Army Regulation 690–752

Civilian Personnel

Disciplinary and Adverse Actions

Headquarters
Department of the Army
Washington, DC
10 February 2022

UNCLASSIFIED

SUMMARY

AR 690–752
Disciplinary and Adverse Actions

This new Department of the Army regulation, dated 10 February 2022—

- Updates Table of Offenses and Penalties Guidance and Guide to Disciplinary and Adverse Actions (table 3–1).
- Incorporates disciplinary policy from AR 690–700, Chapter 751 (throughout).
- Provides policy and guidance for taking disciplinary or adverse actions within the Department of Army (throughout).

Headquarters
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10 February 2022

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Effective 10 March 2022

Civilian Personnel

Disciplinary and Adverse Actions

By Order of the Secretary of the Army:

JAMES C. MCCONVILLE
General, United States Army
Chief of Staff

Official:

MARK F. AVERILL
Administrative Assistant to the Secretary of the Army

History. This publication is a new Department of the Army regulation.

Summary. This regulation provides policy and guidance for taking disciplinary or adverse actions within the Department of the Army and updates the table of offenses and penalties.

Applicability. This regulation is applicable to Department of the Army Civilian employees in the competitive and excepted service with the following exclusions: Individuals who are not "employees" pursuant to Title 5 United States Code 7501 and 5 United States Code 7511; Defense Civilian Intelligence Personnel System employees hired under Title 10 United States Code 1601 (other than the Table of Offenses and Penalties Guidance in table 3–1 which is applicable to Defense Civilian Intelligence Personnel System employees); National Guard Technicians; Foreign national employees; Employees serviced by the Civilian Senior Leader Management Office (for example, members of the Senior Executive Service, members of the Defense Intelligence Senior Executive Service or Defense Intelligence Senior Level employees, political appointees, senior professionals); Reemployed annuitants; Employees serving under temporary appointments; and Highly Qualified Experts as defined in Title 5 Untied States Code 9903.

Proponent and exception authority. The proponent of this regulation is the Deputy Chief of Staff, G–1. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25–30 for specific requirements.

Army internal control process. This regulation contains internal control provisions in accordance with AR 11–2 and identifies key internal controls that must be evaluated (see appendix B).

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from the Deputy Chief of Staff, G–1 (DAPE–CPZ), 300 Army Pentagon, Washington, DC 20310–0300.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Office of the Assistant G–1 for Civilian Personnel (DAPE–CPZ), 6010 6th Street, Building 1465, Room 104, Fort Belvoir, VA 22060–5595 or at email address usarmy.bevoir.ag1cp.mbx.lerd@army.mil.

Distribution. This publication is available in electronic media only and is intended for the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

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*This regulation supersedes AR 690–700, Chapter 751, Discipline, dated August 1981.

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Glossary

Chapter 1
Introduction

1–1. Purpose
This regulation prescribes the Department of the Army (DA) policy, procedures, and authority/responsibility for administering civilian employee disciplinary and adverse actions.

1–2. References and forms
See appendix A.

1–3. Explanation of abbreviations and terms
See the glossary.

1–4. Responsibilities
a. Assistant Secretary of the Army (Manpower and Reserve Affairs). The ASA (M&RA) will—

(1) Serve as the principal advisor to the Secretary of the Army for Manpower and Reserve Affairs.

(2) Establish the strategic direction and oversees human capital functions relating to the Army's personnel, including military, civilian, and contractors.

(3) Develop and oversee policies and programs related to hiring, developing, managing performance, executing workforce transformation, managing talent, retaining, and separating civilian personnel.

b. Deputy Chief of Staff, G–1. The DCS, G–1, as the responsible official to the ASA (M&RA), will—

(1) Provide advice and assistance to the ASA (M&RA) in the development of policies and programs for human resource support to the Total Army through the integration and synchronization across the human resource life cycle for both the military and civilian workforces, and planning and supervising the execution of those policies and programs.

(2) Provide advice and assistance on development of the strategic management of human capital, personnel legislation, and budget requirements.

(3) Through the Assistant G–1 for Civilian Personnel ensures the following:

(a) Planning and supervising the execution of DA Civilian personnel policy, procedures, and programs, including those involving DA Civilian disciplinary and adverse actions.

(b) The evaluation and administration of the DA Civilian personnel programs Armywide.

(4) Through the Director of the Civilian Human Resources Agency (CHRA), exercise control over the Army's servicing personnel organizations consisting of the Civilian Personnel Advisory Centers (CPACs), and other activities that manage civilian human resources (CHR) matters such as the Army Benefits Center that do not fall within the authority of another command. As a part of its responsibility, CHRA will establish operational and procedural guidance for the CPACs, as needed, to support implementation and administration of this regulation.

(5) Through servicing CPACs, provide DA Civilian personnel support to the commanders, managers, supervisors, and DA in all phases of the human resources (HR) life cycle. With respect to DA Civilian adverse and disciplinary actions, CPAC responsibilities include the following:

(a) Advise and assist supervisors with informal and formal disciplinary actions, and adverse actions, including the drafting of memorandums for formal disciplinary/adverse actions and providing guidance on procedural/regulatory parameters.

(b) Inform employees of their procedural rights and responsibilities relative to this regulation (and applicable laws, regulations, and collective bargaining agreements (CBAs)).

(c) Coordinate disciplinary and adverse actions with the servicing legal office and provide assistance as needed.

(d) Ensure management employee relations staff is appropriately trained.

(e) Provide training support to ensure management is aware of the provisions of this regulation.

(f) Maintain disciplinary and adverse action case files in accordance with paragraph 1–5*b*.

(g) Provide administrative and personnel advice in applicable settlement negotiations, Merit Systems Protection Board (MSPB) appeals, arbitration hearings and other third party proceedings.

c. Commanders of Army commands, Army service component commands, Administrative Assistant to the Secretary of the Army, and direct reporting units. Commanders of ACOMs, ASCCs, the AASA, and DRUs will ensure disciplinary and adverse actions are administered in accordance with this regulation, local policy, if established, and CBAs.

d. The Judge Advocate General. TJAG administers the Army Labor Counselor Program and exercises technical supervision over all Army labor counselors (see AR 27–1). TJAG will ensure that the servicing legal office attorneys—

(1) Advise on administrative and personnel matters.

(2) Review and advise on formal disciplinary and adverse actions for legal sufficiency, and propose alternative actions when appropriate.

(3) Participate in employee relations matters, to include drafting, preparing, or reviewing actions as necessary that bind the DA (for example, settlement agreements and MSPB appeals).

(4) Represent the DA in personnel actions subject to administrative adjudicative proceedings (for example, MSPB appeals).

e. Supervisors will —

(1) Conduct themselves consistent with the standards of conduct prescribed in relevant Department of Defense (DoD) and Army publications (for example, the Joint Ethics Regulation) at all times.

(2) Establish and maintain a safe and well-ordered work environment.

(3) Communicate to employees expectations regarding relevant policies and procedures for workplace matters (for example, leave procedures, overtime and compensatory time, and internal standard operating procedures).

(4) Consult with the servicing CPAC and servicing legal office regarding employee misconduct and other matters regarding this regulation.

(5) Conduct inquiries or fact finding, and document circumstances related to incidents of employee misconduct.

(6) Refer employees to the Employee Assistance Program (EAP), as necessary.

(7) Recognize and comply with the requirements of this regulation and the applicable provisions of established CBAs.

f. Employees will —

(1) Follow work rules and directives provided by supervisors or appropriate management officials.

(2) Comply with the standards of conduct prescribed in relevant DoD and Army publications (for example, the Joint Ethics Regulation).

(3) Cooperate in inquiries, and/or investigations.

(4) Report incidents of waste, fraud, abuse, sexual assault, threats against supervisors, employees, or government facilities, and other misconduct to appropriate authorities.

(5) Become familiar with, and abide by, relevant personnel policies and procedures (for example, standards of conduct, ethics, personnel policies, and internal standard operating procedures).

1–5. Records management (recordkeeping) requirements

a. The records management requirement for all record numbers, associated forms, and reports required by this regulation are addressed in the Records Retention Schedule–Army (RRS–A). Detailed information for all related record numbers, forms, and reports are located in the Army Records Information Management System (ARIMS)/RRS–A at https://www.arims.army.mil. If any record numbers, forms, and reports are not current, addressed, and/or published correctly in ARIMS/RRS–A, see DA Pam 25–403 for guidance.

b. Case files will be maintained for disciplinary and adverse actions initiated and/or effected. The file will be maintained electronically or as a hard copy file in accordance with current policies and procedures related to case file system requirements. Case files will be kept apart from the electronic Official Personnel Folder (eOPF) and retained for a minimum of 4 years, or as long as the documents are needed, but not more than 7 years after the action is closed, unless needed due to litigation. Upon request, the information in the file will be furnished to the employee whom the action was taken against, their designated representative (to include a designated union official), or an appropriate third party adjudicating authority. All documents related to the disciplinary or adverse actions are subject to 5 USC 552a. The case file will contain, at a minimum, the following documents:

(1) The notice of proposed action with supporting documents;

(2) The written reply and/or summary of the oral reply from the employee, if any;

(3) The notice of decision; and

(4) Any order effecting the action, together with any supporting material.

1–6. Objective

a. The objective of discipline is to encourage and motivate (teach, train, and develop) Army employees to take responsibility and ownership for the rules, regulations, and standards of conduct applicable to the DA, and to prevent prohibited activities. The supervisor's most effective means of maintaining discipline is through the promotion of cooperation, sustained good working relationships, self-discipline, and responsible performance.

b. Supervisors will take informal disciplinary, formal disciplinary, and adverse actions for such cause as will promote the efficiency of the service by ensuring high standards of Government service and maintaining public confidence in the DA. Maximum flexibility to pursue the appropriate disciplinary or adverse action should be exercised in accordance with what is fair and reasonable. After determining that misconduct occurred and corrective action is warranted, discipline should be initiated as soon as practicable and should be tailored to the totality of the facts and circumstances of the offending conduct.

c. Supervisors must exercise due diligence to gather all of the facts relevant to the situation at hand and conduct a thorough analysis to decide the appropriate penalty regardless if the ultimate role is to be the proposing or deciding official on a disciplinary or adverse action matter.

d. In deciding whether to take a disciplinary or adverse action an employee will not be discriminated against on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, age, disability, genetic information (including family medical history), marital status, political affiliation, sexual orientation, labor organization affiliation or non-affiliation, status as a parent, or any other non-merit-based factor, or retaliation for exercising rights with respect to the foregoing protected categories, or the Whistleblower Protection Act.

1–7. Labor relations obligations

Management officials and supervisors will adhere to the provisions of applicable CBAs and fulfill all statutory and contractual labor relations obligations identified in 5 USC 7101 in advance of implementation and administration of this regulation. Questions concerning labor relations obligations should be addressed with the servicing CPAC and servicing legal office.

Chapter 2
Procedures

2–1. Informal actions

Informal actions include oral admonishments, a verbal counseling/warning, or written counseling/warning memorandums, or any other similar documentation not otherwise covered under paragraph 2–2. These actions may be used when an offense does not, by itself, warrant a formal disciplinary action, but could progress to a formal disciplinary action if there is a recurrence of misconduct.

a. An oral admonishment or verbal counseling/warning may be documented by email or memorandum for record for the management official's records.

b. Informal actions may not be counted as a prior disciplinary action when determining an appropriate penalty under the Table of Offenses and Penalties, nor do they become matters of record in the employee's eOPF.

c. Informal actions may be cited in future disciplinary or adverse actions as evidence the employee was made aware of acceptable standards of conduct or performance and the employee was given notice that future instances of misconduct could result in disciplinary action.

2–2. Formal disciplinary and adverse actions

a. Formal disciplinary actions. Disciplinary actions are usually initiated by an employee's first-level supervisor in their chain of command, and require procedural due process, including an entitlement to an advanced written notice of the reasons for an action, an opportunity to reply, and a written decision following that response. Disciplinary actions not covered by 5 Code of Federal Regulation (CFR) 752 (for example, letter of reprimand), present no procedural due process entitlements. A letter of reprimand is a formal action for disciplinary purposes.

(1) A letter of reprimand will—

(a) Include the infraction and reason(s) for the reprimand, and how it promotes the efficiency of the service.

(b) If applicable, include reference to any past counseling or other attempts to correct the employee's behavior.

(c) Provide a warning that future misconduct may result in a more severe action.

(d) Include the employee's right to file a grievance either under a negotiated grievance procedure or administrative grievance procedure, as appropriate.

(e) Contain a statement that a copy of the letter of reprimand will be placed in the employee's eOPF for a specified period, typically not to exceed 3 years.

(f) Include, if appropriate, information regarding services or assistance (for example, EAP) available to the employee.

(g) Provide opportunity for acknowledgment by the employee. A letter of reprimand presents no procedural due process entitlement to advanced written notice of the reasons for an action, opportunity to reply, and written decision

following that response period. Acknowledgment only establishes receipt by the employee, not agreement with the action itself. If an employee refuses to acknowledge receipt, the management official will note the date that it was presented to the employee and annotate on the memorandum that the employee refused or declined to sign. The employee will be given a copy of the memorandum for their records.

(2) The letter of reprimand is effective on presentation and/or receipt by the employee, regardless of whether the employee refused/declined to sign.

(3) The letter of reprimand will be maintained in the employee's eOPF until one of the following is met:

(a) The expiration of the period specified in the memorandum;

(b) The departure of the employee from the DA;

(c) A determination through an appropriate adjudicatory procedure, or by an appropriate management official that the reprimand is not warranted and must be withdrawn;

(d) A determination by the management official that the employee has sufficiently corrected their behavior and the letter of reprimand has served its purpose; or

(e) When a letter of reprimand had been cited or relied upon in another disciplinary action, all evidence of the reprimand will not be expunged. A copy of the letter of reprimand will be retained in the case file for the purposes of documenting the employee's disciplinary record.

b. Adverse actions. Prior to implementation of any adverse action impacting an employee's pay, the employee is entitled to procedural due process. This includes advanced written notice of the reasons for the action, the right to review the material relied upon (when requesting), an opportunity to reply, and a written decision. Adverse actions will be initiated by the proposing official, who is generally the first-level supervisor in the employee's chain of command. The final decision to suspend, reduce in grade or pay, or furlough or remove from Federal Service, will be made by the deciding official, who is normally a supervisor higher in the employee's chain of command than the supervisor who proposed the action. The proposing official and deciding official are usually different management officials; however, for actions effected under 5 CFR 752, one official may serve as both the proposing official and deciding official when circumstances warrant. Prior to initiating or taking a disciplinary or adverse action, it will be coordinated with the servicing CPAC and servicing legal office.

c. Suspensions of 14 days or less. An employee may be suspended from duty and pay for a period of 1 to 14 calendar days for such cause as will promote the efficiency of the service. If effected, a suspension becomes a permanent record in the employee's eOPF, as documented by a Standard Form (SF) 50 (Notification of Personnel Action). Suspensions of 14 calendar days or less may be grieved, but are not appealable to the MSPB.

(1) The notice of proposed suspension will—

(a) Include the proposed length of the suspension.

(b) Include notification of the employee's duty status during the advanced notice period.

(c) Include a description of the specific charges, specifications, and details pertaining to the impact on the efficiency of the service, in order to allow the employee to understand and reply to the reasoning for the proposed suspension. The notice should discuss the relevant aggravating factors (including, but not limited to, factors enumerated in Douglas v. Veterans Administration, 5 Merit Systems Protection Report (MSPR) 280 (1981), hereafter referred to as, "the Douglas Factors"), that were considered for determining the penalty. The proposing official should not complete a Douglas Factor worksheet as this is the responsibility of the deciding official.

(d) If applicable, include reference to any past counseling, discipline, or other attempts to correct the employee's behavior and any other matters considered in determining the proposed action.

(e) Inform the employee of the right to review the material relied upon in support of the proposed action.

(f) Inform the employee of the right to provide a response, orally, in writing, or both, to the deciding official and the time (not less than 24 hours) for the response, and of the right to furnish affidavits, and other documentary evidence in support of the reply.

(g) Inform the employee of their right to request an extension to their reply period, along with the process and point of contact (deciding official) for doing so. Employees should be advised to include their reasoning within the request for consideration in granting/denying the extension, along with the amount of time being requested.

(h) Inform the employee of their right to representation by an attorney, union official, or other representative, as appropriate, but that management may disallow a representative who has a conflict of interest (for example, supervisor, HR/Equal Employment Opportunity (EEO) Specialist), whose duties will not allow release, and/or whose services would give rise to unreasonable costs to the government.

(i) Include the name, title, and contact information of the deciding official to hear and/or receive the employee's response to the proposed action.

(j) Contain a statement that no decision has been made or will be made until after the reply has been received and considered, or until after the reply period has expired.

(k) Include detailed information with respect to the right of the employee to appeal the action, the forums in which the employee may file an appeal, and any limitations on the rights of the employee that would apply because of the forum in which the employee decides to file an appeal.

(l) Be signed and dated by the proposing official.

(m) The reply period begins the day following the memorandum's presentation to the employee.

(n) Provide opportunity for acknowledgment by the employee. This only establishes receipt by the employee, not agreement with the action itself. If an employee refuses to acknowledge receipt the proposing official will note the date that the proposed notice was presented to the employee and annotate on the memorandum that the employee refused or declined to sign. The employee will be given a copy of the memorandum for their records.

(2) Upon expiration of the reply period the deciding official will, after considering all relevant information, including all applicable aggravating and mitigating factors (including, but not limited to, the Douglas Factors), and coordinating with CPAC, issue a notice of decision to the employee. To the extent practicable, the decision should be issued within 15 business days of the end of the employee reply period. If the deciding official considers any information that was not included in the notice of proposed action, the deciding official must give the employee an opportunity to respond to the information before reaching a final decision. The deciding official will consult the CPAC and servicing legal office for proper procedures if this occurs. The deciding official may not increase the penalty from what was proposed, without ensuring the employee receives due process and a new notice of proposal is issued.

(3) The notice of decision will—

(a) Inform the employee that only the reason(s) specified in the notice of proposed action and reply, if any, were considered.

(b) Include which charges, specifications, and/or narrative (as applicable), were sustained or not sustained. The deciding official may sustain, reduce, or cancel the proposed action in its entirety. Specify the reasons for the decision, including what information was considered in arriving at a final decision (for example, information from the notice of proposal, supporting documentation, the employee's response(s), and applicable Douglas Factors).

(c) If the employee did not provide a reply, a statement to that effect should be included.

(d) Advise the employee of the availability of the EAP or other resources, as applicable.

(e) Inform the employee of the right to file a grievance (administrative or negotiated grievance procedure), or if applicable, a complaint of discrimination, or a whistleblower complaint with the Office of Special Counsel, any limitations contained in these forums, and the filing deadlines for each.

(f) Advise the employee of the decision, its effective date, and, if the decision is to uphold a suspension of any length, the return-to-duty date from the suspension.

(g) Be signed and dated by the deciding official.

(h) The notice of decision will be delivered to the employee and acknowledged by the employee. If an employee refuses to acknowledge receipt of the notice, the deciding official will annotate the date that it was presented to the employee and annotate on the memorandum that the employee refused or declined to sign. The employee will be given a copy of the memorandum for their records.

(4) The deciding official taking the action will provide the following to the CPAC for inclusion in the official case file as soon as feasible following receipt/presentation to employee:

(a) A copy of the signed proposal memorandum;

(b) Employee's written reply, if any;

(c) A summary of the employee's oral reply, if any;

(d) Copies of documents considered in arriving at the final decision; and

(e) A copy of the signed decision memorandum.

d. Removals, reduction in grade or pay (or other like action), suspensions for more than 14 days, or furloughs for 30 days or less. These adverse actions are effected for such cause as will promote the efficiency of the service. If effected, the action becomes a permanent record in the employee's eOPF, as documented by a SF 50. These actions may not be grieved under the administrative grievance procedure, but may be grieved under certain negotiated grievance procedures, where they are not excluded. These actions are appealable to the MSPB. Before initiating an administrative furlough action, consult with the servicing CPAC to ensure all requirements of 10 USC 1597, DoDI 1400.25, and AR 690–300 are met, where applicable. Prior to effecting any adverse action, an employee is entitled to at least 30 days advance written notice proposing the action, a reasonable opportunity to respond to the charges, and a written decision. To the extent practicable the written notice will be limited to 30 days as prescribed in 5 USC 7513(b)(1). These actions will—

(1) Provide advance notice of proposed action that—

(a) Identify the action being proposed (for example, suspension and number of days proposed).

(b) Include notification of the employee's duty status during the advanced notice period.

(c) Include a description of the specific charges and specifications, and details pertaining to the impact on the efficiency of the service, in order to allow employee to understand and reply to the reasoning for the proposed adverse action. The notice should discuss the relevant aggravating factors that were considered for determining the penalty.

(d) If applicable, include reference to any past counseling, discipline, or other attempts to correct the employee's behavior, and any other matters considered in determining the proposed action (see para 2–1 if past disciplinary actions were informal).

(e) Inform the employee of the right to review the material relied on in support of the proposed action.

(f) Inform the employee of their right to provide a response, orally, in writing, or both, to the deciding official and the time (no less than 7 days) for the response, and of the right to furnish affidavits and other documentary evidence in support of the reply.

(g) Inform the employee of their right to request an extension to their reply period, along with the process and point of contact (Deciding Official) for doing so. Employees should be advised to include their reasoning within the request for consideration, along with the amount of time being requested.

(h) Inform the employee of their right to representation by an attorney, union official, or other representative, as appropriate, but that management may disallow a representative having a conflict of interest (for example, supervisor, management official, or HR/EEO Specialist), whose duties will not allow release, and/or whose services would give rise to unreasonable costs to the government.

(i) Include the name, title, and contact information of the deciding official to hear, and/or receive, the employee's response to the proposed action.

(j) Contain a statement that no decision has been made or will be made until after the reply has been received and considered, or until after the reply period has passed.

(k) Include detailed information with respect to the right of the employee to appeal the action, the forums in which the employee may file an appeal, and any limitations on the rights of the employee that would apply because of the forum in which the employee decides to file an appeal.

(l) Be signed and dated by the proposing official.

(m) Include acknowledgement by the employee. The notice of proposal will be delivered to the employee and the employee will be provided an opportunity to acknowledge. If an employee refuses to acknowledge receipt of the notice, the proposing official will note the date that it was presented to the employee.

(n) The reply period begins the day following the memorandum's presentation to the employee.

(2) Upon expiration of the reply period the deciding official will, after considering all relevant information, including all applicable aggravating and mitigating factors (including, but not limited to, the Douglas Factors), and coordinating with CPAC, issue a notice of decision to the employee. To the extent practicable decisions on proposed removals should be issued within 15 business days of the end of the employee reply period. Deciding officials will generally not consider information not included in the notice of proposed action, however if circumstances warrant their inclusion they must first consult the CPAC and servicing legal office to determine if an additional notice is required to ensure proper due process. The deciding official may not increase the penalty from what was proposed without ensuring the employee receives due process and a new notice of proposal is issued. In this case the deciding official must consult with the servicing CPAC and legal office.

(3) The notice of decision will—

(a) Inform the employee that only the reason(s) specified in the notice of proposed action and reply, if any, were considered.

(b) Include which charges, specifications, and/or narrative (as applicable) were sustained or not sustained. The deciding official may sustain, reduce, or cancel the proposed action in its entirety. Specify the reasons for the decision including what information was considered in arriving at a final decision (for example, information from the proposed notice, supporting documentation, the employee's response(s), and applicable Douglas Factors).

(c) If the employee did not provide a reply, a statement to that effect should be included.

(d) Advise the employee of the availability of the EAP or other resources, as applicable.

(e) Inform the employee of the right to file an MSPB appeal, a grievance through the negotiated grievance procedure (if applicable), a complaint of discrimination, or a whistleblower complaint with the Office of Special Counsel, any limitations contained in these forums, and the filing deadlines for each.

(f) Provide the employee access to the MSPB's appeal form, regulations, and information on electronic filing of an appeal.

(g) Advise the employee of the decision, its effective date, and if the decision is to suspend, include the return-to-duty date from the suspension.

(h) Be signed and dated by the deciding official.

(i) The notice of decision will be delivered to the employee and the employee will be provided an opportunity to acknowledge by the employee. If an employee refuses to acknowledge receipt of the notice, the deciding official will annotate the date that it was presented to the employee and annotate on the memorandum that the employee refused or declined to sign. The employee will be given a copy of the memorandum for their records.

(4) The deciding official taking the action will provide to the CPAC for inclusion in the official case file as soon as feasible upon receipt/presentation to employee the following:

(a) A copy of the signed proposal memorandum;

(b) Employee's written reply, if any;

(c) A summary of the employee's oral reply, if any;

(d) Copies of documents considered in arriving at the final decision; and

(e) A copy of the signed decision memorandum.

e. Indefinite suspension. An indefinite suspension is an adverse action where an employee is placed in a temporary status without duties and pay for an indeterminate period of time. Management must use adverse action procedures and show that it imposed the suspension for an authorized reason, that the suspension has an ascertainable end (an event that will trigger the conclusion of the suspension), that the suspension bears a relationship (nexus) to the efficiency of the service, and the penalty is reasonable.

(1) The basis for indefinite suspensions include the following scenarios:

(a) Management has reasonable cause to believe that an employee committed a crime for which a sentence of imprisonment could be imposed, pending resolution of the criminal matter and any subsequent action.

(b) When management has legitimate concerns that an employee's medical condition makes their continued presence in the workplace dangerous or inappropriate, pending a determination that the employee is fit for duty.

(c) When an employee's access to classified information has been suspended or revoked and the employee must have such access to perform their job, pending a final adjudicative determination on the employee's access to classified information.

(2) The process for considering an indefinite suspension are as follows:

(a) When considering an indefinite suspension, if it is determined it is not feasible to retain the employee in a duty status during the notice period and other options are not appropriate, the employee may elect to use their own accrued leave to be placed in an appropriate leave status. Any use of an employee's accrued paid leave should not be enforced by management. Enforced leave may constitute an appealable suspension within the MSPB's jurisdiction when it extends for more than 14 days.

(b) When the condition is subsequently met, such as a final adjudication of a security clearance, or resolution of criminal charges, management should promptly return the employee to a duty status, or take other administrative action, as appropriate. An employee can remain on an indefinite suspension while management initiates the employee's removal.

(c) Unless directed to do so by an appropriate third party, an employee suspended under this provision who is later returned to duty is not entitled to back pay for the period of indefinite suspension, regardless of whether the outcome was in the employee's favor in the criminal matter or security clearance determination.

f. Alternative discipline. Alternative discipline can take many forms. Generally, alternative discipline is an effort undertaken by management to address employee misconduct using a method other than traditional discipline (for example, letter of reprimand, suspension, change to lower grade, or removal). Employees do not have an entitlement to alternative discipline. Managers may choose to use alternative discipline, but must do so under the consultation of their CPAC and servicing legal office. Alternative discipline agreements are binding agreements mutually agreed upon between management and the employee. Due to the contractual nature of the agreement, managers must request a review from their servicing legal office of all agreements before they are signed. In most cases an alternative disciplinary action is considered past discipline if the following conditions are met:

(1) The employee was informed of the action in writing;

(2) The action is a matter of record; and

(3) The employee was given the opportunity to dispute the charges to a higher level official than the individual who imposed the action.

g. Crime provision. The 30-day advance notice period for adverse actions may be shortened when there is reasonable cause to believe that an employee has committed a crime for which a sentence of imprisonment may be imposed. The period of time an employee has to provide an answer to the proposed notice, including affidavits and other documentary evidence, may be reduced to a reasonable time, but not less than 7 days.

2–3. Guidelines for determining appropriate penalties

a. Table of Offenses and Penalties. The table of offenses and penalties is an integral guide for use by the management officials in determining an appropriate charge and penalty. The specific facts and circumstances of the case will be taken into account. Careful judgment must be used to ensure the penalty is proportionate to the offense.

b. The Douglas Factors. Consideration of the Douglas Factors will be formally documented in the decision letter by the deciding official during the adverse action process to demonstrate that the agency considered all relevant circumstances in reaching its decision to impose a specific disciplinary action. To effectively complete this analysis, the proposing official must ensure that they document all aggravating factors for consideration within the notice of proposal; however, they do not prepare a separate, written Douglas Factors' analysis. Aggravating factors must be included in the notice of proposal so the employee receives the opportunity to respond to their consideration, to ensure there are no due process errors. If the deciding official desires to consider aggravating factors brought to their attention that were not included in the notice of proposal, the deciding official must give the employee a reasonable opportunity to respond to the factors' consideration before reaching their final decision. This will be done in consultation with the servicing CPAC and legal office. The Douglas Factors are as follows:

(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 supervisor's 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 DA Table of Offenses and Penalties.

(8) The notoriety of the offense or its impact upon the reputation of DA.

(9) The clarity with which the employee was on notice of any rules violated in committing the offense, and whether he or she had been warned about the conduct in question.

(10) The potential for the employee's rehabilitation.

(11) Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, bad faith, malice, or provocation on the part of others involved in the matter.

(12) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

c. Supervisory expectations. Supervisors will be held to a higher standard than non-supervisors because they occupy positions of trust and responsibility. Therefore, occupying a supervisory position or role while engaging in misconduct may be considered an aggravating factor for determining an appropriate penalty. Any Army Civilian supervisor found to have engaged in misconduct may be considered for a more serious penalty than a non-supervisory employee engaging in the same or similar misconduct. It is the duty of all supervisors to ensure that this policy is implemented.

2–4. Additional considerations

a. Standard Form 50 remarks. When an employee, who has appeal rights and has been notified in writing of an agency action, resigns after being issued a proposal or decision notice for pending disciplinary or adverse action, the resignation SF 50 will be annotated with the appropriate legal authority code and corresponding remark in accordance with the Office of Personnel Management Guide to Processing Personnel Actions' (and/or agency regulations, as appropriate). A remark should be included that annotates the type of notice (proposal or decision), issuance date, type of action (suspension or removal) and charge(s) or reason(s) for discipline/adverse action. Failure to correctly annotate this remark will require a correction to the SF 50.

b. Performance-based actions. Performance-based actions may be effected using this regulation under 5 CFR 752 or under 5 CFR 432. Before initiating a performance-based action, the official should consider the elements required to sustain the action under either performance or disciplinary procedures. Performance-based actions taken under 5 CFR 752 still require an analysis of the Douglas Factors and must prove the following:

(1) The employee was notified that they were required to perform a particular duty;

(2) The employee's performance of the duty was unacceptable; and

(3) The manager measured the employee's performance in an accurate and reasonable manner.

c. Non-disciplinary adverse actions. Certain actions taken under this chapter are non-disciplinary in nature. These adverse actions may include charges related to an employee's deficient performance and/or their medical inability to perform. These actions are often removal actions. When the action is taken for medical inability to perform, management will coordinate with necessary parties, such as their servicing CPAC and/or EEO Office, to determine whether accommodation(s) would be feasible and/or appropriate in lieu of effecting an involuntary removal. While these actions are adverse they are not included in the Table of Offenses and Penalties since they are non-disciplinary in nature.

Chapter 3
Table of Offenses and Penalties Guidance

The Table of Offenses and Penalties is a guide that provides a suggested range of actions that can be taken for common infractions committed by employees. The deciding official has discretion to choose the penalty as proposed, but should ensure that it is proportionate to the offense. Conduct that justifies discipline of one employee does not necessarily justify similar discipline of a different employee where the employees are in different work units or chains of supervision. Furthermore, supervisors are not prohibited from removing an employee simply because they did not remove a different employee for comparable conduct. Nonetheless, employees should be treated equitably, so managers should consider appropriate comparators as they evaluate potential disciplinary actions. Removal may be considered for a first offense depending on the nature and severity of the situation. Management's deviation from table 3–1 is permissible. Management should not apply the table of offenses and penalties so rigidly as to ignore other factors.

3–1. General

The Table of Offenses and Penalties is intended for use as a guide for selecting an appropriate penalty for infractions committed by employees as it may not effectively address all situations. This table does not substitute for independent supervisory judgment and does not dictate penalties. Rather, the table provides a general framework within which supervisors exercise judgment on a case-by-case basis. The servicing CPAC provides guidance to supervisors as they navigate the Table of Offenses and Penalties. The servicing legal office reviews actions for legal sufficiency and provides advice, when needed.

3–2. Offense column

The offenses listed are not exhaustive. The fact that a specific offense is not listed does not mean a penalty cannot be imposed. Notices need not replicate the language from the offense column but should more appropriately describe the offense instead of trying to make the misconduct fit a specific label.

3–3. Penalty column

a. The penalty column lists a range of penalties from minimum to maximum for a specific type of offense. The penalty column is further divided into columns for first offense, second offense, and third offense. The penalty range typically becomes more severe based on egregious conduct or as offenses progress from first through third. Previous informal actions are not counted as previous offenses for the purpose of penalty selection. To be considered a second or third offense, the subsequent misconduct does not have to be the same or similar type of misconduct. For example, if an employee who previously was issued a letter of reprimand for a first offense for absence without leave subsequently engages in insubordination, the penalty range would be derived from the second offense column for insubordination. Also, various factors can combine to either enhance or mitigate a penalty selection. For example, the presence of multiple charges would tend to enhance a penalty selection.

b. A supervisor may choose the severity of action ranging from no penalty, informal disciplinary actions, to the maximum penalty of removal. When aggravating circumstances exist, the penalty range may be exceeded. For example, if the table shows a 14 day suspension as a maximum penalty, the supervisor may determine no penalty is needed, or may issue an oral admonishment, a written reprimand, a suspension of up to 14 days, or a penalty of greater than a 14 day suspension if there are significant aggravating circumstances. Whenever prior offenses are considered in supporting a more severe penalty, those offenses must be cited in the notice of proposed action. When a series of offenses have been committed and action could not have been taken on each before another was committed, a more severe penalty may be assessed for the combined offenses than would be appropriate for any one single offense. See table 3–1.

Table 3–1
Offenses and Penalties Guidance and Guide to Disciplinary and Adverse Actions

Offense	First offense	Second offense	Third offense	Remarks
1. Alcohol				
1a. Unauthorized use, possession, transfer, storage, or consumption of an alcoholic beverage while on duty or on government premises or in government or leased property (including vehicles).	Written reprimand to 5 day suspension	5 day suspension to 14 day suspension	14 day suspension to removal	
1b. Reporting to work or being on duty while under the influence of alcohol.	1 day suspension to removal	14 day suspension to removal	Removal	Removal for a first offense may be warranted if personnel, property, or safety is endangered.
2. Attendance and Leave				
2a. Any absence during the regularly scheduled tour of duty which has not been authorized and/or for which pay must be denied (absence without leave) or any absence from management directed additional hours of duty (Unauthorized Absence).	Written reprimand to 5 day suspension*	1 to 14 day suspension*	5 day suspension to removal	Penalty depends on length of absence. *Removal may be appropriate for first or second offenses if the absence is prolonged.
2b. Leaving the place of duty without permission.	Written reprimand to 5 day suspension*	1 to 14 day suspension*	5 day suspension to removal	*Removal may be appropriate for first or second offenses if the absence is prolonged.
2c. Failure to follow established leave procedure(s).	Written reprimand to 5 day suspension	1 to 14 day suspension	10 day suspension to removal	
2d. Unexcused tardiness.	Written reprimand to 1 day suspension	1 to 5 day suspension	5 day suspension to removal	Includes delay in reporting at the scheduled starting time, returning from lunch or break periods, and returning after leaving work station on official business. Penalty depends on length and frequency of tardiness.
3. Conduct Unbecoming a Federal Employee				Includes off-duty misconduct if nexus is established. Removal is normally warranted when United States citizens employed overseas become involved with the law enforcement authorities of a host government in whose country the U.S. Army facility is a guest. Such involvement negatively reflects upon the United States and affects the success of its mission overseas.
3a. Immoral, indecent, or disgraceful conduct; or conduct that is improper or unprofessional.	1 day suspension to removal	Removal		
3b. Solicitation or acceptance of anything of value from a person or business whose interests may be substantially affected by the performance or nonperformance of the individual's official duties where acceptance creates an appearance of impropriety.	Removal			
4. Discourtesy (Disrespectful Behavior)				
4a. Discourtesy, for example, rude, unmannerly, impolite acts or remarks (non-discriminatory).	1 day suspension to removal	5 day suspension to removal	Removal	

Table 3–1
Offenses and Penalties Guidance and Guide to Disciplinary and Adverse Actions—Continued

Offense	First offense	Second offense	Third offense	Remarks
4b. Use of abusive or offensive language, gestures, or similar conduct (non-discriminatory).	Written reprimand to 10 day suspension	5 day suspension to removal	Removal	
4c. Discourtesy, for example, rude, unmannerly, impolite acts or insolent remarks (non-discriminatory) directed at a supervisor or toward members of the public, such as customers or patients.	1 Day Suspension to Removal	5 Day Suspension to Removal	Removal	
4d. Discourtesy, for example, rude, unmannerly acts or remarks (non-discriminatory) directed towards an employee by a supervisor that creates a hostile work environment, disrupts operations, or negatively impacts an employee's attendance.	3 day suspension to removal	Removal		
5. Discrimination based on race, color, religion, age, sex, national origin, disability, political affiliation, marital status, genetic information, or other impermissible basis.	5 day suspension to removal	14 day suspension to removal	Removal	Prohibited discriminatory practice in any aspect of employment (for example, employment, appraisal, development, advancement, or treatment of employees). Includes failure to prevent or curtail discrimination of a subordinate when the supervisor knew or should have known of the discrimination. May also include making discriminatory remarks (verbally or in writing). Appropriate penalty depends on the facts in a given case weighed against DA policy that discrimination is prohibited.
6. Drugs				Controlled substance refers to an illegal substance under state or federal law, or a legal drug that is misused (for example, without a prescription or contrary to the prescribing physicians' instructions for use).
6a. Possession of illegal drugs or controlled substances while on government premises or in a duty status.	14 day suspension to removal	Removal		
6b. Use of illegal drugs or controlled substances while on government premises or in a duty status or reporting to work or being on duty while under the influence of illegal drugs or controlled substances.	Removal			
6c. Sale or transfer of illegal drugs or controlled substances.	Removal			
6d. Off duty illegal drug use or possession.	Written reprimand to removal	Removal		A nexus, a connection between the conduct and the negative impact it has on the agencies operations, must be established in cases of off duty use or possession.
7. Drug/Alcohol Testing				
7a. Refusal to provide a testing sample when required or failure to appear for testing when directed or leaving the testing area once notified to report.	14 day suspension to removal	Removal		

Table 3–1
Offenses and Penalties Guidance and Guide to Disciplinary and Adverse Actions—Continued

Offense	First offense	Second offense	Third offense	Remarks
7b. Substituting, adulterating, or otherwise tampering with a testing sample, testing equipment or related paraphernalia.	Removal			
7c. Attempted or actual falsification, misstatement, or concealment of a material fact, record, or other communication with the collection, handling, transportation, or testing of samples.	14 day suspension to removal	Removal		
7d. Positive drug test.	30 day suspension to removal	Removal		
8. Ethics Violations not covered elsewhere in this table (such as improper acceptance of a gift, conflicts of interest).	Written reprimand to removal	14 day suspension to removal	Removal	Not limited to DoD 5500.07–R, Joint Ethics Regulation, 5 CFR 735, and 5 CFR 2635.
9. Failure to Follow Directives, Instructions , Orders, Procedures, Regulations, or Rules (Oral or Written).				
9a. Violation where safety to persons or property is not endangered.	Written reprimand to 14 day suspension	14 day suspension to removal	Removal	
9b. Violation where safety to persons or property is endangered.	5 day suspension to removal	Removal		
9c. Violations of official security regulations.				
9c(1). Where restricted information is not compromised and breach is unintentional.	Written reprimand to 5 day suspension	1 to 14 day suspension	5 day suspension to removal	
9c(2). Where restricted information is compromised and breach is unintentional.	Written reprimand to removal	Removal		
9c(3). Intentional violation or reckless indifference.	Removal			
10. Falsification				Falsification charges apply where falsification was intentional (for example, not an omission or where intent cannot be proven).
10a. False statements, misrepresentation, or fraud in entitlements, includes falsifying information on a time card, leave form, travel voucher, or other document pertaining to entitlements.	Written reprimand to removal	14 day suspension to removal	Removal	
10b. False statements or misrepresentations on a resume, application, other document pertaining to qualifications, or on any official record not otherwise enumerated.	Written reprimand to removal	Removal		Note: A probationary employee terminated for pre-employment reasons has certain rights in accordance with 5 CFR 315.805.

Table 3–1
Offenses and Penalties Guidance and Guide to Disciplinary and Adverse Actions—Continued

Offense	First offense	Second offense	Third offense	Remarks
10c. Making false, unfounded, or malicious statements against co-workers, supervisors, subordinates, or government officials with the effect of harming or destroying their reputation, authority, or official standing of that individual or an organization.	Written reprimand to removal	5 day suspension to removal	10 day suspension to removal	
10d. Perjury, making false sworn statements, or lying to a management official, law enforcement or investigator.	Written reprimand to removal	Removal		
11. Fighting/Creating a Disturbance				Penalties may be exceeded based on such factors as work being severely disrupted, threats, provocation, injuries, aggressive behavior, actions directed at a supervisor, or actions toward members of the public, such as customers or patients. Removal may be warranted for a first offense if the disturbance caused fear, panic, or had an adverse impact on the workplace.
11a. Creating a disturbance resulting in an adverse effect on morale, production, or maintenance of proper discipline.	Written reprimand to 14 day suspension	5 to 14 day suspension	14 day suspension to removal	
11b. Threatening or attempting to inflict bodily harm without bodily contact.	Written reprimand to removal	14 day suspension to removal	Removal	
11c. Hitting, pushing, or other acts against another without causing injury.	Written reprimand to removal	Removal		
11d. Hitting, pushing, or other acts against another causing injury.	5 day suspension to removal	Removal		
12. Gambling				Joint Ethics Regulation, DoD 5500.07–R, 2–302.
12a. Participating in an unauthorized gambling activity while on Government premises or in a duty status.	Written reprimand to 5 day suspension	10 day suspension to removal	14 day suspension to removal	
12b. Operating, assisting, or promoting an unauthorized gambling activity while on Government premises or in a duty status, or while others involved are in a duty status.	14 day suspension to removal	Removal		
13. Insubordination: Willful/intentional refusal to obey orders, defiance of authority.	Written reprimand to removal	5 day suspension to removal	Removal	
14. Job Obstruction: Participating in or promoting a strike, work stoppage, slow down, sick out or other related job actions.	Removal			5 USC 7311.
15. Lack of Candor: Failure to be forthcoming with regard to relevant facts or information.	Written reprimand to removal	5 day suspension to removal	10 day suspension to removal	Includes misrepresentation, exaggeration, concealment, omission, or withholding of a fact, regardless of whether such information was explicitly elicited.

Table 3–1
Offenses and Penalties Guidance and Guide to Disciplinary and Adverse Actions—Continued

Offense	First offense	Second offense	Third offense	Remarks
16. Loafing: Delay in carrying out instructions: Idleness or failure to work on assigned duties or delay in carrying out or failure to carry out instructions within the time required.	Written reprimand to 3 day suspension	1 to 5 day suspension	5 day suspension to removal	Enhanced penalty is appropriate if loafing offense was by an employee in a supervisory position.
17. Misuse of Government Charge Card				
17a. Misuse of Government Travel Charge Card or Purchase Charge Card (for example, use for unauthorized personal expenses, failure to pay charge card bill in a timely manner, failure to properly safeguard the card or failure to use card for required expenses arising from official travel. Use of the Travel Charge Card at establishments or for purposes that are inconsistent with the official business of DoD, the Army, or applicable regulations).	Written reprimand to removal	5 day suspension to removal	10 day suspension to removal	
17b. Unauthorized use, failure to appropriately control or safeguard the use of a Government Purchase Card as a card holder or approving official responsible for use or oversight of the purchase card.	Written reprimand to removal	14 day suspension to removal	Removal	
18. Misuse or Abuse of Government Property or Position				Penalty depends on such factors as the value of the property or amounts of employee time involved or if misuse was for personal gain and the nature of the position held by the offending employee that may dictate a higher standard of conduct.
18a. Using government property, position, information, or Federal employees who are in a duty status for unofficial or unauthorized purposes.	Written reprimand to removal	14 day suspension to removal	Removal	
18b . Loss of or damage to government property, records, or information.	Written reprimand to removal	10 day suspension to removal	14 day suspension to removal	
18c. Willfully using or authorizing the use of a government passenger motor vehicle, aircraft, or water craft for other than official purposes.	30 day suspension to removal	Removal		31 USC 1349(b). Penalty cannot be mitigated to less than 30 days.
18d. Misuse of government credentials.	Written reprimand to removal	5 day suspension to removal	14 day suspension to removal	Misuse occurs when badges or credentials are used in a manner that is unauthorized or to receive a benefit that the employee is not entitled to receive.
18e. Willful or unlawful concealment, removal, mutilation, or destruction of a public record.	Removal			18 USC 2071.
18f. Misuse of Government Automation or Communication Equipment, Systems, Networks, or Services.	Written reprimand to removal	14 day suspension to removal	Removal	Misuse occurs when used to access pornographic/inappropriate material, cyber

Table 3–1
Offenses and Penalties Guidance and Guide to Disciplinary and Adverse Actions—Continued

Offense	First offense	Second offense	Third offense	Remarks
				loafing, unauthorized websites. Includes access to official records without a need to know.
19. Negligent Performance of Duty	Written reprimand to 5 day suspension	1 to 10 day suspension	5 day suspension to removal	Penalty should be exceeded, based on the nature of the position held, impact to mission, or when the safety to persons or property is endangered.
20. Political Activity				5 USC 7323, 5 USC 7324, 5 USC 7325, and 5 CFR 734.
20a. Violation of prohibition against soliciting political contributions.	Removal			
20b. Violation of prohibition against campaigning or influencing elections.	30 day suspension to removal	Removal		
21. Prohibited Personnel Practice				Commitment of a prohibited personnel practice as described in 5 USC 2302(b) by a Federal employee with personnel authority who can take, direct others to take, recommend, or approve any personnel action.
21a. Violation was not deliberate.	Written reprimand to 5 day suspension	5 to 14 day suspension	14 day suspension to removal	
21b. Violation was deliberate.	14 day suspension to removal	Removal		
21c. Violation by a Supervisor.	3 day suspension to removal	Removal		5 USC 7515(b).
22. Refusal to Testify; Interference or Obstruction				
22a. Failing or refusing to give oral or written statements, testimony, or failing to cooperate with an inquiry, investigation, or administrative proceeding.	Written reprimand to removal	5 day suspension to removal	Removal	
22b. Interference with, attempting to influence, or attempting to alter testimony of witnesses or participants.	5 day suspension to removal	14 day suspension to removal	Removal	
22c. Impeding, influencing, or attempting to impede or influence an investigation or to influence an investigating officer.	10 day suspension to removal	Removal		
23. Reprisal				
23a. Taking, or declining to take, official agency action because of, in whole or in part, an employee's exercise of a right conferred by statute, regulation, or policy.	Written reprimand to removal	14 day suspension to removal	Removal	
23b. Intentional interference with an employee's exercise of a right conferred by statute, regulation, or policy.	Written reprimand to removal	14 day suspension to removal	Removal	
23c. Reprisal against an employee for providing information to an Inspector General, MSPB, Office of Special	Written reprimand to removal	7 day suspension to removal	Removal	

Table 3–1
Offenses and Penalties Guidance and Guide to Disciplinary and Adverse Actions—Continued

Offense	First offense	Second offense	Third offense	Remarks
Counsel, Equal Employment Opportunity Commission, or DoD Investigations and Resolutions Division investigator, or testifying in an official proceeding.				
24. Sexual Harassment: Including, but not limited to, Influencing, Offering to Influence, or Threatening the Career, Pay, Job, or Employment of Another Person in Exchange for Sexual Favors or Offensive Comments, Gestures, or Physical Contact of a Sexual Nature.				Where conduct created a hostile or offensive work environment, removal may be warranted for a first offense.
24a. Involving a Subordinate.	5 day suspension to removal	14 day suspension to removal	Removal	
24b. Not Involving a Subordinate.	1 day suspension to removal	5 day suspension to removal	10 day suspension to removal	
25. Sleeping on Duty				
25a. Where safety of personnel or property is not endangered.	Written reprimand to 5 day suspension	5 to 14 day suspension	14 day suspension to removal	
25b. Where safety of personnel or property is endangered.	1 day suspension to removal	14 day suspension to removal	Removal	
26. Theft, Conversion, or Unauthorized Possession				
26a. Theft, actual or attempted, of government property or property of others; or collusion with others to commit such acts.	14 day suspension to removal	Removal		
26b. Conversion or Unauthorized Possession of government property or property of others.	Written reprimand to removal	10 day suspension to removal	14 day suspension to removal	

Appendix A

References

Section I

Required Publications

DoDI 1400.25
DoD Civilian Personnel Management System (Cited in para 2–2*d*.) (Available at https://www.esd.whs.mil.)

5 CFR 752
Adverse Actions (Cited in para 2–2*a*.) (Available at https://www.ecfr.gov/.)

Section II

Related Publications

A related publication is a source of additional information. The user does not have to read a related publication to understand this publication. Army publications are available on the Army Publishing Directorate website available at (https://armypubs.army.mil/). United States Code is available at https://uscode.house.gov/.

AR 11–2
Managers' Internal Control Program

AR 25–30
Army Publishing Program

AR 25–400–2
The Army Records Information Management System (ARIMS)

AR 27–1
Claims

AR 690–12
Equal Employment and Opportunity

AR 690–300
Employment

AR 690–700
Personnel Relations and Services

DA Pam 25–403
Guide to Recordkeeping in the Army

DoD 5500.07–R
Joint Ethics Regulation (Available at https://www.esd.whs.mil.)

5 CFR 315.805
Termination of probationers for conditions arising before appointment

5 CFR 432
Performance Based Reduction in Grade and Removal Actions

5 CFR 734
Political activities of federal employees

5 CFR 735
Employee responsibilities and conduct

5 CFR 2635
Standards of ethical conduct for employees of the executive branch

5 USC 552a
The Privacy Act of 1974

5 USC 2302
Prohibited personnel practices (including whistleblower protections)

5 USC 7101
Labor-Management and Employee Relations

5 USC 7311
Loyalty and striking

5 USC 7323
Political activity authorized; prohibitions

5 USC 7324
Political activities while on duty; prohibitions

5 USC 7325
Political activity permitted; employees residing in certain municipalities

5 USC 7501
Definitions

5 USC 7511
Definitions; application

5 USC 7511–5 USC 7514
Adverse actions

5 USC 7513(b)(1)
Cause and procedure

5 USC 7515(b)
Discipline of supervisors based on retaliation against whistleblowers

5 USC 9903
Attracting highly qualified experts

10 USC 1597
Civilian positions: guidelines for reductions

10 USC 1601
Civilian intelligence personnel: general authority to establish excepted positions, appoint personnel, and fix rates of pay

18 USC 2071
Concealment, removal, or mutilation generally

31 USC 1349(b)
Adverse personnel actions

Section III

Prescribed Forms

This section contains no entries.

Section IV

Referenced Forms

DA forms are on the Army Publishing Directorate website available at (https://armypubs.army.mil). SFs are available on the U.S. General Services Administration (GSA) website: https://www.gsa.gov/portal/forms/type/sf.

DA Form 11–2
Internal Control Evaluation Certification

DA Form 2028
Recommended Changes to Publications and Blank Forms

SF 50
Notification of Personnel Action

Appendix B

Internal Control Evaluation

B–1. Function

The function covered by this regulation is the management of Army's disciplinary and adverse actions.

B–2. Purpose

The purpose of this evaluation is to assist managers in evaluating the key internal controls associated with disciplinary and adverse actions. It is intended as a guide and does not cover all controls.

B–3. Instructions

Answers to test questions must be based on the actual testing of key internal controls (for example, document analysis, direct observation, interviewing, sampling, and simulation). Answers that indicate deficiencies must be explained and corrective action identified in supporting documents. These internal controls must be evaluated at least once every 5 years. Certification that the evaluation has been conducted must be accomplished on DA Form 11–2 (Internal Control Evaluation Certification). Additionally, the CHR Plans, Analysis & Evaluation Division, Office of the Deputy Assistant Secretary of the Army (Civilian Personnel), conducts periodic reviews (evaluation and audits) to determine how effectively commanders, managers, and other stakeholders exercise their CHR disciplinary authorities in the context of mission accomplishment while maintaining the integrity of the merit system principles. Commanders may request a full or targeted CHR evaluation within their command at any time. Requests for an evaluation must be made to the CHR Plans, Analysis & Evaluation Division, Office of the Deputy Assistant Secretary of the Army (Civilian Personnel).

B–4. Test questions

a. Has all paperwork associated with formal disciplinary actions been provided to the servicing CPAC according to the requirements in paragraph 1–6 of this regulation?

b. Are case files complete and accurate according to the requirements in paragraph 1–6 of this regulation?

c. Before placing an employee on administrative leave was the situation evaluated for the employee being a threat to themselves or others, the likelihood of a loss of or damage to Government property, or if the situation would otherwise jeopardize legitimate Government interests?

d. Have efforts been made to place the employee who is on administrative leave pending an investigation into a work status in a different job and/or set of duties after the evaluation of the government's safety and interest?

B–5. Suspension

Not applicable.

B–6. Comments

Help make this a better tool for evaluating internal controls. Submit comments to CHR Plans, Analysis & Evaluation Division, Office of the Deputy Assistant Secretary of the Army (Civilian Personnel) (SAMR–CPE), 6010 6th Street, Building 1465, Room 104, Fort Belvoir, VA 22060–5595.

Glossary

Section I

Abbreviations

AASA
Administrative Assistant to the Secretary of the Army

ACOM
Army command

ARIMS
Army Records Information Management System

ASA (M&RA)
Assistant Secretary of the Army (Manpower and Reserve Affairs)

ASCC
Army service component command

CBA
collective bargaining agreement

CFR
Code of Federal Regulations

CHR
Civilian Human Resources

CHRA
Civilian Human Resources Agency

CPAC
Civilian Personnel Advisory Center

DA
Department of the Army

DCS
Deputy Chief of Staff

DoD
Department of Defense

DRU

EAP
Employee Assistance Program

EEO
Equal Employment Opportunity

eOPF
electronic Official Personnel File

HR
Human Resources

MSPB
Merit Systems Protection Board

MSPR
Merit Systems Protection Report

SF
Standard Form

Section II

Terms

Adverse action
Removals (terminations of employment after completion of probationary or other initial service period), reductions in grade or pay, suspension for more than 14 days, or furloughs for 30 days or less for cause that will promote the efficiency of the service; an involuntary resignation or retirement is considered to be a removal (see 5 USC 7511–5 USC 7514 and 5 CFR 752).

Aggravating factor
Considerations that can provide a basis for enhancing the severity of a penalty. For example, supervisory status is an aggravating factor because supervisors hold positions entailing high levels of trust and agency obligation and therefore can be held to a higher standard. These factors are including, but not limited to, factors enumerated in Douglas v. Veterans Administration, 5 MSPR 280 (1981).

Charge
The label or characterization of specified conduct. The charge includes the label that names the misconduct and indicates the elements which must legally be met. The specifications are the who, what, when, where of each instance that the charged conduct occurred.

Day
A calendar day, unless otherwise noted.

Deciding official
The management official authorized to make the decision on a proposed disciplinary or adverse action.

Disciplinary action
A letter of reprimand, suspension, change to lower grade, or removal action taken by a supervisor to correct employee misconduct. Disciplinary actions may only be taken for such cause as will promote the efficiency of the service.

Douglas Factors
The Douglas Factors are based on the landmark MSPB decision, Douglas v. Veterans Administration, 5 MSPR 280 (1981). This case established 12 criteria that deciding officials must consider in determining an appropriate penalty for infractions committed by an employee. Out of the 12 factors, not all will be pertinent in every instance and none are weighted. However, it is critical to balance the relevant factors in each case and choose a reasonable penalty.

Efficiency of the service
The standard for agency action. This term embraces a wide variety of considerations, including the efficiency and effectiveness of operations; the health, well-being and safety of Federal employees and property; or the ability of the agency to serve the public interest effectively by maintaining its confidence.

Electronic Official Personnel Folder
The eOPF is a web-accessible official file containing records for an individual's Federal employment career.

Employee Assistance Program
A program designed to provide confidential, professional assessment and short-term counseling/referral services to help employees and their Family members with personal, job, or Family problems.

Furlough
Placing an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.

Indefinite suspension
The placement of an employee in an involuntary, non-pay status for an indeterminate period of time pending investigation, inquiry, or further management action.

Informal action
Counseling sessions, admonishments, warnings, and similar actions are not formal disciplinary actions and will not be filed in the employee's eOPF.

Letter of reprimand
A memorandum issued for employee misconduct. A reprimand is the least severe formal disciplinary action. A copy is placed in the employee's eOPF for a set period of time, not to exceed 3 years.

Mitigating factor
Considerations that can provide a basis for reducing the severity of a penalty (for example, the fact that an individual acted inappropriately in response to extreme provocation). These factors are including, but not limited to, factors enumerated in Douglas v. Veterans Administration, 5 MSPR 280 (1981).

Nexus
A reasonable connection or factual relationship between the reasons for the action taken and the efficiency of the service. Nexus is presumed if the misconduct occurs while on duty or on government premises, but must be established if the misconduct occurs while the employee is not on duty or on government premises.

Oral admonishment
A non-disciplinary discussion between a supervisor and an employee to address minor misconduct.

Proposing official
The management official who proposes the disciplinary or adverse action.

Reduction in grade or pay
The assignment of an employee to a position of lower classification or grade (also known as change to lower grade).

Removal
The involuntary separation of an employee from employment with the DA.

Suspension
The placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.