



# Basic Employee Relations Course

## Disciplinary/Adverse Actions – Selecting the Appropriate Penalty

### Fact Sheet

Conduct problems involve an employee breaking a rule, regulation, policy or direction. Although not completely avoidable, taking the time to communicate with employees to provide correction, expectations, and the possible consequences of repeated misconduct can help in preventing future conduct problems. Discipline is meant to correct an employee's conduct while maintaining high productivity, discipline, and morale among all employees. When discipline becomes necessary, the goal is to impose the minimum remedy that can reasonably be expected to meet this objective.

- Before deciding on an appropriate penalty, management has the burden of showing reasonableness of the remedy by demonstrating that appropriate consideration was given to each of the applicable 12 Douglas Factors, a non-exclusive list of requirements that must be considered in a penalty decision as set forth by the Merit Systems Protection Board.
  - Seriousness of the offense
  - Prior disciplinary record
  - Table of offenses and Range of Remedies
  - Medical issues
  - Consistency of the action
  - Other factors
- Disciplinary actions include:
  - Letters of Reprimand
  - Suspensions
  - Demotions
  - Removals
- These actions are usually progressively more serious for each subsequent instance of similar misconduct; however, there may be incidents of misconduct which are so serious that they warrant severe action, including removal from employment, for the first offense.
- Remedies for offenses may vary. Greater or lesser penalties than set out in the Table of Penalties may be imposed depending on mitigating or aggravating factors. Remember, for agencies that use them, the Table of Penalties is only a guide.



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- In considering past offenses, oral counseling sessions and written admonishments may not be counted as prior offenses in determining a remedy. These may be cited, however, to show that the employee was informed of acceptable level of conduct.
- Letters of reprimand may be counted as prior offenses provided the reckoning period for the letter has not expired.
- Suspensions or reduction in grade or pay for disciplinary reasons may be counted as prior offenses.
- Formal disciplinary actions become a matter of record in an employee's official personnel folder (OPF). However, Reprimands only remain in an employee's OPF for a specified period of time as determined by the agency or collective bargaining agreement.
- There are several useful tools that can be used instead of or in addition to disciplinary actions to assist the supervisor in correcting conduct problems. These tools should be considered during the early stages of conduct issues.
  - Document oral counseling.
  - Letters of counseling, cautions, warnings and letters of requirement that are not placed in the OPF.
  - Placing employees on Letters of Requirement or Restriction for leave abuse are effective tools.
  - Training (team building, interpersonal skills, etc.) or closer supervision may also assist in correcting misconduct.
- Employee Assistance Program – free, confidential, counseling service provided to employees experiencing personal problems that might impact their performance/conduct on the job. Bargaining Unit employees covered by negotiated agreements may have special requirements involving some of the tools mentioned above. Refer to the Negotiated Agreement before taking any actions.
- The supervisor and ER Specialist have different roles during this process:
  - Supervisor:
    - Contacts the ER Specialist
    - Assesses the situation
    - Gathers facts
    - Decides what action to take



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- ER Specialist:
  - Researches case law
  - Analyzes case and reviews case file
  - Recommends range of penalties
  - Writes all letters and maintains files
  - Offers advice and guidance throughout the process
- Job relatedness is important in actions. Supervisors have a right to expect good conduct, performance, and attendance. When problems in these areas arise, documentation is key. The supervisor's action must be supported with good documentation.

### RELATED TOPICS

Performance v. Conduct

Douglas Factors

Employee Discussions (Formal)

Counseling Employees

### REFERENCES

USC chapter 75

5 CFR 752