





Policy No. 532
Supersedes: 532
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DEPARTMENT OF TRANSPORTATION POLICY/PROCEDURE

SUBJECT: Discipline	Effective Date: 10/3/16	Commissioner Approval:  Sponsor Approval:  Contact Telephone #: 609-530-2755
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I. PURPOSE

To state the policy governing breaches of conduct by NJDOT employees, and the guidelines for the administration of disciplinary and corrective actions.

II. DEFINITIONS

Breach of Conduct – Conduct, performance, or behavior by an employee which violates Civil Service Commission regulations, NJDOT policies, divisional, regional, district, bureau, or section rules; or conduct or behavior which is disruptive, insubordinate, criminal, immoral or generally not in conformance with reasonably acceptable standards for a public employee. Examples of conduct, performance, or behavior which constitute breaches of conduct are listed in the *Guidelines for Employee Conduct and Discipline* in the Appendix of this policy. The examples listed are not all-inclusive, but represent more common breaches of conduct.

Disciplinary Action – Corrective or punitive action taken by the NJDOT against an employee as a result of a breach of conduct. Disciplinary action includes official reprimand, suspension, fines, demotion, resignation not in good standing, and removal.

Forfeiture of Public Office - Public employees convicted of certain offenses and crimes are subject to the forfeiture of their public office and/or permanent debarment from public employment under the provisions of N.J.S.A. 2C:51-2.

Immediate Suspension – Temporary separation of an employee when it is determined that the employee is unfit for duty or is a hazard to any person or property if permitted to remain on the job, or when it is necessary to maintain safety, health, order or effective direction of public services.

Impaired Employee – An employee whose demeanor or ability to perform is diminished in a detectable manner. Signs of impairment shall include, but not be limited to, such unusual behavior as, misbehavior, slurred speech, difficulty in maintaining balance, poor coordination, confusion, etc. or otherwise being unable to perform his/her job in a safe or satisfactory manner.

Indefinite Suspension – Temporary separation of an employee based on a pending criminal complaint or indictment.

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Informal Pre-termination (Loudermill) Hearing – Due process by which the employee is served notice of criminal and/or disciplinary charges and provided the opportunity to respond prior to being immediately/indefinitely suspended without pay.

Investigation – The act of seeking out the facts of an alleged breach of conduct. Related activities may include speaking with witnesses/the accused, gathering relevant documents, securing relevant evidence, etc. which serve to provide details of the incident in order to determine appropriate action.

Major Discipline

Communications Workers of America (CWA) represented employees:

- Suspension of four to 45 working days, demotion, removal, fines and/or restitution

International Federation of Professional and Technical Engineers (IFPTE),

International Brotherhood of Electrical Workers (IBEW),

NJ State Policemen’s Benevolent Association (PBA) represented, and

Non-Aligned employees:

- Suspension of six working days to six months, demotion, removal, fines and/or restitution

Minor Discipline

CWA represented employees:

- Official Reprimand, suspension of up to three working days, fines and/or restitution

IFPTE, IBEW, PBA represented and *Non-aligned* employees:

- Official Reprimand, suspension of up to five working days, fines and/or restitution

Non-Aligned Employee – An employee not represented by a collective bargaining unit.

Pre-Disciplinary Action – Corrective action taken by the supervisor against an employee as a result of a breach of conduct. Pre-disciplinary action includes verbal counseling and/or written warning and is not a part of the employee’s official Personnel file.

III. POLICY

A. Purpose of Pre-Disciplinary Action

The purpose of pre-disciplinary action is to correct and prevent minor misconduct, attendance and performance problems that are contrary to rules, policies, regulations and other standards of behavior by means of verbal counseling and/or written warning. Appropriateness of pre-disciplinary action will depend on the type and severity of the infraction. Although not a part of the employee’s official Personnel file, these actions can be used to demonstrate continuing breaches of conduct.

B. Purpose of Disciplinary Action

1. The purpose of disciplinary action is to correct and prevent future misconduct and performance problems that are contrary to rules, policies, regulations and other

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standards of behavior. The ultimate goal of discipline is to ensure that all employees carry out their assigned tasks in an effective and efficient manner.

2. Disciplinary action should be timely and serve to educate and encourage employees to engage in proper conduct and performance.

C. Nature of Disciplinary Action

1. Uniform Application of Policy

- a. Disciplinary action shall be administered without regard to race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), familial status, marital/civil union status, religion, domestic partnership status, affectional or sexual orientation, gender identity and expression, atypical hereditary cellular or blood trait, genetic information, liability for military service, mental or physical disability (including perceived disability, and AIDS and HIV status), political affiliation or legal union activity.
- b. No disciplinary action shall be taken, immediate or otherwise, without a review and consideration of the evidence by the appropriate NJDOT official and/or a formal investigation by the Inspector General's Office or the Division of Civil Rights which results in a recommendation to the Appointing Authority that a breach of this policy occurred. This may contain an opportunity for the employee under investigation to provide a statement prior to the determination of whether or not discipline shall be sought.
- c. If, in management's judgment, there is evidence of a breach of conduct, then corrective/disciplinary action will be initiated without exception. Conversely, if there is insufficient evidence, no disciplinary action will be initiated.

2. Progressive

- a. To fulfill its corrective purpose, disciplinary action shall normally be progressive with recurring breaches of conduct resulting in progressively more severe penalties. In some circumstances, the appropriate action may be a warning, either verbal or written, to inform the employee of the unacceptable conduct or performance. Such warnings are considered to be pre-disciplinary action, and serve as a basis for future disciplinary action if the same misconduct or unacceptable performance is repeated.
- b. The progression of disciplinary action typically follows the pattern of official reprimand, suspensions of increasing length, demotion in certain types of breaches, and finally removal.
- c. Removal is a disciplinary action which is not corrective in nature. It shall be used where previous efforts to bring about correction have failed, or in cases where management deems that it would be inappropriate to continue the employment of the employee. Any breach of conduct can result in removal, regardless of whether

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there were previous disciplinary actions concerning the same type of breach, when the totality of circumstances indicate an egregious breach has occurred.

3. Timely

An investigation should be undertaken immediately upon the allegation that a breach of conduct has occurred. In order to be effective, disciplinary action should be initiated as soon as possible after investigation of the alleged breach of conduct.

4. Consistent

To ensure that employees are treated equitably, disciplinary action shall be administered in a consistent manner. Similar penalties shall be imposed for similar breaches of conduct when the employee's disciplinary history, length of service and other mitigating circumstances are similar.

5. Confidential

- a. The purpose of disciplinary action is to correct unacceptable behavior and not to publicly embarrass employees.
- b. All investigations of alleged breaches of conduct, verbal and written communications concerning disciplinary matters, and official notices of disciplinary action are to be handled in a confidential manner with disclosure limited to only those persons who have a need to know in the exercise of their official duties. Unauthorized disclosure of disciplinary matters is a breach of conduct subject to disciplinary action.

D. Factors to Consider in Determining Appropriate Disciplinary Action

1. Seriousness and circumstances of the breach of conduct (e.g. indirect or direct cost/liability to the Department; time-loss or other productivity impacts; effect on others including those in authority; safety violations; effect on Department reputation including actions in view of the public; etc.).
2. Prior disciplinary action and performance records.
3. Length of service of the employee.
4. Frequency of other breaches of conduct, if any, and their relationship to the current breach; the duration or length of time the improper behavior was practiced; the amount of time between breaches of conduct.
5. Ethical breach or the appearance of impropriety.
6. Mitigating circumstances that weigh in the employee's favor must also be considered.

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E. Approval Authority

The following disciplinary actions require approval of the NJDOT management as indicated:

1. Immediate/Indefinite Suspension

In situations where there is a need to immediately suspend an employee, a senior manager, in conjunction with the Director of Human Resources or designee, has the authority to suspend an employee. Such situations exist when the safety, health or welfare of the employee, fellow employees, the public, or NJDOT is or may be directly and imminently affected, or there is insubordinate conduct, or other circumstances, including but not limited to, certain criminal misconduct.

2. Minor Discipline

The Manager, Bureau of Employee Relations shall issue all minor discipline.

3. Major Discipline

The Director, Division of Human Resources shall issue all major discipline.

4. Special Rule for Ethics Law Violations

Consistent with N.J.S.A. 52:13D-23, the Department must refer proposed discipline for violations of the New Jersey Conflicts of Interest Law, or the New Jersey Uniform Ethics Code to the New Jersey State Ethics Commission prior to imposing that discipline. The NJDOT Ethics Liaison Officer will be consulted to review any alleged ethics breach and, if necessary, to refer the disciplinary action to the N.J. State Ethics Commission prior to issuance of the Final Notice of Disciplinary Action.

F. Employee Rights

1. Permanent career service employees and employees in their working test period are granted rights to challenge a disciplinary action pursuant to their respective union contracts, and/or N.J.A.C. 4A:2-2.1 et seq. for major discipline and/or N.J.A.C. 4A:2-3.1 et seq. for minor discipline. The New Jersey Administrative Code and the union contracts set forth certain due process rights regarding disciplinary appeals.

2. Permanent employees and employees in their working test period, not represented by a union, are granted rights to challenge a disciplinary action pursuant to the N.J.A.C. 4A:2-2.1 et seq. for major discipline and/or N.J.A.C. 4A:2-3.1 et seq. for minor discipline. The New Jersey Administrative Code sets forth certain due process rights regarding disciplinary appeals.

3. The union contracts also provide certain due process rights to unclassified and provisional employees serving in titles represented by the unions.

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G. Notices

The employee, the majority representative for the respective union, and the Civil Service Commission will be served copies of written notices of disciplinary action pursuant to Civil Service Commission rules and union contracts.

H. Special Rule for Resignations Not in Good Standing

Consistent with N.J.A.C. 4A:2-6.2, the Department may resign an employee not in good standing for unauthorized absence. The employee shall be provided with notice and an opportunity for a departmental hearing in accordance with the appropriate union contract and/or N.J.A.C. 4A:2-2.5 and 4A:2-2.8.

IV. PROCEDURE FOR EMPLOYEE DISCIPLINE

A. Investigating Breaches of Conduct

1. Investigations of Major Offenses

- b. Investigations of major offenses will be conducted by the Office of the Inspector General in accordance with Policy 200, *Request for Investigative Services*.
- c. The Inspector General refers substantiated violations to the Division of Human Resources, Bureau of Employee Relations for analysis and issuance of disciplinary action.

2. Investigations of Workplace Violence, Discrimination and/or Harassment

- a. Investigations of incidents of workplace violence will be conducted by the Office of the Inspector general in accordance with Policy 922, *Violence or Threats of Violence in the Workplace*.
- b. Investigations of incidents of discrimination and/or harassment will be conducted by the Division of Civil Rights in accordance with the *New Jersey State Policy Prohibiting Discrimination in the Workplace*.
- c. Substantiated violations are referred to the Division of Human Resources, Bureau of Employee Relations for analysis and issuance of disciplinary action as appropriate.

3. Employees Reporting Breaches of Conduct

- a. Employees are to report allegation(s) of misconduct by NJDOT employee(s) to any supervisor, or to the Office of the Inspector General if they wish to make a confidential report.
- b. Complaints will be kept confidential to the extent possible. If an employee is making the report of a breach of conduct and/or is a material witness to the alleged

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misconduct, he/she will be required to cooperate with NJDOT officials conducting the investigation and will be required to testify during the Departmental Administrative Hearing process and/or additional hearings beyond the Departmental forum, as needed.

4. Supervisors/Managers Reporting and/or Investigating Breaches of Conduct must:

- a. Immediately report to and consult with your superior any instance of employee misconduct to determine the appropriate method of investigation before taking any action.
- b. Conduct the informal investigation into minor offenses or cooperate with the investigation if conducted by the Office of the Inspector General or Division of Civil Rights.
- c. Be familiar with the case and the circumstances related to the breach of conduct. Prior to recommending disciplinary action, discuss the circumstances with the employee and his/her union representative. This will serve to 1) uncover any mitigating circumstances and 2) let the employee know precisely why he/she is being disciplined.
- d. Submit a written report with supporting evidence, after receiving all relevant information and physical evidence, to your superior.
- e. Outreach to the Division of Human Resources, Bureau of Employee Relations for guidance as needed.
- f. Refer criminal matters to the Office of the Inspector General. In this circumstance, consultation with the Division of Human Resources, Bureau of Employee Relations is required before any action is taken. The Department of Transportation has the right to request and/or support a criminal prosecutor's application for forfeiture of public office or permanent debarment from public employment.

B. Reviewing and Recommending Discipline

1. Manager or Other Designated Management Official

- a. Review the report, recommendation of the supervisor, supporting evidence, and conduct a further investigation, if necessary, to determine if a breach of conduct has occurred.
- b. If a breach of conduct has occurred, recommend disciplinary action via completion of a *Request for Disciplinary Action* (PR-180) and submit to the Division of Human Resources, Bureau of Employee Relations, no later than two weeks after completing the investigation.

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C. Disciplinary Actions and Appeals

1. Manager, Bureau of Employee Relations

- a. Review management's written recommendations for all disciplinary action for sufficiency of evidence, appropriateness of charges and the penalty recommended.
- b. Review all substantiated investigative reports received from the Office of the Inspector General and/or Division of Civil Rights and Affirmative Action.
- c. Consult with appropriate management officials to determine the action to be taken, if necessary.
- d. Prepare the appropriate Notice of Disciplinary Action to be issued to the employee.

2. Employee

If a disciplinary action is to be appealed, employees may obtain time limit and process guidance by referring to the respective union contract, N.J.A.C. 4A:2-2.5, or by contacting the appropriate union representative.

3. Manager, Bureau of Employee Relations

- a. If an appeal is timely, forward to the Office of Appeals to schedule a hearing. However, under the CWA contract, a hearing or meeting must be specifically requested.
- b. If the appeal is not timely, notify the employee and the bargaining agent in writing that the appeal is dismissed as untimely and issue the final disciplinary notice.

4. Departmental Hearing Officer

- a. Arrange and conduct an administrative hearing within the contractual time limit or in accordance with the New Jersey Administrative Code.
- b. Render a written report within required time limits, including appearances, witnesses, summary of relevant testimony and other evidence, findings of fact, conclusion and recommendation to the Assistant Commissioner for Administration only, who will either accept, reject or modify the recommendation. Following acceptance by the Assistant Commissioner for Administration, transmit the report and recommendation, including a copy of all documentary evidence accepted by the Departmental Hearing Officer, to the Director, Division of Human Resources.

5. Director, Division of Human Resources/Manager, Bureau of Employee Relations

- a. Prepare appropriate written notices and ensure all parties receive appropriate copies in a timely manner.

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- b. Ensure that the decision is properly and promptly implemented in accordance with standard payroll procedures and the terms of the respective union contract and/or Civil Service Commission rules.

V. AUTHORITY

N.J.S.A. 27

N.J.A.C. 4A

N.J.S.A. 11A

N.J.S.A. 2C

N.J.S.A. 52

Federal DOT 49 CFR Part 40 and Part 382 et al
Union Contracts

APPENDIX

**NEW JERSEY DEPARTMENT OF TRANSPORTATION
GUIDELINES FOR EMPLOYEE CONDUCT AND DISCIPLINE**

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NEW JERSEY DEPARTMENT OF TRANSPORTATION
GUIDELINES FOR EMPLOYEE CONDUCT AND DISCIPLINE

PREFACE

In every workplace it is important for all employees to know, respect and follow established standards of conduct. Conduct standards help ensure order, safety, productivity and integrity in employment.

These guidelines were developed to provide New Jersey Department of Transportation (NJDOT) employees and managers with a resource where they can obtain basic information on most of the directives that govern their workplace conduct. While these guidelines will not list and describe all of the Department's conduct standards, they will provide most of the key standards of conduct. Additionally, the guidelines should not be viewed as adding to, or subtracting from, any of the rights or duties found in the various state laws and union contracts.

For managers and supervisors, understanding and consistently applying the Department's Discipline Guidelines, while an unpleasant duty, is essential. Though there may be a hesitancy to initiate such measures, it is a duty, which should not and cannot be avoided. The manager must execute this duty without regard to an employee's race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), familial status, marital/civil union status, religion, domestic partnership status, affectional or sexual orientation, gender identity and expression, atypical hereditary cellular or blood trait, genetic information, liability for military service, mental or physical disability (including perceived disability, and AIDS and HIV status), political affiliation or legal union activity. Failure to do so may subject the supervisor to discipline.

To assist each manager in carrying out this responsibility, these guidelines have been established to provide general direction for the administration of discipline. These guidelines include the most common breaches of conduct and are not to be considered all-inclusive, since there may be other matters that are just cause for disciplinary action. After each violation listed in the Guidelines, there is generally a short, written explanation describing the heading. They are to serve as an information source and are not to be considered a firm standard which cannot be modified. Generally, the action to be taken starts with the minimum range of disciplinary action(s) and progresses to the next step for recurrence of the same offense. It is important to understand that circumstances such as the seriousness of the infraction or the employee's disciplinary history may dictate the imposition of lighter or harsher penalties than suggested. When these circumstances occur, the manager should include in his/her recommendation for disciplinary action, justification for proposing the lighter or harsher penalty for the infraction.

Employees should know that disciplinary action is primarily a corrective tool rather than a punitive measure and, generally, the result should provide an opportunity for employee growth.

DEFINITIONS

Pre-Disciplinary Action

Type of Action	Description of Action
Counseling	Privately informing the employee to correct his/her behavior and/or performance. Advise employee of potential disciplinary action(s) if the unacceptable conduct or performance is repeated. A written memorandum of record to file, detailing the specifics of the counseling session, should be prepared with a copy given to the employee. This is <u>not</u> an <u>official</u> discipline and is not included in the official personnel file.
Written Warning	A written notice to the employee that his/her conduct or behavior must comply with policy and/or performance, or that recurrence will result in disciplinary action. The notice must state the specific reason for issuing the written warning. This is <u>not</u> an <u>official</u> discipline and is not included in the official personnel file.

Types of Discipline

Type of Action	Description of Action
Official Reprimand	A written notice to the employee that the conduct or performance is unsatisfactory for a specific reason. The notice must state that it is an official reprimand and should warn the employee that any recurrence may result in more severe disciplinary action, including, where appropriate, the possibility of removal.
Suspension	Suspension is without pay and may include a holiday which will also be without pay and count as one suspension day.
Demotion	A reduction in title and class code.
Resignation Not in Good Standing	A resignation resulting from unauthorized absence of five or more consecutive days, or for the failure to provide 14 days written notice of resignation.
Removal	Permanent separation from employment.

If a question exists, or if help is required in implementing corrective action for behavior or performance problems, the Division of Human Resources, Bureau of Employee Relations, should be consulted.

GUIDELINES FOR DISCIPLINE

SECTION 1 – ATTENDANCE

Employees are expected to be at their workstation during the scheduled work shifts and must comply with official starting and ending times, meal breaks, and rest periods. Each employee should be informed of these official work hours immediately upon their assignment to a work unit and/or reassignment to another work unit or a new supervisor.

Breaches of conduct in this category disrupt work schedules, reduce productivity, require duplication of effort in rescheduling work, and may result in delay and/or failure to respond to an emergency or provide other high priority services.

A. ABSENTEEISM

1. UNAUTHORIZED ABSENCE

No employee shall be absent from a scheduled work shift including overtime assignments once accepted, without permission. This charge may include, but is not limited to:

- failure to provide proper notice of intended absence;
- failure to provide documentation when requested;
- leaving without permission and failing to return to work;
- failure to observe working hours such as taking extended breaks and lunches; and/or
- periods of incarceration.

In instances where an employee is required to document an absence due to an illness, he/she must meet the requirements applicable in employee benefit time and leave policies or any preexisting supervisory directives.

NOTE: Should the first or second offenses of unauthorized absence involve more than one consecutive day, the incident should be treated as one event. As such, the penalty may be increased.

2. CHRONIC OR EXCESSIVE ABSENTEEISM

Any employee may be charged with chronic and/or excessive absenteeism, for either intermittent absences of short duration or repetitive long-term absences. Employees must have received prior counseling and must have been placed on written notice providing warning that continued absences will be addressed through further corrective action. Managers should evaluate the employee's overall attendance record and whether or not these absences are protected under the Americans with Disabilities Act (ADA), New Jersey Law against Discrimination (NJLAD), Federal Family and Medical Leave Act (FMLA), and/or State Family Leave Act (SFLA).

Consult with the Division of Human Resources, Bureau of Employee Relations, for guidance.

3. LATENESS

Any employee who fails to report to work on time may be charged with lateness. Factors to consider when determining appropriate disciplinary action include, but are not limited to: the amount of time late; effect on other employees and/or starting work assignment timely (delays and/or special transportation requirement); causing overtime on seven day coverage jobs; causing rescheduling of daily assignments; and amount of time between infractions (decreasing, constant, or increasing interval).

NOTE: If a supervisor believes that chronic and/or excessive absenteeism and/or lateness may involve the Family Medical Leave Laws, or the Americans with Disability Act (ADA), the Division of Human Resources should be contacted before taking any action.

Official Reprimand – 1 day	2 - 4 days	5 – 15 days	16 - 45 days	Removal
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B. RESIGNATION NOT IN GOOD STANDING

Any employee will be considered to have resigned from the Department not in good standing under the following circumstances:

1. Failure to provide 14 days written or verbal notice of resignation as required by N.J.A.C. 4A:2-6.1;
2. Being absent from duty for five or more consecutive business days without the approval of his or her superior constituting abandonment of his or her position; or
3. Failure to return to duty for five or more consecutive business days following an approved leave of absence constituting abandonment of his or her position.

Resignation Not in Good Standing is an administrative action prescribed by the New Jersey Administrative Code. It is included for informational purposes as it concerns an attendance problem. Processing should begin after the employee has been absent without permission for five consecutive scheduled workdays.

NOTE: An employee who is unable to report to work for five or more consecutive work days due to incarceration may be separated under this charge.

C. FAILURE TO BE AVAILABLE AND/OR REFUSAL TO WORK OVERTIME

If an employee's position requires overtime work, employees must be available for a reasonable amount of work in the categories of Non-scheduled, Scheduled, Emergency and/or Emergency/Winter Weather. In evaluating an employee's overall response to overtime, regarding time worked or unavailability, reasonable excuses recorded will be assessed to determine if excessive.

As the requirement to respond constitutes a condition of State employment, an employee's failure or refusal to work overtime will be recorded as a failure to be available. If an employee fails to be available unreasonably or excessively for Non-scheduled,

Scheduled, Emergency and/or Emergency/Winter Weather work, an employee can be disciplined under this section. Additionally, an employee's failure to respond to non-contiguous or mandatory overtime may be subject to discipline even if requirements to work any other category of overtime are met.

Official Reprimand – 1 day	2 - 4 days	5 – 15 days	16 - 45 days	Removal
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D. LEAVING ASSIGNED WORK AREA WITHOUT PERMISSION

An Employee who fails to request permission to leave the assigned work station or work site may be subject to disciplinary action.

Official Reprimand – 1 day	2 - 4 days	5 – 15 days	16 - 45 days	Removal
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SECTION 2 – PERFORMANCE

A. INABILITY TO PERFORM DUTIES

An employee who is unable to perform the duties and responsibilities of his/her title/position may be subject to disciplinary action.

If this breach of conduct is the result of a medical condition, such matters must be referred to the Division of Human Resources, Reasonable Accommodations Unit, for evaluation of the evidence and a review of alternatives, if available.

Discipline for inability to perform duties may also result from an employee’s failure or inability to maintain elevated computer privileges or access, security clearance, or a valid license and/or certification when required as a condition of employment or policy. An employee’s failure to maintain any of the above conditions may be cause for disciplinary action under this charge. Additional examples may include, but are not limited to:

- Driver’s license
- Commercial driver’s license
- Steam plant boiler operator’s license
- Pesticide application license
- Building, computer and/or security clearance

Any of the above must immediately be reported to the supervisor for appropriate action.

NOTE: An employee’s court-ordered requirement for a vehicle interlock device will preclude him/her from driving an NJDOT vehicle. Such requirement will be treated as an inability to perform duties if driving NJDOT vehicles is required for the position.

Demotion / Removal	Removal
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B. INCOMPETENCY, INEFFICIENCY OR FAILURE TO PERFORM DUTIES

An employee’s failure to perform at a satisfactory level may result in discipline for incompetency, inefficiency, or failure to perform duties. It is recommended that Performance Assessment Review (PAR) records be reviewed prior to initiating this action.

If this breach of conduct is the result of a medical condition, such matters must be referred to the Division of Human Resources, Reasonable Accommodations Unit, for evaluation of the evidence and a review of alternatives, if available.

Official Reprimand - Demotion / Removal	Demotion / Removal
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C. NEGLECT OF DUTY

An employee who fails to perform or complete tasks assigned by a superior and associated with the responsibilities of the position, may be disciplined for neglect of duty.

This breach of conduct also includes the failure to be working, without good reason, when active work is underway, or failure to work at a minimally acceptable pace (e.g. sleeping, idleness, loafing, etc.).

When neglect of duty creates potential danger to persons or property or actual personal injury, property damage or loss, the warranted disciplinary action will be more severe.

Official Reprimand - 5 days	6 - 14 days	15 – 45 days	Demotion / Removal
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D. FAILURE TO REPORT LOSS, THEFT OR DAMAGE

An employee is required to notify management of any loss, theft, or damage to Department property within the required time frame as stipulated by Policy 203, *Reporting Losses, Thefts or Vandalism*. This includes, but is not limited to, any motor vehicle accident involving a Department vehicle.

Official Reprimand - 5 days	6 - 14 days	15 days - Removal	Removal
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E. FAILURE TO HAVE MANDATORY PERSONALLY OWNED TOOLS OR EQUIPMENT

Certain employees are required, as a condition of employment, to maintain a specified inventory of personally owned tools or equipment. Failure to initially obtain and have available the mandatory items at all times while on duty is cause for disciplinary action. If the employee's tools are either lost or destroyed, and the State is not held responsible, as provided by the union contract, the employee is required to replace his/her tool(s) within 15 working days of the loss. Employees whose tools have been stolen or destroyed, and the State has assumed responsibility, are required to replace their tool(s) within 15 working days after receiving reimbursement from the State. Failure to obtain replacement tool(s) within the stated time frame is also cause for disciplinary action. If the employee fails to obtain replacement tools within 30 working days, escalation to the next disciplinary step is appropriate until the tools are obtained or the employee is either demoted or removed.

Official Reprimand - 5 days	6 - 14 days	15 days - Removal	Removal
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F. WASTE OF MATERIALS OR SUPPLIES

An employee may be disciplined for using more materials or supplies than prudent or necessary. If the action of the employee is deliberate and/or malicious, more severe disciplinary action is warranted.

Official Reprimand - 3 days	4 - 9 days	10 days - Removal	Removal
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G. SUSPENSION OF DRIVER'S LICENSE / DRIVING PRIVILEGES

An employee who is required by title or by an assignment to possess a driver's license, is subject to discipline for having his/her driver's license, privileges, and/or endorsements suspended and for failing to report such loss. Specific guidelines for an employee's obligation to report his/her loss of driver's license, how the length of the loss may impact employment, as well as supervisory responsibilities, can be found in Policy 528, *Loss of Driver's License*.

1. FAILURE TO REPORT SUSPENSION OF DRIVER'S LICENSE/DRIVING PRIVILEGE

Employees who are required to maintain a valid driver's license and/or endorsements and who fail to report a suspension of driving privileges and/or endorsements to their supervisor as soon as they are aware of the suspension, are subject to discipline.

Official Reprimand - 3 days	4 - 9 days	10 days - Removal	Removal
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2. DRIVING ON THE JOB WHILE DRIVER'S LICENSE / DRIVING PRIVILEGES ARE SUSPENDED AND/OR EXPIRED

Employees who are required to maintain a valid driver's license and/or endorsements and have operated a State vehicle while his/her driving privileges and/or endorsements were suspended or have expired, will be subject to disciplinary action. Factors to be considered in determining the type and/or level of disciplinary action include, but are not limited to, the number of times a vehicle was driven during the suspension, and/or type of vehicle driven.

3 - 15 days	Removal
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H. FAILURE TO FOLLOW RULES, REGULATIONS, POLICIES AND/OR PROCEDURES.

If an employee fails to follow a particular Civil Service Commission regulation, NJDOT policy, divisional, regional, district, bureau, or section rule and there is no other specific infraction covered in this Appendix, the following penalties should be utilized.

NOTE: If the violation of policy, rules, regulations or procedures results in personal gain for the employee, creates an unsafe situation or a potential for liability, more severe discipline will be considered.

Official Reprimand – 5 days	6 - 14 days	15 days - Removal	Removal
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SECTION 3 – PERSONAL CONDUCT

A. THEFT OR MISAPPROPRIATION

No employee shall commit, or attempt to commit, an act of theft or misappropriation (i.e. the wrongful taking and carrying away of property, services or time) against the Department. This breach of conduct is an extremely serious matter, which may warrant major disciplinary action up to and including removal. A breach of this nature must be referred to the Office of the Inspector General.

Official Reprimand - Removal	Removal
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B. INSUBORDINATION

No employee shall commit an act of insubordination. Insubordination is considered to be a refusal or failure to carry out a specific legitimate order, at the direction or request of a superior.

1. Refusal or failure to carry out a specific order.

1 – 5 days	6 days - Removal	Removal
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2. Unreasonable delays in carrying out a specific, legitimate order at the direction or request of a superior.

Official Reprimand - 1 day	2 – 3 days	4 - 7 days	8 days - Removal	Removal
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C. WORKPLACE VIOLENCE

The State of New Jersey has a zero tolerance policy for workplace violence. All employees must refer allegations of workplace violence immediately to the NJDOT Workplace Violence Coordinator in the Office of the Inspector General for investigation. In addition, notification to the Division of Human Resources must also be made in the event an immediate suspension or referral to the Employee Advisory Service is necessary. In cases where the investigation of workplace violence reveals a pattern or where the act is against an individual with supervisory authority, the warranted discipline will be more severe.

1. Physical contact where blows are struck or use of a weapon or object to inflict bodily injury. If injuries require medical treatment, or property damage results, more severe disciplinary action is warranted.

10 days - Removal	Removal
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2. Brandishing any object or tool which could potentially be used as a weapon in a threatening manner or making a verbal threat with reference to a deadly weapon.

6 days - Removal	Removal
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3. Physical contact in the form of pushing or shoving, with no blows struck, or unwelcome contact between two or more parties. More severe action is warranted for the same reasons listed in 1.

1 - 5 days	6 days - Removal	Removal
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4. Verbal or physical threats of violence (direct, conditional or veiled), intimidation, coercion or interference, verbal abuse or harassment intended to harm another.

Official Reprimand - 5 days	6 - 45 days	Removal
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D. DISCRIMINATION

The Department of Transportation is committed to providing every employee with a work environment free from prohibited discrimination and harassment. Consistent with the New Jersey State Policy Prohibiting Discrimination in the Workplace, forms of employment discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), familial status, marital/civil union status, religion, domestic partnership status, affectional or sexual orientation, gender identity and expression, atypical hereditary cellular or blood trait, genetic information, liability for military service, mental or physical disability (including perceived disability, and AIDS and HIV status), political affiliation or legal union activity.

To achieve the goal of maintaining a work environment free from discrimination and harassment, the Department exercises a zero tolerance policy where violations of conduct occur.

Due to the sensitivity, complexity and scope of this breach of conduct, immediate referral to the Division of Civil Rights and Affirmative Action is required. This Division must conduct an investigation, and if the finding is substantiated, will refer the matter to the Division of Human Resources, Bureau of Employee Relations.

1. SEXUAL HARASSMENT

Sexual Harassment is defined as any unwelcome sexual advances, requests for sexual favors, including repeated offensive sexual flirtation, propositions, continual or repeated abuse of a sexual nature, verbal or written sexually related comments about an individual's body, display of sexually suggestive objects or pictures, or any uninvited physical contact or touching, such as patting, pinching, or constant brushing against another's body. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature also constitute sexual harassment when:

- a. submission to such conduct is made, either explicitly or implicitly, as a term or condition of employment;
- b. Such conduct has the purpose or effect of unreasonably and substantially interfering with the work performance of the individual, or creating an intimidating, hostile, or offensive working environment.

2. OTHER HARASSMENT AND DISCRIMINATION

- a. Harassment may also include any circulation of materials which would breach the State Policy Prohibiting Discrimination in the Workplace, even without the intent to be malicious.
- b. Discrimination may take the form of differential treatment in work assignments, promotional opportunities, hiring practices, etc. Among the factors to be considered when determining penalties for discrimination are intent, malice, past-practice, impact, etc.

Official Reprimand - Removal	Removal
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E. FALSIFICATION, TAMPERING WITH AND/OR ALTERATION OF PUBLIC RECORDS OR INFORMATION

1. FALSIFICATION

Falsification is an intentional misstatement or omission of a material fact in connection with employment, attendance, or in any record, report, investigation or other proceeding of the Department.

2. TAMPERING WITH AND/OR ALTERATION OF PUBLIC RECORDS OR INFORMATION

An employee may be disciplined for knowingly making a false entry in, or false alteration of, any record or document belonging to, received, or maintained by the Department for information or record. This would include, but not be limited to, any public database or Department record.

An employee may also be disciplined for making, presenting, offering for filing or using any record or document knowing it to be false, and with the purpose that it be taken as a genuine part of information or records as described above.

NOTE: If the employee benefitted personally, or attempted to hide or obscure his or her personal involvement in this breach of conduct or criminal act, the disciplinary action to be taken will be severe.

Official Reprimand - Removal	6 days – Removal	Removal
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F. DAMAGE, LOSS OR TAMPERING WITH PROPERTY

No employee shall deliberately, recklessly or carelessly damage any State property or property of Department employees, visitors on State premises, or property of the traveling public on any highways.

1. WILLFUL DAMAGE TO OR TAMPERING WITH PROPERTY

This category includes damage, defacing or tampering which is deliberate or reckless. The severity of discipline will be based partially on the nature of the damage, defacing or tampering, with more stringent penalties for evidence of malice.

Official Reprimand - Removal	6 days – Removal	Removal
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2. NEGLIGENT DAMAGE TO OR LOSS OF STATE PROPERTY

This section differs from willful damage in that the damage/loss was not deliberate, but the result of carelessness. Accidental damage/loss which could have been prevented if the employee had used proper caution or followed safety requirements.

Official Reprimand – 3 days	4 days – 9 days	10 days – Removal
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G. DIVULGING CONFIDENTIAL INFORMATION

1. DIVULGING CONFIDENTIAL INFORMATION WITHOUT AUTHORIZATION

No employee shall divulge any information to persons not entitled to such information without expressed authorization. This breach of conduct must be referred to the Office of the Inspector General for investigation as a major offense.

NOTE: A violation of this section may also be a violation of the New Jersey Conflicts of Interest Law and the NJ State Ethics Code. Removal may be appropriate for a first offense.

2. DIVULGING CONFIDENTIAL INFORMATION ASSOCIATED WITH AN INVESTIGATION

Prior to, during, or following the completion of an investigation, Department employees are prohibited from divulging any confidential information. This includes investigations conducted by the NJDOT Internal Investigations Unit, Federal, State and local law enforcement agencies, compliance agencies, integrity monitors hired by the Department, and any Civil Rights and Affirmative Action investigation conducted at the Federal, State or Departmental level.

All employees must exercise reasonable due diligence in preventing a breach of confidentiality.

Official Reprimand - Removal	Removal
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H. CONDUCT UNBECOMING A PUBLIC EMPLOYEE

No employee shall act in a manner that is immoral, indecent, or inappropriate, including unacceptable conduct or attitude (e.g. horseplay and/or disrespectful, insulting, or abusive language or gestures) toward a coworker, superior, or the general public.

NOTE: Any improper conduct toward a superior and/or in view of the general public that may reflect poorly on the Department, although seemingly minor, may have more serious implications.

1. IMMORAL, INDECENT OR OTHER MORE EGREGIOUS ACTS OF MISCONDUCT

6 days - Removal	Removal
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2. UNACCEPTABLE CONDUCT AND/OR HORSEPLAY OR RUDENESS / DISCOURTEOUSNESS TOWARD A COWORKER, SUPERIOR OR THE PUBLIC

Official Reprimand - 3 days	4 - 9 days	10 days - Removal	Removal
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I. ETHICS VIOLATIONS

Pursuant to the New Jersey Conflicts of Interest Law, N.J.S.A 52:13D-12 et seq., Department employees are required to follow the NJ Uniform Ethics Code to maintain the respect and confidence of the public. Any violation can result in an Official Reprimand to Removal depending on the nature and extent of the infraction. Some, but not all, of the violations include: engaging in prohibited political activity, accepting gifts with the intent to influence in the performance of duties, solicitation of employment, inappropriate use of State time and resources, etc. Any code violations should be referred to the Division of Human Resources, Bureau of Employee Relations, and the NJDOT Ethics Liaison Officer who will seek concurrence and approval of the proposed disciplinary action from the NJ State Ethics Commission. Any questions regarding possible code violations should be referred to the Department's Ethics Liaison Officer.

Official Reprimand - Removal	Removal
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J. MANAGERIAL OR SUPERVISORY MISCONDUCT

1. NEGLIGENCE OF MANAGERIAL OR SUPERVISORY RESPONSIBILITIES

No manager or supervisor will neglect serious managerial or supervisory responsibilities. Such acts serve to erode employee morale and discipline, damage management credibility and the professionalism of the Department.

2. ABUSE OF POSITION/AUTHORITY

No manager or supervisor shall mistreat, show favoritism toward, or inappropriately intimidate a subordinate, or direct a subordinate to perform duties contrary to NJDOT policies and procedures.

Official Reprimand - Removal	Removal
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K. UNAUTHORIZED OR INAPPROPRIATE USE OF DEPARTMENT ASSETS

No employees shall use Department assets without authorization or for purposes other than the asset's expressed business-related intent. Misuse of such assets will result in discipline.

1. UNAUTHORIZED USE OF FACILITIES AND/OR EQUIPMENT

It is expected that Department facilities and equipment will be utilized as intended for business purposes. Use of such facilities or equipment outside of normal business hours must receive appropriate authorization. Factors that warrant more severe disciplinary action may include:

- a. other violations of law or policy that are committed while using facilities or equipment in an unauthorized fashion;
- b. extent of time of unauthorized use;
- c. taking equipment to public areas not in the immediate vicinity of the worksite; and/or
- d. quantity of unauthorized units produced on equipment or in the facility.

2. UNAUTHORIZED USE OF VEHICLES

Employees shall utilize State vehicles in accordance with State Circulars and Department policy governing their use. Factors that warrant more severe disciplinary action may include:

- a. carrying other employees as passengers during unauthorized use where the other employees are prevented from performing their assignments;
- b. other violations of law or policy are committed while using vehicles in an unauthorized fashion;
- c. extent of time and/or mileage of unauthorized use; and/or
- d. taking a vehicle to public areas not in the immediate vicinity of the worksite.

3. UNAUTHORIZED OR ABUSIVE USE OF DEPARTMENT RADIO COMMUNICATION SYSTEMS

No employee shall make or cause to be made, any disruptive transmissions, obscene language, "cat" calls, or rebroadcast of commercial stations that may adversely affect the Department's ability to effectively communicate with employees and disrupt field operations. Such improper use of the radio system is a violation of Federal

Communications Regulations and is punishable by fine and/or imprisonment consistent with 47 U.S.C. § 501. Uncontrolled use by individuals could result in revocation of the Department's license. This breach of conduct may result in Removal for the first offense.

4. UNAUTHORIZED OR INAPPROPRIATE USE OF OFFICE EQUIPMENT AND/OR SYSTEMS

No employee shall use or cause to be used, any office equipment and/or systems such as PCs, laptops, DOTNET, Intranet, internet, fax machines, copy machines, work-issued cell phones, or any other electronic communication device in an inappropriate or unreasonable manner that is outside the duties required of his/her position.

Examples of inappropriate and unreasonable use include, but are not limited to:

- a. sending, receiving, or photocopying any material that is not directly related to State business;
- b. using abusive or objectionable language in either public or private messages;
- c. misrepresenting oneself or NJDOT;
- d. lobbying public officials; or
- e. sending chain letters, playing computer games, using public distribution lists to distribute personal information, accessing non-business related Internet sites in excess of limited incidental use (quota time), or any other activity that could cause congestion or disruption to the Department communication network.

Examples of unauthorized use include, but are not limited to:

- a. any attempt to access computer systems or data for which access rights have not been provided;
- b. not exercising reasonable caution to ensure personal passwords remain confidential;
- c. installing any software that violates Department or SONJ policies; or
- d. any attempt to bypass system software used to ensure the integrity of the Garden State Network.

Official Reprimand - 5 days	6 - 14 days	15 days – Removal	Removal
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L. UNHYGIENIC PERSONAL HABITS

No employee shall report for duty in a manner that is considered unhygienic. Counseling is mandatory as the first step to correct this breach of conduct. Efforts to correct the problem should be coordinated with the Division of Human Resources, Bureau of Employee Relations, to ensure that the problem is not health related.

Official Reprimand - 3 days	4 - 9 days	10 days – Removal	Removal
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M. FAILURE TO COOPERATE WITH, OR INTERFERING WITH, OFFICIAL DEPARTMENTAL INVESTIGATIONS

All employees must cooperate and respond fully and honestly to questions posed, and provide evidence of which they are in possession, in the course of official Departmental investigations unless doing so would incriminate them criminally.

Official Reprimand - 5 days	6 - 14 days	15 days – Removal	Removal
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N. VIEWING PORNOGRAPHIC, SEXUALLY SUGGESTIVE, AND/OR OTHER OFFENSIVE MATERIAL ON DEPARTMENT EQUIPMENT

No employee shall use State equipment or systems (including hardware, software, networks, Wi-Fi or any other information technology asset) to access pornography, sexually suggestive, or other offensive materials. Normally the progressive discipline outlined should be followed, however, any egregious incident could be cause for Removal or immediate referral to the Employee Advisory Service on the first offense and should be immediately referred to the Division of Human Resources, Bureau of Employee Relations.

The viewing or downloading of certain materials may constitute an unlawful activity and any breach of this discipline should immediately be referred to the Office of the Inspector General for investigation. Such activities may also be subject to criminal or civil prosecution under State or federal laws or could constitute sexual or other harassment.

Official Reprimand – Removal	Removal
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O. POSSESSION OF STOLEN PROPERTY

No employee shall possess any stolen property on State premises. Suspicion of stolen property requires immediate referral to the Office of the Inspector General and appropriate law enforcement officials. Possession of stolen State property, on or off premises, warrants more severe disciplinary action.

3 days - Removal	Removal
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SECTION 4 – DRUG AND ALCOHOL FREE WORKPLACE

NJDOT employees are required to be free from the effects of alcohol and other mind altering drugs while in the course of their assignment. It is the responsibility of each employee to ensure that he/she is alcohol and drug free in compliance with NJDOT Policy 535, Drug and Alcohol Free Workplace.

A penalty of Removal for a first offense may be sought under this section for any safety sensitive or CDL employee if the action is defined as a violation of a Federal regulation concerning drug and alcohol use by and testing of employees who perform functions related to the operation of commercial motor vehicles, and state and local policies issued thereunder, N.J.A.C. 4A:2-2.3(a-10).

A. UNFIT FOR DUTY DUE TO ALCOHOL AND/OR DRUG USE

Employees are not permitted to report for duty, when they cannot safely, efficiently, or effectively perform normal assigned duties, as a consequence of physical or mental unfitness caused by alcohol and/or or drug use. Supervisors/Managers should consult with the Division of Human Resources, Bureau of Employee Relations, in the event referral to the Employee Advisory Service is warranted.

NOTE: An employee may be determined to be impaired even if alcohol content is below .04 for CDL or .08 for non-CDL if the employee’s job performance is adversely impacted.

B. USE, POSSESSION, DISTRIBUTION OR SELLING OF ALCOHOL OR DRUGS WHILE ON THE JOB

Employees are not permitted to use, possess, distribute or sell alcohol or drugs while on duty and/or on State premises or in State vehicles, including possession of drug paraphernalia.

NOTE: On-duty is defined as any time period (regular work hours, overtime, hourly services), including breaks, during which an employee is required to comply with a directive from a supervisor and the employee will perform and/or be available to perform all work duties including safety sensitive functions.

Official Reprimand - Removal	Removal
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C. POSITIVE DRUG AND/OR ALCOHOL TEST UNDER FEDERAL REGULATIONS

Employees holding safety sensitive and/or CDL required positions, may not test positive under a Reasonable Suspicion or Post Accident screening or incur a Second-Time positive result for drug use and/or alcohol levels of .04 and higher.

D. FAILURE AND/OR REFUSAL TO COOPERATE WITH DRUG/ALCOHOL TESTING PROCEDURES, INCLUDING TAMPERING

All employees are expected to cooperate with the Drug/Alcohol Testing Procedure as mandated by the Code of Federal Regulations (CFR) Title 49. Employees who do not cooperate with any part of the collection/testing process, including but not limited to declining to provide a sample under direct observation, leaving the worksite without permission after being notified of a random test, and substitution/tampering with a sample, will be considered to have refused.

E. OPERATING STATE VEHICLES OR POWERED EQUIPMENT WHILE UNDER THE INFLUENCE OF DRUGS AND/OR ALCOHOL

Employees may not operate a State vehicle of any type, a personal vehicle while in the course of a work assignment, or any powered/motorized equipment while under the influence of drugs and/or alcohol.

F. ACCIDENT IN A STATE VEHICLE WHILE UNDER THE INFLUENCE OF DRUGS AND/OR ALCOHOL

Employees may not cause or be involved in an accident while operating a State Vehicle, a personal vehicle while in the course of a work assignment, or any powered/motorized equipment while under the influence of drugs and/or alcohol.

Immediate Suspension and Removal

SECTION 5 – SAFETY AND SECURITY

A. WILLFUL DISREGARD OF SAFETY REGULATIONS/PROVISIONS

No employee is permitted to deliberately disregard safety regulations intended to ensure the safety and well-being of him or herself, coworkers, or the public.

Official Reprimand - Removal	Removal
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B. FAILURE TO COMPLY WITH SAFETY MANUAL AND PRESCRIBED SAFETY PRACTICES

No employee shall fail to use appropriate safety devices and personal safety gear when required by the NJDOT Safety Manual, Work Zone Safety Set-Up Guide, Safety Training Classes, Operations Bulletins, Federal, State, or Local laws. This section also includes failure to comply with prescribed safety practices as outlined in the above.

Official Reprimand - 3 days	4 - 9 days	10 days - Removal	Removal
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C. NEGLIGENT OPERATION OF A VEHICLE AND/OR EQUIPMENT

1. VEHICLES

No employee shall operate a State vehicle, or a personal vehicle while in the course of a work assignment, in a manner which violates State motor vehicle laws and/or results in an accident caused by the employee's negligent operation.

NOTE: In addition, vehicle accidents deemed preventable by the Accident Review Board will be considered in issuing discipline under this charge.

2. EQUIPMENT

No employee shall operate Department equipment in a manner that creates unsafe working conditions, injury, or the propensity to cause damage to State or personal property.

Official Reprimand - 3 days	4 - 9 days	10 days - Removal	Removal
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NOTE: If the negligence involves damage to a vehicle, equipment or property, refer to Section 3 (F) of this appendix, *Damage, Loss or Tampering with Property*.

D. FAILURE TO SECURE FACILITIES

Employees who are designated responsible to secure Department facilities by lockup or other means must ensure that this task is completed as directed.

Official Reprimand - 3 days	4 - 9 days	10 days - Removal	Removal
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E. LOSS OR CARELESS CONTROL OF KEYS

Keys to all Department premises, vehicles, and equipment, are to be secured by the operator or custodian of the keys at all times.

Official Reprimand - 3 days	4 - 9 days	10 days - Removal	Removal
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F. IMPROPER POSSESSION OR USE OF FIREARMS AND/OR OTHER WEAPONS

Employees are not permitted to have, on Department premises or at work sites, in State vehicles traveling to and from work sites, on the highways or in the field, weapons such as firearms, knives, or other types of implements whose designed purpose is to inflict injury on persons. This breach of conduct warrants major disciplinary action up to and including removal, and must be referred to appropriate law enforcement officials and the Office of the Inspector General.

Official Reprimand - Removal	Removal
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