

- Disciplinary Action
- Appeal of Disciplinary Action

There are some very specific requirements when it comes to disciplinary action for a classified County employee. Let's take a closer look at what needs to happen!

Courts have consistently found that civil service protections (and, where applicable, collective bargaining agreements) grant classified public employees with “property interests” in their jobs. This simply means that they have the right to expect continued employment, short of disciplinary action for “just cause” or a legal abolition or layoff of positions.

Disciplinary action is a mandatory topic of collective bargaining, and there may be differences between ORC & contract language. If your department is covered by a CBA, look for this “callout” box throughout the handout for additional info that may apply!

This is quite different than the “employment at will” concept that exists for unclassified public employees (as well as non-unionized private sector workers).

There are very specific requirements that must be met to impose discipline on, or layoff, a classified County employee, and we'll find them again in Chapter 124 of the Ohio Revised Code. We'll examine layoff & position abolition next session. For now, let's become familiar with the disciplinary action requirements of the Ohio Revised Code.

We'll start by navigating to Section 124.34

Chapter 124 | Department of Administrative Services - Personnel

Ohio Revised Code / Title 1 State Government

[Expand All](#) [Close All](#)

Section

[Section 124.01](#) | Department of administrative services - personnel definitions.

[Section 124.011](#) | City school districts - civil service commissions.

[Section 124.02](#) | Director of administrative services and state personnel board of review to sei commission.

[Section 124.03](#) | State personnel board of review - powers and duties.

[Section 124.04](#) | Director of administrative services powers, duties, functions.

[Section 124.05](#) | State personnel board of review organization.

[Section 124.06](#) | Civil service appointments and removals to be made in accordance with chap

[Section 124.07](#) | Director of administrative services employees, services and facilities.

[Section 124.528](#) | Layoff, displacement appeals.

[Section 124.55](#) | Transfers - appeal - reimbursement of expenses.

[Section 124.54](#) | Reduction in pay or position - suspension - removal.

[Section 124.541](#) | Violation or misuse - whistleblower protection.

[Section 124.55](#) | Refusal to testify constitutes unfitness

Here's what
you're looking for

There's a lot of info in this Section! Let's break it down...

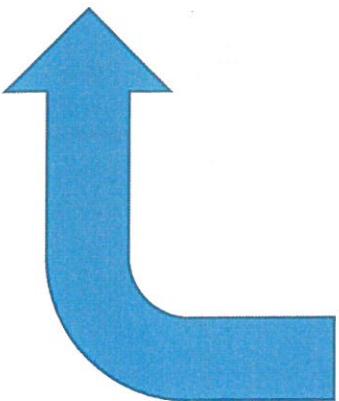
ORC 124.34 (A) starts out by establishing the “property interest/right” that follows with being a classified public employee in Ohio. It then proceeds to identify the types of disciplinary action that can be imposed on a classified employee:

- **Reduced in pay**
- **Reduced in position**
- **Fined (very rare)**
- **Suspended**
- **Removed (terminated)**
- **Longevity pay reduced or eliminated (again, very rare)**

} IF INVOLUNTARY

What disciplinary
action can be
imposed?

Note: although “reprimands” are not listed, they are permitted and, in fact, in many cases required as a first step to show “progressive discipline”. They aren’t specifically listed simply because they do no financial harm to an employee.



A CBA should list the types of disciplinary action that can be imposed on bargaining unit employees. Usually, but not always, it's the same list minus "Fined" & "Longevity Pay" and adding "Reprimands".

“Reduced in pay or position” is usually an involuntary “demotion”; however, it can also be an unintended consequence of other business decisions. For example, if we keep a classified employee’s title and pay the same but take away significant duties (for example, they used to supervise staff but now they don’t) without the employee’s consent, that could be seen as a “reduction in position” that may fall under the requirements of ORC 124.34.



Next, ORC 124.34 (A) lists the offenses for which a classified public employee may be disciplined. We call these the “charges”, and a classified employee should only be charged with an offense that is on this list!

A CBA should list the specific charges that can be applied to a bargaining unit employee. It may be the exact same list, or it could be a modified list. Make sure you check to see what your options are!

- Incompetency
- Inefficiency
- Unsatisfactory Performance
- Dishonesty
- Drunkeness (yes...they actually still use that word)
- Immoral Conduct
- Insubordination
- Discourteous Treatment of the Public
- Neglect of Duty
- Violation of a Policy or Work Rule
- Violation of ORC 124.34
- Failure of Good Behavior
- Misfeasance
- Malfeasance
- Nonfeasance
- Conviction of a Felony

ORC 124.34 (A) also permits a “working suspension”, where the employee can be required to report to work as normal to perform their regular job duties and receive their normal pay. This type of suspension is still recorded as disciplinary action & has the same weight as an unpaid suspension for the purpose of “progressive discipline”.

Is there such a thing as a “paid” suspension? And if so...what’s the point?

This type of suspension is useful particularly when an employee is being disciplined for absence-related reasons (excessive use or abuse of sick leave, tardiness, etc...). An employee required to serve a working suspension who then does not show up to work on the assigned date(s) & doesn’t have a verifiable extenuating circumstance can then be further disciplined for not serving their suspension.

While Unions are generally not opposed to a “working suspension”, it’s best to have that option identified in the CBA; if it’s not specifically mentioned, you may need an MOU/written terms of discipline with the Union to use this.

If a “working suspension” is used, the appointing authority is under no obligation to repeat it if it becomes necessary to suspend the same employee later; for example, an employee required to serve a 3 day “working suspension” could next be suspended without pay for 5 days...

Employees can also be disciplined for violations of Ohio’s ethics laws...

ORC 124.34 (A) also states that violations of Ohio’s ethics laws covering public officials & employees can also result in disciplinary action—specifically, removal. These laws are found in Chapter 102 and Sections 2921.42, 2921.43 and 102.02 of the Ohio revised Code. Violations of the Ethics Law can be either misdemeanors or felonies, carrying penalties of fines +/or jail sentences, so if a violation of these statutes is suspected, consult HR & the County Prosecutor’s Office.

- Disciplinary action can be taken for a **felony conviction** while employed
- ORC 124.34 (A) has links to what are considered felonies for this purpose
- Can also take disciplinary action for the work-related offense itself even before a conviction
- Action imposed for a felony conviction isn't appealable to SPBR but action taken on an original offense **before** a conviction can be
- Even if no disciplinary action is taken, an employee convicted of a felony becomes an unclassified employee, & if removed, loses all prior service credit for vacation accrual purposes if they are later reemployed in the public service

Tell me more about that "Conviction of a Felony" charge...

Proceed with caution, particularly for a bargaining unit employee if the CBA doesn't specify "conviction of a felony" as a charge.

Classified employees may appeal certain types of disciplinary action to SPBR per ORC 124.34 (B).

- A reduction (in pay or position)
- Suspension of **MORE** than 40 hours or a fine of **MORE** than 40 hours' pay for an employee who is **exempt** from OT
- Suspension of **MORE** than 24 hours or a fine of **MORE** than 24 hours' pay for an employee who is **eligible** to be paid OT
- Removal

An appeal to the State Personnel Board of Review is handled much like a court case: people are sworn in, evidence is presented, "heresay" is inadmissible, & the employer has the burden to prove that the discipline issued was for "just cause", progressive (except in extreme cases) & that the employee was provided "due process" before discipline was imposed.

SPBR can either **affirm, disaffirm, or modify** the discipline that was imposed.

If the CBA provides for final & binding arbitration on disciplinary actions, then the bargaining unit employee does NOT have the right to appeal to SPBR UNLESS the CBA gives the employee the choice of filing a grievance OR appealing to SPBR. Unions prefer arbitration because more types of disciplinary action can be grieved than appealed to SPBR.

What's a "Section 124.34" Order?

Any disciplinary action that can be appealed to SPBR must be documented on an “Order of Removal, Reduction, Suspension, Fine, Involuntary Disability Separation”, or a “Section 124.34 Order” for short. Copies of this form must be provided to the employee & sent to SPBR—there are specific instructions on the back of the form!

The discipline imposed must be identified, including the effective date

The charge(s) must be listed, with a brief description of the offense (“Neglect of Duty for ...”)

Verification steps of “Due Process” were taken

List of dates of suspension, if applicable

Appropriate signatures for the appointing authority

Order of Removal, Reduction, Suspension, Fine, Involuntary Disability Separation

M _____

This will notify you that you are: removed, suspended, suspended (working), fined; involuntary disability separated; reduced in pay, from your position of _____ and/or reduced to new position of _____ (if applicable)

effective _____ (date)

The reason for this action is that you have been guilty of (List relevant R.C. 124.34 disciplinary offense(s)).
(Section not applicable for involuntary disability separation.)

Specifically:

Notice of pre-disciplinary/separation hearing given to employee: _____ (date)

Pre-disciplinary/separation hearing held or waived: _____ (date)

Employee allowed to meet with employer: Yes No

Order hand-delivered to employee: _____ (date, if hand-delivered)

If employee is suspended, list dates of suspension: _____

Signed at _____ (city) Ohio, _____ (date)

Counter signature, if applicable _____ Signature of Appointing Authority _____

Counter signature, if applicable _____ Type Name and Title of Appointing Authority _____

Counter signature, if applicable _____ Type Department, Agency, or Institution _____

ADM 4055 (Rev. 6-99)/PDF Important: See attachment for Employer and Employee Instructions.

*** HR will prepare and submit the 124.34 Order if it's required ***

Whether appealable or not, “just cause”, progressive discipline, & due process are important considerations of disciplinary action.

JUST CAUSE

- Reasonable standard/expectation existed
- Employee was aware of it
- Objective investigation shows employee violated the standard/expectation
- Discipline imposed was reasonable & consistent

PROGRESSIVE DISCIPLINE

- Except in unusual cases, employee received lower-level discipline for previous same/similar act
- Consistent with past practice & CBA (if applicable)

DUE PROCESS

- Employee notified of charge(s) in writing
- Employee given explanation of the evidence for the charge(s)
- Employee given an opportunity to respond to the charge(s) & provide other evidence or mitigating factors, with representation if desired

IMPORTANT!

For bargaining unit employees, the CBA will likely have specific requirements for each of these concepts. For example:

- 1. Existence/communication/enforcement of “work rules”**
- 2. When & how employees must be notified of charges or an “intent to discipline”**
- 3. The process for a pre-disciplinary meeting or hearing, including Union representation**
- 4. When progressive discipline can be skipped**
- 5. How the employee & Union are informed of disciplinary action actually being imposed**

Is a “Last Chance Agreement” legal?

*A “last chance agreement” can include other disciplinary action for the original/current charge, such as a suspension or demotion

YES.

ORC 124.34 (B) & (F) recognize a “last chance agreement” as a written agreement, signed by both the appointing authority & affected employee (**voluntarily**) that describes the type of future behavior or circumstances which will automatically result in the employee’s removal*.

If later appealed, SPBR may only rule on whether the terms of the “last chance agreement” were violated by the employee; SPBR cannot disaffirm or modify the agreement itself.

A “last chance agreement” cannot be imposed on a bargaining unit employee, but can be negotiated with their Union, and the signed agreement should reference limitations at arbitration.

The Supreme Court ruled that bargaining unit employees have the right to request Union representation at any time during or prior to an investigatory interview with management if they believe that the interview could result in disciplinary action taken against them.

The Union rep has the right to be told the reason for the interview, to confer privately with the employee, and to ask questions related to the matter.

What are “Weingarten Rights”?

Review the CBA carefully; even employees who are questioned simply as witnesses may still have the right to request a Union rep be present.

You may be thinking, “What about a counseling?”

While they should absolutely be documented in writing, a counseling **is not** considered to be a form of disciplinary action. It serves as a “warning” or notice to the employee that a specific behavior needs to change before discipline.

Finally, let's look at a few topics that aren't specifically addressed by ORC/civil service law, but are still tied to disciplinary action...

What is a
"Garrity
Warning"?

You've heard of people "pleading the fifth" to avoid potentially self-incriminating themselves with their testimony. The US Supreme Court ruled in 1967 that **public employees** have the same right to avoid answering **work-related investigatory questions** if their answers **might then result in criminal prosecution**. A "Garrity Warning" lets the employee know that their responses will **not** be used against them in a **criminal proceeding**, and that so informed, failure to answer questions may result in disciplinary action.

Can an employee
resign in lieu of
termination?

YES. However, Courts have ruled that "voluntary resignations" must meet **certain criteria**:

- Should be written, signed, dated & clearly indicate an effective date
- Should be accepted in writing by the appointing authority (employee can rescind resignation before that)
- Must not have been coerced, by threat or promise

How should we handle
disciplinary action for
unclassified employees?

Even though unclassified employees do not have the right to appeal disciplinary action to SPBR, **it is still good advice to follow the concepts of "just cause", progressive discipline, and "due process" for 2 reasons:**

- 1) An unclassified employee who has been disciplined may first challenge their unclassified status; if SPBR agrees with them & places them in the classified service, then that employee can next appeal the disciplinary action itself to SPBR.
- 2) Any employee, including those in the unclassified service, can file a charge with either the US Equal Employment Opportunity Commission or the Ohio Civil Rights Commission. Proving "just cause" & due process are particularly important here.