

**TOWN OF
KIRKLAND LAKE**

POLICY

SECTION: MUNICIPAL EMPLOYEE	SUBJECT: CODE OF DISCIPLINE, CORPORATE	Pg. 1 of 10
		DATE: January 12, 2016

1. Introduction

All employees of the Corporation of the Town of Kirkland Lake share a common goal of providing the best possible service both within the Corporation and to the public, and to strive to reach the Corporation's goals and objectives.

In order to reach these goals, all line management shall strive through personal leadership and motivation, to maintain an atmosphere of trust and open communication with employees. They shall operate from the premise that problems which may arise from time to time are best resolved through open dialogue between the employee and the supervisor.

It is also recognized that unions can, and should, play a vital role in attempting to resolve problems at the earliest stage possible. To this end, management is committed to meet and discuss problems with the appropriate union representative of bargaining unit employees.

In the pursuit of achieving the Corporation's goals and objectives, it may become necessary for line management to contemplate some form of disciplinary action if circumstances warrant. If this situation should arise, it is the Corporation's position and philosophy that disciplinary action is designed to be corrective rather than punitive in nature. The effect of this would be to encourage employees to change unacceptable behavior, to deter similar acts of behavior and to motivate the employee towards achieving the overall goals of the Corporation.

For the most part, an employee shall be given the opportunity to improve unacceptable work performance or conduct insofar as this is reasonable and practical. However, there may be occasions where, due to the frequency or seriousness of an employee's misconduct, the most appropriate disciplinary measure is termination of employment by discharge. While it is hoped that these situations will be most rare, it is recognized that this action would be required in the event that the employer/employee relationship is no longer viable.

In all actions involving disciplinary action, it is recognized that the employee has the right to access the grievance procedure as outlined in the respective collective agreement or his/her supervisor in the case of non-union employees.

2. Application of Discipline Policy

Due to the variety of situations that may arise in an organization as diversified as the Corporation of the Town of Kirkland Lake, this document is intended to be a guideline only regarding the handling of disciplinary matters. However, it is important to recognize that, to the extent possible, a consistent approach to discipline is both appropriate and desirable. To this end, the Administration Department is available to discuss the appropriateness of contemplated disciplinary action.

3. Prerequisites for Discipline

An employee cannot, in most instances, be disciplined for, among other items, breach of Town of Kirkland Lake policy, violation of rules and/or regulations, or failure to perform satisfactorily unless it can be demonstrated that a reasonable employee should have been aware of what was expected.

Therefore, it is important to note that employees should be informed about the rules, regulations and policies governing all Town employees and specific information related to what is expected of the employee in the work environment. If an employee's behaviour is not acceptable, it must be pointed out to the employee what is expected of them and what the consequences of such behaviour would be. Unless the employment relationship is being terminated: such counseling should result in the behaviour being corrected.

A distinction should be drawn between disciplinary and non-disciplinary action. In instances where an employee is incapable of performing or conducting themselves satisfactorily, then the employee may be removed from that employment. Such removal, however, is non-disciplinary.

4. Disciplinary Action

If an employee's actions are unacceptable and informal discussions have failed to correct the situation, it may be appropriate for the supervisor to consider some type of disciplinary action. It is extremely important that accurate records be kept by the supervisor with respect to all efforts to correct the undesired behaviour.

Prior to deciding whether or not disciplinary action is appropriate, the supervisor should investigate the situation in as fair and objective a manner as possible. Assistance in this matter is available from the Department Heads and Town Administrator. Supervisors are also reminded that employees can, and indeed should avail themselves of union representation when appropriate. To this end, the employee must be advised that they can have a union representative present when disciplinary action is being discussed. Indeed: this element is imperative as a case can, and in all probability will, be lost if the employee was not advised that they could have a union representative with them.

5. Types of Disciplinary Action

Generally speaking, discipline falls into one of the following categories:

- a) Written Reprimand
- b) Suspension
- c) Discharge

Oral Warnings are generally not regarded as discipline unless they were intended to form part of the employee's record.

In imposing disciplinary action, it is Important to note that generally such sanctions will be progressive. However, it may happen that an offence is so flagrant or serious that the only appropriate penalty is discharge without having imposed any lesser penalty.

I. Oral Warnings

If informal discussions with the employee do not resolve the problem of a minor nature, the employee should be given an oral warning. This would include a statement of what the employee did wrong, how It could be corrected and the possible consequences if corrective action is not forthcoming from the employee. In most circumstances this action will be sufficient to correct any inappropriate behaviour.

II. Written Reprimand

The written reprimand is a formal warning that an employee's conduct is unsatisfactory. It would normally be utilized for minor infractions or first occurrences. Written reprimands shall be addressed directly to the employee and clearly specify the infraction, the corrective measures required and the possible consequences if no improvement is forthcoming. The employee should be requested to acknowledge receipt by signing and dating the written reprimand. A copy shall be placed on the employee's Personal File and another copy shall be forwarded to the Town Administrator.

A written reprimand will normally be initiated and signed by the supervisor and handed directly to the employee. Where this is not possible, the written reprimand shall be sent by registered mail to the employee's last known home address.

III. Suspension

While it is anticipated that the number of suspensions for employees of the Town of Kirkland Lake would be minimal, there may be occasions when such action is necessary. Such could occur when a written reprimand fails to resolve a problem. It could also be imposed where an incident is of such a nature that a written reprimand would be inappropriate, for example, disorderly conduct, theft, fighting, or falsifying documents to name a few.

A suspension is the temporary removal of an employee from the place of work usually for a specified period of time, without pay. It is done in order to impose a definitive disciplinary measure for an act of misconduct and is designed to be corrective in nature. On very rare occasions, it may be necessary to suspend an employee indefinitely pending an investigation. This would occur, for example, if the employee committed a serious offence and the continued presence of this employee represents a threat to other employees. The employee is suspended while the investigation is going on but such investigation should be as expeditious as possible.

Suspensions must be immediately reported to both the Department Head and to the Town Administrator.

I V Discharge

In the event that it is not possible to continue the Employer/employee relationship, it may be appropriate for the Corporation to consider discharging an employee. Discharge may be an appropriate sanction if an infraction is of a major nature; or it may be appropriate if an infraction is the latest in a series of offences which have been dealt with through progressive stages of the disciplinary process. These offences may or may not be related and may by themselves, not warrant discharge. However, when examined as a whole, the employee's record may indicate that the continuation of the employment relationship is not appropriate. Such events are known as the culminating incidents or the straw that broke the camel's back.

Discharge is the most serious sanction which the Employer can impose. The decision to proceed should be taken only after very careful consideration of all the available information and only when it is determined that the employee is no longer suitable for continued employment. It should be noted that only a Department Head can discharge an employee. This can only occur after a full discussion has taken place with the Town Administrator and at the discretion of the Town Administrator, subject to legal advice.

A letter of discharge should set out the facts and should include the reasons for the decision. It should be sent directly to the employee by registered mail and signed by the employee to acknowledge receipt. A copy shall be forwarded to the Town Administrator.

V. Other Penalties

Other penalties such as demotion or transfer may be applied. When such penalties are contemplated, the Town Administrator shall be consulted.

6. Factors Affecting the Degree of Penalty

In all cases where disciplinary action is contemplated, it is important to ascertain that the corrective measure to be applied is consistent with the particular circumstances surrounding the infraction.

(a) Seriousness of The Infraction

An Infraction is composed of two parts. The first part relates to the actual offence. The second part relates to the effect of that offence on the operational unit.

(b) Effect or Potential Effect of Infraction

If the effect or potential effect on the operational unit is great, then the appropriate penalty will lean towards more severe discipline. The range of penalties outlined on pages 8, 9 & 10 is intended to apply in normal circumstances. In an abnormal situation, the penalty could far exceed the maximum penalty indicated. For example, consider the situation of a physical fight. In the normal course of events, it would generally be appropriate to apply a suspension. However, if that fight occurred in a control room filled with sensitive instruments and control equipment, and damage occurred to the equipment resulting in the shutdown of operations, the employees would be disciplined for fighting, for damaging equipment and for being responsible for the shutdown. The appropriate discipline might be discharge.

(c) Uniformity of Application

This factor is of prime importance and is one of the major reasons for the existence of this policy. It is important that discipline for similar offences in similar circumstances be applied consistently for two reasons:

- i. From a staff relations perspective: employee reaction will be better with the knowledge that the discipline policy is applied fairly and consistently to all employees.
- ii. In the legal sense, arbitrators tend to look with disfavor on Employers with an inconsistent approach to this matter.

The appropriateness of the penalty from within the range suggested is determined by past practices of the Town of Kirkland Lake and current labour arbitration jurisprudence. It is necessary to investigate and find out what penalty has been applied in the past in similar circumstances. Therefore, the Town Administrator shall be consulted in this regard.

(d) Prior Warnings

Repeated occurrences of the same offence, when documentation exists that prior warnings did occur, increase the degree of penalty that is appropriate. Generally, warnings are required before any discipline may be applied.

Although in the normal course of events a warning is required, there may be instances where misconduct or insubordination is so serious that suspension may be warranted.

(e) Momentary Aberration or Premeditated Act

The discipline which would be imposed upon an employee could be affected by whether or not the action arose as a result of an impulsive act or whether it was premeditated. Generally, an impulsive act would tend to be subject to a lesser degree of penalty than a premeditated act.

(f) Provocation

The consideration as to whether or not an employee was provoked into action enters into the determination of the degree of penalty.

Provocation does not absolve the employee of responsibility for their actions, but the existence of provocation might be a mitigating factor in considering discipline.

(g) Misunderstanding

In such areas such as rules, regulations and performance standards the onus is on the Employer to make sure that the employee is aware of, and understands what is expected. Lack of knowledge and/or understanding of what is expected in such situations generally does not give rise to discipline.

Certain areas may exist where misunderstanding on the part of the employee does warrant disciplinary action. However, misunderstanding can affect the degree of penalty imposed. For example, consider the case where an employee misinterprets the motives of a supervisor in assigning different duties. As a result of this misinterpretation, the employee acts in a manner inconsistent with the responsibilities given to carry out such duties. In such an instance, the employee may be subject to discipline but the degree of discipline would be less than in a similar situation where no such misinterpretation exists.

When contemplating disciplinary action, consideration shall be given to employees who have identified substance abuse or other physical, personal or domestic problems. While such problems are not, by themselves, an excuse for misconduct, every effort should be made to encourage and assist an employee to seek and obtain professional assistance. If the employee's performance continues to deteriorate, it may be necessary to resort to disciplinary measures.

(h) Seniority

An employee's length of service will have a bearing on the degree of penalty which may be applied. An employee with a long and unblemished service record will, in all likelihood, be treated more leniently than a recent hire for the same offence.

(i) Past Performance

Another factor in the determination of the applicable penalty is the employee's previous record.

(j) General Comments

It has been stated that uniformity is an important factor in applying discipline.

Mitigating circumstances may well require variations in supervisor's response to apparently similar offences, but whatever the response, it must be made evident to all employees that disciplinary actions depend upon the nature of the offence and the attendant circumstances.

When mitigating circumstances exist which affect the degree of penalty to be applied, such circumstances should be fully documented in order not to set a precedent and prejudice a penalty which may be applied at a later date for the same type of offence but where no mitigating circumstances exist.

Disciplinary action should not be delayed by an unwarranted length of time. Too great a time gap between the breach of discipline and supervisor's response tends to disassociate the offence from the corrective action.

7. Disciplinary Guidelines

The following is intended to be an overall guideline for the Corporation. The offences have been grouped in to one of four categories ranging from the least serious to the most severe. However, circumstances may be such that an offence might be a 'group 1' in one branch of a Department and a 'group 2' or even a 'group 3' elsewhere or vice versa. It is intended to assist supervisors in deciding the severity of the offence as well as to indicate to employees how the Corporation would generally look upon various types of behaviour. The offences shown on the guidelines are not all inclusive and are intended to be used as a guide.

VERBAL WARNING	WRITTEN REPRIMAND	SUSPENSION	DISCHARGE
Group 1			
<hr/>			
Group 2			
<hr/>			
Group 3			
<hr/>			
Group 4			
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Length of Suspension (without pay)		0	10
		days	

Group 1 Types of Offences:

Minor in Nature:

- late without a reasonable explanation
- departs early without reasonable explanation
- interferes with the work of others
- wastes time while on duty

Group 2 Types of Offences:

More Serious in Nature:

- is discourteous or rude to members of the public or employees of other Branches or Departments
- is insubordinate
- improperly uses the services of another employee during working hours or uses the property of the Corporation at any time for other than officially approved activities
- disregards established safety practices
- fails to promptly report a work accident
- as a person in authority, condones or fails to take action when an employee has committed an infraction
- tampers with another employee's locker, tool box, etc.
- misuse of Town computers or information systems by violating computer policy

Group 3 Types of Offences:

Very Serious in Nature:

- fraudulently obtains documentation required for approval of leave is absent without permission
- tampers with attendance registers or time clocks deliberately misrepresents attendance
- acts in a manner likely to bring discredit to the Corporation while on duty
- makes a false statement in relation to any matter affecting appointment or employment
- makes or signs a false statement in relation to the performance of duties
- sleeps on duty
- falsifies expense or any other claim forms
- reports for duty impaired or is unfit for duty due to the influence of alcohol or illegal drugs
- consumes alcoholic beverages, legal drugs or illegal drugs which cause impairment while on duty, on or off of Town of Kirkland Lake premises.
 - o this includes paid and unpaid breaks for employees who are required by their jobs to operate vehicles and/or equipment, or work in safety sensitive areas (such as water distribution) while on duty
 - o for all other employees 'while on duty' pertains to only paid breaks

- fails to notify immediate manager of use of prescribed drugs causing impaired alertness and/or disorientation. Each employee is responsible for :
 - o determining any potential adverse effects of using prescribed or over-the-counter medication with his/her doctor or pharmacist
 - o Heading warning labels on medications re: impairment
- fails to account for, improperly withholds, misappropriates or misapplies any public money or property
- breach of confidentiality by an employee who is entrusted with or has access to employee personal information or any other information deemed by the Corporation or by legislation to be confidential in nature
- sustained, intemperate or unbalanced public criticism of either Corporate policy or procedures or the character or integrity of those responsible for the development or administration of policy or procedures

Group 4 Types of Offences:

Extremely Severe in Nature:

- assaults a supervisor or members of the public
- acts in contravention of the Corporation's policies on Conflict of Interest and Personal Use of Town Property
- commits an indictable offence or an offence punishable under any statute of Canada or any Province or territory which affects ability to perform the duties of the position
- steals or participates in the theft of public property
- willfully causes waste, damage or destruction of any public property
- operates a Town vehicle while employee's license is suspended
- sexual harassment of subordinates, supervisors or peers.

8. Documenting Performance/Behavioural Problems

Throughout the discussion of the various types of disciplinary actions available to supervisors, the importance of making and keeping records has been emphasized. It is part of the supervisor's responsibility and duty to keep records of an employee's performance and/or conduct. Further, copies of all disciplinary documentation shall be forwarded to the Town Administrator.

A record of the disciplinary action must be placed on the Personal File of the employee concerned. However, nothing of a disciplinary nature should be placed on the employee file without the knowledge of the employee. If an employee declines to acknowledge the content of the document to be placed on their file, a notation should be made to this effect prior to filing the document.

Supervisors should consider the following in preparing and maintaining records and/or supervisory reports:

- a) The records of an employee's performance/behaviour must be as complete and detailed as possible.
- b) The record must be dated and signed by the supervisor, and where appropriate, by the employee concerned.
- c) The record must state the action taken by the supervisor to remedy performance/behavioural problems.
- d) Both performance/behavioural problems and the effect or potential effect of these problems must be recorded.
- e) Those factors which were considered as affecting the degree of penalty for performance/behavioural problems should be specified.
- f) The record must be objective.
- g) All discipline records forwarded to the employee's Personal File shall be clearly dated and identified in the subject line as follows:
 1. "Discipline"-suspension (or whatever it actually is)
 2. Last three digits of S.I.N./surname

9. One Penalty for One Offence

An employee may not be disciplined more than once for the same incident.

10. Consultation with the Town Administrator

Further information or clarification concerning disciplinary action is available by contacting the Town Administrator at the Town Hall.

Approved by Council Resolution

January 12, 2016