



**ARKANSAS DEPARTMENT OF THE MILITARY  
OFFICE OF THE ADJUTANT GENERAL  
CAMP JOSEPH T. ROBINSON  
NORTH LITTLE ROCK, ARKANSAS 72199-9600**

ASA HUTCHINSON  
GOVERNOR

KENDALL W. PENN  
MAJOR GENERAL  
THE ADJUTANT GENERAL

NGAR-DOTM

21 January 2020

**MEMORANDUM FOR DEPARTMENT OF THE MILITARY (DOTM) STATE  
EMPLOYEES**

SUBJECT: Department of the Military (DOTM) Policy 47-2020, Uniform Discipline Policy

1. The DOTM Human Resources is responsible for the creation, updating, revision, and dissemination of state policies and procedures. These policies and procedures assist the agency in maintaining an effective workforce.
2. The purpose of this policy is to inform all state employees and supervisors of the updated Department of the Military Uniform Discipline Policy and Conduct Expectations.
3. Point of contact for this memo is Scott Stanger at (501) 212-5167.

A handwritten signature in black ink, appearing to read "K. W. Penn".

KENDALL W. PENN  
MAJOR GENERAL  
The Adjutant General

Encl.  
Uniform Discipline Policy

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SUBJECT: Department of the Military (DOTM) Policy 47-2020, Uniform Discipline Policy

**DEPARTMENT OF THE MILITARY EMPLOYEE  
UNIFORM DISCIPLINE POLICY AND CONDUCT EXPECTATIONS**

**I. PURPOSE**

All Department of the Military (DOTM) employees are expected to perform their jobs honorably, professionally, competently, and diligently, in compliance with DOTM policies. Employees are also expected to perform their jobs and communicate with the public, clients, and other employees, with respect and professionalism.

Many of the terms; used to describe expected conduct and performance require no definition or explanation, for example, honesty and dependability. For some other terms, clarification may be beneficial. This policy attempts to describe expected employee traits in understandable terms; however, there is no attempt in this or other DOTM policies to catalogue each specific behavior (meaning act or omission) that may warrant discipline.

Each employee has a duty to read and understand this policy and other DOTM rules and policies applicable to the employee, including the Adjutant General's Policies.

**II. DISCLAIMER**

This policy creates no property interest or expectancy in employment, nor does it alter the employment-at-will doctrine.

The procedures described in this policy are mandatory and the conduct and performance expectations are minimum requirements for all employees. However, nothing in this policy limits the establishment of workplace conduct or performance standards that are more specific, more rigorous, or both.

This policy is subordinate to federal laws and regulations, and to the Arkansas Code. For example, provisions in the Arkansas Code may disqualify a person from employment regardless of whether the person is or would be subject to discipline under this policy.

### III. DEFINITIONS

1. **Business Day:** Each weekday except official Arkansas State government holidays designated by Executive Proclamation and Ark. Code Ann. § 1-5-101 as follows:
  - a. New Year's Day – January 1st
  - b. Dr. Martin Luther King Jr.'s – January 21st
  - c. George Washington's Birthday and Daisy Gatson Bates Day - 3rd Monday in February
  - d. Memorial Day - Last Monday in May
  - e. Independence Day – July 4<sup>th</sup>
  - f. Labor Day – 1st Monday in September
  - g. Veterans Day – November 11th
  - h. Thanksgiving Day – 4th Thursday in November
  - i. Christmas Eve – December 24th
  - j. Christmas Day – December 25th
  - k. An Employee's Birthday – An employee is granted one (1) holiday to observe his or her birthday.
  - l. A Holiday falling on a Saturday will be observed on the preceding Friday. A holiday falling on a Sunday will be observed on the succeeding Monday.
2. **Disciplinary Actions:**
  - a. Probation for the minimum amount of time necessary for a qualified and diligent employee to make satisfactory performance/conduct improvement, but no longer than six (6) months. Discipline Level (C)  
\*(Disciplinary probation should not be confused with new hire probation)
  - b. Letter of Reprimand. Discipline Level (C)
  - c. Suspension without pay. Discipline Level (B) Notes: Under the Fair Labor Standards Act, special rules apply to the suspension without pay of exempt employees. An exempt employee may be suspended for one or more days for serious misconduct such as infractions of workplace conduct rules prohibiting sexual harassment, workplace violence or drug or alcohol use, and violations of state or federal laws. All other suspensions without pay of exempt employees, including suspension for performance and attendance issues, must be

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for a minimum of five (5) consecutive work days. No suspension of any employee may exceed thirty (30) days without the approval of the TAG.

- d. Demotion -- reduction in salary, grade, or both. Discipline Level (B)
- e. Termination of employment. Discipline Level (A) Note: The Office of the Staff Judge Advocate (OSJA) will be consulted when termination is being considered.

Documentation: All discipline shall be administered in writing. Records of all disciplinary actions must be permanently retained in the employee's Personnel File.

- 3. **Disciplinary Action**: Termination, suspension, involuntary demotion, written reprimands, and non-new hire probation.
- 4. **Employee**: a person regularly appointed or employed in a state position in the DOTM for which he or she is compensated on a full-time basis or on a pro-rata basis for whom a class title and pay grade are established in the DOTM's appropriation act, in accordance with the Uniform Classification and Compensation Act.
- 5. **Pre-Disciplinary Checklist**: A checklist for supervisors to use in advance of administering discipline. (See Attachment B )
- 6. **Pre-Disciplinary Consultation**: One or more discussion(s) between the supervisor, HR Representative and or the HR Administrator regarding the suspected or alleged conduct/performance and the related disciplinary implications. The DOTM legal advisor may be included in the consultation at the request of the supervisor or the personnel manager. The main purpose of the pre-disciplinary consultation is to assure that the supervisor understands the controlling policies and has the information needed to decide whether to convene a pre-disciplinary staffing. Pre-disciplinary consultation(s) shall occur before the supervisor informs the employee of the suspected or alleged misconduct/poor performance.

7. **Pre-Disciplinary Staffing:** A meeting to review information regarding an employee's behavior (including conduct, performance and compliance) and decide:
  - a. Whether documented or observed behavior warrants the level of discipline under consideration and complies with all relevant supervisory obligations; and
  - b. Whether the supervisor should convene an employee disciplinary meeting.  
  
\*When required: A "Pre-Disciplinary Staffing Form" must be completed before administering Discipline Level (A) or (B) and is encouraged before administering Discipline Level (C). ("Pre-Disciplinary Staffing Form" is Attachment "C" within this policy.)
  - c. Participants shall include the employee's direct or a higher level supervisor, the HR Administrator and the DOTM legal advisor. The DOTM Chief of Staff may attend the staffing at the request of any participant.
8. **Probation:** A trial period during which an employee's suitability for the position is determined. A probationary employee who engages in behavior warranting discipline or whose performance is not satisfactory by the end of the probation period is not suitable for the position and shall be subject to termination.
9. **Property:** Real and personal property including, but not limited to funds or the creation of an obligation to pay funds.
10. **Severity of Discipline:** The level of discipline recommended in Section III.2 is the minimum that may be applied. Discipline may be set at any higher level, including Discipline Level (A) based upon:
  - a. The nature and extent of the non-compliance;
  - b. The impact of the non-compliance on, for example, DOTM clients, other state employees, or DOTM services, operations, or funding;

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- c. All previous disciplinary actions, non-compliance and poor/unsatisfactory performance. Neither a history of satisfactory or higher performance ratings nor the absence of previous discipline are mitigating factors or defenses to the discipline administration.
- 11. **Suspension from Duty Pending Investigation:** Upon having reasonable cause to suspect that an employee may jeopardize: (1) the health or safety of any person; or (2) the integrity of DOTM, a person in the employee's supervisory chain may immediately relieve the employee from duty pending an investigation to be completed as provided in this rule. Suspension from duty pending investigation is with full pay and benefits.
- 12. **Technical Error:** An error that does not alter the outcome is not grounds for overturning the discipline. That is, if the error does not prevent establishing the employee's behavior by a preponderance of the evidence and the behavior warrants the discipline imposed, then the error is technical. For example, missing a discipline processing deadline is not a reason to excuse an employee's misconduct/poor performance, but rather, is a performance issue for the responsible supervisor.

#### IV. BEHAVIOR EXPECTATIONS

In addition to the expectations set forth below, please refer to the Department of the Military and The Adjutant General Policies found in the Employee Handbook and RCAS, as well as all applicable workplace rules, including the workplace rules contained in Attachment (A) - Offenses that Violate Minimum Behavior Standards.

- 1. **Integrity and Honesty:** DOTM does not tolerate deceptive behavior including but not limited to, without limitation, misstatements of fact, failure to state complete facts, or fraud. Deceptive behavior is presumed to be a Discipline Level (A) violation; however, that presumption may be rebutted, and a lower level of discipline administered, if all of the following conditions are met:
  - a. The violation is an isolated occurrence and does not suggest that the employee is untrustworthy;

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- b. The violation did not adversely impact any DOTM client, any other state employee, or any DOTM service, operation, or funds;
- c. The violation did not involve any abuse of official authority; and
- d. The violation did not jeopardize the health or safety of any person.

2. **Compliance:** Employees must comply with workplace policies, rules and all job-related standards, standard practices, and requirements, including, without limitation, laws (including traffic laws), rules, regulations, judicial and administrative decisions, agency interpretations, and all reasonable work-related instructions. Minimum Discipline Level (C).

Supervisors have the additional compliance obligation of invoking this and other DOTM policies when necessary to enforce conduct and performance expectations. Some examples of non-compliance include:

- a. Violation of a criminal law is non-compliance if it occurs on DOTM property or while on duty, regardless of whether the criminal law is job-related. Discipline Level (A).
- b. Conviction of a crime is non-compliance if one or more elements of the crime is/are relevant to the employee's behavior standards, job duties, or both. For example, a conviction for fraud establishes that the employee lacks integrity and honesty. Discipline Level (A).
- c. Misconduct or unsatisfactory performance that relates to the employee's workplace behavior standards, job duties, or both. Non-compliance includes off- the-job behavior if the behavior is such that a reasonable supervisor could conclude that continuing the employee in the position without correction could impair DOTM operations or objectives, or expose DOTM to liability. Discipline Level (A).

3. **Teamwork:** Cooperative effort to achieve the goals of the department or work unit is imperative. Minimum Discipline Level (C)

4. **Responsibility and Dependability:** This category includes, without limitation, behavior traits such as reliable and timely attendance; willingness when necessary to perform tasks that would not ordinarily be the employee's responsibility; follow-through and timely completion of assigned tasks. Minimum Discipline Level (C)
5. **Diligent and Competent Performance:** Attentive and persistent attention to job duties exercising the care that a very prudent person would take in connection with his or her own concerns; high quality work product; sound decision making. Minimum Discipline Level (C)
6. **Professionalism:** Tactful, discreet, and courteous behavior, even when provoked, demonstrating competence, compassion, and tolerance that does not belittle the skills, beliefs, or teachings of others and brings credit to DOTM. Minimum Discipline Level (C)
7. Supplemental List of Offenses and Level of Discipline-see "Attachment A".

## **V. DISCIPLINARY PROCESS**

1. **Removal from Duty Assignment Pending Investigation:**
  - a. Upon having reasonable cause to suspect that an employee may jeopardize the health or safety of any person, or the integrity of DOTM, a person in the employee's supervisory chain may immediately relieve the employee from regularly assigned duty pending an investigation to be completed as provided in this policy.
  - b. The employee shall remain off regularly assigned duty until the final administrative resolution of discipline, a decision is made not to discipline the employee, or a decision is made to discipline the employee at the written counseling or written reprimand level.
  - c. If feasible, the employee shall temporarily assume other duties where the employee does not jeopardize the health or safety of any person or the integrity or public image of DOTM. If such temporary assignment is not feasible, the employee shall be relieved of all duty.



- d. Employees relieved of regularly assigned or all duties shall remain on call for purposes of investigating the employee's conduct/performance.
- e. Removal from regularly assigned or all duty pending investigation shall be with full pay and benefits.

**2. Disciplinary Investigation Checklist**

The supervisor shall complete the Disciplinary Investigation Checklist and consider the checklist factors prior to proceeding with disciplinary action. The supervisor shall then document his or her findings on the Notice of Disciplinary Action and select level of discipline proportional to the employee's behavior.

**3. Administering Discipline**

- a. The supervisor has the burden of establishing the misconduct by the greater weight of evidence. The greater weight of evidence is not necessarily established by the greater number of witnesses testifying to any fact or state of facts. It is the evidence which, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. Facts may be established by circumstantial evidence when the existence of the fact can reasonably be inferred from other facts proved.
- b. All deadlines stated below are calculated from the date the supervisor becomes aware of a possible conduct violation. Exception: Occasionally information, findings, and expert opinions ("information") from one or more sources outside DOTM is necessary to decide whether to administer discipline, to decide the level of discipline, or both. When necessary information is not available from an outside source in time to follow the deadlines in this policy: 1) the supervisor must make diligent efforts to obtain the information; and 2) the pre-discipline staffing is not required until three (3) business days after receiving the information from the outside sources. Once the pre-discipline staffing is held, the deadlines for post-staffing events apply as stated below.

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- c. The supervisor shall engage in a pre-disciplinary consultation within five (5) business days.
  - d. The supervisor shall consider information within his or her personal knowledge, and shall gather such additional information as necessary to decide if the misconduct occurred, whether discipline is required and the level of discipline. If a disciplinary action has been determined, the supervisor shall complete a "Pre-Disciplinary Staffing Form" (Attachment "C") and conduct a pre-disciplinary staffing.
  - e. When considering disciplinary action of Level A or B, the pre-disciplinary staffing shall be held as soon as possible and no later than the 15<sup>th</sup> business day.
  - f. Employees must be notified of the disciplinary action through written documentation. If the employee refuses to sign the notification letter, the supervisor shall document that the employee refused to sign the notification letter. Another supervisor shall be present as a witness for all disciplinary actions.
  - g. In all cases of termination, the DOTM personnel manager shall review the disciplinary documentation to assure that correct termination code and re-hire status codes are placed into personnel records.
4. **Delivery of Discipline:** Delivery or attempted delivery of discipline to the employee must be made within seventeen (17) business days. The following actions should be taken:
- a. The notice of disciplinary action should be hand-delivered to the person at the supervisor's work location or the employee's work location, if possible.
  - b. If unavailable, employee must be notified by certified mail and the return receipt is required.
  - c. If the certified mail is returned as unclaimed, the notice of disciplinary action shall be sent by regular mail to the employee's last known address.

**5. Resignation prior to Discipline**

- a. If an employee resigns at any time after an investigation begins but before discipline is administered, the investigation shall continue to the point necessary to determine if the employee would be discharged if still employed and whether the employee jeopardized the health or safety of any person or the integrity or public image of DOTM.
- b. Persons who resign and are subsequently determined ineligible for rehire, either for two (2) years or permanently, shall be notified of the decision in the same manner as provided in this rule for notification of discipline.

**VI. POST DISCIPLINE**

**1. Eligibility for Re-Employment**

- a. Persons discharged for violation(s) of this policy are ineligible for re-employment for two (2) years unless permanently disqualified under Section VI(1)(c).
- b. Persons who would have been discharged for violation of this policy, but resigned prior to receiving disciplinary action, are ineligible for re-employment for two (2) years unless permanently disqualified under VI(1)(c).
- c. Persons disqualified from re-employment under VI(1)(a) or (b) are permanently disqualified from re-employment if any one of the following conditions are met:
  - i. Employee's violation(s) jeopardized the health or safety of any person;
  - ii. Employee's violation(s) jeopardized the integrity or public image of DOTM;
  - iii. Discipline was or would have been termination for the first offense;
  - iv. After investigation, it is determined that the employee engaged in work- related sexual misconduct or sexual harassment;

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- v. After investigation, it is determined that the employee engaged in work- related discrimination on the basis of race, age, gender, color, religion, or national origin.
2. Employees who receive a suspension without pay or disciplinary demotion may not apply for any other DOTM positions within six (6) months after the demotion, or after the end of the suspension.
3. **Effective Date of Disciplinary Action:** All discipline is effective the date the final decision to discipline is made.

#### **VII. GRIEVANCE POLICY/PROCEDURE**

Employees who are suspended or terminated from his or her position may be eligible to grieve the disciplinary action. He or she must contact the DOTM Grievance Officer no later than five (5) business days from the date of notification (see DOTM policy 46-2019).

#### **VIII. CONFLICTING POLICIES SUPERSEDED**

This rule supersedes the DOTM's Disciplinary Policy found in the DOTM Employee Handbook dated 1 July 2018, and any existing policies or specific sections of existing policies that conflict with the terms of this policy.

## ATTACHMENT "A"

### OFFENSES THAT VIOLATE MINIMUM BEHAVIOR STANDARDS

- I. This section supplements the behavior expectations established in Section IV and any other workplace rule established by DOTM or any DOTM office or unit. The behavior described below is misconduct and warrants at least the minimum disciplinary level for a first offense:
1. Possession of any weapon or explosive on DOTM or customer property without authorization (Level A).
  2. Abuse of official authority (Level A).
  3. Any acts or threats of physical violence (Level A).
  4. Failing or refusing to cooperate in a DOTM investigation. An employee may refuse to answer a question on the basis that the answer would expose the employee to criminal violation; however, the investigator, supervisor, or other decision-maker may consider and draw inferences from the employee's failure or refusal to answer. Investigations may include polygraph examinations (Level A).
  5. Insubordination, defiance of authority, intentional refusal to obey an employer's lawful and reasonable order; Disrespectful behavior that would undermine a supervisor's level of respect and ability to manage. (e.g. failure to perform assignments or otherwise comply with established policy, intimidation, harassment, confrontational actions, or other disruptive behaviors) (Severity level dependent upon offense).
  6. Possession, use, sale, distribution of "or impairment by" alcohol or any drugs during working hours, other than properly prescribed drugs or over-the-counter drugs (Level A).
  7. Loss of or damage to DOTM property, records, or the property of other persons, either intentionally or by neglect (Level A).
  8. Accessing or use of DOTM data, information, or property without authority (Level A).
  9. Threatening or coercing persons associated with any state agency or participating in any type of concerted interference with state operations (Level A).
  10. Selling or attempting to sell any goods or services during working hours or while occupying any property under the jurisdiction of The Adjutant General pursuant to A.C.A. §12-63-211 (Level A).

11. Failure to report job-related personal injury, accident or property damage to the employee's supervisor, regardless of whether the supervisor knows of the occurrence and regardless of the reason for the occurrence (Level B).
12. Gambling during working hours or while occupying any property under the jurisdiction of The Adjutant General pursuant to A.C.A. §12-63-211 (Level A).
13. Failing to observe traffic laws or failing to report traffic violations received while on duty or while operating a DOTM vehicle (Level C).
14. Misuse of government internet or government issued electronic devices (e.g. accessing pornography, electronic stalking, etc.) (Level A).
15. Possession, use, transfer, theft, unauthorized removal, or sale of any DOTM property without authorization (including, but not limited to records, real property, or property of other persons) (Level A).
16. Using tobacco or electronic cigarettes or personal vaporizers that serve as a substitute for tobacco use in any DOTM motor vehicle or building owned or by DOTM or within 25 feet of the entrance to any such building except in designated smoking areas (Level C).
17. Unsatisfactory attendance, excessive tardiness or other abuse of state time (e.g. unauthorized time away from the work area, use of state time for personal business, or leaving the work area during work hours without permission) (Level B).
18. Violation of DOTM Equal Employment Opportunity Discrimination Policies, depending upon the nature of the violation (Level B or C).
19. Failure or refusal to work scheduled hours as required, to include overtime (Level B).
20. Absence of two (2) consecutive workdays without prior authorization or satisfactory reason (not applicable to extra help or employees in new hire probationary status) (Level A).
21. Sleeping during work hours (not applicable to firefighters) (Level A).
22. Falsification of any agency records including, but not limited to vouchers, reports, insurance claims, time or leave records, client records, or any other state documents (Level A).
23. Any criminal conviction for illegal conduct occurring on or off the job that is of such a nature that to continue the employee in their position could constitute negligence in regard to the agency's duties to other employees, clients, visitors and/or students (Level A)

- II.** The above offenses violate minimum standards of conduct and are contrary to the best interests of DOTM and employees. Depending on the severity of the offense, the frequency of unrelated offenses, the employee's overall work record, and other relevant factors, the department may elect to implement any level of disciplinary action up to and including immediate termination.
- III.** The above violations are examples of types of unacceptable conduct. Unacceptable conduct will result in discipline up to and including immediate termination. These violations are not all-inclusive, however, and employees who engage in any type of conduct which may be injurious to the department, or which interferes with the efficient operations, damages the reputation of DOTM, or interferes with the department's ability to serve the public, will be subject to disciplinary action up to and including immediate termination.
- IV.** The previous list is intended to be representative of the types of activities that may result in disciplinary action. It is not intended to be comprehensive and does not alter the employment-at-will relationship between the employee and DOTM.

## ATTACHMENT "B"

### DISCIPLINARY INVESTIGATION CHECKLIST

**THE PURPOSE OF THIS QUESTIONNAIRE IS TO REMIND SUPERVISORS OF KEY STEPS / CONSIDERATIONS IN THE DISCIPLINARY PROCESS BEFORE A SUPERVISOR RECOMMENDS OR TAKES DISCIPLINARY ACTION.**

**THE SUPERVISOR MUST COMPLETE EACH QUESTION BY PLACING A CHECK MARK ON EITHER THE "YES" OR "NO" BOX.**

	YES	NO
1. Has the employee behaved/performed in a manner that does not comply with an DOTM rule, policy or standard?	<input type="checkbox"/>	<input type="checkbox"/>
2. Are the facts established by observation, documentation, or both?	<input type="checkbox"/>	<input type="checkbox"/>
3. Was the employee informed of the issues and given an opportunity to explain why discipline is not warranted?	<input type="checkbox"/>	<input type="checkbox"/>
4. Did you consider the factors for determining the severity of discipline?	<input type="checkbox"/>	<input type="checkbox"/>
5. To your knowledge, have similarly situated employees received similar discipline?	<input type="checkbox"/>	<input type="checkbox"/>
6. Were there one or more pre-discipline consultations?	<input type="checkbox"/>	<input type="checkbox"/>
7. Was a "Pre-Disciplinary Staffing Form" completed before administering discipline?	<input type="checkbox"/>	<input type="checkbox"/>
8. If the discipline is level A or B, was there a pre-disciplinary staff meeting?	<input type="checkbox"/>	<input type="checkbox"/>

**IF THE SUPERVISOR OR MANAGER ANSWERED "NO" TO MORE THAN TWO QUESTIONS AND STILL WISHES TO DISCIPLINE THE EMPLOYEE, THE SUPERVISOR OR MANAGER SHOULD CONTACT THE OFFICE OF THE STAFF JUDGE ADVOCATE TO DISCUSS THE MATTER.**

\_\_\_\_\_  
Signature of Supervisor

\_\_\_\_\_  
AASIS Personnel No.

\_\_\_\_\_  
Date



## Pre-Disciplinary Staffing Form

As stated in DOTM Employee Discipline Policy., "A Pre-Disciplinary Staffing" is required before administering Discipline Level (A) or (B) and is encouraged before administering Discipline Level (C). Please complete this form, print it out, and attach to all compiled documentation (including emails) if disciplinary action is taken. If no action is taken, this form may be placed in the supervisor's files.

Your Name:

Job Title:

Are you the  
Employee's  
Supervisor?

☐ Yes ☐ No Supervisor's Name:

Employee's  
Name:

Date:

Time:

**Who did you talk to? (Give names and titles. Participants must include one person in the supervisory chain, the HR personnel manager and the DOTM Legal Advisor)**

**What did you discuss?**

**Are you going to take disciplinary action?**

☐ Yes

☐ No

ATTACHMENT "D"

# Disciplinary Primary Flow Chart

Date the supervisor becomes aware of a possible conduct/performance violation

