

# **Policy 1317**

## **Classified Employee Standards of Conduct and Performance**

**Date of Current Revision: June 2021**

**Responsible Officer: Director of Human Resources**

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### **1. PURPOSE**

This policy is written to reflect James Madison University's compliance with the Commonwealth of Virginia's Policy [1.60](#) - Standards of Conduct to ensure the clear statement of employee expectations and fair treatment of all classified employees. Standards of Conduct are designed to protect the well-being and rights of all employees; to assure safe, efficient university operations; and to assure compliance with law. The ultimate goal of this policy is to help employees become fully contributing members of the university community.

The Standards of Conduct serve the following purposes:

- Establish guidelines for employee conduct that contributes to the success of the university's mission.
- Establish a fair and objective process for addressing job performance or conduct that negatively impacts an employee's ability to do their job or is contrary to the university's mission.
- Distinguish between less serious and more serious acts and provide corrective action accordingly.

### **2. AUTHORITY**

The Board of Visitors has been authorized by the Commonwealth of Virginia to govern James Madison University. See Code of Virginia § 23.1-1600; § 23.1-1301. The board has delegated the authority to manage the university to the president.

### **3. DEFINITIONS**

#### **Administrative Notification**

Advance notification of discipline given to an employee (orally or in writing) prior to the issuance of written notices, suspensions, demotions, transfers, disciplinary salary actions, and terminations.

#### **Corrective Action**

Any action taken by management to address unacceptable job performance or conduct. Corrective action may range from an informal action such as counseling to formal written disciplinary action.

#### **Disciplinary Action**

A formal action taken in response to unacceptable job performance or conduct. Disciplinary actions include the issuance of written notices; suspensions; demotions; transfers; disciplinary salary actions; and terminations.

#### **Employee Assistance Program (EAP)**

The EAP is a confidential information, support, and referral service offering tools and resources designed to help maximize productivity and meet the challenges of modern life. EAP services are available to employees and their household members enrolled in state health plans. Areas frequently addressed by the EAP include:

- Addiction and recovery
- Child care and parenting
- Concierge and convenience services

- Emotional well-being
- Financial issues
- Helping aging parents
- Legal concerns
- Life events
- Wellness and prevention
- Work and career

### **Notice of Improvement Needed (NIN)**

A form completed by the immediate supervisor during the performance cycle to document substandard performance and the need to improve performance.

### **Pre-disciplinary Leave**

Pre-disciplinary leave is leave with pay to be used when disciplinary action is being considered and the employee's removal from the workplace is necessary or prudent because the employee's continued presence: may be harmful to the employee, other employees, or clients; makes it impossible for the university to conduct business; may hamper an internal investigation into the employee's alleged misconduct; may hamper an investigation being conducted by law enforcement; or may constitute negligence in regard to the university's duties to the public or other employees. At JMU, Administrative Leave is the leave category used for this purpose.

### **Progressive Discipline**

A system of increasingly significant measures that are utilized to provide feedback to employees to correct unacceptable job performance or conduct. It is most successful when provided in a way that helps an employee become a fully contributing member of the organization. Progressive discipline also enables agencies to fairly, and with reliable documentation, terminate an employee who is unable or unwilling to improve.

### **Standards of Conduct**

Reasonable and acceptable expectations for job performance and conduct.

### **Suspension**

An employee's absence from work, without pay, imposed by the university as a part of a disciplinary action.

### **Unacceptable Conduct/Misconduct**

Employee behavior that is inconsistent with state or university standards for which specific corrective or disciplinary action is warranted.

### **Written Notice**

A formal, written method of issuing discipline to an employee when counseling has failed to correct unacceptable job performance or conduct, or when an employee commits a more serious offense. A written notice may be accompanied by additional actions including suspension; a demotion or transfer with reduced responsibilities with a disciplinary salary action; a transfer to an equivalent position in a different work area; or termination.

## **4. APPLICABILITY**

This policy applies to all non-probationary classified employees. It also applies, where applicable, to those who supervise classified employees.

## 5. POLICY

It is the policy of the university to effectively advance its mission by promoting the Commonwealth's established guidelines for acceptable job performance and conduct, and uniform rules to address unacceptable conduct and related employment problems in the workplace, or outside the workplace, when conduct impacts the employee's job performance or influences the university's overall effectiveness.

## 6. PROCEDURE

Employees covered by this policy are employed to fulfill certain duties and expectations that support the mission of the university and are expected to conduct themselves in a manner deserving of public trust. The following list is not all-inclusive, but is intended to illustrate the minimum expectations for acceptable job performance and conduct.

Employees who contribute to the success of the university's mission:

- Report to work as scheduled and seek approval from their supervisors in advance for any changes to the established work schedule, including the use of leave and late or early arrivals and departures.
- Perform assigned duties and responsibilities with the highest degree of public trust.
- Devote full effort to job responsibilities during work hours.
- Maintain the qualifications, certification, licensure, or training requirements identified for their positions.
- Demonstrate respect for the university and toward university coworkers, supervisors, managers, subordinates, students, customers, affiliates, and visitors.
- Use state equipment, time, and resources judiciously and as authorized.
- Support efforts that ensure a safe and healthy work environment.
- Utilize leave and related employee benefits in the manner for which they were intended.
- Resolve work-related issues and disputes in a professional manner and through established business processes.
- Meet or exceed established job performance expectations.
- Make work-related decisions or take actions that are in the best interest of the university.
- Comply with the letter and spirit of all state and university policies and procedures, the Conflict of Interest Act, and Commonwealth laws and regulations.
- Report concerns that may affect satisfactory job performance to management, including any inappropriate (fraudulent, illegal, unethical) activities of other employees. See Policy [1603](#) – Fraud, Waste and Abuse Reporting.
- Obtain approval from supervisor prior to accepting outside employment.
- Obtain approval from supervisor prior to working overtime if non-exempt from the Fair Labor Standards Act (FLSA).
- Work cooperatively to achieve work unit and university goals and objectives.
- Conduct themselves at all times in a manner that supports the mission of the university and the performance of their duties.

### 6.1 General Principles

Corrective action, whether informal or formal, must depend upon the nature, potential consequence(s) of the employee's job performance or conduct, and the surrounding mitigating factors, if any. Management must confer with an HR Consultant in order to apply corrective action consistently, while taking into consideration the specific circumstances of each individual case. Prior to taking any corrective action it is suggested that management consider the following:

- Whether the corrective action is consistent with state and university standards of conduct.
- The nature, severity, and consequences of the offense.

- Whether the offense constitutes a violation of a policy, procedure, rule, or law.
- Previous counseling, whether informal or formal, that addressed the same or similar job performance or conduct.
- Previous disciplinary actions that addressed the same or similar job performance or conduct.
- Whether the offense relates to the employee's job duties and the employee's ability to perform satisfactorily.
- How issues with similarly situated employees have been addressed.
- Mitigating factors that would compel a reduction in the disciplinary action to promote the interests of fairness and objectivity.
- If the corrective action is appropriate for a specific offense.

## 6.2 Corrective and Disciplinary Actions

The Commonwealth's disciplinary system is based on progressive discipline, which utilizes increasingly significant measures to provide feedback to employees so that they may correct unacceptable job performance and conduct. It is designed to encourage employees to become fully contributing members of the organization and to enable the university to fairly, and with reliable documentation, terminate employees who are unable or unwilling to improve.

### 6.2. a. Counseling

Counseling is *typically* the first level of corrective action, but is not a required precursor to the issuance of written notices. Counseling may be in the form of verbal or written communication specifying the employee's unacceptable job performance and/or conduct, indicates expectations for improvement, and potential consequences if these expectations are not met. It is advisable to maintain a record of verbal counseling in order to document that progressive disciplinary steps have been taken.

This level of corrective action would be appropriate for job performance issues or conduct resulting in minimal impact to business operations or the safety and well-being of others, or are minor infractions of policies or laws.

The Notice of Improvement Needed form can be used to identify poor, substandard, or unacceptable performance of any essential function, special assignment, agency, or unit objectives that fall below Contributor level. This includes an improvement plan, which should have an improvement period between 30 and 180 days. Throughout the length of the improvement plan, the supervisor must continuously assess the employee's performance and provide periodic and timely feedback.

Documentation regarding counseling should be retained in the supervisor's files and not in the employee's personnel file, except as necessary to support subsequent formal disciplinary action. The NIN can be attached to an Annual Performance Evaluation to support an overall rating of Below Contributor.

### 6.2. b. Disciplinary Action

Disciplinary action may also include demotion or transfer. In such cases, the university must initiate a disciplinary-related salary action. With a disciplinary-related salary action, an employee may be retained in the employee's current position with reduced responsibilities, or be moved to a position in the same or lower pay band with reduced responsibilities. In either case, the employee's salary must be reduced by at least 5 percent. In no case may an employee's salary exceed the maximum of the pay band following a disciplinary-related salary action.

#### 6.2 b. 1 Due Process

Prior to the issuance of any written notices, demotions, and transfers with disciplinary salary actions, suspensions, or terminations, supervisors must:

- Confer with an HR Consultant to review the documentation for the recommended action to determine if the action is appropriate for the offense, if a referral to the [Employee Assistance Program](#) or a benefits specialist is advisable, and what the final recommendation for corrective action should be.

Give the employee oral or written notification (administrative notification) of the offense, an explanation of the university's evidence in support of the charge, and a reasonable opportunity to respond. When administrative notification is issued orally, the supervisor or deliverer should follow-up with written documentation outlining the conversation. Normally, a 24-hour period is a sufficient period of time; however, an opportunity to respond should not be based solely on the quantity of time provided, but also on the nature of the offense which may or may not require more or less time to refute or mitigate the charge.

## 6.2. b. 2 Written Notices

When counseling has failed to correct unacceptable job performance or conduct, or when an employee commits a more serious offense, management should address the matter by issuing a written notice.

To assist management in the assessment of the appropriate corrective action, offenses are organized into three groups according to the severity of the act. Under certain circumstances, an offense typically associated with one offense category may be elevated to a higher-level offense (or dropped to a lower offense) based on impact, nature, mitigating factors, etc. Any action, which in the judgement of the university, undermines the effectiveness of the university's mission, may be considered so unacceptable as to warrant disciplinary action appropriate with the next higher group offense level, and then treated in a manner consistent with the provisions of this section. At the sole discretion of the university, an offense listed as a Group I or II may be subject to disciplinary actions consistent with a Group II or Group III offense.

Action to remove employees from the university under this policy must be reviewed and approved by the Director of Human Resources, or a designee, in advance of taking final action.

At any time, the supervisor may refer the employee to the Employee Assistance Program or to a benefits specialist for additional resources and to discuss available options. Referral to the EAP or comparable program shall not be considered a substitute for any disciplinary action imposed for the commission of an offense.

The offenses set forth below are not all-inclusive, but are intended as examples of unacceptable conduct for which specific disciplinary actions may be warranted.

### **Group I**

Offenses in this category include acts of misconduct that have a relatively minor impact on university business operations, but still require management intervention. Active life of notice: two years from its date of issuance to the employee.

- Unsatisfactory attendance or excessive tardiness
- Abuse of state time, including, for example, unauthorized time away from the work area, use of state time for personal business, and abuse of sick leave
- Use of abusive language
- Inadequate or unsatisfactory work performance
- Disruptive behavior
- Conviction of a minor moving traffic violation while using a state-owned or other public-use vehicle
- Violation of JMU Policy [1110](#) - Alcohol and Other Drugs (considered a Group I offense depending on the nature of the violation)
- Violation of Virginia Department of Human Resource Management Policy [2.35](#) – Civility in the Workplace (considered a Group I offense depending upon the nature of the violation)

- Violation of JMU Policy [1302](#) - Equal Opportunity (considered a Group I offense depending upon the nature of the violation)

Accumulation of four active Group I Notices normally should result in termination unless there are mitigating factors. Absent mitigating factors, a repeat of the same active Group I offense should result in the issuance of a Group II Notice. A third active Group I Notice may result in a suspension of ten workdays (or a maximum of 80 hours for non-exempt employees.)

### **Group II**

Offenses in this category include acts of misconduct of a more serious or repetitive nature that require formal disciplinary action and that significantly impact business operations. Active life of notice: three years from its date of issuance to the employee.

- Failure to follow a supervisor's instructions, perform assigned work, or otherwise comply with established written policy
- Violating a safety rule where there is not a threat of bodily harm
- Leaving the work site during work hours without permission
- Failure to report to work as scheduled without proper notice to supervisor(s)
- Unauthorized use or misuse of state property or records
- Refusal to work overtime hours as required
- Committing a Group I offense when the employee has an active Group I Notice for the same offense in their personnel file
- Violation of JMU Policy [1110](#) - Alcohol and Other Drugs (considered a Group II offense depending on the nature of the violation)
- Violation of Virginia Department of Human Resource Management Policy [2.35](#) – Civility in the Workplace (considered a Group II offense depending upon the nature of the violation)
- Violation of JMU Policy [1302](#) - Equal Opportunity (considered a Group II offense depending upon the nature of the violation)

Suspension of up to 10 workdays (or maximum of 80 hours for non-exempt employees) is an option for the first Group II Offense. A second active Group II Notice normally should result in termination; however, when mitigating circumstances exist, an employee may be suspended for up to 30 workdays and/or demoted or transferred with reduced responsibilities and a disciplinary salary action; or transferred to an equivalent position in a different work area with no change in salary. A Group II Notice in addition to three active Group I Notices normally should result in termination, but suspension and or a demotion or transfer with reduced responsibilities and a disciplinary salary action; or transfer to an equivalent position in a different work area with no change in salary may be considered.

### **Group III**

Offenses in this category include acts of misconduct of such a severe nature that a first occurrence normally should warrant removal. Active life of notice: four years from its date of issuance to the employee.

- Absence in excess of three days without proper authorization or a satisfactory reason
- Falsifying any records, including, but not limited to, insurance claims, leave records, reports, vouchers, time records, or other official state documents
- Willfully or negligently damaging or defacing state records, state property, or property of other persons (including, but not limited to, employees, students, supervisors, affiliates, and visitors)
- Theft or unauthorized removal of state records, state property or the property of other persons (including, but not limited to, employees, students, supervisors, affiliates, and visitors)
- Gambling on state property or during work hours
- Fighting and/or other acts of physical violence
- Violating safety rules where there is a threat of physical harm
- Sleeping during work hours

- Participating in any kind of work slowdown or similar concerted interference with state operations
- Unauthorized possession or use of firearms, dangerous weapons, or explosives
- Threatening or coercing persons associated with any state agency (including, but not limited to, employees, students, supervisors, affiliates, and visitors)
- Criminal convictions for illegal conduct occurring on or off the job that clearly are related to job performance or are of such a nature that to continue employees in their positions could constitute negligence in regard to universities' duties to the public or to other state employees
- Failure of an employee whose job requires carrying a firearm or authorization to carry a firearm to report conviction for a "misdemeanor crime of domestic violence"
- Violation of JMU Policy [1110](#) - Alcohol and Other Drugs (considered a Group III offense depending on the nature of the violation)
- Violation of Virginia Department of Human Resource Management Policy [2.35](#) - Civility in the Workplace (considered a Group III offense depending upon the nature of the violation)
- Violation of JMU Policy [1302](#) - Equal Opportunity (considered a Group III offense depending upon the nature of the violation)

Suspension of up to 30 workdays (or maximum of 240 hours for non-exempt employees) is an option. One Group III offense normally should result in termination unless there are mitigating factors.

#### 6.2 b.3 Removal Due to Circumstances which Prevent Employees from Performing their Jobs

An employee unable to meet the working conditions of their employment due to circumstances such as those listed below may be removed under this section. Reasons include:

- Loss of driver's license that is required for performance of the job.
- Incarceration for an extended period.
- Failure to obtain license or certification required for the job.
- Loss of license or certification required for the job.
- Inability to perform the essential functions of the job after reasonable accommodation (if required) has been considered.
- Failure to successfully pass the university's criminal background check.
- Conviction of a misdemeanor crime of domestic violence for employees whose jobs require: (a) carrying a firearm; or (b) authorization to carry a firearm.
- Failure to timely present appropriate documentation of identity and eligibility to work in the U.S. as required by federal law.

Prior to such removal, the appointing authority and/or Human Resources shall gather full documentation supporting such action and notify the employee, verbally or in writing, of the reasons for such a removal, giving the employee a reasonable opportunity to respond to the charges. Final notification of removal shall be via memorandum or letter, not by a written notice form.

#### 6.2 b. 4 Removal from the Workplace for Alleged Criminal Conduct

Management may also immediately remove an employee from the workplace without providing advance notification when the employee is under investigation for alleged criminal conduct that is related to the nature of their job or to the agency's mission. Management should consider the employee's ability to perform their assigned responsibilities and if the employee's continued presence:

- May constitute negligence in regard to the agency's duties to the public or other employees.
- May be harmful to the employee, other employees, clients, students, or patients.
- Makes it impossible for the agency to conduct business.
- May hamper the investigation by law enforcement.

An employee who is placed on pre-disciplinary leave with pay because of alleged criminal conduct that impacts the employee's ability to do their job or represents a risk to the agency shall be continued on leave with pay until either (a) the employee is formally charged with a criminal offense by authorities or entities outside of the employer agency, such as by arrest or indictment, or (b) the criminal investigation is concluded without any formal charges being made.

Any employee who is formally charged with a criminal offense (that is related to the nature of their job or to the agency's mission) by outside authorities may face immediate suspension without pay for a period not to exceed ninety (90) calendar days.

Regardless of the status of any criminal investigation or process, the university may determine at any time to institute disciplinary measures against the employee under the Standards of Conduct, up to and including termination, based upon the facts or evidence of conduct that prompted the criminal investigation or process.

### 6.3 Use of Grievance Procedure

Classified, non-probationary employees may challenge corrective or disciplinary actions through the [Employee Grievance Procedure](#), and may direct questions regarding this procedure to the Department of Employment Dispute Resolution or an HR Consultant.

## 7. RESPONSIBILITIES

Supervisors of classified employees must maintain open, honest communication with employees, ensuring that expectations are clear. Supervisors should clearly communicate both when the employee performs excellently, as well as when job performance and conduct is substandard. Supervisors also have a responsibility to communicate the potential consequences of unsatisfactory job performance or conduct.

Employees must meet expectations for acceptable job performance and conduct as outlined within this policy.

Human Resources is responsible for providing guidance and support with the progressive disciplinary process including providing an administrative notification template, written notice forms, and assisting managers in the application of this policy.

Action to remove employees from the university under this policy must be reviewed and approved by the Director of Human Resources, or a designee, in advance of taking final action.

All departments, offices, and employees that generate, receive, or maintain public records under the terms of this policy are also responsible for compliance with Policy [1109](#) - Records Management.

## 8. SANCTIONS

Sanctions will be commensurate with the severity and/or frequency of the offense and may include termination of employment.

## 9. EXCLUSIONS

This policy does not apply to probationary classified employees (see Policy [1322](#) - Classified Employee Probationary Period), wage, or student employees, and faculty.



## **10. INTERPRETATION**

The authority to interpret this policy rests with the president and is generally delegated to the director of human resources.

Previous version: September 2016

Approved by the President: November 2011