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By [illegible] SECRETARY OF STATE

~~NEBRASKA ADMINISTRATIVE CODE~~

~~Title 69 - Department of Correctional Services~~

~~Chapter 1 - EMPLOYEE DISCIPLINE~~

~~001 — Applicability. The provisions of this rule shall apply to all employees of the Department of Correctional Services.~~

~~002 — Department Policy. It is the policy of this Department that, when it becomes necessary to administer discipline against an employee, the type of discipline will be imposed consistent with the nature, severity, and effect of the offense; the type and frequency of previous offenses; the period of time elapsed since a prior offensive act; and consideration of extenuating circumstances. This rule must be read in conjunction with the State Personnel Rules and Regulations and/or applicable union contracts. Uniform application of this regulation and all policies governing disciplinary action will assist the Department in uniformity, consistency and elimination of many grievance actions.~~

~~003 — Progressive Discipline. The Department advocates the principle of progressive discipline when and where major violations are not involved. Unless the security of the institution/program is compromised or the employee has committed a major violation, all employees should be given the opportunity to improve. Discipline should be progressive in nature.~~

~~004 — Original Probation/Non-Permanent Employees. It is not the intent of the~~

~~Department or State Personnel to allow original probation/non-permanent employees the same due process as permanent employees. The very nature of original probation/non-permanent employees is to watch their progress closely and to utilize this time as an essential part of the selection process. For that reason, the following procedure will be accomplished for all original probation/non-permanent employees.~~

~~1. When it is determined that an original probation/non-permanent employee is not suitable for the position, and either termination or extended probation is necessary, the Chief Executive Officer will so justify on a performance evaluation form sent to the Director. The performance evaluation will point out those areas of deficiency which require the action to be taken.~~

~~(New Promulgated Rule)~~

~~004.02 The Director will approve or disapprove the requested action. If extension of probation is approved, the employee will be~~

~~005.02B. Fails to appear at his/her job location without authorization.~~

~~005.02C. Departs from his/her job location without authorization.~~

~~005.02D. Improperly uses or abuses any type of leave, meal or rest periods.~~

~~005.03. Drugs and/or Alcohol Abuse.~~

~~005.03A. Possesses or introduces narcotics, alcoholic beverages, or other unlawful drugs onto state property.~~

~~005.03B. Drinks or otherwise takes unlawful drugs or alcohol while on duty.~~

~~005.03C. Reports to duty under the influence of unlawful drugs or alcohol.~~

~~005.03D. Operates any vehicle while drunk or under the influence of unlawful drugs.~~

~~005.04. Insubordinate Acts.~~

~~005.04A. Fails to accept a proper assignment from an authorized supervisor.~~

~~005.04B. Strikes or assaults a superior.~~

~~005.04C. Treats with contempt or is disrespectful in language or deportment toward a superior.~~

~~005.04D. Provides false or misleading information to a manager, supervisor or superior employee.~~

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~~materials, resting~~

~~one's eyes, or any similar actions showing gross inattention~~

~~to duties).~~

~~005.07A. Any employee not performing a function related to the safety or security of the Department who violates this rule will be punished as follows:~~

~~005.07A(1) First Offense -- Formal counseling (corrective action) to two days' suspension without pay.~~

~~005.07A(2) Second Offense -- Two to five days' suspension without pay.~~

~~005.07A(3) Third Offense -- Termination.~~

~~005.07B. Any employee performing a function related to the safety or security of the Department who violates this rule will be punished as follows:~~

~~005.07B(1) First Offense -- Written warning to termination.~~

~~005.07B(2) Second Offense -- Five days' suspension to termination.~~

~~005.07B(3) Third Offense -- Termination.~~

~~005.07C. The Director retains the decision to terminate for any incident after review of the evidence and determining what is in the best interests of the Department.~~

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~~006.01B. Any actions involving violations of the work place harassment policy, including written warning or dismissal of complaint will not be delegated, but must be approved by the Director. All actions listed above, when imposed, will become a part of the employee's personnel file, so all elements of due process are to be followed. Employees will be notified of all disciplinary action by letter from the Chief Executive Officer. This letter will describe the nature of the offense and the disciplinary action taken.~~

~~With regard to any disciplinary action involving "work place harassment," the Director will have final review and approval of these actions.~~

~~2. Disciplinary action shall consist of one of the following for any one incident.~~

~~006.02A. Written Warning. This is a disciplinary action given the employee by division and program heads and the Chief Executive Officer of facilities, except in cases of work place harassment. Because this is an action which naturally predicts anticipated improvement, not involving a loss of pay, status, or tenure, it should include remarks of what the performance problem is, suggested remedies and time periods in which to improve. A copy must be furnished to the employee for his/her compliance. A copy will be forwarded to the Director's office for information and filing.~~

~~006.02B. Disciplinary Probation. This disciplinary action may affect an employee's pay, status and tenure. The length of probation will not exceed six (6) months. Because this is an action which naturally predicts anticipated improvement, the imposition of discipline must be accompanied by a letter telling the employee what the performance problem is, suggested remedies and expected improvement anticipated by the end of the probation period.~~

~~006.02C. Suspension Without Pay. When suspended without pay for disciplinary reason (as distinguished from investigatory suspension), the length of suspension may be any amount of working days up to thirty (30), and will not exceed thirty (30) working days.~~

~~006.02D. Demotion. The employee may be demoted in grade as a disciplinary action. Employees who receive a disciplinary demotion to a position of a lower salary grade shall have their salary reduced by a maximum of 5% for a downward transfer or demotion of one salary grade, 7.5% for a downward transfer or demotion of two salary grades, and 12.5% for a downward transfer or demotion of three salary grades or more. In no case shall the new salary be lower than the minimum permanent rate nor more than the maximum rate of the new salary grade.~~

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~~007.03A. The employee will be called into a meeting with the supervisor and told that suspension is contemplated. The employee will have the opportunity to present his/her side of the incident and any mitigating evidence.~~

~~007.03B. If the decision is to suspend, the supervisor will note all relevant information in a memo to the Chief Executive Officer. A letter stipulating the suspension and reasons for suspension will also be sent to the employee.~~

~~007.03C. The Chief Executive Officer will notify the Director's office in writing as soon as possible after the suspension.~~

~~007.04. All suspensions pending investigation can be with or without pay. If the investigation indicates that such action is warranted, disciplinary action will be taken. If the employee is reinstated, it shall be with adjusted back pay and service credit for the period of suspension. (Pay may be adjusted considering unemployment payments and any other employment during the period of suspension.) If discipline taken includes a period of suspension, this suspension in part or as a whole can be used to satisfy the discipline imposed.~~

~~007.05. Employees will not be maintained on suspension with or without~~

~~pay for over thirty (30) work days before imposing the disciplinary process,~~

~~unless the Department is awaiting the results of an outside investigation or~~

~~the employee is awaiting trial by a court of law.~~

~~008. Disciplinary Due Process. The following due process is necessary once a~~

~~charge has been investigated and there is reasonable cause established to~~

~~discipline.~~

~~1. Statement of Charges. When a charge has been confirmed,~~

~~the first step of due process will be the presentation of charges. A supervisor will prepare a statement of~~

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~~008.04. Pre-disciplinary Hearing. The purpose of the pre-disciplinary hearing with the Chief Executive Officer is to allow both parties, i.e. management and employee, to explain their sides of the story. This hearing will be informal in nature. Presentation of evidence and witnesses will be at the discretion of the C.E.O., but should be sufficient to adequately present the case for both sides.~~

~~During this hearing, the employee will be informed that he/she may submit a written statement of mitigation through the CEO to the Director. The employee will have two (2) work days after the hearing to prepare and deliver this mitigating statement to the CEO. It is the responsibility of the CEO to transmit the results of the hearing, the employee letter of mitigation and a recommendation for discipline, if appropriate, through the Assistant Director to the Director.~~

~~During the pre-disciplinary hearing, the C.E.O. and management should be mindful of the following just cause tests:~~

~~008.04A. Was the rule violated a reasonable rule?~~

~~008.04B. Did the employee have adequate notice of the rule?~~

~~008.04C. Was the investigation conducted fairly, concisely and completely?~~

~~008.04D. Is there proof of a violation?~~

~~008.04E. Is the employee receiving fair and equal treatment?~~

~~008.04F. Is the penalty recommended consistent with past, similar cases?~~

~~008.05. Director's Action. The Director, upon receipt of the recommendation of the C.E.O., will approve/disapprove or modify the disciplinary action. The Director may act upon the discipline from the C.E.O.'s recommendation, may request further investigation before acting, or may decide to hold a hearing of the principals before acting. If a hearing is to be held, the Director may appoint a hearing officer to chair the hearing.~~

~~When the Chief Executive Officer recommendations for disciplinary action are received by the Director, they are routed to the appropriate Assistant Director and the Personnel Administrator for recommendation/comment. If the recommendation of the Chief Executive Officer is to be altered by the recommendation of the Assistant Director or Personnel Administrator, either individually or cooperatively, the Chief Executive Officer will be called and advised of this recommendation. This action will give the Chief Executive Officer the opportunity to provide and strengthen his or her recommendation with the Director.~~

~~008.06. Notice of Discipline Imposed. After the Director's action is received, the C.E.O. will present the employee with the written notice of disciplinary action. This document will state the reasons for discipline, ways to improve (if appropriate), the discipline to be imposed, and will contain the employee's signature of understanding and receipt. The written notice will be mailed certified with return receipt requested or presented in person, and signed by the employee. If the employee will not sign, that refusal must be witnessed.~~

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~~Title 69 - Department of Correctional Services~~

~~Chapter 2 - CODE OF ETHICS AND CONDUCT~~

~~001 - Applicability. The provisions of this rule shall apply to all employees of the Department of Correctional Services.~~

~~002 - Department Policy. This Department is charged with the responsibility for providing inmates with opportunities for rehabilitation in an atmosphere conducive to rehabilitation. That responsibility is unique among state agencies, and warrants a code of ethics and conduct for employees of the Department. The responsibility of the Director to appoint or remove employees of the Department and to delegate appropriate powers and duties to them lies in Nebraska Revised Statutes. This code of ethics and conduct supplements the Nebraska statutes. It may be supplemented by operational memoranda issued by the Department's facilities that are consistent with this rule.~~

~~003 - Procedure.~~

~~003.01. Employee / Offender Relationships. Employees will conduct themselves in a professional manner when dealing with inmates and parolees.~~

~~003.01A. Employees will keep their conversation with inmates/parolees on a professional level at all times, and will refrain from discussing their personal lives and activities with them.~~

~~003.01B. Employees shall not introduce contraband into any facility. Contraband is defined as any article not officially issued, purchased, or brought into the facility via proper channels.~~

~~003.01C. Employees shall not accept or issue bribes, gifts or gratuity, nor grant favors or solicit or accept favors, loans or gifts of any kind from inmates/parolees or their family or friends.~~

~~(New promulgated rule)~~

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~~003.01P. Employees having law enforcement responsibilities may be requested to submit to polygraph examination on issues involving their employment.~~

~~003.01Q. Employees having charge, control, or direction of inmates shall not be in any manner financially interested in the work or profit of the labor of any inmate, nor receive pay, gift, gratuity or favor from any person interested in such labor.~~

~~003.01R. Employees of the Department shall not employ inmates on work in which that employee or any other employees of the Department has a personal interest nor be connected or have any interest in the business or shops belonging to the Department of Correctional Services.~~

~~003.02. Personal Accountability. Whether on or off duty, employees will conduct themselves in a manner so as not to discredit the State or this Department.~~

~~003.02A. Any employee who is arrested or issued a citation for a violation of the law, other than a minor traffic violation, will be subject to the following procedure and policies.~~

~~003.02A1. The employee must immediately notify the Chief Executive Officer of his/her alleged violation of law.~~

~~003.02A2. If the Department believes the employee has been engaged in illegal activity, the Department may question the employee about the activity as it relates to the employee's performance of job duties.~~

~~003.02A3. Refusal to answer questions of such activity as it relates to the job, may result in disciplinary action, to include dismissal.~~

~~003.02A4. Any alleged illegal activity on the part of the employee will be considered to have an impact on his or her ability to perform as a correctional employee and may result in immediate suspension from the job pending the outcome of any litigation.~~

~~003.02B. Employees shall refrain from giving any information or discussing any matter of a confidential nature with the public, pertaining to an inmate/parolee, except on an approved basis.~~

~~003.02C. No employee will wear the uniform of a correctional officer unless on duty or directly en route to or from the employee's work place. If an employee appears before a legislative committee, the Parole Board, Pardons Board, the courts, or any other administrative or judicial body, the employee shall not purport to speak on behalf of the Department, unless so authorized by the director of the Department.~~

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~~003.02N(3). Employees will not take prescription drugs which they know will impair their ability to drive before or while operating a state vehicle.~~

~~003.02N(4). Employees will be in violation of our rules if they consume any form of illegal drug, either in or out of a state vehicle.~~

~~003.02N(5). Employees will wear seat belts, will not carry radar detectors and will not wear headphones when operating or riding in a State vehicle.~~

~~003.03. Conflicts of Interest.~~

~~003.03A. Employees will avoid activities which would conflict with their responsibility as employees of the Department of Correctional Services. Any employee who wishes to engage in additional employment must notify his or her Chief Executive Officer who shall review the employee's request to determine whether or not such additional employment would tend to conflict with the employee's responsibility to the Department. The Chief Executive Officer will notify the employee regarding the approval or disapproval of the additional employment.~~

~~003.03B. The Director has discretion by law to deal with the policy of nepotism.~~

~~003.04. Financial Accountability~~

~~003.04A. While in the discharge of his or her duties, an employee will not take action or make a decision which will cause financial benefit for him or her, or a member of his or her immediate family, or business or properties in which he or she has an interest. If by error or omission the employee becomes aware of this rule after the fact, a written statement describing the conflict of interest must be prepared by the employee and sent to the Nebraska Accountability and Disclosure Commission, with a copy to the Departments' Personnel Administrator.~~

~~003.04B. An employee will not enter into any contracts with this Department on their own behalf or on behalf of any business in which the employee has an interest. Concerning other Departments, an employee, a member of the employee's immediate family, or business with which the employee is associated can not enter into a contract valued at $2,000.00 or more without the contract being awarded through an open public process. This process includes prior notice and public inspection as noted in the law.~~

~~003.04C. An employee will not accept gifts, loans, contributions, rewards or promise of future employment based on an agreement that the official action, or judgment of the employee would be influenced thereby. An employee will not use his or her position or confidential information received through his or her position to obtain financial gain, other than compensation provided by law for himself or herself, a member of his or her immediate family, or a business with which the employee is associated.~~

~~003.05. Political Activities. Rules and regulations governing what political activities are appropriate for state employees are clearly defined in State Personnel Rules and Regulations.~~

~~003.06. Drug Abuse. It is the policy of the Department that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the Department of Correctional Services' work place is prohibited. Any employees violating this policy will~~

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~~Title 69 - Department of Correctional Services~~

~~Chapter 3 - Policies Against Workplace Harassment~~

~~001 Applicability. The provisions of this rule shall apply to all employees of the Department of Correctional Services.~~

~~002 Department Policy. This department subscribes to a policy of non-discrimination in all elements of the working environment within corrections. This policy is applicable to all non-merit principles including race, color, sex, religion, national origin, age, marital status or disability.~~

~~Work place harassment shall be defined as "unlawful employment practices," and shall include those actions on the part of employees which create an intimidating or offensive environment within the department. More specifically, any verbal or physical conduct of a discriminatory nature involving race, color, sex, religion, national origin, marital status, age or disability will be in violation of this policy.~~

~~002.01 Supervisor's Responsibility. Work place harassment can and does create a negative work environment which will affect productivity, efficiency, work attendance and turnover of staff. In addition, allegations of work place harassment which are not appropriately responded to by the agency may place the State of Nebraska in a position of potential liability to the victim of such work place harassment Supervisory personnel must take all work place harassment complaints seriously and the agency shall act immediately to investigate and resolve all such complaints in accordance with the following procedures.~~

~~002.02. Reporting of Complaint.~~

~~002.01A. Receipt. Any supervisor who receives a complaint alleging work place harassment or who is otherwise aware of a situation involving work place harassment shall be required to immediately report that complaint or situation, in writing, to the CEO. The CEO shall immediately report this information to the Director through the Department Contact person.~~

~~002.01B. Failure to Report. Any failure by a supervisor to report such work place harassment complaints or situations shall be considered to be in violation of this policy and shall subject the supervisor to appropriate corrective or disciplinary action.~~

~~(New Promulgated Rule)~~

~~002.01C. Complainant Notification of Policy. Any supervisor receiving a complaint alleging work place harassment shall also be obligated to immediately notify the complainant of the agency's policy concerning work place harassment and of the complainant's rights concerning the pursuit of such allegations, as set forth in this policy.~~

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~~002.04. Corrective Action.~~ ~~If upon investigation an allegation of work place harassment is found to be substantiated, the agency head shall take appropriate corrective action against the employee or employees found responsible for such work place harassment. This corrective action may consist of verbal counseling of the employee or employees responsible or may consist of disciplinary action as outlined in Chapter 13 of the State of Nebraska Classified Systems Personnel Rules and Regulations and Article 10 of the Labor Contract between the State of Nebraska and the Nebraska Association of Public Employees. If the complainant so requests, a statement of the findings of fact and whether or not corrective action was issued shall be provided to the complainant.~~

~~002.05. Rights of Complainants.~~

~~002.05A. Right to Report. In the event that any employee of this agency or recipient of services provided by this agency believes that he or she has been or is being subjected to work place harassment, that party shall have the right to report such alleged work place harassment to the agency for purposes of prompt investigation and appropriate action.~~

~~002.05B. Direct Request to Stop. Any employee or recipient of services who believes that he or she is being subjected to work place harassment is encouraged to directly inform the offending person or persons that such conduct is offensive and must stop.~~

~~002.05C. Reporting of Allegations.~~

~~002.05C(1). If the aggrieved person does not wish to communicate directly with the offending person or persons, or if direct communication has been ineffective, then the aggrieved person is encouraged to immediately report the alleged work place harassment to his or her supervisor, to the agency head or to the Department contact within the agency designated to receive complaints of work place harassment.~~

~~002.05C(2). In reporting allegations of work place harassment, complainants should take care to state specific facts including, wherever practical, the identity of the person or persons who committed such work place harassment, the date, time and place of the alleged harassment, what was done or said, and the identity of any witnesses who were present.~~

~~002.05C(3). Any aggrieved person who is uncertain how to report complaints of alleged work place harassment may contact any agency supervisor or the Department contact, the State Affirmative Action Office, Commission on the Status of Women, Nebraska Equal Opportunity Commission or State Ombudsman for assistance in reporting such complaints.~~

~~002.05D. Internal Investigation.~~

~~002.05D(1). An employee of the agency shall be designated as an~~

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