- agency policies

Note: For performance terminations there will not be a cited work rule.

Specifically you....

**OR** You were advised of deficiencies during performance reviews and evaluations of your work. Despite extensive training, coaching and feedback, you have not demonstrated the necessary proficiencies to justify the retention of your employment. An intent to terminate meeting was held with you on [insert date]. During this meeting, you did not provide any significant mitigation for management to take into consideration.

Pursuant to [ER-MRS 13.08 (1) for original probations], [ER-MRS 14.03 (1) for promotional probations where restoration is required], [ER-MRS 15.055 for permissive probations where restoration is required] an appointing authority may dismiss a probationary employee without the right to appeal during the employee’s probationary period. Dismissal shall not be made on a discriminatory basis as defined under ss. 111.31 to 111.395. Wis. Stats.

Please make arrangements with your former supervisor [insert name] to return all department property.

**[Public records information]** As required by law, anything meeting the definition of “public record” in s. 16.61, Wis. Stats. is property of your employing agency. Unless authorized by an applicable Records Disposition Authorization (RDA), you may not destroy public records or take your agency’s only copy of a public record. If you wish to take duplicates of public records with you upon your departure, you must obtain prior approval from your supervisor.

**[EAP Information]** I also want to make you aware of the Employee Assistance Program which serves as a free, confidential referral service for obtaining services that support your well-being and resilience in work and life. Information about the program is available through FEI Workforce Resilience, phone 866-274-4723 website is <https://www.feieap.com>, use SOWI as the username.

Sincerely,

[insert name/title]  
cc: Personnel File  
Payroll