



The examples and best practices listed here are illustrative only, and are intended only for use as general advice. An appeal decision is the product of applying the Civil Service Rules, Article and Constitutional principles of Due Process to the unique facts of each case. Accordingly, these FAQ's and the HR Handbook do not predict or guarantee a particular result.

Q. What does a suspension pending criminal proceedings do?

A. Excludes an employee from the workplace, without pay, while the employee is facing criminal charges for conduct that would warrant the employee's dismissal.

Q. Is an arrest cause for discipline?

A. Usually, no. The factors the agency should consider are whether the employee is in jail, how long the employee is expected to be in jail, the validity or probable outcome of the charges, and the notoriety to the agency associated with the arrest.

Q. If an employee cannot report for work because he is in jail, is that job abandonment?

A. No, job abandonment occurs when an employee voluntarily deserts his or her position. (Rule 1.1)

Q. What should an agency do when it learns of an employee's arrest?

A. Question the employee about the circumstances of the arrest and the nature of the charges. If necessary, place the employee on suspension pending investigation. Verify this information with the arresting authority. Is there cause for discipline – did the conduct leading to the arrest impair the agency's operations? Is there enough information to initiate discipline (day, date, time, place, names)? Is there enough information to prove the conduct? If the answer is yes to all questions, initiate discipline. If the answer to the first question is yes but the answer to the last two questions is no, a suspension pending criminal proceedings may be available.

Q. Is an arrest enough to request approval for a suspension pending criminal proceedings?

A. No. There must be something to indicate that the charges will be prosecuted – either a bill of information or an indictment.

Q. How long may a suspension pending criminal proceedings last?

A. Until the criminal case becomes final.

Q. Are there alternatives to a suspension pending criminal proceedings?

A. Yes. Possible alternatives include detailing or reassigning the employee to another position, changing the employee's shift to one with greater supervision, placing the employee on enforced annual or compensatory leave, and allowing the employee to use annual leave.

Q. What are examples of situations that might justify seeking approval of a suspension pending criminal proceedings?

A. The District Attorney files a bill of information charging a direct care worker with sexual battery of a client in a state facility, the District Attorney will not release the client's name or the details of the alleged abuse, and the agency has no means of obtaining this information.

The District Attorney files a bill of information charging a police officer at a hospital with indecent behavior with a juvenile, the District Attorney will not release the juvenile's name, the judge has sealed the bill of information, and there is no position at the hospital that would restrict the officer's access to juveniles.

Q. How does an agency get a request for approval of a suspension pending criminal proceedings on the Commission's agenda?

A. By sending a cover letter and a completed questionnaire to the Director of Civil Service.

Q. When should an agency send this request?

A. At least 10 days before the next Commission meeting.

Q. Who gives the employee notice of proposed action/opportunity to respond?

A. The Commission. It will send the employee copies of the agency's request and the questionnaire and will give the employee a deadline for submitting a written response.

Q. Who gives the employee notice of suspension if the Commission approves a suspension pending investigation?

A. The agency.

Q. When an employee appeals a suspension pending criminal proceedings, what happens?

A. The Appeals Division places the appeal on hold until the criminal matter is resolved.

Q. If the court/jury finds the employee not guilty of the criminal charges, is the employee entitled to back pay?

A. Yes.