

# EMPLOYMENT INSTRUCTION NUMBER 7

## DISCIPLINE

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### 1. SCOPE AND PURPOSE

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This Employment Instruction identifies the issues which must be addressed when the Chief Executive Officer suspects on reasonable grounds that an employee within the agency has committed a breach of discipline as set out under section 49 of the *Public Sector Employment & Management Act* (the Act).

### 2. LEGISLATIVE BASIS

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Sections 49 to 52 and Section 57 of the Act.

### 3. OTHER SOURCES OF INFORMATION

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The following should be read in conjunction with this Instruction:

- Employment Instruction Number 3 - Natural Justice;
- Employment Instruction Number 4 - Performance Management;
- Employment Instruction Number 5 - Medical Incapacity;
- Employment Instruction Number 6 - Inability to Discharge Duties;
- Employment Instruction Number 13 - Code of Conduct;
- Investigation Handbook;
- Agency specific disciplinary procedures; and
- Agency specific disciplinary procedures/ code of conduct/ code of ethics.

### 4. REPORTING REQUIREMENTS

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Section 18(2)(c) of the Act requires the Commissioner to report annually on the extent to which disciplinary procedures have been invoked in the Public Sector.

Chief Executive Officers shall provide the information necessary for the Commissioner to comply with this reporting requirement.

## **5. AGENCY ACTION REQUIRED**

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Chief Executive Officers may establish procedures, which are not inconsistent with the Act, Regulations, By-Laws or Employment Instructions, regarding breaches of discipline within their Agency.

## **6. SUMMARY DISMISSAL**

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Under section 50 of the Act, an employee may be summarily dismissed. Summary dismissal may only occur where a Chief Executive Officer is of the opinion that the action or omission constituting a breach of discipline amounts to misconduct of such a nature that it is in the public interest that the employee be immediately dismissed from the Public Sector.

Where a Chief Executive Officer is considering summary dismissal, the Chief Executive Officer must first consult with the Commissioner.

## **7. DISCIPLINE PROCESS**

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### **7.1 Preliminary Enquiries**

Nothing in the discipline process shall prevent a Chief Executive Officer from making preliminary enquiries.

### **7.2 Advice to employee and initial response**

Under the Act the Chief Executive Officer must suspect on reasonable grounds that a breach of discipline has occurred. The Chief Executive Officer shall advise the employee in writing of the particular alleged breach of discipline and the grounds on which the opinion has been formed.

The employee must be given an opportunity, within a period of 14 days, to furnish a written explanation of the matters alleged to constitute the breach of discipline.

After consideration of any response from the employee, the Chief Executive Officer may arrange for an investigation to be carried out to determine whether the employee has in fact committed a breach of discipline.

The Chief Executive Officer need not arrange for an investigation to be carried out if the employee admits in writing to having committed the breach, if the Chief Executive Officer is satisfied with the employee's explanation or if the Chief Executive Officer is satisfied that an investigation is not warranted.

In any case the Chief Executive Officer must advise the employee in writing.

### **7.3 Suspension and Transfer**

It may be appropriate for the employee to be removed from the workplace by suspension (with or without pay) or transfer prior to or during an investigation in accordance with section 51(6) of the Act.

The suspension or transfer provisions of section 51(6) of the Act should only be used where a breach is of such a nature that the employee should not continue in the performance of his or her duties.

An employee should be invited to make a submission to the Chief Executive Officer in relation to the proposed suspension or transfer before a decision is made.

### **7.4 Arrangement of Investigation**

As soon as practicable after the expiration of the 14 days referred to in 7.2 above, the Chief Executive Officer may arrange for an investigation by one or more persons.

Written terms of reference, detailing the particulars of the alleged breach, should be provided to the investigator(s).

The investigator(s) will be required to conduct and document the investigation and report the findings and indicate whether in his, her or their opinion the employee has committed a breach of discipline and the reasons for the opinion, to the Chief Executive Officer.

Investigators:

- must be impartial;
- should have appropriate qualifications and experience to enable them to carry out the investigation; and
- would normally (but not always) be from an agency other than the agency in which the employee is normally or currently employed; or
- may be from outside the Public Sector.

An investigation should consider all the available evidence.

The Office of the Commissioner for Public Employment can provide assistance in the selection of investigating persons and has produced a handbook which provides guidelines for conducting employment related investigations.

### **7.5 Investigating Persons Reporting Requirements**

The report to the Chief Executive Officer should cover:

- the matter under inquiry;

- the terms of reference;
- the investigation process; and
- the findings and an opinion to indicate whether the employee has committed a breach of discipline and the reasons for the opinion.

## 7.6 Action of Chief Executive Officer after Investigation

- (i) Not later than 14 days after receiving the investigation report, the Chief Executive Officer shall forward a copy of the advice and reasons to the employee.
- (ii) Where, after considering the investigation report, the Chief Executive Officer decides that the employee has not committed a breach of discipline, the Chief Executive Officer shall notify the employee accordingly in writing.
- (iii) Otherwise, the Chief Executive Officer should, at the time of providing a copy of the advice and reasons in accordance with paragraph (i), invite the employee to make a written submission in relation to the advice and reasons.

Where, after considering the investigation report and the submission of the employee (if any), the Chief Executive Officer decides a breach or breaches of discipline has or have occurred, on the same or different grounds, the Chief Executive Officer shall advise the employee in writing of:

- the Chief Executive Officer's decision, with reasons;
- the actions available to the Chief Executive Officer under section 51(10)(a) of the Act; and
- the action foreshadowed by the Chief Executive Officer as the most appropriate (this may include a combination of actions available);

and invite the employee to make a submission on the foreshadowed action and any other action available to the Chief Executive Officer.

Following consideration of any submission from the employee, the Chief Executive Officer will advise the employee of:

- the Chief Executive Officer's decision;
- the action to be implemented;
- the date of effect; and
- his or her appeal rights.

The time which should be provided for the employee to make the submissions referred to in this subsection is not specified but must be reasonable and the Chief Executive Officer should be prepared to allow extensions of time if requested so as to permit the employee to properly respond. A good guideline would be 14 days such as is provided in section 51(3) of the Act for the employee's response to the notice of the grounds for suspecting a breach of discipline.

**D J HAWKES**  
**COMMISSIONER FOR PUBLIC EMPLOYMENT**

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