

(2) WITHIN 5 DAYS AFTER RECEIVING A COUNSELING MEMORANDUM, AN EMPLOYEE MAY SUBMIT TO THE EMPLOYEE'S APPOINTING AUTHORITY A WRITTEN RESPONSE TO THE MEMORANDUM. THE RESPONSE SHALL BE PLACED IN THE EMPLOYEE'S FILE AND ATTACHED TO ANY RECORD OF THE MEMORANDUM.

(3) AN EMPLOYEE MAY NOT TAKE ANY OTHER ACTION IN RESPONSE TO A COUNSELING MEMORANDUM.

(B) (1) PLACING AN EMPLOYEE ON LEAVE WITHOUT PAY WHEN THE EMPLOYEE IS ABSENT WITHOUT APPROVAL IS NOT A DISCIPLINARY ACTION WITHIN THE MEANING OF THIS SUBTITLE.

(2) AN EMPLOYEE WHO IS PLACED ON LEAVE WITHOUT PAY FOR AN UNAPPROVED ABSENCE ALSO MAY BE SUBJECT TO DISCIPLINARY ACTION FOR THE UNAPPROVED ABSENCE.

(C) (1) REQUIRING AN EMPLOYEE TO MAKE RESTITUTION TO THE STATE FOR LOSS OR DAMAGE TO STATE PROPERTY DUE TO THE EMPLOYEE'S NEGLIGENCE IS NOT A DISCIPLINARY ACTION WITHIN THE MEANING OF THIS SUBTITLE.

(2) AN APPOINTING AUTHORITY MAY NOT REQUIRE AN EMPLOYEE TO PAY RESTITUTION EXCEEDING 3% OF THE EMPLOYEE'S ANNUAL BASE PAY.

(3) AN EMPLOYEE WHO IS ORDERED TO MAKE RESTITUTION UNDER THIS SUBSECTION ALSO MAY BE SUBJECT TO CIVIL PROSECUTION OR CRIMINAL PROSECUTION FOR WANTON DESTRUCTION OF PROPERTY UNDER THE STATE LAW.

~~44-409.~~ 11-108.

(A) THIS SUBTITLE DOES NOT PRECLUDE AN APPOINTING AUTHORITY AND AN EMPLOYEE FROM AGREEING TO THE:

(1) SUSPENSION HOLDING IN ABEYANCE OF A DISCIPLINARY ACTION FOR A PERIOD NOT TO EXCEED 18 MONTHS IN ORDER TO PERMIT AN EMPLOYEE TO IMPROVE CONDUCT OR PERFORMANCE; OR

(2) IMPOSITION OF A LESSER DISCIPLINARY ACTION AS A FINAL AND BINDING ACTION, NOT SUBJECT TO ANY FURTHER REVIEW.

(B) (1) IF AN EMPLOYEE FAILS TO APPEAL A DECISION IN ACCORDANCE WITH THIS SUBTITLE, THE EMPLOYEE IS CONSIDERED TO HAVE ACCEPTED THE DECISION.

(2) A FAILURE TO DECIDE AN APPEAL IN ACCORDANCE WITH THIS SUBTITLE IS CONSIDERED A DENIAL FROM WHICH AN APPEAL MAY BE MADE.

(C) THE PARTIES MAY AGREE TO WAIVE OR EXTEND ANY TIME STATED IN THIS SUBTITLE.

(D) EACH PARTY SHALL MAKE EVERY EFFORT TO RESOLVE AN APPEAL AT THE LOWEST LEVEL POSSIBLE.