



Basic Employee Relations Course

Selecting the Penalty

As an ER Specialist, you will assist the supervisor in selecting an appropriate penalty after it has been determined that an action is appropriate. The agency must demonstrate that the penalty was reasonable and promoted the efficiency of the service. The MSPB requires the agency to prove that the relevant Douglas factors have been considered and balanced to determine the penalty. Because the Douglas factors are a non-exclusive list of criteria, any other pertinent considerations should be evaluated, as well. The MSPB will consider whether the penalty is within the tolerable limits of reasonableness.

A supervisor should take the minimum level of discipline appropriate to correct the behavior. Choosing the appropriate penalty requires a case-by-case analysis, and not a “cookie-cutter” approach that eliminates a careful examination of all of the available information. The facts and circumstances surrounding any given issue and the considerations for each employee are too diverse for anything other than a case-by-case evaluation.

If your agency uses a table of penalties, remember that it is only a guide. Follow the policy of your agency in applying this tool. Mechanical use of an agency table of penalties must be avoided.

Penalties must be consistent and if there are exceptions the agency must prove by preponderant evidence that it had a legitimate reason for a difference in the penalty treatment of the employee and a comparator. The reason for exceptions must be documented. Inconsistent application may result in mitigation or reversal by the MSPB.