



Basic Employee Relations Course

Douglas Factors

The Douglas Factors are a set of criteria for appropriate penalty based on the Merit Systems Protection Board case *Douglas v. Department of Veterans Administration*, 5 M.S.P.R. 280 (1981). The Douglas Factors is a non-exclusive list. The relevant mitigating and aggravating factors must be considered and balanced by both proposing and deciding officials in determining an appropriate penalty. The MSPB evaluates an agency's choice of penalty based on these factors to determine if the penalty is within the tolerable limits of reasonableness.

The twelve factors identified by *Douglas v. Veterans Administration* generally recognized as relevant are the following:

1. the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. the employee's past disciplinary record;
4. the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
6. consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. consistency of the penalty with any applicable agency table of penalties;
8. the notoriety of the offense or its impact upon the reputation of the agency;
9. the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. potential for the employee's rehabilitation;
11. mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12. the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.



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Although the MSPB has stated that not all the factors will be relevant in every case, all factors should be addressed so that a third party will not impose his or her judgment on missing factors.

The U.S. Court of Appeals for the Federal Circuit in *Nagel v. Department of Health and Human Services*, 707 F.2d 1384 (1983), found that neither statute nor regulation requires an agency to demonstrate that it considered all mitigating factors. The documentation of your consideration of the Douglas factors should appear in the proposal and decision notices and must be clear and sufficient to defend the action if challenged.

Timeliness is important in investigating and taking actions because accurate and detailed information is usually readily available when the events and circumstances are fresh in the minds of those involved. In addition, documentary evidence can be more readily obtained closer to the time of the misconduct.