

CHAPTER 3

PERSONNEL

Table of Contents

Section 3.1	Scope of This Chapter
Section 3.2	State Merit System
3.2.1	Uncovered Employees
3.2.2	Covered Employees
3.2.3	Probationary Employees
3.2.4	Appointment Employment
Section 3.3	Discipline of Covered Employees
3.3.1	Reprimand and Counseling
3.3.2	Suspension
3.3.3	Demotion
3.3.4	Dismissal
3.3.5	Rules for Law Enforcement and Probation Officer Employees
Section 3.4	Appeal from Disciplinary Action
3.4.1	Employee's Disclosure of Information ("Whistleblowing")
Section 3.5	Employee Grievances
Section 3.6	Agency Actions Affecting Employees
3.6.1	Promotions and Promotional Probation
3.6.2	Transfer

3.6.3	Reorganization and Reduction in Force
Section 3.7	Employee Options
3.7.1	Voluntary Resignation and Resignation in Lieu of Dismissal
3.7.2	Voluntary Grade Decrease
3.7.3	Reinstatement and Reemployment
Section 3.8	Leave
3.8.1	Holidays
3.8.2	Annual Leave
3.8.3	Sick Leave
3.8.4	Compensatory Leave and Overtime Pay
3.8.5	Industrial Leave
3.8.6	Leave for Serious Health Condition Under the Family and Medical Leave Act
3.8.7	Other Leave
3.8.8	Medical Leave Without Pay
3.8.9	Leave Without Pay
Section 3.9	Conditions of Employment
3.9.1	Standards of Conduct
3.9.2	Conflict of Interest
3.9.3	Restricted Political Activity
3.9.4	Employment of Relatives
Section 3.10	Inquiries About State Employees

Section 3.11	Equal Employment Opportunity
3.11.1	General Considerations Regarding Discrimination Complaints
3.11.1.1	Procedure upon Receipt of a Notice of Charge of Discrimination
3.11.1.2	Confidentiality
3.11.1.3	Settlement Agreements
3.11.1.4	Unlawful Discrimination
3.11.1.5	Retaliation
3.11.1.6	Interviewing
3.11.1.7	Nondiscriminatory Work Environment
3.11.1.8	Affirmative Action
3.11.2	Race, Color, and National Origin Discrimination
3.11.3	Sex Discrimination
3.11.3.1	Sexual Harassment
3.11.4	Religious Discrimination
3.11.5	Disability and Handicap Discrimination
3.11.6	Age Discrimination
3.11.7	Discrimination Grievances
Section 3.12	Workers' Compensation
3.12.1	Workers' Compensation Defined
3.12.2	Workers Covered by the Workers' Compensation System
3.12.3	Employer Responsibility for Industrial Injuries of Employees
3.12.4	Risk Management's Role

3.12.5	The Attorney General's Role
Form 3.1	Administrative Leave Pending Investigation
Form 3.2	Return from Administrative Leave
Form 3.3	Demotion for Cause—Covered Employee
Form 3.4	Dismissal—Permanent Status State Employee
Form 3.5	Dismissal—Uncovered Employee
Form 3.6	Dismissal—Original Probationary Employee
Form 3.7	Dismissal—Temporary and Seasonal Employees
Form 3.8	End of Assignment—Limited, Temporary, or Seasonal Employees
Form 3.9	Medical Certification Requirement
Form 3.10	Medical—Order for Medical Examination
Form 3.11	Fitness-for-Duty Evaluation
Form 3.12	Memorandum of Concern—Option No. 1
Form 3.13	Memorandum of Concern—Option No. 2
Form 3.14	Notice of Charges Letter
Form 3.15	Notice of Charge(s) of Misconduct—Option No. 2
Form 3.16	Resignation
Form 3.17	Resignation—Acceptance of Verbal Resignation (Covered Employee)
Form 3.18A	Resignation—In Lieu of Dismissal
Form 3.18B	Resignation—In Lieu of Dismissal—Confirmation of Discussion
Form 3.19	Reversion—Failure to Complete Promotional Probation

Form 3.20	Separation Without Prejudice Following Extended Leave—Failure to Return
Form 3.21	Separation Without Prejudice Following Extended Leave—Inability to Return
Form 3.22	Separation Without Prejudice Following Extended Leave—Position Not Available
Form 3.23	Suspension Without Pay—Covered Employee—Forty Hours or Less
Form 3.24	Suspension Without Pay—Forty-one or More Hours
Form 3.25	Voluntary Grade Decrease—Employee Request
Form 3.26	Voluntary Grade Decrease—Management Acceptance
Form 3.27	Reprimand
Form 3.28	Request for Information

CHAPTER 3

PERSONNEL

3.1 Scope of This Chapter. This Chapter reviews state and federal laws concerning personnel matters. As noted in this Chapter, for certain employment issues, it is particularly important that state agencies and other state employers consult with their assigned counsel or the Employment Law Section of the Attorney General's Office. Chapter 15 discusses discrimination law, particularly as it concerns state employers.

3.2 State Merit System. Employees who are in the State Merit System are called "state service employees" or "covered employees." The Department of Administration Personnel Rules, A.A.C. R2-5-101 through -904, apply to these employees. Certain other state employees are governed by other statutes and provisions. For example, the Law Enforcement Officers' Merit System is governed by A.R.S. §§ 41-1830.11 through -1830.15 and A.A.C. R13-5-101 through -804. This Chapter discusses the Department of Administration personnel system as it pertains to both covered and uncovered employees.

3.2.1 Uncovered Employees. Employees who are not in the State Merit System are called "uncovered employees." The Department of Administration Personnel Rules do not apply to uncovered employees. These rules, however, may be used for advisory purposes in personnel matters involving uncovered employees.

Uncovered employees may be disciplined or terminated at any time without a statement of cause and for any reason not prohibited by law. A.G. Opinion I01-011. Accordingly, uncovered employees do not have a protected interest in continued employment or a right to appeal disciplinary actions taken against them. An agency may dismiss an uncovered employee simply by notifying the employee that his or her employment is terminated. See Form 3.5.

Because an uncovered employee has no right to know the reasons for his or her dismissal, an agency should not disclose the reasons for the dismissal to the employee, either orally or in writing. Communicating a reason for the dismissal may result in liability for the agency or may entitle the uncovered employee to a hearing. *Bishop v. Wood*, 426 U.S. 341, 346 (1976); *Bd. of Regents v. Roth*, 408 U.S. 564, 576 (1972); see also *Montoya v. Law Enforcement Merit Sys. Council*, 148 Ariz. 108, 110-11, 713 P.2d 309, 311-12 (App. 1985).

A permanent status state service employee may be granted a "mobility assignment" to an uncovered position or to another state agency for up to thirty-six months. A.A.C. R2-

5-208(D). The employee has the right to return to a position in the original agency in the same pay grade that he or she held before the mobility assignment if the employee possesses the knowledge, skills, and abilities that the position requires. *Id.* An employee who has been granted a mobility assignment may not be deprived of his or her status as a permanent employee without a hearing, even though he or she may be removed from the uncovered position without a hearing or a statement of cause. *Lara v. Cowan*, 848 F. Supp. 1456, 1458-59 (D. Ariz. 1994).

3.2.2 Covered Employees. Covered employees may be demoted, suspended, or dismissed only for cause pursuant to A.R.S. § 41-770 and A.A.C. R2-5-501, -802, and -803. See Sections 3.3 through 3.3.4 for further discussion regarding specific discipline that may be imposed on a covered employee.

3.2.3 Original Probationary Employees. An original probationary period of six months provides an agency with an opportunity to assess an employee's suitability for permanent employment. A.A.C. R2-5-213. State service employees may be terminated at any time during the original probationary period without a statement of cause. Once a state service employee obtains permanent status, however, he or she may be disciplined only for cause. A permanent status employee may be terminated for misconduct or deficient job performance. A.R.S. § 41-770.

An agency may dismiss an employee during the original probationary period, and the probationary employee has no right to appeal that action. A.A.C. R2-5-213(C)(3)(b)(ii), -803(C)(1). As with an uncovered employee, an agency should not disclose to a probationary employee the reasons for his or her dismissal. See Form 3.6.

An agency head may extend the original probationary period for up to six months for employment-related reasons. A.A.C. R2-5-213(C)(2)(a). If the agency head takes no action to extend the probationary period or to terminate the probationary employee during the original probationary period, the employee will be awarded permanent status when he or she completes the probationary period. A.A.C. R2-5-213(C)(3)(a).

For a discussion on promotional probation, see Section 3.6.1.

3.2.4 Appointment Employment. An agency may meet its specific needs by hiring employees other than permanent, full-time personnel. Other types of employment include limited, temporary, provisional, emergency, clerical pool, and student appointments. Employees in these positions probably will not have a protected interest in continued employment or a right to appeal disciplinary actions taken against them. Unless an employee has the right to appeal a dismissal, an agency should not disclose to the employee the reasons for his or her dismissal. See Forms 3.7; 3.8. Consult A.A.C. R2-5-

206(B) and your human resources professional for a more detailed explanation of these types of employment.

3.3 Discipline of Covered Employees. The following discussions cover the most common forms of discipline that apply to covered employees. Discipline may be imposed as a corrective or a punitive measure in response to an employee's misconduct or deficient job performance. See A.R.S. § 41-770. In disciplining employees, the most difficult task is not determining whether to impose discipline, but rather identifying the appropriate type of discipline. While progressive discipline is not legally mandated, progressive sanctions—from warnings to more severe penalties—are usually recommended. Agencies should contact their human resources representative for assistance when contemplating disciplinary action.

3.3.1 Reprimand and Counseling. Reprimand and counseling are the least severe forms of discipline. They provide ways to alert an employee to problems in his or her job performance and to urge corrective action before the problems become more serious. Reprimands may be oral or written. Oral reprimands allow a supervisor to express dissatisfaction with an employee's job performance without leaving a permanent record. A written reprimand documents the supervisor's dissatisfaction with the employee's job performance, and it must be placed in the employee's personnel file. See A.A.C. R2-5-105(B)(5)(a); Form 3.27. Although an oral or a written reprimand is not a prerequisite to imposing more severe disciplinary action, it may avert the need for more severe disciplinary action. A supervisor may also urge corrective action by counseling the employee and following up with a memorandum of concern. See Forms 3.12; 3.13. Although an employee may not appeal a reprimand or a memorandum of concern to the Arizona State Personnel Board, he or she may submit a grievance in accordance with the procedures in A.A.C. R2-5-701 and -702.

3.3.2 Suspension. When a reprimand is not adequate and dismissal is not warranted, an agency head may discipline an employee for misconduct or deficient job performance by relieving the employee of his or her duties without pay for up to thirty work days during any twelve-month period. A.A.C. R2-5-801(A)-(C). If the misconduct involves improper political activity under A.R.S. § 41-772, however, the agency head must either suspend the employee for not less than thirty work days or dismiss the employee. A.R.S. § 41-772(H).

If an employee is suspended without pay for more than forty hours, the employee has the right to appeal the suspension to the Personnel Board. See A.R.S. § 41-782. The suspension letter should reflect that right. See Forms 3.23 and 3.24 for examples of suspension letters. If the suspension is for forty hours or less, the employee may submit a grievance. See A.A.C. R2-5-701(B)(2). In issuing suspensions in increments other than full work weeks (such as an eight-hour suspension) to employees who are salaried and

exempt under the Fair Labor Standards Act, 29 U.S.C. §§ 201 to 219, care must be taken to ensure that the suspension complies with the FLSA. In this situation, it is advisable to contact your employment attorney.

3.3.3 Demotion. An agency head may demote (move to a position in another class with a lower pay grade) a permanent status employee for cause. A.A.C. R2-5-802, -101(19); see *also* Form 3.3. A permanent status employee may appeal a demotion to the Personnel Board. A.A.C. R2-5-802(B). An employee must be given notice of a demotion prior to the demotion's effective date. A.A.C. R2-5-802(B). (For the effect of demotion on pay, see A.A.C. R2-5-303(C).) If the employee requests or accepts demotion, the demotion is voluntary and the employee is not entitled to submit a grievance or to appeal the action. A.A.C. R2-5-208(E); see *also* Section 3.7.2. Reductions in pay grades based upon legitimate reorganizations, reductions in force, or reclassifications are not demotions. A.A.C. R2-5-303, -902, -903.

3.3.4 Dismissal. Permanent status employees may be dismissed from state service only for cause pursuant to A.R.S. § 41-770 and A.A.C. R2-5-501. A permanent status employee must be given notice of a contemplated dismissal in writing. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985); *Carlson v. Ariz. Personnel Bd.*, 214 Ariz. 426, 430, 153 P.3d 1055, 1059 (App. 2007); A.A.C. R2-5-803(A). This notice is called a "notice of charges." The notice of charges letter must provide facts and legal grounds supporting the charges, identify the reasons why dismissal is contemplated, and notify the employee that he or she has the opportunity to present a written response to the charges no later than three working days after receiving the notice of charges. See Forms 3.14; 3.15. The agency head may extend this three-day time period in writing. A.A.C. R2-5-803(A).

The notice of charges should include the following information:

1. A description of the misconduct or deficient performance;
2. The dates that the misconduct or deficient performance occurred;
3. Names of key witnesses, if any;
4. Citations to the statutory subsections, personnel rules, or agency policies violated;
5. A description of the harm or damage resulting from the misconduct or deficient performance; and
6. A statement concerning prior warnings or discipline.

After considering the employee's response, the agency head may decide to take less severe disciplinary action or no disciplinary action. If the agency head decides to take less severe disciplinary action, the agency should provide the employee with a letter that includes the information in the notice of charges (items 1 through 6 above),¹ a statement of the discipline ultimately imposed, and the following:

1. A statement describing the corrective action that the employee must take to remedy the misconduct or deficient performance to avoid further discipline;
2. A statement of the consequences of failing to remedy the misconduct or deficient performance; and
3. A warning that any further misconduct or deficient performance may or will lead to additional discipline up to and including dismissal.

If the agency head decides that dismissal is appropriate, the agency must provide the employee with written notice of the decision. The letter should include the information in the notice of charges (items 1 through 6 above). See Form 3.4. Dismissal is effective only after the dismissal letter has been served on the employee in accordance with A.A.C. R2-5-803(B). However, if the employee is on an approved period of leave with pay, dismissal will not be effective until the end of the approved period of leave. A.A.C. R2-5-803(B).

3.3.5 Rules for Law Enforcement and Probation Officer Employees.

Arizona Revised Statutes § 38-1101 imposes certain requirements on state agencies that are investigating misconduct by nonprobationary employees who are statutorily defined as "law enforcement officers" or "probation officers." These requirements apply regardless of whether the nonprobationary employee is a covered or an uncovered employee. The statute defines a law enforcement officer as an individual who is either (1) certified by the Arizona Peace Officer Standards and Training Board or (2) a detention or a correction officer. A.R.S. § 38-1101(P)(4). It defines a probation officer as someone who works as either a probation officer or a surveillance officer. A.R.S. § 38-1101(P)(5).

If an employee meets the statutory definition of law enforcement officer or probation officer, the agency must provide the employee with written notice before interviewing the

¹ If the employee's response or additional investigation reveals that certain charges or facts are inaccurate, the disciplinary letter should correct those inaccuracies.

employee on a matter that the agency reasonably believes could lead to dismissal, demotion, or suspension. A.R.S. § 38-1101(A)(2). The notice must inform the employee of (1) any known allegations of misconduct, (2) the alleged facts on which the agency is basing the investigation, (3) the nature of the investigation, (4) whether the employee is the subject of the investigation, and (5) the employee's right to have a representative present at the interview. *Id.*

The employee then has the right to request that a representative be present at the interview to act as an observer. A.R.S. § 38-1101(A)(1). The representative must be an employee of the same agency, or, if one is not reasonably available, a representative from the employee's professional membership organization. *Id.* The agency should give the employee reasonable notice prior to the interview to ensure that the employee's representative is available. *Id.* The representative cannot be an attorney unless the agency agrees that he or she can be and cannot verbally participate in the interview, but can be present only as an observer. *Id.* During the interview, the employee has the right to take short, reasonable breaks to consult in person or telephonically with an attorney or other representative. *Id.*

The Legislature has also enacted A.R.S. § 38-1104, which applies to law enforcement officers, but not to probation officers. It states that law enforcement officers "shall not be subject to disciplinary action except for just cause." A.R.S. § 38-1104(A). It requires an agency to establish that the law enforcement officer had reasonable knowledge that the actions at issue constituted misconduct for which discipline could be imposed, A.R.S. § 38-1104(I)(3)(a), and that a preponderance of evidence supports the discipline, A.R.S. § 38-1104(I)(3)(c). Furthermore, the discipline must not be excessive and must be reasonably related to the seriousness of the offense and the officer's service record. A.R.S. § 38-1104(I)(3)(d). However, an agency does not have to establish just cause to discipline law enforcement officers who are probationary employees, A.R.S. § 38-1104(B), or who are uncovered employees, A.R.S. § 38-1104 (I)(4)(a).

3.4 Appeal from Disciplinary Action. Covered employees may appeal a suspension without pay for more than forty working hours, a demotion, or a dismissal. A.R.S. § 41-785(A). The appeal must be filed with the Personnel Board no later than ten working days after the action's effective date. *Id.* An agency should be prepared to obtain the information and witnesses necessary to establish the basis for the disciplinary action. See Form 3.28. If an appeal is filed, the agency should immediately notify its employment counsel.

3.4.1 Appeals Involving Law Enforcement and Probation Officers. Arizona Revised Statutes § 38-1101 imposes additional requirements in disciplinary appeals involving state employees who qualify as law enforcement officers or probation officers. At any time after these employees file an appeal, they are entitled to request in writing a copy

of the complete investigative file related to their discipline. The agency must provide the investigative file to the employee within three business days of receiving the written request. A.R.S. § 38-1101(E)(1). These employees are also entitled, prior to their appeal hearings, to an exchange of copies of the exhibits that will be produced and of the names of the witnesses who will appear at the appeal hearing. A.R.S. § 38-1101(E)(2), (3). The statute also imposes additional requirements in the appeal process that are not required for state employees who are not law enforcement or probation officers.

3.4.2 Employee’s Disclosure of Information (“Whistleblowing”). Whistleblower law constantly changes due to legislative rewriting and judicial interpretation. Agencies should therefore consult with counsel before taking disciplinary action against any employee who the agency believes may claim to be a whistleblower.

An employee may not take disciplinary action against another employee for disclosing to a “public body” information involving a matter of public concern that the disclosing employee reasonably believes evidences either a violation of the law or mismanagement, a gross waste of monies, or an abuse of authority. A.R.S. § 38-532(A). The term “public body” includes “the attorney general, the legislature, the governor, a federal, state or local law enforcement agency, the county attorney, the governing board of a community college district or school district, the board of supervisors of a county or an agency director.” A.R.S. § 38-531(5).

Arizona Revised Statutes § 38-532(B) requires an employee’s disclosure to a public body alleging a violation of law, mismanagement, gross waste of monies, or abuse of authority to be in writing and to contain the following information:

1. The date of the disclosure.
2. The name of the employee making the disclosure.
3. The nature of the alleged mismanagement, violation of law, gross waste of monies, or abuse of authority.
4. If possible, the date or range of dates on which the alleged violation of law, mismanagement, gross waste of monies or abuse of authority occurred.

An employer must provide an employee with a copy of A.R.S. § 38-532 (prohibited personnel practice relating to disclosure of information by public employees) upon request or any time that an employee alleges that disciplinary action has been taken against him or her for disclosing information. A.R.S. § 38-532(G). Any employee who believes that disciplinary action has been taken against him or her for disclosing information may file a

complaint with the Personnel Board. A.R.S. § 38-532(H). The complaint must be filed within ten days of the disciplinary action's effective date. *Id.*

The Personnel Board must determine the validity of the complaint and whether the disciplinary action was taken as a result of the employee's disclosure. *Id.* An employee does not commit a prohibited personnel practice if he or she takes disciplinary action against an employee for disclosing information in a manner prohibited by law or for disclosing information prescribed as confidential by law. A.R.S. § 38-532(E). The complaining employee, the employee alleged to have committed the prohibited personnel practice, and the employer may be represented by counsel during the hearing. A.R.S. § 38-532(J).

If the Personnel Board determines that the employee's complaint is valid and that the disciplinary action was taken as a result of the disclosure, it must rescind the disciplinary action and order that all lost pay and benefits be returned to the employee. A.R.S. § 38-532(I). The employee may also recover attorney's fees, costs, and general and special damages. A.R.S. § 38-532(D). The Personnel Board must also order the employee who committed the prohibited personnel practice to pay a civil penalty of up to five thousand dollars, and the employer must take appropriate disciplinary action against the employee who committed the prohibited personnel practice. A.R.S. § 38-532(C). The complaining employee, the employee alleged to have committed the prohibited personnel practice, and the employer may appeal the Personnel Board's decision to the superior court. A.R.S. § 38-532(I).

The Arizona Court of Appeals has ruled that the administrative procedure described above is not mandatory and that an employee may file a complaint in superior court without first seeking a hearing before the Personnel Board. *Walters v. Maricopa County*, 195 Ariz. 476, 481, 990 P.2d 677, 682 (App. 1999). The court of appeals has also ruled that a nonclassified employee may bring a whistleblower complaint pursuant to A.R.S. § 23-1501. Under that statute, an employee may file a complaint against an employer for dismissing him or her in retaliation for making an oral or written disclosure to

either the employer or a representative of the employer who the employee reasonably believes is in a managerial or supervisory position and has the authority to investigate the information . . . and to take action to prevent further violations of the [law] or an employee of a public body or political subdivision of this state or any agency of a public body or political subdivision.

A.R.S. § 23-1501(3)(c)(ii) (emphasis added).

But in *Mullenaux v. Graham County*, 207 Ariz. 1, 82 P.3d 362 (App. 2004), the court of appeals stated that a classified employee's failure to exhaust the administrative remedies that the county's grievance procedures provided made his action for wrongful discharge and breach of contract premature. The court rejected the employee's argument that the county's exhaustion statute was permissive rather than mandatory. *Id.* at 4-5, 82 P.3d at 365-66. It also rejected the employee's claim that A.R.S. § 23-1501 or A.R.S. § 38-532 provided an independent statutory ground for his wrongful discharge claim. *Id.* at 6-7, 82 P.3d at 367-68. It acknowledged that A.R.S. §§ 23-1501 (which provides public or private employees with a cause of action for termination against their employers under certain circumstances) and 38-532 (which provides public employees with a cause of action for termination against their employers under certain circumstances) appeared to be inconsistent with the county's exhaustion statute because they provided for direct causes of action in superior court. *Id.* at 6, 82 P.3d at 367. It harmonized all of the statutes by holding that employees must exhaust their administrative remedies under the county's exhaustion statute but that they can then file an action in superior court under A.R.S. § 23-1501 or A.R.S. § 38-532 and assert any claims that the administrative process did not completely resolve or preclude. *Id.* at 7, 82 P.3d at 368.

3.5 Employee Grievances. Each agency is required to adopt a grievance procedure that affords every employee a means of resolving complaints concerning discrimination, noncompliance with the state personnel rules, or other work-related matters that directly and personally affect the employee (e.g., performance evaluations). A.A.C. R2-5-701(A). The grievance procedures established in each state agency must, at a minimum, include the requirements, provisions, and statements set forth in A.A.C. R2-5-702(A).

An employee may not submit a grievance regarding any matter for which another method of review is provided. A.A.C. R2-5-701(B). For example, an employee may not submit a grievance regarding retirement; life or health insurance; suspension for more than forty working hours, demotion, or dismissal resulting from disciplinary action; any examination, certification, or appointment; any classification action; or any reduction in force action. *Id.* An employee also may not submit a grievance concerning any matter that is not under the agency's control (except for complaints alleging a violation of the personnel rules), A.A.C. R2-5-701(E), or challenging an agency's management rights; specifically, an agency's rights to direct its employees; to hire, promote, transfer, assign, and retain employees; or to maintain efficiency and determine the methods, means, and personnel by which agency operations are to be conducted, A.A.C. R2-5-701(C). An employee may, however, submit a grievance concerning the manner in which an agency administers the aforementioned management rights insofar as it personally affects the employee. *Id.*

An employee may not submit a grievance based on receiving a performance decrease, failing to receive a performance increase or special performance award, the amount of any increase or decrease, or the use of any job-related supplemental rating factors to determine the receipt or amount of an increase, decrease, or special performance award. A.A.C. R2-5-701(D). An employee may, however, submit a grievance concerning an overall performance evaluation or a specific rating.

A grievance cannot be amended once it has been referred to any step beyond the employee's immediate supervisor. A.A.C. R2-5-701(F). If additional documentation is submitted after the grievance is initiated, the reviewing official may remand the grievance to the appropriate previous level for reconsideration. *Id.* An employee who is not satisfied with the agency head's decision on a grievance alleging discrimination or noncompliance with personnel rules may submit the grievance to the Director of the Department of Administration for review within five working days after receiving the agency head's response. A.A.C. R2-5-702(B)(1). If the facts of the grievance do not support the agency head's response, the Director will conduct an investigation and reach a final decision. *Id.* A Department of Administration employee who is not satisfied with the Director's decision on a grievance alleging discrimination or noncompliance with the personnel rules may resubmit the grievance to the Director within five working days after receiving the Director's decision. A.A.C. R2-5-702(B)(2). The Director will then appoint an outside investigator to review the grievance. *Id.* If the facts of the grievance do not support the Director's response, the investigator will conduct an investigation and reach a final decision. *Id.* An employee may file a charge of discrimination with the Arizona Civil Rights Division of the Attorney General's Office or the Equal Employment Opportunity Commission at any time.

3.6 Agency Actions Affecting Employees.

3.6.1 Promotions and Promotional Probation. State service promotions must be competitive. A.A.C. R2-5-208(A)(1). The evaluation of candidates for placement on an internal promotion referral list must be based on the knowledge, skills, and abilities required for the position. A.A.C. R2-5-208(A)(3). An employee who is promoted must serve a promotional probationary period of six months. A.A.C. R2-5-213(D)(1). If an employee fails to successfully complete the promotional probationary period, the agency head may either revert the employee to a position in the current employing agency in the class in which the employee held permanent status immediately before promotion or offer the employee a similar position in another class at the same grade as the class in which the employee holds permanent status, provided that the employee meets the knowledge, skill, and ability requirements of that position. A.A.C. R2-5-213(D)(3). If a vacancy does not exist in the agency, the rules governing reduction in force apply. A.A.C. R2-5-213(D)(6); see *also* Section 3.6.3.

Reversion to a former position or transfer to another position for failure to complete the promotional probationary period is not an appealable disciplinary action. A.A.C. R2-5-213(D)(5); see *also* Form 3.19. However, neither reversion to a former class nor transfer to another position precludes the imposition of disciplinary action. A.A.C. R2-5-213(D)(4). An employee who is “repromoted” is not required to serve a probationary period. A.A.C. R2-5-213(D)(7).

3.6.2 Transfer. An agency head may transfer an employee to another position in the same pay grade within the agency. A.A.C. R2-5-208(B)(1). An employee may also transfer to a position in the same pay grade in another agency with the approval of that agency’s head. A.A.C. R2-5-208(B)(2). However, the employee must meet the qualifications required for the position as identified in the class specification or the position description questionnaire for the position to which he or she is transferred. A.A.C. R2-5-208(B)(3). In addition, although an employee has no right to remain in a particular assignment or at a particular work location, an agency may not use a transfer as a disciplinary measure, and any transfer must be made in good faith. See *Lewis v. Jamieson*, 135 Ariz. 322, 325, 660 P.2d 1249, 1252 (App. 1983).

If all or a part of the functions of a state service agency or a non-state service agency are transferred to another state service agency, all of the affected employees will be transferred to or offered state service employment in the agency to which the functions have been transferred. A.A.C. R2-5-208(B)(4)(a). However, any non-state service employee who is offered state service employment may be required to serve a probationary period. A.A.C. R2-5-208(B)(4)(b).

3.6.3 Reorganization and Reduction in Force. An agency may reduce its work force when a lack of funds or work, the abolition of a position, or a material change in duties or organization requires. See A.A.C. R2-5-902. The agency head must submit an agency proposal for a reduction in force to the Director of the Department of Administration at least thirty days prior to the effective date of the proposed reduction in force. A.A.C. R2-5-902(A)(2). An agency may also conduct a temporary reduction in force when funding necessary to pay employees is suspended or reduced. A.A.C. R2-5-903(A).

In administering a reduction of force, an agency must first separate provisional, clerical pool, temporary, seasonal, probationary, and limited employees before taking any reduction in force action affecting permanent status employees. A.A.C. R2-5-902(B)(1). The agency must then determine the order in which to transfer or separate permanent status employees as part of a reduction in force by assigning retention points to employees based on performance and length of state service. See A.A.C. R2-5-902(B)-(E). Employees on promotional probation or detail to special duty shall compete for retention only in the class in which they hold permanent status. A.A.C. R2-5-902(B)(4). Permanent

part-time employees can compete for retention only against other permanent part-time employees who are in the same class series. A.A.C. R2-5-902(B)(6).

The agency must give written notice at least five working days in advance to each employee to be transferred or separated as part of a reduction in force unless circumstances beyond its control prevent it from doing so. A.A.C. R2-5-902(F). Within three working days of receiving the notice, unless a longer period of time is authorized, an employee may request a review of the procedure that resulted in the employee's transfer, reduction, or separation due to a reduction in force. A.A.C. R2-5-902(G)(2). The request for review must be based on error and must contain specific information supporting the alleged error and a proposed resolution. *Id.* The agency head must review the request and respond to the employee within five working days of receiving the request. *Id.*

A reclassification to a lower grade as part of an improper reorganization constitutes a demotion that may be appealed to the State Personnel Board. *Rolfe v. State ex rel. Huerta*, 131 Ariz. 592, 594, 643 P.2d 505, 508 (App. 1982).

3.6.4 Separations Without Prejudice. In some cases, an agency may issue a separation without prejudice pursuant to A.A.C. R2-5-101(59). A "separation without prejudice" is the nondisciplinary removal of an employee in good standing from state service. *Id.* An agency may separate an employee without prejudice when an employee does not return to work after approved leave without pay. A.A.C. R2-5-414(D)(3).

3.7 Employee Options.

3.7.1 Voluntary Resignation and Resignation in Lieu of Dismissal. An employee may resign from state service by submitting a written resignation to the agency head at least ten working days prior to the resignation's effective date. A.A.C. R2-5-901(A); see also Form 3.16. An employee who fails to give such notice will not be eligible for reinstatement unless the Director of the Department of Administration determines that the employee had good cause for not giving such notice. *Id.* If the agency intends to accept the resignation, the agency head should immediately do so in writing. See Forms 3.17, 3.18B.

If an employee resigns orally, and the agency intends to accept the resignation, the agency head should immediately confirm the resignation in writing. A.A.C. R2-5-901(B). An agency head may refuse to accept a written or an oral resignation and may instead dismiss the employee pursuant to A.A.C. R2-5-803. See A.A.C. R2-5-901(C). An employee may withdraw a resignation by personally delivering a written withdrawal to the agency head no later than the end of the next working day after submitting the oral or written notice of resignation. A.A.C. R2-5-901(D). If a timely withdrawal is not submitted,

the resignation will be final unless both the agency head and the employee agree that the resignation may be withdrawn. *Id.*

When an employee is compelled to choose between immediate resignation and dismissal, a resulting resignation may be found to have been involuntary if the employee was not informed that he or she had the right to appeal a dismissal to the Board and that resignation waives this right. *Ariz. Dep't of Econ. Sec. v. Redlon*, 215 Ariz. 13, 20, 156 P.3d 430, 437 (App. 2007). In such a case, the Personnel Board properly accepts jurisdiction to hear such claims. *Id.*

Therefore, if an employee attempts to resign (1) while facing any pending disciplinary action that the Personnel Board could hear or (2) while he or she is a party to a lawsuit connected with a disciplinary action, the agency should consult with legal counsel before acting on the request to resign.

3.7.2 Voluntary Grade Decrease. Employees may request a voluntary grade decrease. A.A.C. R2-5-208(E)(1); *see also* A.A.C. R2-5-303(O); Form 3.25. The employee requesting the voluntary grade decrease must, however, be qualified for the position requested. A.A.C. R2-5-208(E). The agency should approve the request in writing. *See* Form 3.26. An employee cannot grieve or appeal an approved voluntary pay grade decrease. A.A.C. R2-5-208(E). An employee who is on original probation when the voluntary grade decrease request is approved must serve a new original probation in the new position. *Id.*

3.7.3 Reinstatement and Reemployment. For two years from the effective date of the separation, an agency may consider a former permanent status employee who has resigned and given proper notice, *see* A.A.C. R2-5-901(A), or who has been separated without prejudice, *see* A.A.C. R2-5-101(54), for reinstatement for the class in which the employee held permanent status at the time of separation and for all classes at the same or at a lower grade for which the employee is qualified. A.A.C. R2-5-205(B)(5). An agency may also consider for two years from the effective date of the separation a former permanent status employee who has been separated as a result of a reduction in force for reemployment for the class in which the employee held permanent status at the time of separation and for all classes at the same or at a lower grade for which the employee is qualified. A.A.C. R2-5-205(B)(4).

An agency head may require a former employee who is reinstated or reemployed to complete an original probationary period. A.A.C. R2-5-213(E). In these cases, the agency head should confirm in writing that the employee must complete the original probationary period. However, an agency head must require a former employee to complete an original probationary period if the former employee is reinstated or reemployed in a class other than the class in which the employee previously held permanent status. *Id.* Tests are not

required for reinstatement or reemployment unless the requirements of the class have changed or are different from the requirements of the class from which the applicant separated. A.A.C. R2-5-203(D)(4).

3.8 Leave.

3.8.1 Holidays. State service holidays are listed in A.A.C. R2-5-402(A). An employee who is regularly scheduled to work on a day on which a state holiday falls is entitled to be absent with pay for the number of hours regularly scheduled to work unless required to work to maintain essential state services. A.A.C. R2-5-402(B). An employee who is not scheduled to work on a day on which a state holiday falls will receive holiday compensation for the number of hours normally worked per day, unless the employee is on leave without pay on the employee's work days immediately preceding or following the state holiday. A.A.C. R2-5-402(C). An employee who is required to work on a state holiday will receive both holiday compensation and one hour of pay at the current salary rate for each hour worked. A.A.C. R2-5-402(D).

3.8.2 Annual Leave. Annual leave is a broad category of leave that includes all periods of approved absence from work with pay that are not chargeable to another category of leave. A.A.C. R2-5-403(A). An employee may take annual leave at any time that the agency head approves. A.A.C. R2-5-403(F). An agency should reasonably permit an employee to use accrued annual leave during the course of the calendar year. If an agency disapproves an employee's taking annual leave on the ground that the agency's ability to function would be adversely affected by the leave (e.g., when it would leave an insufficient number of employees to provide service), the agency should arrange with the employee an alternative time for use of the leave.

3.8.3 Sick Leave. Sick leave includes any approved period of absence from work with pay due to any of the following:

1. Illness or injury which renders the employee unable to perform the duties of the position. Minor, nondisabling injuries and illnesses do not qualify an employee for sick leave.
2. Disability caused by pregnancy, childbirth, miscarriage, or abortion.
3. Examination or treatment by a licensed health care practitioner.

4. Illness, injury, examination, or treatment by a licensed health care practitioner of an employee's spouse, dependent child, or parent. Sick leave granted for this purpose shall not exceed forty hours per calendar year.

A.A.C. R2-5-404(A).

Sick leave may be taken when approved by the agency head. A.A.C. R2-5-404(D)(1). The agency may require the employee to submit evidence substantiating the need for sick leave. A.A.C. R2-5-404(D)(2); see *also* Form 3.9. If the agency determines that the evidence is inadequate, the absence must be charged to another category of leave or be considered an absence without leave. A.A.C. R2-5-404(D)(2). Abuse of sick leave is a basis for disciplinary action.

Under some circumstances, an agency head may require an employee to submit to a medical examination by a licensed health care practitioner whom the agency designates. A.A.C. R2-5-404(D)(3); see *also* Forms 3.10, 3.11. This is commonly known as a fitness-for-duty examination. The agency pays for the examination, and the employee is not charged leave for time spent traveling to or from or participating in the examination. A.A.C. R2-5-404(D)(3)(c). If the practitioner determines that the employee should not work, the agency head may place the employee on sick leave or, if the employee's sick leave is exhausted, on leave without pay. *Id.* The agency may require the practitioner's approval before the employee is permitted to return to work. *Id.* Requiring an employee to submit to a medical examination should be considered very carefully. Determining what, if any, action should be taken following the practitioner's assessment likewise requires serious consideration. If at all possible, the situation should be discussed with the agency's human resources representative or with employment counsel.

3.8.4 Compensatory Leave and Overtime Pay. The agency head must approve all overtime work in advance. A.A.C. R2-5-305(A). The Director of the Department of Administration determines which positions are entitled to compensatory leave or overtime pay in accordance with the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 to 219. A.A.C. R2-5-305(B). An employee whom the FLSA covers must be compensated for overtime work by either additional pay at the rate of one and one-half times the employee's regular rate for each excess hour worked or compensatory leave at the rate of one and one-half hours for each excess hour worked. A.A.C. R2-5-305(C)(1). An employee may be compensated with compensatory leave only if he or she has agreed to that arrangement in advance. A.A.C. R2-5-305(C)(2). Most agencies require employees to sign a form at the time that they are hired, indicating whether they will accept compensatory leave in lieu of overtime pay. Employees may change their decision. If an employee agrees to accept either overtime pay or compensatory leave, the agency head determines whether to compensate the employee for excess hours with overtime pay or compensatory leave,

unless the employee's compensatory leave balance has reached the maximum allowed in A.A.C. R2-5-305(F), in which case the agency head must compensate the employee with overtime pay. A.A.C. R2-5-305(C)(2).

Covered employees who are not excluded under A.A.C. R2-5-305(E) and who are exempt from the FLSA must receive one hour of compensatory leave for each hour of overtime worked or, if the Director of the Department of Administration approves, overtime pay at the regular pay rate. A.A.C. R2-5-305(D).

Upon separation, any accumulated compensatory leave is paid as provided in A.A.C. R2-5-305(G).

3.8.5 Industrial Leave. An agency must place an employee who sustains a job-related disability that is compensable under the Workers' Compensation Law, A.R.S. §§ 23-901 to -1091, on sick leave. A.A.C. R2-5-405(A). If the employee exhausts all sick leave and either fails to request or has exhausted all annual or compensatory leave, the agency must place the employee on leave without pay. *Id.* If the employee is on leave under the Workers' Compensation laws and that leave qualifies for Family and Medical Leave Act (FMLA) leave, an agency must count the leave as FMLA leave. *Id.* An agency must apply industrial and FMLA leave concurrently. *Id.*

3.8.6 Leave under the Family and Medical Leave Act. Under the FMLA, an employee may take up to twelve weeks of leave for the following: the birth of a child and caring for the child within one year of birth; the placement of a child for adoption or foster care and caring for the newly placed child within one year of placement, see A.A.C. R2-5-411; caring for a family member with a "serious health condition," see A.A.C. R2-5-412(B); or "a serious health condition" that makes the employee unable to perform the essential functions of the job, see A.A.C. R2-5-412(A). However, the employee must take FMLA leave in the order enumerated in A.A.C. R2-5-412.

Under the FMLA, an employee who is the spouse, son, daughter, parent, or next of kin of a covered service member may take up to twenty-six work weeks of leave during a single twelve-month period to care for a service member who has a serious injury or illness. An employee may take up to twelve weeks of FMLA leave if the employee's spouse, child, or parent is a member of the military reserves or the National Guard who faces recall to active duty if a qualifying exigency exists.

An employee who takes FMLA leave is entitled to return to a position that is the same as or is equivalent to the position that he or she held before taking the leave. *Guo v. Maricopa County Med. Ctr.*, 196 Ariz. 11, 18, 992 P.2d 11, 18 (App. 1999) (citing 29 U.S.C. § 2614(a)(1)). "If there is a conflict between the provisions of [the Personnel

Administration] rules and the FMLA, the provisions of the FMLA govern.” A.A.C. R2-5-412(H).

3.8.7 Other Leave. Other categories of leave with pay include Civic Duty Leave (A.A.C. R2-5-406), Military Leave (A.A.C. R2-5-407), Educational Leave (A.A.C. R2-5-408), Administrative Leave (A.A.C. R2-5-409), and Bereavement Leave (A.A.C. R2-5-410). Parental leave is “any combination of annual leave, sick leave, compensatory leave, or leave without pay taken by an employee due to pregnancy, childbirth, miscarriage, abortion, or adoption of children.” A.A.C. R2-5-411(a).

3.8.8 Medical Leave Without Pay. An agency must place an employee on medical leave without pay if the employee’s physician documents and an agency-selected physician confirms that the employee is unable to work due to a “seriously incapacitating and extended illness or injury” that is not job-related. A.A.C. R2-5-413(A). To qualify for medical leave without pay, however, the employee must have exhausted all leave balances, including leave donated to the employee. *Id.* The leave terminates when the employee returns to work or the employee is absent for 180 days, whichever occurs first. *Id.* If leave is donated to the employee while the employee is on medical leave without pay, the donated leave does not restart the 180 days. However, the donated time cannot be counted toward the 180 days. “An employee who returns to work after a period of leave without pay of 80 consecutive hours or less shall [be] return[ed] to the same position [previously held].” A.A.C. R2-5-414(D)(1). “[A]n employee who returns to work after a period of leave without pay in excess of 80 consecutive hours is entitled to return to a position in the [same] class [previously held]” if available and if the leave was terminated in accordance with A.A.C. R2-5-414(D)(2)(a), (b), or (c). If a position in the same class is not available, the employee may be separated without prejudice. A.A.C. R2-5-414(D)(4).

3.8.9 Leave Without Pay. Leave without pay must be requested in writing in advance and be approved by the agency head. A.A.C. R2-5-414 (A). Before leave without pay is approved, all annual and, if applicable, sick leave should be exhausted unless the situation involves “parental leave, FMLA leave, military leave, or leave granted to forestall a reduction in force.” A.A.C. R2-5-414(C). “An employee who returns to work after a period of leave without pay of 80 consecutive hours or less shall [be] return[ed] to the same position [previously held].” A.A.C. R2-5-414(D)(1). “[A]n employee who returns to work after a period of leave without pay in excess of 80 consecutive hours is entitled to return to a position in the [same] class [previously held]” if available and if the leave was terminated in accordance with A.A.C. R2-5-414(D)(2)(a), (b), or (c). If a position in the same class is not available, the employee may be separated without prejudice, A.A.C. R2-5-414(D)(4); see also Forms 3.21, 3.22 unless the employee is returning from leave without pay granted for military service, industrial illness or injury, to forestall a reduction in force as part of parental or FMLA leave, or to accept an uncovered position, in which case a reduction in force must take place, A.A.C. R2-5-414(D)(5). Although an agency head has discretion to

grant or deny a request for leave without pay, he or she should apply such discretion consistently.

If an employee fails to return to work on the first day after the approved period of leave, the agency may consider the employee's failure to return a resignation, a separation without prejudice, or cause for dismissal, A.A.C. R2-5-414(D)(3); see *also* Form 3.20. The agency should contact its human resources representative or employment counsel with any questions, particularly if the employee is unable to return for medical or disability reasons. The agency must consider whether the FMLA or the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 to 12213, applies when deciding what action to take following an employee's failure to return to work on the first day after the approved period of leave without pay.

3.9 Conditions of Employment.

3.9.1 Standards of Conduct. All employees are required to know and to comply with the standards of conduct set forth in A.A.C. R2-5-501. Violations of the standards of conduct constitute cause for discipline, including dismissal. A.A.C. R2-5-501(A). Employees are required, for example, to maintain high standards of honesty, integrity, and impartiality and to be courteous and prompt in dealing with and serving the public. A.A.C. R2-5-501(B). Employees must also comply with state laws and rules. *Id.*

The standards of conduct also contain a gratuity policy that prohibits state service employees from

[a]ccept[ing] or solicit[ing], directly or indirectly, anything of economic value as a gift, gratuity, favor, entertainment, or loan that is, or may appear to be, designed to influence the employee's official conduct. This provision shall not prohibit acceptance by an employee of food, refreshments, or unsolicited advertising or promotional material of nominal value.

A.A.C. R2-5-501(C)(4). An agency may decide to promulgate a more detailed gratuity policy to provide additional guidance to its employees. However, the agency's policy must include or incorporate by reference all the provisions of A.A.C. R2-5-501(C)(4).

The standards of conduct also prohibit any employee from taking any disciplinary action against another employee that impedes or interferes with that employee's exercise of any right granted under the law or the personnel administration rules. A.A.C. R2-5-501(D). Any employee found to have acted in reprisal toward another employee for that

employee's exercise of his or her rights may be disciplined in accordance with A.A.C. R2-5-801 through -803. See A.A.C. R2-5-501(D).

3.9.2 Conflict of Interest. All employees are required to know the conflict-of-interest laws set forth in A.R.S. §§ 38-501 through -511. The conflict-of-interest laws apply to all public officers and employees (full- or part-time) of incorporated cities or towns, political subdivisions (including all school districts), the State, and any of the State's departments, commissions, agencies, bodies, or boards. A.R.S. §§ 38-501, -502(2), (5). The purpose of the conflict-of-interest laws is to protect the public from self-dealing by public employees. *Maucher v. City of Eloy*, 145 Ariz. 335, 338, 701 P.2d 593, 596 (App. 1985). For example, school district employees are required to engage in public competitive bidding in making purchases regardless of the cost involved or the source of funding. A.G. Opinion I06-002 at 1.

Any public officer or employee who has, or whose relative has, a substantial interest in any contract, sale, purchase, or service to a public agency or in any decision of a public agency, must make that interest known in the public agency's official records and is prohibited from participating in any manner in any contract, sale, purchase, or decision. A.R.S. § 38-503(A), (B). The officer or employee must make the interest known by signing and filing a paper that fully discloses the substantial interest(s) or by filing a copy of the public agency's official minutes that fully discloses the substantial interest(s). A.R.S. § 38-502(3). "Substantial interest' means any pecuniary or proprietary interest, either direct or indirect, other than a remote interest." A.R.S. § 38-502(11). The prohibition includes participating in any discussions, study groups, or decisions where an actual or potential conflict is present. A.G. Opinion I03-005 at 1. If a conflict is not disclosed, any affected contract is voidable. See A.R.S. § 38-506(A).

Employees are prohibited from representing another person before an agency that currently employs them or that employed them within the preceding twelve months on any matter in which employees personally participated by a substantial and material exercise of discretion. A.R.S. § 38-504(A). Employees are also prohibited from disclosing or using for personal profit any confidential information acquired in the course of official duties during their employment and for two years thereafter. A.R.S. § 38-504(B). Employees are also prohibited from using or attempting to use their positions for personal gain, A.R.S. § 38-504(C), and from receiving direct or indirect compensation other than as provided by law for any service rendered in any matter pending before the agency that employs the employee, A.R.S. § 38-505(A). Penalties for violating any of the conflict-of-interest laws include forfeiture of public employment and possible prosecution. A.R.S. § 38-510(A), (B).

See Chapter 8 for a more detailed review of conflict-of-interest law or contact legal counsel if there are additional questions.

3.9.3 Restricted Political Activity. Arizona Revised Statutes § 41-772 limits covered employees' participation in political activities. Subsection B of that statute provides that state employees or personnel board members may not

1. Be a "member of any national, state or local committee of a political party,"
2. Be "an officer or chairman of a committee of a partisan political club,"
3. Be "a candidate for nomination or election to any paid public office,"²
4. "[H]old any paid, elective public office" (one for which compensation is provided regardless of whether the compensation is accepted),
5. "[T]ake any part in the management or affairs of any political party," or
6. "[Take any part] in the management of any partisan or nonpartisan campaign or recall effort."

Arizona Revised Statutes § 41-772 further provides that covered employees may not "[u]se any political endorsement in connection with any appointment to a position in the state service" or "[u]se or promise to use any official authority or influence for the purpose of influencing the vote or political action of any person or for any consideration." A.R.S. § 41-772(A).

However, one does not become a "candidate" under A.R.S. § 41-772(B) until nomination papers are filed. A.R.S. § 16-311(H). Up to the point of filing, a covered employee may take other preliminary steps such as filing petitions or forming campaign committees without resigning his position. This section applies only to covered employees. A.G. Opinion I10-005 at 3.

None of the A.R.S. § 41-772 restrictions on political activity, however, are to "be construed as denying any employee or board member his civil or political liberties as guaranteed by the United States and Arizona Constitutions." A.R.S. § 41-772(K). Thus, covered employees are permitted to wear buttons, to place bumper stickers on their personal vehicles, and to participate in initiative, referendum, and other ballot measure campaigns without restriction. See Ariz. Att'y Gen. Ops. I90-054 at 4-5, I87-028 at 2-3.

² The provisions of A.R.S. § 41-772 do not apply "to school board elections or community college district governing board elections, and an employee may serve as a member of the governing board of a common or high school district or as a member of a community college district governing board." A.R.S. § 41-772(G).

Covered employees are further permitted to do the following:

1. Express opinions.
2. Attend meetings for the purpose of becoming informed concerning the candidates for public office and the political issues.
3. Cast votes and sign nomination or recall petitions.
4. Make contributions to candidates, political parties, or campaign committees contributing to candidates or advocating the election or defeat of candidates.
5. Circulate candidate nomination petitions or recall petitions.
6. Engage in activities to advocate the election or defeat of any candidate.
7. Solicit or encourage contributions to be made directly to candidates or campaign committees contributing to candidates or advocating the election or defeat of candidates.

A.R.S. § 41-772(B). However, with the exception of expressing opinions or being absent from work for the purpose of voting pursuant to A.R.S. § 16-402, covered employees may not engage in permissible political activities “while on duty, while in uniform, or at public expense.” A.R.S. § 41-772(C).

Section 41-772 prohibits any person from soliciting employees to engage or not to engage in permitted activities “with the direct or indirect use of any threat, intimidation or coercion including threats of discrimination, reprisal, force or any other adverse consequence including the loss of any benefit, reward, promotion, advancement or compensation.” A.R.S. § 41-772(D). It also prohibits any person from subjecting employees who engage in or who choose not to engage in permitted activity “to any direct or indirect discrimination, reprisal, force, coercion, intimidation or any other adverse consequence.” A.R.S. § 41-772(E), (F).

A covered employee who engages in restricted political activity is subject to suspension of not less than thirty days or dismissal. A.R.S. § 41-772(H). An employee who violates A.R.S. § 41-772(D), (E), or (F) is guilty of a class 6 felony. A.R.S. § 41-772(I)(1). An employee who violates any other provision of A.R.S. § 41-772 is guilty of a class 1 misdemeanor. A.R.S. § 41-772(I)(2). In addition to any other penalty, any person

soliciting or encouraging a contribution in a manner that A.R.S. § 41-772 prohibits is subject to a civil penalty of up to three times the amount of the contribution plus costs, expenses, and reasonable attorney fees. A.R.S. § 41-772(J).

When interpreting A.R.S. § 41-772, one must construe its provisions in accordance with its underlying policy. It specifically provides as follows:

It is the public policy of this state, reflected in this section, that government programs be administered in an unbiased manner and without favoritism for or against any political party or group or any member in order to promote public confidence in government, governmental integrity and the efficient delivery of governmental services and to ensure that all employees are free from any express or implied requirement or any political or other pressure of any kind to engage or not engage in any activity permitted by this section.

A.R.S. § 41-772(L).

None of the personnel rules that the Department of Administration has promulgated, including those that incorporate the A.R.S. § 41-772 restrictions on political activity, apply to the following:

1. Elected state officers.
2. State officers and members of boards and commissions appointed by the legislature or the Governor, the employees of the Governor's office, the employees of the Arizona legislative council, and the employees of the supreme court and the court of appeals.
3. State officers and employees appointed or employed by the legislature or either house thereof.
4. The curator, curatorial aides and tour guides and any other person employed to work in the state capitol museum.
5. Officers or employees of state universities and personnel of the Arizona state school for the deaf and the blind.
6. Patients or inmates employed in state institutions.
7. Officers and enlisted personnel of the national guard of Arizona.

8. The single administrative or executive director and one deputy director of each state department or agency.
9. Not more than two assistants who serve in the office of an elected state officer, where that elected state officer is the sole elected head of the department.
10. One administrative assistant who serves a board or commission elected to head a state agency, department or division, and one assistant for each elected member of such a board or commission.
11. Persons reporting directly to the Governor.
12. Employees of the department of emergency and military affairs who occupy Arizona national guard positions identified as mobilization assets.
13. Except as otherwise required by federal law and except for certified peace officers as defined in section 38-842, correctional officers and juvenile correctional officers, state officers and employees who are appointed or employed after December 31, 2006 and who are at a pay grade of twenty-four or above.
14. Any other position exempted by law.

A.R.S. § 41-771(A).

Except for the anticoercion restrictions of A.R.S. § 41-772(D), (E), and (F), none of the personnel rules, including those that incorporate the other A.R.S. § 41-772 restrictions on political activity, apply to positions that the Director of the Department of Administration determines meet any of the following criteria:

1. Top level positions in a department or agency that determine and publicly advocate substantive program policy. This includes those persons engaged in the direction of line operations if they report directly to the director or deputy director of the agency and in large multiprogram agencies, those persons who report directly to the head of a primary component of the department or agency.
2. Those persons who are required to maintain a direct confidential working relationship with an exempt official.

3. Persons who provide legal counsel.
4. Positions that are part time.
5. Positions that are temporary, established for the purpose of conducting a special project, study, or investigation.
6. Positions that are essentially for rehabilitation purposes.
7. Positions that are determined by the director to be directly or indirectly engaged in establishing policy or enforcement standards.
8. Directors of all institutions which maintain supervision or care on a twenty-four hour per day basis other than halfway houses or group homes.

A.R.S. § 41-771(B).

Finally, certain covered and uncovered positions funded with federal money are subject to more restrictive provisions governing political activity. See 5 U.S.C. § 7324. Supervisors and managers who administer programs subject to these restrictions should inform the affected employees. *Id.*

3.9.4 Employment of Relatives. Employment of relatives is restricted in accordance with A.R.S. § 38-481 and A.A.C. R2-5-207. State, county, and city officials are prohibited from appointing or voting for the appointment of a relative to any clerkship, office, position, employment, or duty in any department of the state, district, county, city, or municipal government of which the officer is a member. A.R.S. § 38-481(A). An agency should direct questions about this subject to legal counsel.

3.10 Inquiries About State Employees. Access to an employee's personnel file is limited to the following persons:

1. The employee or another person with written authorization from the employee to review the personnel file.
2. Agency personnel designated by the agency head as having a need for such information.
3. Department officials in the normal line of duty.

4. Officials acting in response to court orders or subpoenas.
5. Officials of an agency to which the employee has applied.
6. An official of an agency of the federal government, state government or any of their political subdivisions, if the agency head of the employing agency deems access to the file to be appropriate to a proper function of the official requesting access.

A.A.C. R2-5-105(E).

For purposes of determining access to personnel files, an “official” is defined as “one who provides identification verifying that he is exercising powers and duties on behalf of the chief administrative head of a public body.” *Id.* The documents to be maintained in an employee’s personnel file are specified in A.A.C. R2-5-105. This includes records of disciplinary actions, which are deemed to be public records under A.R.S. § 39-128.

Although certain information about state employees is considered public information, when additional information is requested or when an agency is otherwise concerned about releasing information about an employee, the agency should contact legal counsel before releasing the information.

3.11 Equal Employment Opportunity. The State of Arizona and its agencies and instrumentalities are equal opportunity employers. The State, as an employer, may not discriminate against applicants for employment or employees with regard to hiring; discipline; discharge; compensation; or terms, conditions, or privileges of employment because of an individual’s race, color, religion, sex, national origin, age, disability, or handicap. See *generally* Chapter 15. The Attorney General’s Office is available to assist agencies with questions and problems that arise in the area of equal employment opportunity. Specifically, the Attorney General’s Office will provide training and will evaluate programs and practices to ensure that agencies are compliant. It will also defend agencies against charges of discriminatory action.

3.11.1 General Considerations Regarding Discrimination Complaints.

3.11.1.1 Procedure upon Receipt of a Notice of Charge of Discrimination. The Equal Employment Opportunity Commission (EEOC), a federal agency, enforces Title VII of the Civil Rights Act of 1964, as amended; the Americans with Disabilities Act (ADA); the Age Discrimination in Employment Act (ADEA); and the Genetic Information Nondiscrimination Act of 2008 (GINA). See 29 U.S.C. § 626; 42 U.S.C. §§ 2000e-5, 2000ff-6, 12117. The Arizona Attorney General’s Office enforces the Arizona Civil Rights Act, A.R.S. §§ 41-1401 to -1493.02.

An employee may file a complaint with either the Civil Rights Section of the Attorney General's Office, see Chapter 15, or the EEOC. The EEOC investigates complaints filed with the Civil Rights Section against state employers. When a complaint is filed with the EEOC, the EEOC will contact the state agency involved. The EEOC may inquire if the agency is interested in conciliation or it may request a statement of position and documentation in support of the agency's position. A copy of any charge of discrimination should immediately be sent to the Chief Counsel of the Liability Management Section of the Attorney General's Office and to the Department of Administration, Division of Risk Management. They will either process the charge or assist the agency. Contact employment counsel for any questions or assistance on discrimination matters not yet filed with investigative agencies.

3.11.1.2 Confidentiality. Discrimination complaints must be handled in a confidential manner. See A.R.S. § 41-1481(A), A.A.C. R10-3-103. For this reason, and to ensure against charges of retaliation, information that a discrimination charge has been filed and that an investigation has been undertaken should be discussed only with those who have a need to know. A.R.S. § 41-1481(A), A.A.C. R10-3-103; *see also* A.R.S. § 41-1464(A). Investigative and charge files should be kept in a secure area separate from the agency's personnel files.

3.11.1.3 Settlement Agreements. Discrimination charges, whether formal or informal, may result in negotiated settlements. The roles of the Attorney General's Office and state agencies in settling cases are set forth in A.R.S. §§ 41-192(B)(4) and -621(N). The roles vary depending on the cause of action asserted. Before any settlement agreement is reached, all entities must comply with the duties imposed by statute.

3.11.1.4 Unlawful Discrimination. Employment discrimination takes many forms, each with different legal bases, proof requirements, and ramifications. See Chapter 15 for a discussion of discrimination law and consult legal counsel for advice on discrimination charges.

3.11.1.5 Retaliation. It is unlawful to retaliate against any employee who files an external or internal discrimination charge or who assists or participates in the investigation of such a charge. 42 U.S.C. §§ 2000e-3(a), 2000ff-6(f), 12203(a); A.R.S. § 41-1464(A); *see also* Section 15.15.

3.11.1.6 Interviewing. Job applicants should never be asked a question not directly related to the qualifications for employment. See *generally* Chapter 15. For example, an applicant should never be asked about his or her race, color, national origin, religion, age, sex, politics, marital or family status, genetic information, or family medical history. Because employment decisions may not be made upon these bases, A.R.S. § 41-

1463, agencies should avoid raising the issues and should decline to discuss these issues if the applicant raises them. Similarly, questions relating to disability should not be discussed until a decision is made that the applicant is otherwise qualified and will be offered the position subject to the applicant's ability to demonstrate that he or she can perform the essential functions of the position with reasonable accommodation. See Sections 3.11.5, 15.12 to 15.12.7.

In addition, to ensure that all applicants receive the same consideration, oral interviews should be structured so that the same procedure is used for all applicants, with specific questions prepared in advance. Written notations of the reasons for any employment decision should be made and retained for three years after the employment decision has been made.

3.11.1.7 Nondiscriminatory Work Environment. As an employer, the State has a responsibility to create a nondiscriminatory work environment. 42 U.S.C. § 2000e-2, 2000ff-1; A.R.S. § 41-1463. Supervisors should neither make nor tolerate ethnic, religious, racial, age, disability, or sexual jokes or slurs or otherwise create or tolerate a hostile, intimidating, or offensive work environment. Supervisors should take disciplinary action up to and including dismissal against employees for such conduct. Failure to provide a harassment-free environment may create liability for the State and the individuals involved. See, e.g., Sections 3.11.3.1, 15.7.2, 15.10.

3.11.1.8 Affirmative Action. “Affirmative action” is generally defined as “a set of actions designed to eliminate existing and continuing discrimination, to remedy the lingering effects of past discrimination, and to create systems and procedures to prevent future discrimination.” *Black’s Law Dictionary* 60 (7th ed. 1999). Certain federal and state laws may obligate an employer to provide affirmative action plans. See Sections 15.16, 15.16.1. For example, such affirmative action obligations may arise from federal contracts or from the receipt of federal funds under the Rehabilitation Act of 1973. See 29 U.S.C. §§ 793, 794. If an agency believes that any provision of this type applies, it should contact legal counsel.

3.11.2 Race, Color, and National Origin Discrimination. An employment decision cannot be based on an applicant’s or employee’s race, color, or national origin, and employees cannot be treated differently on any of these bases. 42 U.S.C. § 2000e-2; A.R.S. § 41-1463; see also Sections 15.4, 15.5. All applicants, employees, and clients must receive equal consideration and treatment without regard to their race, color, or national origin. Any employee who violates these principles subjects himself or herself, the agency, and the State to legal liability. See Section 13.3. Furthermore, any employee who violates these principles may be subject to disciplinary action, including dismissal. See, e.g., A.A.C. R2-5-501(A).

3.11.3 Sex Discrimination. An employment decision may not be based on an applicant's or an employee's sex. 42 U.S.C. § 2000e-2; A.R.S. § 41-1463; *see also* Sections 15.7, 15.7.1, 15.7.2. Sex discrimination includes discrimination based on pregnancy, childbirth, or related medical conditions. 42 U.S.C. § 2000e(k); A.R.S. § 41-1463; *see also* Section 15.7.1. In addition, an employer may not pay an employee of one sex less than it pays an employee of the opposite sex when the two perform substantially equal work. 29 U.S.C. § 206(d) (*see* Section 15.8 for a more detailed discussion of this federal statute).

Dress codes and hair-length requirements generally are not considered sex discrimination even though different standards may be applied to males and females. *Jespersion v. Harrah's Operating Co.*, 444 F.3d 1104, 1109-10 (9th Cir. 2006). However, dress codes that *prescribe* uniforms for females while specifying "normal business attire" for males have been found to be unlawful as perpetuating sexual stereotypes. *Carroll v. Talman Fed. Sav. & Loan Ass'n*, 604 F.2d 1028, 1029-30 (7th Cir. 1979).

3.11.3.1 Sexual Harassment. It is unlawful to use one's position to obtain sexual favors or to imply that any term or condition of employment depends upon or is related to the receipt of sexual favors. *See* Section 15.7.2. Requests for sexual favors or verbal or physical conduct of a sexual nature that has the purpose or effect of interfering with an employee's work performance or creating an intimidating, hostile, or offensive environment are likewise unlawful. *See id*; Section 3.11.1.7. Sexual harassment is cause for discipline up to and including dismissal. Supervisors who are aware that sexual harassment is occurring but who take no action to stop it may be subject to disciplinary action as well as to legal liability. If the problem is so widespread that, for example, supervisory employees should have known of the conduct, the employer may be liable even though no employee has specifically complained. *See* Section 15.7.2.

Every state agency should promulgate a formal policy prohibiting sexual harassment. The policy should incorporate the EEOC guidelines at 29 C.F.R. §§ 1604.1 to 1604.11. The agency should also develop a training program that explains the various forms of sexual harassment, the agency policy prohibiting it, and the procedure for reporting incidents.

3.11.4 Religious Discrimination. Actions by state employees that either promote the establishment of a specific religion (or religion in general) or prohibit or interfere with the free exercise of religion violate both the Federal and State Constitutions. *See* Section 15.6. Accordingly, all applicants, employees, and clients of the State must be treated equally and without regard to the presence or absence of religious belief.

When an employee's religious beliefs conflict with his or her job responsibilities, the employee has a responsibility to alert his or her supervisor. The supervisor then has a duty

to “reasonably accommodate” the employee’s religious beliefs. Such accommodation might include a change in the employee’s work schedule or a modification of the employee’s responsibilities. However, the employer need not incur more than minimal costs or permit the observance of religious tenets if to do so would unreasonably interfere with the performance of the agency’s responsibilities and create undue hardship. 42 U.S.C. § 2000e(j); A.R.S. § 41-1461(13); *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 84 (1977); see also Section 15.6.

The reasonable accommodation required for religion is less than that required for a disability or handicap. See Sections 3.11.5, 15.12.1. Supervisors should keep detailed records of each religious conflict brought to their attention and all steps taken to accommodate the religious belief. Such records should be kept separate from the employee’s personnel file. If problems arise in this area, the agency should consult with employment counsel.

3.11.5 Disability and Handicap Discrimination. The Americans with Disabilities Act (“ADA”) prohibits discrimination against a “qualified individual with a disability.” 42 U.S.C. § 12112. A “qualified individual with a disability” is a person who has a disability, but who can, either without any accommodation or with a reasonable accommodation, “perform the essential functions of the employment position.” 42 U.S.C. § 12111(8). The language of the Arizona Civil Rights Act parallels that of the ADA, forbidding discrimination against a “qualified handicapped individual” who, with or without reasonable accommodation, can perform the position’s essential functions. A.R.S. §§ 41-1461(11), -1463(L). The ADA and the Arizona Civil Rights Act do not apply if no accommodation will enable the employee to perform an essential function of a job. The questions of whether an individual is disabled, whether an accommodation is reasonable, and whether a function is essential are determined on a case-by-case basis, taking into consideration all relevant factors. Thus, if an agency has a question regarding the applicability of either federal or state disability law, it should contact legal counsel.

Certain federal statutes may obligate the State to take affirmative action to employ and advance qualified individuals with handicaps. See 29 U.S.C. §§ 793, 794; see also Sections 15.12 to 15.12.7. The affirmative action requirements may include taking reasonable steps to modify tests, examinations, and job responsibilities or obtaining specialized equipment that will permit applicants or employees with handicaps to perform the job in question. See *id.*

3.11.6 Age Discrimination. The Federal Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 to 634, and the Arizona Civil Rights Act, A.R.S. § 41-1463, prohibit age discrimination. The age discrimination prohibitions are limited to individuals who are at least forty years of age. In general, an agency cannot make decisions to hire, promote, or discharge based upon an applicant’s or employee’s age. See Section 15.11.

An agency can require that applicants and employees meet the requirements of performing a particular job, provided that *all* applicants and employees are required to demonstrate that they can meet those requirements and that the same test or evaluation procedures are applied to each applicant or employee regardless of age. See Sections 15.11, 15.11.1, and 15.25 for a more thorough analysis of the law in this area.

3.11.7 Genetic Information Discrimination. The Genetic Information Nondiscrimination Act of 2008 (GINA), 42 U.S.C. § 2000ff, prohibits discrimination based on genetic information. Genetic information includes information about an individual's or an individual's family members' genetic tests, as well as information about an individual's or an individual's family members' participation in genetic services or research. Genetic information also includes information about an individual's family medical history. An agency may not use genetic information in making employment decisions, including those involving hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, and any other term or condition of employment. Under GINA, employers cannot request, require, or purchase genetic information and the disclosure of genetic information is strictly limited.

3.11.8 Discrimination Grievances. An employee may submit a grievance alleging discrimination in accordance with the agency's grievance procedures. See R2-5-701, -702. Any employee who is not satisfied with an agency head's decision on a grievance alleging discrimination may submit the grievance to the Director of the Department of Administration. See R2-5-702(A)(11), (B)(1). Any employee who has a complaint alleging discrimination that A.R.S. § 41-1463 prohibits and who is not satisfied with the final grievance resolution will be referred to the appropriate agency by the Director. R2-5-702(D).

3.12 Workers' Compensation.

3.12.1 Workers' Compensation Defined. The workers' compensation system strives to compensate individuals who are injured on the job. See *generally* A.R.S. Title 23, Chapter 6, Workers' Compensation. The State of Arizona is a self-insured entity. Workers' compensation benefits for state employees are provided through the Arizona Department of Administration, Risk Management Division. The workers' compensation system is a "no fault" system. See, *e.g.*, A.R.S. § 23-1021. Therefore, neither the negligence of the worker nor the negligence of the employer is considered in assessing the compensability of an injured worker's claim. With rare exceptions, an injured State worker cannot recover in tort against the State because workers' compensation is the exclusive remedy. See A.R.S. §§ 23-906(A), -1022(A).

3.12.2 Workers Covered by the Workers' Compensation System. Under Arizona's workers' compensation law, an injured worker bears the burden of proving a

compensable industrial injury. *See, e.g., Lapare v. Indus. Comm'n*, 154 Ariz. 318, 319, 742 P.2d 819, 820 (App. 1987). Generally, the injured worker is required to establish that (1) the worker is an employee covered under the workers' compensation law, (2) the injury or illness arose out of his or her employment, and (3) the injury or illness occurred within the course and scope of his or her employment.

3.12.3 Employer Responsibility for Notification of Industrial Injuries of Employees. Upon receiving notice that a state employee has sustained an industrial injury, the employer must within ten days file an "Employer's Report of Industrial Injury" with both the Arizona Industrial Commission and Risk Management. A.R.S. § 23-1061(E) If a fatality occurs, the employer must immediately notify the Industrial Commission and Risk Management. A.A.C. R20-5-110.

3.12.4 Risk Management's Role. The State of Arizona is a self-insured entity for workers' compensation liability. Risk Management must accept or deny a claim within twenty-one days of receiving notification of the claim from the Arizona Industrial Commission. A.R.S. § 23-1061(M). If a claim is accepted, Risk Management may be responsible for paying medical, surgical, and hospital benefits; temporary compensation benefits; and permanent compensation benefits. Risk Management is responsible for administering state industrial claims.

3.12.5 The Attorney General's Role. Assistant Attorneys General defend State agencies and Risk Management in statewide litigation before the Arizona Industrial Commission Administrative Law Judge Division and at the Arizona appellate courts. They work closely with and provide legal advice to Risk Management adjusters regarding the proper processing of claims, claim settlement and subrogation issues, and related legal matters.

Form 3.1

ADMINISTRATIVE LEAVE PENDING INVESTIGATION

(Section 3.8.7)

(Date)

Ms. Sally Q. Employee
1234 Anywhere Road
Tucson, Arizona 85000

Dear Ms. Employee:

This letter is official notice that in accordance with Department of Administration Personnel Rule R2-5-409, you have been placed on Administrative Leave with Pay pending the results of an investigation. Your leave will begin at (time) .m., on (date) , and will continue until further notice.

While you are on Administrative Leave, you remain an employee of the State of Arizona and must continue to observe all rules and regulations regarding the conduct of state service employees. You will continue to accrue all rights and benefits as an employee.

During your leave, you are directed to remain at your residence during the regular work hours of 8:00 a.m. to 5:00 p.m. You must be available to provide information or services during these hours as directed by your supervisor. You must call your supervisor each work day between 8:00 a.m. and 8:30 a.m. You may leave your residence during your lunch break from 12:00 noon to 1:00 p.m. To leave your residence at any other time during the regular work hours cited above, you must request sick leave or annual leave. If your supervisor approves your request for sick leave or annual leave, you may leave your residence during the approved leave period.

You may be contacted at your residence during the regular work hours of 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. If you are not at your residence and your supervisor has not approved sick or annual leave for this time, you will be considered to be absent without leave and will be given leave without pay. Furthermore, you may be disciplined.

Form 3.1
Page 2 of 2

Failure to comply with all of the directives in this letter will subject you to disciplinary action.

Sincerely,
(Name)
(Title)

cc: Office Administrator

Form 3.2

RETURN FROM ADMINISTRATIVE LEAVE

(Section 3.8.7)

(Date)

Ms. Sally Q. Employee
1234 Anywhere Road
Phoenix, Arizona 85000

Dear Ms. Employee:

On (date) , you were placed on Administrative Leave pending the results of an investigation. The investigation has been completed, and you are instructed to return to work.

You are to report to your immediate supervisor, (name) , on (date) at (time) .m. Your reporting place is (location) .

Sincerely,

(Name)
(Title)

cc: Office Administrator

Form 3.3

DEMOTION FOR CAUSE—COVERED EMPLOYEE

(Section 3.3.3)

(Date)

Ms. Sally Q. Employee
1234 Anywhere Road
Phoenix, Arizona 85000

Dear Ms. Employee:

This letter is notice of your demotion from Nurse II, grade 16, at an annual salary of _____, to Nurse I, grade 15, at an annual salary of _____, effective (date).

This action is taken under the authority of Department of Administration Personnel Rule A.A.C. R2-5-802 for “cause” as outlined in A.R.S. § 41-770 and A.A.C. R2-5-501.

Background: In the first semester of Nurses’ training, every student receives extensive instructions on how to “chart,” the importance of “charting,” the legal necessities of “charting,” and the ramifications that may result if “charting” is not performed or is performed erroneously. In summary, “charting” of a patient’s treatment is a basic but essential responsibility of all nurses.

The specific reasons for your demotion are as follows:

1. On January 3, 1999, patient (use code) assigned to your ward and in residence at the time of your shift had charting entries not in harmony with the attending physician’s instructions. In addition, you admitted that medicine was given that was not entered on the patient’s chart. **[You may place the following sentence here, after each charge, or as a separate paragraph at the end of all of the charges:** Your actions violated (cite specific statutory subsections, personnel rules or agency policies.)]

2. On November 3, 1999, patient (use code) assigned to your ward and in residence at the time of your shift had charting entries not in harmony with the attending physician's instructions. In addition, you admitted that medicine was given that was not entered on the patient's chart. **[You may place the following sentence here, after each charge, or as a separate paragraph at the end of all of the charges:** Your actions violated (cite specific statutory subsections, personnel rules or agency policies.)]

3. **[Include discussion of prior corrective and disciplinary action.]** You have been counseled orally six times between July 1, 1997, and July 28, 1998, about the necessity of following physicians' instructions and correctly charting. **[You may place the following sentence here, after each charge, or as a separate paragraph at the end of all of the charges:** Your actions violated (cite specific statutory subsections, personnel rules or agency policies.)]

[If you do not list the specific violations of statute, personnel rules or agency policies after each charge, then state the following here: Your actions violated (cite specific statutory subsections, personnel rules or agency policies.)]

It is our belief that you need an intensified period of close supervision. A Nurse II classification has independent work activities assigned to it. Therefore, we are demoting you to Nurse I, a classification that is in harmony with your need for close supervision.

You have the right to appeal this demotion if you wish. Your appeal must be made in writing to the State Personnel Board, 1400 W. Washington, Ste. 280, Phoenix, Arizona, 85007. You must file your appeal within ten working days from the date of this demotion and must state the facts upon which your appeal is based, along with the action you request of the Personnel Board.

Sincerely,

Director/Deputy Dir./Assistant Dir.
(Person With Actual or Delegated Authority)

cc: Employee Personnel File
Agency Personnel Manager

Form 3.3
Page 3 of 3

I, _____ (employee's signature) _____, acknowledge receipt of this Notice of Demotion for Cause on _____ (date) _____.

Form 3.4

DISMISSAL—PERMANENT STATUS STATE EMPLOYEE

(Section 3.3.4)

(Date)

Mr. John Q. Employee
1234 Anyplace Avenue
Any Old Place, Arizona 85000

Dear Mr. Employee:

This letter is notice of your dismissal from the Department of Economic Security effective (date) at .m.

This action is taken under the authority of Department of Administration Personnel Rule R2-5-803 for “cause” as outlined in A.R.S. § 41-770 and Department of Administration Personnel Rule R2-5-501, Standards of Conduct.

[Include a statement that includes the employee’s official class title and length of total state service and specifies how, because of this background, the employee should have been aware that his actions were inappropriate. See example below.]

As a Public Assistance Eligibility Interviewer II, Grade 15, with the Office of the Department of Economic Security with 18 years of Arizona state service, you are aware of the general employment conduct requirements contained in the Standards of Conduct, including the requirement to be courteous, considerate, and prompt in dealing with and serving the public and to conduct yourself in a manner that will not bring discredit or embarrassment to the State. On the first page of the DES New Employee Handbook that you signed (date) you attested that you are aware of your responsibility to adhere to the rules, policies, procedures, and statutes referred to in the handbook, as well as to all others that govern your conduct and performance as a state service employee.

The specific reasons for your dismissal are:

1. On January 5, 1999, at about 10:00 a.m., you stated to your supervisor, [Mr. or Ms.] _____, "Go to hell, I will not attend," or words to that effect, when your supervisor asked you to attend a meeting. Even though you later attended the meeting, your actions were inappropriate and disruptive. **[You may place the following sentence here, after each charge, or as a separate paragraph at the end of all of the charges: Your actions violated (cite specific statutory subsections, personnel rules or agency policies.)]**

[Include any additional information that would show the seriousness of the action. For example: You made that statement in the client reception area in front of clients and other employees, thereby showing disrespect for the public and your supervisor and causing embarrassment to the State.]

[Include any additional information that identifies any adverse impact on clients or employees that resulted from the employee's action.]

2. On January 8, 1999, you were directed to process seven requests for hearing. You objected to this assignment. At 5:00 p.m. the seven hearing requests were discovered in your wastebasket. **[You may place the following sentence here, after each charge, or as a separate paragraph at the end of all of the charges: Your actions violated (cite specific statutory subsections, personnel rules or agency policies.)]**
3. On January 9, 1999, at about 3:00 p.m., you left your post at ***[give specific work area]*** before ***[state what job assignment remained to be done]***. You left your post without authority and without being properly relieved. **[You may place the following sentence here, after each charge, or as a separate paragraph at the end of all of the charges: Your actions violated (cite specific statutory subsections, personnel rules or agency policies.)]**

[If you do not list the specific violations of statute, personnel rules or agency policies after each charge, then state the following here: Your actions violated (cite specific statutory subsections, personnel rules or agency policies).] Such misconduct calls for appropriate disciplinary measures. In arriving at the decision that dismissal was the appropriate disciplinary action to take in this matter, consideration also was given to the following facts:

1. You received an oral warning on July 14, 1998, for using obscene language towards another employee and for refusing to assist in taking an inventory. You were advised at that time that further misconduct on your part would result in more severe disciplinary action.
2. You received a written reprimand on August 16, 1998, for threatening to destroy another employee's personal property. You were advised at that time that further misconduct on your part would result in more severe disciplinary action.
3. You were suspended from work without pay for five days in November 1998 for being absent without leave. You were advised at that time that further misconduct on your part would result in more severe disciplinary action.

Please return all state property immediately so that we can issue your final paycheck.

You have the right to appeal this action under A.R.S. § 41-785 if you wish. Your appeal must be made in writing to the State Personnel Board, 1400 W. Washington, Ste. 280, Phoenix, Arizona, 85007. If you choose to appeal, your appeal within ten working days from the date of this dismissal and must state the facts upon which your appeal is based, along with the action you request of the Personnel Board.

Sincerely,

(Name)

cc: Employee Personnel File
Office Administrator
State Personnel Board
Office of the Attorney General, Employment Law Unit

[NOTE: If the employee is on Promotional Probation and the Employee is going to be reverted prior to the dismissal, the dismissal letter should contain a statement such as the following to ensure that the termination is completed effectively: "You are reverted to your permanent status position and you are terminated from your permanent status position."]

Form 3.5

DISMISSAL—UNCOVERED EMPLOYEE

(Section 3.2.1)

(Date)

Ms. Sally Q. Employee
4321 Anywhere Road
Tucson, Arizona 85000

Dear Ms. Employee:

This letter is official notice that your services are no longer needed by the Department of _____, effective (date) at _____ .m.

As an uncovered employee, you have no right to appeal this action. Please return all state property immediately.

Sincerely,

Board or
Director/Deputy Dir./Assistant Dir.

cc: Employee Personnel File
Agency Personnel Manager

Form 3.6

DISMISSAL—ORIGINAL PROBATIONARY EMPLOYEE

(Section 3.2.3)

(Date)

Ms. Sally Q. Employee
4321 Anywhere Road
Tucson, Arizona 85000

Dear Ms. Employee:

This letter is notice of your dismissal as an original probationary employee from employment with the Department of _____. You are dismissed effective (date) at _____ .m.

This action is taken under the authority of Department of Administration Personnel Rules A.A.C. R2-5-213(C) and R2-5-803(C)(1).

As a probationary employee, you have no right to appeal or to request a review of this action by the Department of Administration. See A.A.C. R2-5-803.

Please return all state property immediately.

Sincerely,

Board
Director/Deputy Dir./Assistant Dir.

cc: Employee Personnel File
Agency Personnel Manager

Form 3.7

DISMISSAL—TEMPORARY AND SEASONAL EMPLOYEES

(Section 3.2.4)

(Date)

Ms. Sally Q. Employee
4321 Anywhere Road
Tucson, Arizona 85000

Dear Ms. Employee:

This letter is official notice of your dismissal from the Office of the Attorney General, effective (date) at .m.

Please return all state property immediately so that we can issue your final paycheck.

Sincerely,

(Name)

cc: Human Resources for Employee Personnel File
Office Administrator

Form 3.8

**END OF ASSIGNMENT—LIMITED, TEMPORARY, OR
SEASONAL EMPLOYEES**

(Section 3.2.4)

(Date)

Ms. Sally Q. Employee
4321 Anywhere Road
Tucson, Arizona 83000

Dear Ms. Employee:

This is to inform you that your **[seasonal or temporary]** assignment will be ending on August 29, 1999, at 5:00 p.m. Your efforts in assisting this office in meeting its objectives have been fully noted and appreciated.

[Following sentence is optional: Please note that as a (seasonal or temporary) employee, your job performance has been recorded as (satisfactory or excellent).]

Please return all state property immediately so that we can issue your final paycheck.

Sincerely,

(Name)
(Title)

cc: Human Resources for Employee Personnel File
Office Administrator

Form 3.9

MEDICAL CERTIFICATION REQUIREMENT

(Section 3.8.3)

(Date)

Ms. Sally Q. Employee
4321 Anywhere Road
Tucson, Arizona 83000

Dear Ms. Employee:

On June 1, 1999, you called your supervisor and reported that you were sick and could not come to work. On that same day, you were observed having lunch with a group of people at a local restaurant.

A review of your sick leave usage also reveals some irregularities. In the past six months, an unusual number of your sick leave days occurred on Fridays. You have also commonly taken sick leave the day following a holiday weekend.

You are hereby reminded that sick leave may be used only for the reasons listed in A.A.C. R2-5-404(A), a copy of which is enclosed for your reference. Abuse or misuse of sick leave can result in discipline up to and including dismissal.

You are advised that for the next six months, sick leave requests will not be granted unless accompanied by medical certification that your absence was for one of the reasons set forth in A.A.C. R2-5-404(A). Such medical certification will not be placed in your personnel file and will be shared only with those individuals who have a need to know. A sick leave certification form is enclosed and may be photocopied if you need additional forms.

Sincerely,

Supervisor

cc: Supervisor's File

Enc.: R2-5-404
Certification Form

Form 3.10

MEDICAL—ORDER FOR MEDICAL EXAMINATION

(Section 3.8.3)

(Date)

CONFIDENTIAL

Ms. Sally Q. Employee
4321 Anywhere Road
Tucson, Arizona 83000

Dear Ms. Employee:

You are employed as a Personnel Analyst II (Classification Specialist). As a Classification Specialist, it is your responsibility to work with various agency management personnel to determine proper job titles and salary grades. Essential functions of this position include _____.

Your recent job performance demonstrates that you may be unable to perform the essential functions of your position for medical reasons. You have been employed in this position for two years. During that time, your performance evaluations reflect that you have been performing satisfactorily with respect to both the quantity and quality of your work. Within the last thirty days, your performance has dramatically changed. You have uncharacteristically missed important deadlines, and your work has demonstrated an unusual number of careless errors. In addition, you have lost your temper and raised your voice to coworkers on several occasions. In one of these altercations, you told a coworker that he "had better hope you never find him in a dark alley somewhere." On March 12, your supervisor observed you sleeping at your desk. When your supervisor discussed these issues with you, you indicated that you were having some serious personal problems.

The state personnel rules provide that an employee may be referred for a medical examination at the employer's expense to determine whether the employee is medically fit to perform his or her job. A.A.C. R2-5-404(D)(3).

You have been scheduled for an appointment with Dr. Psychiatrist on May 15, 1999, at 2:00 p.m. Dr. Psychiatrist is located at 111 West Capitol Lane, Phoenix, Arizona. Dr. Psychiatrist's telephone number is (602) 222-2222. The time for this appointment and travel to and from the examination is considered work time, so there will be no deduction

from your sick leave or annual leave. Transportation can be provided at no cost upon request.

After the examination, Dr. Psychiatrist will provide the agency with a report indicating whether, in his opinion, you are able to perform the essential functions of your position as a Personnel Analyst. This information will be reported to me and shared only with those who need to know. No information concerning this medical examination, including this letter, will be placed in your personnel file.

Your failure to appear for this examination will be considered insubordination, i.e, refusal to follow a direct work order, and may result in disciplinary action up to and including dismissal from state service. See A.R.S. § 41-770; A.A.C. R2-5-501.

Sincerely,

Director/Deputy Director/Asst. Director

I, _____ (Employee Signature) _____, acknowledge receipt of this Order for Medical Examination on _____ (date) _____.

cc: Employee Medical File

Form 3.11

FITNESS-FOR-DUTY EVALUATION

(Section 3.8.3)

(Date)

CONFIDENTIAL

Dear Dr. Psychiatrist:

(Employee) is being referred to your office for a fitness-for-duty evaluation. The employee works as a Personnel Analyst II. A current job description for that position is being provided for your reference. In addition, we are providing you with an essential functions matrix showing the job duties and tasks considered essential to the performance of this job.

After the examination, please provide us with a report discussing the employee's ability to perform the essential functions of the position. If the employee has limitations that affect the ability to perform the essential functions, please let us know the extent of the limitations and the prognosis for those limitations. In addition, please include in your report whether or not the employee's presence in the workplace or continued performance of the described duties could pose a risk to the safety of the employee or any other employee.

[Use if the referral is for an assessment of propensity for violence]

(Employee) is also being referred to you for an examination and assessment of the employee's propensity for violence in the workplace. This referral is being made based on the following incidents:

1. Employee received a poor performance evaluation from his supervisor. During the meeting, the employee said that he was not going to fight the evaluation and that the supervisor would get what was coming to him.
2. The day after this confrontation, the employee placed a newspaper clipping on the supervisor's desk. The clipping referred to a workplace shooting in Nebraska. The employee wrote, "thought you would find this interesting" on the clipping.

3. Employee affixed a National Rifle Association sticker to his computer terminal and has been observed reading gun magazines during his lunch hour.
4. Employee bragged to coworkers about chasing some teenagers off of his property with his shotgun.
5. Employee has started carrying a large duffel bag to and from work that appears to be heavy.
6. Employee has been observed crying at his desk on two separate occasions.

Please include in your report an assessment of this employee's propensity for violence and your assessment of whether allowing this employee to remain in the workplace poses a threat to the employee or to others.

Sincerely,

Director/Dep. Dir./Ass't. Dir.

cc: Employee Medical File

Form 3.12

MEMORANDUM OF CONCERN—OPTION NO. 1

(Section 3.3.1)

TO: Employee
FROM: Supervisor
RE: MEMORANDUM OF CONCERN
DATE: (Date)

This Memorandum of Concern is to confirm our verbal discussion in my office on (date), concerning your tardiness and your attitude toward supervision. The purpose of the meeting was to develop a complete understanding between us as to what behavior is acceptable and to point out two specific areas in which you must improve.

The shop hours are 7:30 a.m. to 11:30 a.m. and 12:00 m. to 4:00 p.m. You and all other shop employees are expected to be here at those times. Your frequent tardiness disrupts planning and scheduling in the shop and is not fair to other employees.

Your habit of contradicting my instructions to other shop employees on work procedures and your use of profanity toward me and other supervisors is unacceptable. If you have suggestions you want to make, I'll be glad to consider them, but you will not countermand my instructions to other employees.

The problem areas addressed in this Memorandum of Concern detract from your performance and are contrary to [*cite statutory subsections, rules or policies violated*]. If these problems continue, they will have to be addressed further through the Department's disciplinary process. If there is any way that I can assist you in remedying these concerns, please feel free to contact me.

Sincerely,

Supervisor

Form 3.12
Page 2 of 2

I, _____ (employee signature) _____, acknowledge receipt of this Memorandum of Concern on _____ (date) _____.

[NOTE: A copy does not go in the employee's personnel file but is retained by the supervisor.]

Form 3.13

MEMORANDUM OF CONCERN—OPTION NO. 2

(Section 3.3.1)

TO: Employee
FROM: Supervisor
SUBJECT: January 6, 1999, Meeting
DATE: (Date)

Your recent actions and your manner in performing routine office clerical tasks led us to hold a meeting with you on January 6, 1999. We now follow up that meeting with this memorandum confirming those items of concern discussed and setting forth what management expects from you.

You are a Clerk Typist II, Grade 9, in the Administrative Secretary's Office. As you clearly understood during your hiring interview, this office serves many analysts assigned to the Director's staff and has a high number of office and interoffice contacts with all divisions in the agency. Another significant characteristic of this office is that the general public frequently comes into the office to seek guidance on processing their applications and licenses.

On January 6, 1999, at 1:30 p.m., the following individuals attended a meeting in the District Manager's office to explain to you the need for corrective action in your daily work performance:

(Administrator of the area)
(Employee's Supervisor)
(An Impartial Observer)
(Affected Employee)

During the meeting, you were clearly advised that your performance is substandard for the following reasons:

1. You have discourteously interrupted meetings and conferences. [*Cite examples*]

2. You have wasted time by needlessly and excessively visiting and discussing private business. [*cite examples*]
3. You have failed to accomplish work on time. [*cite examples*]
4. You have displayed a lack of interest in your job. [*cite examples*]
5. You have prepared correspondence in a sloppy and unbusinesslike manner. [*cite examples*]
6. You have lacked attention to detail and lacked accuracy in performing regular daily tasks. [*cite examples*]

After discussion of these items, I informed you that your work would be closely monitored and that if you did not correct the deficiencies noted in a satisfactory manner, some form of disciplinary action, up to and including possible dismissal, would result.

This is the first formal meeting with you about this subject. However, an informal discussion outlining similar deficiencies took place in November of 1998. I want to be certain that there is no doubt in your mind as to the purpose of the meetings, the deficiencies noted, and the improvements expected of you. If you have any questions about the Department's expectations, or if there is any way that I can assist you in remedying these concerns, please feel free to contact me.

Sincerely,

Supervisor

I, _____ (employee signature) _____, acknowledge receipt of this Memorandum of Concern on _____ (date) _____.

[NOTE: A copy does not go in the employee's personnel file but is retained by the supervisor.]

Form 3.14

NOTICE OF CHARGE(S) OF MISCONDUCT—OPTION NO. 1

(Section 3.3.4)

(Date)

Mr. John Q. Employee
5678 West Anywhere Lane
Flagstaff, Arizona 85000

Dear Mr. Employee:

This letter is notice of charges of misconduct. Pursuant to Department of Administration Rule R2-5-803(A), the purpose of this letter is to provide you with the following:

1. Notice of allegations set forth below. Disciplinary action up to and including dismissal is being considered based on these allegations, which constitute cause for disciplinary action as outlined in A.R.S. § 41-770 and Department of Administration Personnel Rule R2-5-501 (Standards of Conduct).
2. An opportunity to respond to the allegations and present facts that are pertinent to them.
3. To provide you with an opportunity to inform the Department of any and all mitigating circumstances that you feel should be considered prior to deciding what, if any disciplinary action should be taken.

As a Public Assistance Eligibility Interviewer II, Grade 15, with the Department of Economic Security who has eighteen years of Arizona state service, you are aware of the general employment conduct requirements contained in the Standards of Conduct, including the requirement to be courteous, considerate, and prompt in dealing with and serving the public and to conduct yourself in a manner that will not bring discredit or embarrassment to the State. On the first page of the DES New Employee Handbook that you signed on (date) , you attested that you were aware of your responsibility to adhere to the rules, policies, procedures, and statutes referred to in the handbook, as well as all others that govern your conduct and performance as a state service employee.

During your term in state service, you have received a verbal warning for using obscene language, a written reprimand for threatening to destroy another employee's personal property, and a one-week suspension. On each occasion, you were advised that further misconduct on your part would result in more severe disciplinary action.

The specific charges and explanations are as follows:

1. On January 5, 1999, at about 10:00 a.m., you stated to your supervisor, (Mr. or Ms.) _____, "Go to hell, I will not attend," or words to that effect, when your supervisor asked you to attend a meeting. Even though you later attended the meeting, your actions were inappropriate and disruptive. **[You may place the following sentence here, after each charge, or as a separate paragraph at the end of all of the charges: Your actions violated (cite specific statutory subsections, personnel rules or agency policies.)]**

[Include any additional information that would show the seriousness of the action. For example: You made the statement in the client reception area in front of clients and other employees, thereby showing disrespect for the public and your supervisor and causing embarrassment to the State.]

[Include any additional information that identifies any adverse impact on clients or employees that resulted from the employee's actions.]

2. On January 6, 1999, at about 3:00 p.m., you left your post at ***[give specific work area]*** before ***[state what job assignment remained to be done]***. You left your post without authority and without being properly relieved. **[You may place the following sentence here, after each charge, or as a separate paragraph at the end of all of the charges: Your actions violated (cite specific statutory subsections, personnel rules or agency policies.)]**
3. On January 9, 1999, you were directed to process seven requests for hearing. You objected to this assignment. At 5:00 p.m., the seven hearing requests were discovered in your wastebasket. **[You may place the following sentence here, after each charge, or as a separate paragraph at the end of all of the charges: Your actions violated (cite specific statutory subsections, personnel rules or agency policies.)]**

[If you do not list the specific violations of statute, personnel rules or agency policies after each charge, then state the following here: Your actions violated (cite specific statutory subsections, personnel rules or agency policies).]

You may submit a written response to each specific allegation and include appropriate documentation to refute the charges. If you chose to provide a response, the response must be delivered to the office of **[name and title]** at **[address]**, by **[date and time]**.

Sincerely,

(Name)
(Title)

cc: Employee Personnel File
Agency Personnel Manager
Office of the Arizona Attorney General, Employment Law Unit

Form 3.15

NOTICE OF CHARGE(S) OF MISCONDUCT—OPTION NO. 2

(Section 3.3.4)

(Date)

Mr. John Q. Employee
5678 West Anywhere Lane
Flagstaff, Arizona 85000

Dear Mr. Employee:

This letter is notice of a charge (or charges) of misconduct. Pursuant to Department of Administration Rule A.A.C. R2-5-803(A), the purpose of this letter is to provide you with the following:

1. Notice of the allegation(s) set forth below. Disciplinary action up to and including dismissal is being considered based on these allegations, which constitute cause for disciplinary action as outlined in A.R.S. § 41-770 and A.A.C. R2-5-501.
2. An opportunity to respond to the allegations and present facts that are pertinent to them. DOA Personnel Rule A.A.C. R2-5-803(A) requires that you submit your response within three working days after you receive this notice.
3. To provide you with an opportunity to inform the Department of any and all mitigating circumstances that you feel should be considered prior to deciding what, if any, disciplinary action should be taken.

The specific charges and explanations are as follows:

You have not reported to work since _____ (date) _____, and you have not contacted this office to offer a reason for your absence.

Because you have not provided a properly completed leave request, per policy, I have no choice but to notify you that the days on which you have been absent from work are being carried as unauthorized leave without pay.

Form 3.15
Page 2 of 2

Your unexcused absence and failure to appear for work are deemed job abandonment and constitute grounds for disciplinary action up to and including dismissal under [cite statutory subsections, rules and policies].

If you choose, you may submit a written response to each specific allegation and include appropriate documentation to refute these charges. If you choose to provide a response, the response must be delivered to the office of **[name and title]** at **[address]** by **[date and time]**.

Sincerely,

Director/Deputy Dir./Assistant Dir.

cc: Employee Personnel File
Agency Personnel manager

[NOTE: Must send notice to addressee by certified mail, return receipt. May send copies of notice to other individuals either by certified mail, return receipt, or by regular mail.]

Form 3.16

RESIGNATION

(Section 3.7.1)

(Date)

Employers Name
Employer's Address

Dear Employer:

I hereby submit my resignation from my position as _____
with the Arizona Department of _____, effective _____ (date) _____.

Sincerely,

(Name)

[Write letter either confirming that resignation has been accepted or informing that it has been rejected.]

Form 3.17

**RESIGNATION—ACCEPTANCE OF VERBAL RESIGNATION
(COVERED EMPLOYEE)**

(Section 3.7.1)

(Date)

Ms. Sally Q. Employee
4321 Anywhere Road
Phoenix, Arizona 85000

Dear Ms. Employee:

This letter confirms the agency's acceptance of your verbal resignation from the Department of _____, effective _____ at _____ .m.

This resignation is accepted under the authority of Department of Administration Personnel Rule A.A.C. R2-5-901(A) and (B), which states as follows:

- A. General. An employee may terminate employment with the state service by submitting a written resignation to the agency head at least ten working days prior to the effective date of the resignation. Unless the Director determines that the employee had good cause for not giving such notice, an employee who fails to give such notice shall not be eligible for reinstatement.
- B. Oral Resignation. If an employee resigns orally, the agency head shall confirm the resignation in writing.

[If appropriate] Because you failed to provide written resignation at least ten working days prior to the effective date of your resignation, your resignation is accepted with prejudice, and you do not have reinstatement rights.

Sincerely,

Director/Deputy Dir./Assistant Dir.

cc: Employee Personnel File
Agency Personnel Manager

Form 3.18A

RESIGNATION—IN LIEU OF DISMISSAL

(Section 3.7.1, 3.7.3)

(Date)

Employers Name
Employer's Address

Dear Employer:

I hereby submit my resignation from my position as _____ with the Arizona Department of _____, effective _____ (date) _____, and waive all rights to reinstatement and reemployment in state service.

Sincerely,

(Name)

Do not use this prior to seeking legal advice.

[Write letter confirming that resignation in lieu of dismissal has been accepted.]

Form 3.18B

RESIGNATION—IN LIEU OF DISMISSAL—CONFIRMATION OF DISCUSSION

(Section 3.7.1)

(Date)

Ms. Sally Q. Employee
4321 Anywhere Road
Phoenix, Arizona 85000

Dear Ms. Employee:

This is to confirm our discussion on (date). You were informed that the Attorney General's Office no longer requires your services. We have agreed to allow you to substitute a resignation letter in lieu of termination. Our acceptance of the resignation letter is conditioned upon your compliance with the terms of our understanding.

We agreed that your last work day will be (date). You will remove all of your personal items from the office by the end of this day. You will turn in your identification badge to your supervisor and inform your supervisor of all current passwords you use for your computer or any other state equipment by 4:00 p.m. on (date).

We have agreed to allow you to use annual leave from _____ to _____. No other type of leave will be authorized for that period.

After your last work day of _____, you are not authorized to perform any work for the Attorney General's Office. If you are contacted by anyone referencing cases or other work at the Attorney General's Office, you are to direct the person to call _____.

If you have any questions, you are directed to call your supervisor. If you believe that for any reason you must return to the office during the period of annual leave, contact your supervisor to coordinate the visit to the office.

For the purpose of issuing your final check, the operative final employment date will be the last day of annual leave, _____.

Sincerely,
Name
Title

cc: Employee Personnel File
Agency Personnel Manager

Form 3.20

**SEPARATION WITHOUT PREJUDICE
FOLLOWING EXTENDED LEAVE—FAILURE TO RETURN**

(Section 3.8.9)

(Date)

Ms. Sally Q. Employee
4321 Anywhere Road
Phoenix, Arizona 85000

Dear Ms. Employee:

You have been on extended leave without pay since (date) . The last day of authorized leave without pay was (date) . No extension of your leave without pay has been granted. You have not submitted a resignation, and although a position was available, you failed to return to work on (date) .

Therefore, we consider you to have resigned, and you are separated without prejudice.

You may have reinstatement rights as provided in the Department of Administration Personnel Rules, A.A.C. R2-5-101 through A.A.C. R2-5-904. Contact your insurance liaison at (phone number) regarding insurance benefits.

Sincerely,

Director/Deputy Dir./Assistant Dir.

cc: Employee Personnel File
Agency Personnel Manager

[Before issuing this letter, ensure that any obligations under the personnel rules, the Family and Medical Leave Act, and the Americans with Disabilities Act have been met.]

Form 3.21

**SEPARATION WITHOUT PREJUDICE FOLLOWING EXTENDED LEAVE—
INABILITY TO RETURN**

(Section 3.8.9)

(Date)

Ms. Sally Q. Employee
4321 Anywhere Road
Phoenix, Arizona 85000

Dear Ms. Employee:

You have been on extended industrial leave since (date) . We understand that you are not able to return. We have also been notified that you have picked up your medical insurance through state retirement and have been accepted for long-term disability.

Therefore, we consider you to have resigned and you are separated without prejudice.

You may have reinstatement rights as provided in the Department of Administration Personnel Rules, A.A.C. R2-5-101 through A.A.C. R2-5-904.

Sincerely,

Director/Deputy Dir./Assistant Dir.

cc: Employee Personnel File
Agency Personnel Manager

[Before issuing this letter, ensure that any obligations under the personnel rules, the Family and Medical Leave Act, and the Americans with Disabilities Act have been met.]

Form 3.22

**SEPARATION WITHOUT PREJUDICE FOLLOWING EXTENDED LEAVE—
POSITION NOT AVAILABLE**

(Section 3.8.9)

(Date)

Mr. John Q. Employee
5678 West Anywhere Lane
Flagstaff, Arizona 85000

Dear Mr. Employee:

You have been on extended leave without pay since (date) . The last day of authorized leave without pay was (date) . No extension of your leave without pay has been granted. There was no funded position available on (date) , the day you were scheduled to return to work.

Therefore, you are considered to have resigned and are separated without prejudice.

You may have reinstatement rights as provided in Department of Administration Personnel Rules, A.A.C. R2-5-101 through A.A.C. R2-5-904. Contact your insurance liaison at (phone number) regarding insurance benefits.

Sincerely,

Director/Deputy Dir./Assistant Dir.

cc: Employee Personnel File
Agency Personnel Manager

[Before issuing this letter, ensure that any obligations under the personnel rules, the Family and Medical Leave Act, and the Americans with Disabilities Act have been met.]

Form 3.23

**SUSPENSION WITHOUT PAY
COVERED EMPLOYEE—FORTY HOURS OR LESS**

(Section 3.3.2)

(Date)

Ms. Jane Q. Employee
1234 Anyplace Avenue
Anyplace, Arizona 85000

Dear Ms. Employee:

This letter is official notice of your suspension without pay from the Department of Administration.

The period of suspension will begin on (date and time) , and will continue to (date and time) (hours). You are to report to work on (date and time) .

This action is taken under the authority of Department of Administration Personnel Rule A.A.C. R2-5-801 for “cause” as outlined in A.R.S. § 41-770 and A.A.C. R2-5-501.

As a Journeyman Electrician with the State of Arizona, you are a fully qualified tradesman. You have completed an apprenticeship lasting over four years, complemented with over 1,200 hours of classroom instruction. In addition, you took and passed the journeyman’s examination. This background qualifies you to perform any maintenance or construction project pertaining to electrical work. In addition to the qualifications cited above, you have worked seven years in your journeyman field, primarily on construction and renovation type electrical work.

The specific reasons for your suspension are as follows:

On July 23 and July 24, you stated in public and in front of at least six witnesses that the prime contractor’s incompetency caused the power failure at the “uniform power center.” You also stated that a voltage drop was the same contractor’s fault. When questioned by the contractor to determine its role in these problems, you stated that your meter indicated a drop of 32 volts. You were asked if your meter was correct, and you stated that it was. The contractor’s meter was calibrated by “Arizona Testing Laboratories” one week before this reading and was found to read 240 volts. When the contractor asked

you to check the correctness of your meter, you became upset, raised your voice, and stated that there was nothing wrong with your meter. You further stated that it was the contractor's fault that "things keep getting fouled up" and that the company blew up a transformer because the company "didn't know what it was doing."

The contractor immediately pulled the crew (four persons) off the final phase of the contract. They were off three days before your management stepped in and mediated a resolution to the work stoppage. During that time, the State was billed for four persons' work days, and an investigation revealed that your meter was in error. In addition, the investigation revealed that the blown transformer was the manufacturer's fault.

Your actions violated [cite statutory subsections, rules or policies violated].

Hereafter, you are to work through your Maintenance Supervisor if there are any areas of quality concern. Any further problems of this nature or violations of other statutes, rules, or policies will result in additional disciplinary action up to and including dismissal.

You do not have the right to appeal this action. However, you may use the employee Grievance Procedure if you feel that the suspension is unjust. Grievances must be filed within ten working days after the effective date of suspension, which is (date) , the first day of suspension. Please refer to Department of Administration Rules A.A.C. R2-5-701 and A.A.C. R2-5-702.

Sincerely,

Director/Deputy Dir./Assistant Dir.
(Person with Authority or Delegated Authority)

cc: Employee Personnel File
Agency Personnel Manager

Form 3.24

**SUSPENSION WITHOUT PAY
(Forty-one or More Hours)**

(Section 3.3.2)

(Date)

Ms. Jane Q. Employee
1234 Anyplace Avenue
Anyplace, Arizona 85000

Dear Ms. Employee:

This letter is your official notice of your suspension without pay from the Attorney General's Office.

The period of suspension will begin at 8:00 a.m., January 27, 1999, and will continue to 5:00 p.m., February 11, 1999 (56 hours). You are to report to work at 8:00 a.m., February 12, 1999.

This action is taken under the authority of Department of Administration Personnel Rule R2-5-801 for "cause," as outlined in A.R.S. § 41-770 and Department of Administration Personnel Rule R2-5-501 (Standards of Conduct).

You have been a Secretary in state service for four years. You are aware that your responsibilities as a State employee include the necessity of requesting and receiving approval for all absences from the Office.

Specific reasons for your suspension are as follows:

From December 19, 1998, through December 23, 1998, you failed to report to work as scheduled claiming personal illness. On December 20, 1998, in a telephone conversation with your supervisor, you stated that you had attempted to receive treatment from two physicians, but that treatment was refused due to past due accounts. You indicated that you were still too ill to work and probably would not return to duty for several days. You assured your supervisor that you would see a physician on December 23, 1998, because you would receive your pay check that day. However, upon your return to work on December 27, 1998, you not only failed to provide the required documentation, but admitted that you had not been examined or treated by a physician for illness.

Fulfillment of assigned responsibilities is dependent upon reliable and conscientious employees. Furthermore, your absences from duty from December 19, 1998, through December 26, 1998, are considered unauthorized absences and have been reported to Payroll as Leave Without Pay on the time sheet.

On September 2 and October 30, 1998, you received written reprimands for absence without leave, neglect of duty, willful disobedience, and improper attitude. In the reprimands, you were advised that your unanticipated absences were having a negative impact on Office production and staff morale. Both reprimands warned that future unanticipated absences would not be approved unless you provided documentation substantiating your need to be absent. You were also warned that failure to provide such documentation would result in severe disciplinary action. Despite these warnings, you continue to miss work without prior approval and fail to provide the required documentation.

Your actions violated [cite statutory subsections, rules or polices violated]. In the future, you are directed to comply with Department policy regarding leave. Continued violation on your part or violation of other statutes, rules, or policies will result in additional disciplinary action up to and including dismissal from state service.

You have the right to appeal this suspension if you wish. Your appeal should be made in writing to the State Personnel Board, 1400 W. Washington, Ste. 280, Phoenix, Arizona, 85007. You must file your appeal within ten working days from the date of this suspension and must state with specificity the facts upon which your appeal is based, along with the action that you request of the Personnel Board.

Sincerely,

(Name)

cc: Employee Personnel File
Agency Personnel File
State Personnel Board
Office of the Attorney General, Employment Law Unit

Form 3.25

VOLUNTARY GRADE DECREASE—EMPLOYEE REQUEST

(Section 3.7.2)

TO: Name of Supervisor Making Job Offer

FROM: Employee Name and Address

SUBJECT: Voluntary Grade Decrease

DATE: (Date)

For personal reasons (OR – for the reasons listed below), I wish to take a voluntary grade decrease from (Present position), grade _____, effective (date).

I wish to accept a position as (New position title), position (number), grade _____, effective (date).

I fully understand that this voluntary grade decrease will result in a reduction in salary and that my salary will be \$ _____ per year.

[Give details of reasons for voluntary grade decrease if appropriate.]

I also understand that I have no right to grieve this voluntary grade decrease, which I knowingly and voluntarily have requested.

cc: Employee Personnel File
Agency Personnel Manager

Form 3.26

VOLUNTARY GRADE DECREASE—MANAGEMENT ACCEPTANCE

(Section 3.7.2)

(Date)

Ms. Jane Q. Employee
1234 Anyplace Avenue
Anyplace, Arizona 85000

Dear Ms. Employee:

This will confirm that your request for a voluntary grade decrease from a (Present position title), grade _____, at \$ _____ per year, to a (New position title), position (number), grade _____, at \$ _____ per year, is hereby accepted. This action is effective (date), and is in accordance with the Department of Administration Personnel Rules. Since this action is voluntary and because you have an excellent (or acceptable) record of state service, the Department of _____ will place this letter in your personnel file to indicate that this voluntary grade decrease is not a result of disciplinary action, but was done at your request.

Sincerely,

Appointing Authority

cc: Employee Personnel File
Agency Personnel Manager

Form 3.27

REPRIMAND

(Section 3.3.1)

(Date)

Ms. Jane Q. Employee
1234 Anyplace Avenue
Anyplace, Arizona 85000

Dear Ms. Employee:

This letter is a reprimand for your actions on January 6, 1999.

You are a Correctional Officer, Grade 14, in our male youth facility. Your primary duties are to oversee, advise, and counsel male juveniles. Your responsibilities include protecting juveniles from physical and mental harm.

The specific reasons for this reprimand are as follows:

On January 6, 1999, at about 9:30 a.m., you permitted two juveniles under your supervision to engage in a boxing match. You did not obtain prior approval from your supervisor before allowing this activity. No protective equipment was provided to the juveniles. You did not properly document the activity for agency records.

Your actions constitute a serious violation of [cite statutory subsections, rules or polices violated]. Continued violation on your part of these or other statutes, rules, or policies will result in additional disciplinary action up to and including dismissal from state service.

You do not have the right to appeal this action. However, you may use the Employee Grievance Procedure if you feel that the reprimand is unjust. Grievances must be filed within ten working days after the effective date of the action being grieved. See A.A.C. R2-5-701 and R2-5-702.

Sincerely,

Supervisor

cc: Employee Personnel File
Agency Personnel Manager

Form 3.28

REQUEST FOR INFORMATION

(Section 3.4)

TO: Agency
FROM: Employment Law Unit
RE: Case Name
DATE: (Date)

The employee/appellant in the above-referenced matter has filed the attached notice of appeal of the disciplinary action that your agency took. To prepare for the administrative hearing of this matter, please obtain the following information and forward it to me no later than _____:

1. The name, address, title, and phone number of your agency's representative who will be responsible for gathering all written or other information that will be required for the hearing AND who will assist the assigned attorney by attending the hearing itself.
2. Please have the agency representative review a copy of the appellant's letter and, for each factual allegation or contention stated in the letter, provide the following information, paragraph by paragraph:
 - A. The names of the witnesses who will testify in support of the allegations in each paragraph, their home and work telephone numbers and, if not employed by the State, their home or business addresses.
 - B. The written or physical materials (i.e., letters, memos, notes, photographs, agency rules and policies, witness(es)' statements, performance and evaluation reports, investigative reports, transcripts, etc.) that will support or assist in explaining the factual allegations in each paragraph. If an investigation was conducted before discipline was imposed, please arrange for a complete copy of the investigative report to be sent immediately.

- C. A complete copy of the employee/appellant's personnel file, including all prior disciplinary actions issued to the employee/appellant, and all supervisor's files regarding the employee/appellant.
 - D. The names, addresses, and home and work telephone numbers of any individuals who might have additional information that would assist in preparing this case.
 - E. The names, addresses, and home and work telephone numbers of any witnesses who have been contacted by the employee/appellant to testify in this matter, if known.
3. If this was a dismissal, please indicate whether the employee was afforded an opportunity to resign in lieu of the disciplinary action that your agency took and whether or not your agency might consider a resignation at this time.
4. Additionally, please furnish the following information:
- A. Whether the appellant was given oral or written notice of the charges of misconduct relied upon to support disciplinary action.
 - B. If such notice was given orally, indicate who conducted the meeting with the employee/appellant and when it was conducted.
 - C. If pretermination notice of charges was given in writing, provide a copy of the notice and all written responses and/or memoranda reflecting the employee/appellant's answer to the charges of misconduct. If pretermination meetings with the employee/appellant were tape-recorded, please disclose who is in possession of the tape-recording.
5. Provide a response to each allegation in appellant's appeal.

Again, please obtain the information requested above and forward it to me by _____. Also, please have the agency representative contact me if there are any questions.