

**A REPORT ON
ADMINISTRATIVE LEAVE
REPORTED TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 15

**COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES AND SUPPLY
RICHMOND
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A Report on
Administrative Leave

Presented to
The Governor and
the General Assembly

by

The Secretary of Administration and Finance

December 6, 1978
Richmond, Virginia



COMMONWEALTH of VIRGINIA

Office of the Governor

Richmond 23219

Charles B. Walker
Secretary of Administration and Finance

December 6, 1978

The Honorable John N. Dalton
Governor
Commonwealth of Virginia

Members of the General Assembly
State Capitol
Richmond, Virginia 23219

Dear Governor Dalton and Members of the General Assembly:

In its 1978 session the General Assembly adopted Senate Joint Resolution 18 requesting the Secretary of Administration and Finance to study personnel regulations and determine necessary changes in order to establish a procedure for administrative leave for employees relieved of duty for purposes of disciplinary investigations.

The results of the study and my recommendations are set out in this Report on Administrative Leave.

Respectfully submitted,

A handwritten signature in cursive script that reads 'Charles B. Walker'.

Charles B. Walker
Secretary of Administration and Finance

ENGROSSED

1 **SENATE JOINT RESOLUTION NO. 18**

2 Senate Amendments in [] - February 18, 1978

3 *Requesting the Secretary of Administration and Finance to study*
4 *certain changes in the personnel regulations.*

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6 Patrons—Schewel, Goode, Mitchell, Edmunds, and DuVal; Delegates:
7 Giesen, Diamonstein, Fowler, and Murray

8
9 Referred to the Committee on Rules

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11 WHEREAS, on occasion State employees are relieved of their
12 duties for purposes of disciplinary investigations; and

13 WHEREAS, such suspensions are often times without
14 compensation; and

15 WHEREAS, the State personnel rules and regulations contain no
16 provision for administrative leave, that is, leave with pay pending a
17 disciplinary investigation; and

18 WHEREAS, such investigations are lengthy in duration leaving
19 the employee without compensation for such period of investigation;
20 and

21 WHEREAS, such relief from duty without compensation for
22 purposes of investigation for an extended duration of time appear
23 inequitable; now, therefore, be it

24 RESOLVED by the Senate, the House of Delegates concurring,
25 That the Secretary of Administration and Finance is requested to
26 study personnel regulations and determine necessary changes in
27 order to establish a procedure for administrative leave for
28 employees relieved of duty for purposes of disciplinary
29 investigations. [*The Secretary is requested to report his findings to*
30 *the Governor and General Assembly on or before December one,*
31 *nineteen hundred seventy-eight.*]

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Pursuant to SJR 18, a survey of current practices was conducted. Included in the survey were nine states, seven local government jurisdictions in Virginia, the United States Civil Service Commission, two consulting firms specializing in public administration and the principle professional association of public personnel officers.

Of the nine states, only Maryland gives its department heads an open option to suspend with or without pay. Georgia provides for administrative leave with pay at the option of the department head not to exceed forty-five days and not if a police investigation is involved. Wisconsin, Michigan, Pennsylvania, North Carolina, South Carolina, Alabama and Florida make no provision for administrative leave with pay. North Carolina, however, does not permit suspension either with or without pay except in its Highway Patrol, while Alabama and Florida make no provision for reinstatement with back pay if the employee is cleared of the charges against him.

Among the local jurisdictions in Virginia, the Arlington County School Board provides leave with pay for teachers and principals suspended pending disciplinary investigations or court proceedings and is considering extending this policy to all its employees. Fairfax County suspends its police officers with pay and is considering extending this policy to other employees. The City of Lynchburg has no written policy but generally suspends with pay. Arlington and Henrico Counties and the cities of Richmond and Norfolk follow the same practice as the State and suspend without pay subject to reinstatement with back pay if the employee is cleared of the charges against him.

The U.S. Civil Service Commission provides for administrative leave with pay, but for no more than five days and only when it is in the interest of the government to remove the employee from the work site or relieve the employee of his duties pending a decision to suspend or remove.

Both Executive Management Services, Inc., and Yarger and Associates, Inc., reported a national pattern among public jurisdictions of suspension without pay pending disciplinary investigations with provision to reinstate with back pay if the charges are not sustained.

The International Personnel Management Association reported that of some thirty-odd states whose leave practices are known to that association, none other than the two mentioned above provide administrative leave with pay pending disciplinary investigations. Instead, the prevailing practice is the same as in Virginia.

Only the State of Maryland and the Arlington County School Board considered the application of administrative leave to be routine. The Civil Service Commission and the State of Georgia both held the use of administrative leave to be extremely rare and reserved as a viable option only in cases involving unusual circumstances.

Interviews with seventeen agency heads or agency personnel officers in agencies of Virginia government brought out strong preference for the present system. These managers generally felt that the routine application of administrative leave would be counter-productive and the difficulty in developing criteria for the use of administrative leave would make them vulnerable to law suits based on unequal treatment. Of the seventeen, two favored having such authority on a limited basis, two were undecided and thirteen were opposed.

Police officers, because they are delegated unusual powers, are generally held to a higher standard of conduct. Also, they are considered to be more exposed to malicious or vengeful accusations. For these reasons, and because they are widely organized, there is some variation in practices with respect to this group. The most common practice is to relieve the police officer of his law enforcement duties and assign administrative duties in a headquarters pending completion of the necessary investigation.

At the time of the hearings conducted by the Joint Subcommittee Studying Grievance Procedures, the Virginia Superintendent of State Police had voluntarily committed the Department to binding arbitration of demotions and dismissals. The hearings and procedures involved were sometimes long and drawn-out because of continuances requested by counsel for the grievant. Since by his voluntary action the Superintendent had given up his right to make such decisions, suspensions sometimes extended over several months awaiting the final and binding decision of the panel.

In November of 1977, the Superintendent abandoned binding arbitration in cases of demotion and dismissal taking back to himself the authority for the final decision. There have been no cases of prolonged suspension such as concerned the Subcommittee since the Superintendent resumed the decision-making authority.

While SB 135, enacted in the 1978 session, has required cases of demotion and dismissal to be submitted to binding arbitration, the appointing authority may still suspend, demote and dismiss subject to review of his decision under the grievance procedures.

The language of SJR 18 specifies relief from duty pending disciplinary investigations. Most such investigations are conducted without necessity to relieve the employee from duty and the employee usually continues in a pay status to the point of decision to suspend or dismiss. The solution to the problem which concerns the General Assembly and the Administration as well would seem to lie principally in limiting the duration of agency investigations and suspensions.

It is doubtful a thirty-day suspension has any greater deterring effect than a ten-day loss of pay. If a ten-day suspension seems disproportionate to the seriousness of the

offense, consideration should be given to dismissal. Loss of a month's pay for violation of a rule, moreover, is usually a heavier penalty than the courts impose for violation of a similar statute.

Accordingly, we have limited the duration of agency investigations and suspensions by amending the rule on suspension in the following manner:

11.5 SUSPENSION

Any appointing authority may suspend an employee without pay as follows:

a) Suspension Pending Agency Disciplinary Investigation

When a suspension is effected pending completion of a disciplinary investigation for misconduct or violates established work rules such suspension shall be limited to 10 work days.

Where, however, an employee is cleared of any such alleged violations the employee shall be reinstated and paid for this period of suspension. Where no decision of violation or disciplinary action occurs within 10 work days the employee shall be permitted to return to work pending a final decision.

If the appointing authority decides disciplinary action including suspension is warranted, the suspension period for investigative purposes shall apply to the period of disciplinary suspension.

b) Suspension - Disciplinary Penalty

Suspension, warranted for just cause, as a disciplinary penalty shall not exceed 10 work days.

c) Suspension Pending Court Action or Official Investigation¹

In contrast to a suspension pending completion of a disciplinary investigation, the 10 day time limitation shall not apply when an employee is suspended pending completion of court action or an official investigation arising from any summons, warrant, information or indictment for alleged violation of statute provided such court action or official investigation involves statute violations that are work related. Upon completion of such court action or official investigation, the employee may be disciplined or removed or may be reemployed or reinstated with full or partial back pay as the appointing authority determines to be appropriate under the circumstances.

¹Official Investigation shall be limited in interpretation to those investigations conducted by State Police and/or other federal, state, or local government law enforcement agencies.

Notice to Employees: Prior to suspension an employee shall be informed of the reasons for suspension.

Related Commonwealth Personnel Policy: Removal - Rule 11.3 for the Administration of the Virginia Personnel Act as revised January 30, 1979.

With these changes no employee may be deprived of pay for more than ten days on suspension for disciplinary reasons, nor may an employee be deprived of pay for more than ten days pending a disciplinary (departmental) investigation.

