

TABLE OF CONTENTS

2-19 C

INTRODUCTION	8
SECTION 1	
Overarching Principles of Evaluations	8
A. Overview of the Evaluation Process.....	8
1. The Importance of Performance Evaluations	9
2. Embracing Performance Management	10
3. Performance Evaluations vs. Disciplinary Actions	11
B. The Ongoing Evaluation System: Gathering the Facts.....	12
1. Timeliness	12
2. Step One: “Daily” Communication.....	13
3. Step Two: Scheduled Meetings.....	14
C. Constructive Feedback	14
1. Be Concrete and Direct	14
2. Focus on the Conduct, Not the Person	15
3. Link the Conduct to Its Impact.....	16
4. Focus on What You Know, Not How You Know it.....	16
5. Be Accurate and Stay Focused on the Issue at Hand	17
6. Describe What is Expected and a Strategy to Get There, Not Just What is Wrong	17
7. Methodology	18
8. Checklist for Documenting Unsatisfactory Performance	18
D. How to Prepare an Effective Written Evaluation	19
1. Identify Objective Criteria	19
2. Know the Employee’s Job Requirements.....	20
3. Document the Facts.....	20
E. The Face-to-Face Evaluation Meeting	25
1. Prepare for the Evaluation Meeting.....	25
2. Prepare the Employee for the Performance Meeting.....	25
3. The Art of Praise and Criticism.....	26
4. Anger.....	28
5. Personal Crisis.....	28
6. Communication Techniques.....	29
7. Know Your Audience	30
8. Set Goals and Develop an Action Plan	30
9. Set Measurable Goals.....	31
10. Close the Meeting	32
SECTION 2	
Evaluation of Academic Employees.....	32
SECTION 3	
Evaluation of Administrators.....	34
SECTION 4	
Evaluation of Classified Employees in Districts Without a Merit System	34
SECTION 5	
Evaluation of Classified Employees Under the Merit System.....	35

SECTION 6

General Principles Governing Discipline 35

- A. Frequent Disciplinary Problems 36
 - 1. Excessive Absences/Abuse of Leave 36
 - 2. Tardiness 36
 - 3. Incompetence 37
 - 4. Insubordination 37
 - 5. Falsification of Documents 37
 - 6. Employee Conduct Outside Working Hours 37
 - 7. Fighting or Threats of Violence 38
- B. Checklist of Sources of Disciplinary Grounds 38
- C. “Good Cause” Checklist..... 39
- D. Investigate! - Factual Basis for Discipline Must Be Verifiable 40
 - 1. Preliminary Issues to Consider Prior to Starting the Investigation..... 40
 - 2. Possible Interim Steps 41
 - 3. What if the Subject Matter of the Investigation Relates to Criminal as Well as Administrative Misconduct? 42
 - 4. Method of Selecting the Investigator 42
 - 5. When to Use an Outside Investigator..... 43
 - 6. Credibility Determinations 43
 - 7. The Investigator’s Report: Findings and Conclusions 45
- E. Checklist for Analyzing Discipline Problems 46
- F. Time of Disciplinary Action..... 46
- G. Progressive Discipline 47
 - 1. Counseling 47
 - 2. Verbal Reprimand 47
 - 3. Written Reprimand..... 48
 - 4. Suspension 49
 - 5. Demotion..... 49
 - 6. Discharge 49
- H. Progressive Discipline Checklist..... 49

SECTION 7

Academic Employees – Non-Renewal and Discipline 51

- A. Non-Renewal of Contract Faculty Members 51
 - 1. Provide Notice by March 15 of Preceding Academic Year 51
 - 2. Consequences of Failure to Provide Proper Notice..... 51
 - 3. Appeal of Release 52
- B. Discipline of Academic Employees for Cause 52
 - 1. Cause for Discipline Under Education Code Section 87732..... 53
 - 2. Grounds for Immediate Suspension Pending Termination..... 56
 - 3. Procedures in Disciplining Academic Employees for Cause 58
- C. Release of Temporary Faculty Members..... 63

SECTION 8

Discipline of Administrators..... 65

SECTION 9

Discipline of Classified Employees Not Under Merit System..... 65

- A. Cause for Discipline 65
- B. Statutory Grounds for Dismissal 66
 - 1. Sexual Psychopaths 66
 - 2. Government Code Section 1028..... 66
 - 3. Sex Offenses 66

4. Controlled Substance Offenses	67
C. Procedures for Implementing Discipline	67
1. Pre-disciplinary Procedures.....	67
2. Alternatives to Proposed Disciplinary Action	71
D. Remedies for Failure to Provide Pre-Discipline Due Process	72
E. The Liberty Interest (“ <i>Lubey</i> ”) Requirements	73
F. Issuance of Notice of Final Discipline	73
G. Post-Disciplinary Appeal Hearing.....	74
1. Role of Administrator or Supervisor	74
2. Administrator/Supervisor’s Checklist for Hearing Preparation	74
3. Criteria for Success at the Hearing.....	74
H. Judicial Review	76

SECTION 10

Discipline of Classified Employees Under Merit System	76
A. Cause for Discipline	76
B. Suspension, Demotion or Dismissal.....	76
C. Compulsory Leave of Absence – Sex Offenses and Controlled Substance Offenses.....	77
D. Appeal of Suspension, Demotion or Dismissal	77
1. Procedure	77
2. Reinstatement, Compensation and Other Remedies.....	78
E. Probationary Period.....	78

SECTION 11

Legal Considerations	79
A. Placement of Documents in Personnel File	79
B. First Amendment Rights	79
C. Discrimination.....	81
D. Discrimination for Workers’ Compensation Claim or Injury.....	82
E. Retaliation for Engaging in “Protected Activity”	82
1. Federal Law.....	82
2. State Law.....	83
F. Whistleblower Retaliation Claims.....	83
1. The Reporting by Community College Employees of Improper Governmental Activities Act.....	84
2. The Federal False Claims Act	84
3. California False Claims Act	84
4. California Labor Code § 6310.....	85
5. California Labor Code § 1102.5.....	85
G. Accommodation for Disability	86
H. Invasion of Privacy.....	87
1. Off-Duty Conduct	87
2. Drug and Alcohol Testing.....	88

SECTION 12

Judicial Decisions Concerning Employee Discipline	89
A. Whistleblower Cases	89
1. California Labor Code § 1102.5.....	89
2. California False Claims Act	90
B. Controlled Substance Offenses.....	90
C. First Amendment (Employee Speech).....	91
1. Penalties Upheld by Courts	91
2. Penalties Overturned by Courts.....	93
D. Invasion of Privacy/Off-Duty Misconduct	93
E. Last Chance Agreement	94

F. <i>Lubey</i> Interest	95
G. Retaliation	95
1. Under FEHA	95
2. Under Title VII.....	97
H. Sexual Offenses.....	98
APPENDIX A	
Sample Note to Supervisor’s File Which Supervisor Should Notify Employee of and Should Be Given to the Employee and Employee Should Be Allowed Opportunity to Respond in Writing	99
APPENDIX B	
Sample Notice of Paid Administrative Leave Pending Investigation	100
APPENDIX C	
Administrator or Supervisor’s Checklist for Conducting the Disciplinary Counseling Interview	101
APPENDIX D	
Sample Counseling Interview Memorandum	104
APPENDIX E	
Sample Memorandum Confirming Verbal Reprimand.....	106
APPENDIX F	
Sample Written Reprimand	107
APPENDIX G	
Board Policy re: DISCIPLINE– Classified (NON-MERIT)	109
APPENDIX H	
Sample Memo of Notice of Intended Disciplinary Action (NON-MERIT SYSTEM DISTRICT).....	116
APPENDIX I	
Sample Last Chance Agreement.....	120
APPENDIX J	
Checklist for Testifying as a Witness	123
APPENDIX K	
Sample Termination Package – Academic Employee	125
ENDNOTES	142