



Basic Employee Relations Course

Figures A, B, and C

Figure A. Elements of a Part 432 Action

Demotion and Removal Based on Unacceptable Performance Under 5 CFR Part 432	
1. Beginning of appraisal period	Give employee the performance elements and standards in writing. Establish which elements are critical.
2. Informal steps to improve performance	Provide counseling, discussion, training, etc.
3. Formal opportunity to improve	Provide a formal period to demonstrate acceptable performance.
4. Notice of proposed action	Give employee 30 days advance written notice; only specify instances of unacceptable performance occurring in the past year and relating to the critical elements involved.
5. Employee's answer to proposal notice	Provide a reasonable time to reply; employee has a right to representation.
6. Decision issued	Issue decision within 30 days after notice period expires; a higher level official concurs with the decision.
7. Notice of right to appeal	Give employee appeal rights information.

Figure B. Elements of a Part 752 Action

Suspension, Demotion, and Removal Based on Unacceptable Performance Under 5 CFR Part 752	
1. Informal steps to improve performance deficiencies.	Provide discussion, counseling, training, etc.
2. Notice of proposed action	Give employee 30 days advance written notice.
3. Employee's answer to proposal notice	Provide a reasonable time to reply, not less than 7 days.
4. Decision issued	No requirement exists for higher level review.
5. Notice of right to appeal	Give employee appeal rights information.



Basic Employee Relations Course

Figure C. Comparison of Part 432 vs. Part 752

	Chapter 43	Chapter 75
Critical Element	Agency <i>must</i> prove the performance deficiency is in a critical element.	Agency is <i>not</i> required to prove the performance deficiency is in a critical element.
Establishment of Performance Expectations	When the employee's performance in one or more critical elements is unacceptable, the employee will: (1) be notified of the deficiency; (2) be offered the agency's assistance to improve; and (3) be warned that continued poor performance could lead to a change to lower grade or removal. (This is commonly referred to as the PIP, an abbreviation for both performance improvement plan and also for performance improvement period.)	The extent to which an employee is on notice of the agency's expectations is a factor in determining the appropriateness of the penalty. Also, an agency cannot require that an employee perform better than the standards that have been communicated to the employee.
Decline Following Improvement	If the employee's performance improves during the PIP, and remains acceptable for 1 year, a new PIP is necessary before taking an action <i>under this chapter</i> .	There is no obligation to offer a period of improvement at any point. ¹
Efficiency of the Service	Agency is <i>not</i> required to prove that the personnel action will promote the efficiency of the service.	Agency <i>must</i> prove that the personnel action will promote the efficiency of the service.
Burden of Proof	Action must be supported by <i>substantial evidence</i> : that a reasonable person might find the evidence supports the agency's findings regarding the poor performance, even though other reasonable persons might disagree.	Action must be supported by a <i>preponderance of the evidence</i> : that a reasonable person would find the evidence makes it more likely than not that the agency's findings regarding the poor performance are correct.
Advance Notice	The agency must provide a notice of proposed action 30 days before any action can be taken, and must provide the employee with a reasonable opportunity to reply before a decision is made on the proposal.	



Basic Employee Relations Course

Content of Advance Notice	The notice must state the specific instances of unacceptable performance that are the basis for the action <i>and also the critical performance element involved.</i>	The notice must state the specific instances of poor performance that are the basis for the action.
Deciding or Concurring Official	A person higher in the chain of command than the person who proposed the action must concur.	The deciding official does not have to be a person higher in the chain of command than the person who proposed the action.
Agency Decision	Agency must issue a final decision within an additional 30 days of the expiration of the 30 days advanced notice period.	Agency is under no particular time constraint, other than there cannot be a delay so extensive that it constitutes an error that harms the employee.
Penalty Mitigation	Once the agency meets the requirements to take an action, the MSPB cannot reduce the agency's penalty.	After finding that the agency meets the requirements to take a Chapter 75 action, the MSPB may reduce the agency's penalty.
Douglas Factors	The Douglas factors are not used.	The agency must consider the relevant Douglas factors when reaching a decision on the appropriate penalty.
Time Limits	Time limited to performance deficiencies occurring within the 1 year prior to the proposal notice.	No time limit for inclusion of "incident/charges".
Affirmative Defenses	The agency action will not be sustained if the employee was harmed by the agency's failure to follow procedures, if the agency decision was reached as a result of the commission of a prohibited personnel practice, or if the decision is otherwise not in accordance with the law.	

¹ *Although there is no statutory requirement to place an employee on a PIP when taking a chapter 75 action, a manager/supervisor may do so. Under chapter 75, the supervisor still must be able to show a third party that they:

- Communicated the expectation to the employee; and
- Used an accurate means to measure the performance of the employee.