

**Major Functional Series 400: PERSONNEL
 ADS Chapter 487 - DISCIPLINARY AND ADVERSE ACTIONS BASED ON
 MISCONDUCT - CIVIL SERVICE**

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[THIS CHAPTER SUPERSEDES HANDBOOK 30, CHAPTER 6]

487.1 Authority

1. Civil Service Reform Act of 1978, as amended
2. [5 CFR 752, Adverse Actions](#)

487.2 Objective

This chapter provides the policies and essential procedures regarding disciplinary or adverse actions that may be taken as a result of misconduct.

This chapter applies to employees covered under 5 CFR 752. (See Mandatory References, 5 CFR 752.201(b) and (c), and 5 CFR 752.401(c) and (d)).

For employees within the bargaining unit, the provisions of the negotiated agreement take precedence over conflicting procedures in this chapter.

487.3 Responsibility

1. Supervisors are responsible for:
 - a) Informing subordinates of the standards of conduct they are expected to observe, and identifying conduct of subordinates who fail to meet standards;
 - b) Providing an atmosphere conducive to good working relationships;
 - c) Taking preventive measures, e.g. counseling subordinates, to avoid situations that might result in a need for disciplinary action;
 - d) Keeping systematic records of any events, dates, discussions with employees, letters, etc., concerning a matter with potential for developing into a disciplinary problem;
 - e) Initiating corrective action to correct a breach of conduct after informing the employee of the facts and judiciously analyzing them;

- f) Deciding to discipline and determining the penalty when preventive measures are unsuccessful;
- g) Consulting with appropriate employee relations specialists prior to proposing written disciplinary actions, in order to make certain that proposed disciplinary actions are consistent with federal statute and regulations, and Agency policies and essential procedures;
- h) Initiating disciplinary or adverse actions based on investigative reports, other documentation, or personal knowledge of misconduct; and
- i) Determining whether Alternative Discipline in lieu of traditional discipline is appropriate.

2. The Bureau for Management, Office of Human Resources, Labor and Employee Relations and Performance Management Division (M/HR/LERPM) is responsible for providing advice and assistance to managers and supervisors, employees, and Bureau/Office administrative management staffs (AMS), concerning misconduct, discipline, and alternative discipline.

487.4 DEFINITIONS (See [ADS GLOSSARY](#))

ADVERSE ACTION
 ALTERNATIVE DISCIPLINE
 DAYS
 DECIDING OFFICIAL
 DEMOTION
 DISCIPLINARY ACTION
 INDEFINITE SUSPENSIONS
 ORAL ADMONISHMENT
 PROGRESSIVE DISCIPLINE
 PROPOSING OFFICIAL
 REMOVAL
 REPRIMAND
 SUSPENSION

487.5 POLICY

The statements contained within the .5 section of this ADS chapter are the official Agency policies and corresponding essential procedures.

487.5.1 STANDARDS OF CONDUCT

It is the policy of the Agency to expect its employees to adhere to the basic obligations of public service. (See Mandatory References, 5 CFR 735 and [5 CFR 2635.101](#)) Every effort shall be made to counsel employees, identify Agency standards of conduct and give constructive feedback regarding employee conduct to forestall the development of situations in which there is no alternative to discipline.

E487.5.1 Standards of Conduct - N/A

487.5.2 PROHIBITION AGAINST DISCRIMINATION

Under no circumstances shall a disciplinary/adverse action be based on race, sex, age, religion, color, national origin, or physical or mental handicap nor be in retaliation for a previously filed equal employment complaint or grievance. Also prohibited, except as may be required by law, are actions based on marital status or partisan political beliefs, affiliations, or activities.

E487.5.2 Prohibition against Discrimination - N/A

487.5.3 CONCURRENT AUTHORITY

The Deputy Assistant Administrator, Bureau for Management, Office of Human Resources (DAA/M/HR) or the Deputy Director, Bureau for Management, Office of Human Resources (DD/M/HR) shall either propose or decide disciplinary/adverse actions under this chapter, if appropriate.

If it is inappropriate for the Deputy Assistant Administrator for Human Resources or the Deputy Director, Bureau for Management, Office of Human Resources to decide disciplinary/adverse actions involving employees of the Office of Human Resources, the Deputy Assistant Administrator shall assign the matter to another appropriate official outside of the Office of Human Resources.

E487.5.3 Concurrent Authority - N/A

487.5.4 REASONABLENESS OF ACTION

It is the policy of the Agency that each situation be evaluated on the basis of its own factual circumstances to ensure that the action proposed and taken is reasonable under the circumstances. To aid in the selection of an appropriate penalty sanction, consideration shall be given to the "Table of Offenses and Penalties" (See Supplementary Reference, [Table of Offenses and Penalties](#)).

E487.5.4 Reasonableness of Action - N/A

487.5.5 PROGRESSIVE PENALTIES

The least serious penalty shall be imposed for the first offense and the more serious forms of discipline shall be imposed for repeated offenses of misconduct i.e., infrequent Absence-Without-Leave (AWOL), occasional insubordination. The supervisor shall determine the appropriate severity of the discipline to be given.

For serious offenses, such as repeated or extensive Absence-Without-Leave (AWOL), criminal charges, or filing false travel claims, more severe discipline may be warranted for the first offense. Repeated infractions indicate that the previous disciplinary action was insufficient to effect the desired change and more severe corrective actions must be proposed in such cases. (See Supplementary Reference, [Table of Offenses and Penalties](#))

Supervisors shall recognize that there may also be situations of misconduct so egregious that the first instance of misconduct warrants removal.

E487.5.5 Progressive Penalties - N/A

487.5.6 ALTERNATIVE DISCIPLINE

Alternative Discipline is an optional, non-traditional approach to employee discipline, which provides for a variety of both punitive and non-punitive remedial corrective actions. Correcting improper behavior is a joint effort of both the supervisor and the employee. In appropriate circumstances, employees may be offered a choice of negotiating an alternative discipline agreement in lieu of traditional discipline suggested in the "Table of Offenses and Penalties". (See Supplementary Reference, [Table of Offenses and Penalties](#))

In cases where the only appropriate penalty is removal or where the misconduct is egregious, alternative discipline shall not be used. The decision to use alternative discipline rests solely with management.

Examples of alternative discipline are imposing a fraction of the decided upon suspension and holding the remainder in abeyance pending successful completion of an alternative discipline agreement, offering employees a choice of suspension without pay or remaining on the job after voluntarily signing an agreement admitting fault or wrongdoing, incrementally served suspensions, donating leave under the Leave Transfer Program in lieu of suspension, short suspensions held in abeyance, negotiated resignation/retirement in lieu of removal, agreement

to undertake and complete counseling, accepting Leave Without Pay (LWOP) or forfeiture of annual leave in lieu of initiating formal disciplinary action, or other mutually agreed upon corrective actions which promote the efficiency of the service.

E487.5.6 Alternative Discipline

- 1) The following criteria shall be used by supervisors who are considering alternative discipline:
 - a. The misconduct warrants a penalty less than removal from the Federal service, is not mandated by law, or a proposed removal was mitigated by the deciding official;
 - b. The deciding official determines that alternative discipline has a good probability of preventing further misconduct;
 - c. The employee admits that to being engaged in the identified misconduct, accepts responsibility for it, and agrees not to repeat the misconduct; and
 - d. The employee agrees to waive any and all rights to grieve, appeal, complain, or otherwise contest actions taken as a result of the terms and/or conditions of an alternative discipline agreement.
- 2) There is no requirement to initiate formal disciplinary procedures; however, supervisors have the option of completing a disciplinary action through the decision phase and then enter into an alternative discipline agreement.
- 3) There are three options to consider for imposing traditional discipline if an employee violates the terms of the alternative discipline agreement:
 - a. Impose already decided upon penalty that had been held in abeyance;
 - b. Initiate formal disciplinary action upon violation of the agreement; or
 - c. Immediately impose traditional penalty based on the employee's intentional waiver of due process rights.

487.5.7 DISCIPLINARY AND ADVERSE ACTION

Discipline shall be taken to correct misconduct and shall only be taken for such cause as will promote the efficiency of the service. Any supervisor who is considering taking disciplinary or adverse action must consult the Office of Human Resources to ensure that the action being considered is appropriate and warranted on its merits. Letters of reprimand, notices of proposed suspensions or adverse actions, and draft decision letters must be reviewed by a representative of the Office of Human Resources, prior to issuance to the affected employee. This review must include the merits of the case and overall compliance with legal and regulatory requirements.

Before proposing an adverse action, other than a suspension of 14 calendar days or less, the Office of Human Resources must consult with the Office of the General Counsel regarding any issues of law that may be involved.

Performance-based actions are normally taken under the implementing regulations of 5 CFR 432, but may be taken under the procedures of this chapter (**See Mandatory Reference, [5 CFR 432](#)**). However, when both misconduct and performance problems occur, **essential** procedures in this Chapter must be used.

E487.5.7 Disciplinary and Adverse Actions

The purposes of discipline are to:

- a) Correct inappropriate or unacceptable conduct by informing the employee of what is correct or of expected conduct; and
- b) Establish a record of progressive discipline to support later adverse actions, if they prove necessary.

Disciplinary actions are either informal or formal.

Informal discipline is an oral or written warning that communicates or emphasizes a rule to an employee. Oral admonishments, counseling sessions, or written warnings are examples of informal discipline.

Formal discipline or adverse action is an official sanction taken against an employee for misconduct, with such action recorded in the employee's Official Personnel File. Letters of reprimand, suspensions, reduction in grade, or pay are examples of formal discipline.

E487.5.7a Proposing Official

Any supervisor or manager may propose formal discipline or adverse action as a result of personal knowledge, receipt of an investigative report, or other documentation concerning an act or behavior by an employee, which may be grounds for such action.

A **Bureau/Office** administrative officer may propose a suspension when the supervisor or manager who would usually propose the action is unavailable due to reassignment, TDY, leave or similar reason, or when action is proposed based on an investigative report, civil or criminal proceedings, or other circumstance where the events occurred away from the employee's normal duty station.

E487.5.7b Deciding Official

For letters of reprimand, the proposing and deciding official are the same person.

For suspensions or other adverse actions, the deciding official is the next higher level supervisor or manager, unless the proposing official reports to the Office of the Administrator, in which case the Deputy Assistant Administrator for Human Resources shall be the deciding official.

E487.5.7c Disciplinary Actions

There are 2 types of disciplinary actions, as follows:

1) Reprimand. A reprimand is a written statement from a supervisor indicating that the employee has committed some act of wrongdoing. When a letter of reprimand is given to an employee, the employee shall have the opportunity to respond to the letter. After considering the employee's response, the supervisor will decide whether the letter of reprimand is warranted. If it is warranted, the letter of reprimand will be placed in employee's Official Personnel File (OPF).

A letter of reprimand shall state:

- a. The reasons for its issuance;
- b. The length of time (from one to two years) that the letter will be in the OPF;
- c. The right of the employee to respond orally or in writing within three calendar days of the date of the reprimand; and
- d. The right of the employee to file a grievance under administrative or negotiated grievance procedures.

2) Suspension of 14 Days or Less. A suspension without pay is a significant disciplinary action. Suspensions remain a permanent part of the Official Personnel File. A letter proposing a suspension of 14 days or less shall state:

- a. The specific reasons for the proposed suspension, including times, places, names and circumstances;
- b. Previous efforts to correct relevant misconduct during the past two years;
- c. The right of the employee to respond orally and/or in writing to the deciding official within seven work days of the date of the proposal. (The deciding official shall decide whether to grant an employee's request for more time to respond);
- d. The right of the employee to no more than 16 hours of official time to prepare a written and/or oral response. (The deciding official shall decide whether to extend official time beyond 16 hours when the issues are difficult or complex, the material voluminous, or other extenuating circumstances.);
- e. The right of the employee to examine material used as a basis for the action;
- f. The right of the employee to be represented by an attorney or other representative, the cost of such being borne by the employee;
- g. The right of the employee to receive a written decision from the deciding official at the earliest practicable date. The deciding official shall consider only the reasons specified in the notice of proposed action, and any answer made by the employee and/or their representative. Any decision to suspend shall be effective no sooner than 7 calendar days from the day after the decision is issued; and
- h. The right of the employee to file a grievance under administrative or negotiated grievance procedures.

E487.5.7d Adverse Actions

An adverse action is a personnel action taken as the result of an administrative decision that results in removal, suspension for **more than 14 days**, furlough without pay for more than 30 days, or a reduction in

grade or pay. It is taken for such cause as will promote the efficiency of the Federal service. The decision to take an adverse action must be based on the consideration of the Douglas factors cited in E487.5.7e. **(See E487.5.7e)** An employee shall receive a written proposed adverse action at least 30 days before the action is to be effective.

- 1) A proposed adverse action notice shall state:
 - a) The specific charges and reasons why the action is being proposed;
 - b) The right of the employee to respond orally and/or in writing within 10 work days of the date of the proposal to the deciding official. (The deciding official shall decide whether to grant an employee's reasoned request for more time to respond.);
 - c) The right of the employee to reasonable official time, of no more than 32 hours, to prepare a response to the deciding official. (The deciding official shall decide whether to extend official time beyond 32 hours when the issues are difficult or complex, the material voluminous, or other extenuating circumstances.);
 - d) The right to examine all material used as the basis for the proposed action; **and**
 - e) The right of the employee to be represented by an attorney or other representative, with the cost of representation borne by the employee.
- 2) The decision letter shall:
 - a) Be written and signed by the deciding official;
 - b) Address the reasons specified in the notice of proposed action, and any response the employee and/or their representative made to the deciding official; **and**
 - c) Specify the employee's right of appeal to the Merit Systems Protection Board (MSPB) and, if applicable, to file a grievance under the negotiated grievance procedure, but not both. The address of the appropriate MSPB office for filing the appeal, a copy of the MSPB's regulations, and a copy of the MSPB's appeal form must also be provided.
- 3) Exceptions to the Notice Period and Opportunity to prepare a response

a) The 30-day advance written notice period for adverse actions may be shortened when reasonable cause exists to believe that the employee is guilty of a crime for which a sentence of imprisonment can be imposed. Under such conditions, the employee will have seven days to answer orally and in writing to the charges. **(See Mandatory Reference, [5 USC 7513](#))**

b) No advance notice is required for furloughs for 30 days or less without pay when the furlough is due to unforeseen circumstances such as lack of funds or work.

E487.5.7e Exceptions to the Notice Period and Opportunity to Prepare a Response

1) The 30 day advance written notice period for adverse actions may be shortened when reasonable cause exists to believe that the employee is guilty of a crime for which a sentence of imprisonment can be imposed. Under such conditions, the employee will have 7 days to answer orally and in writing to the charges. **(See Mandatory Reference, [5 USC 7513](#))**

2) No advance notice is required for furloughs for 30 days or less without pay when the furlough is due to unforeseen circumstances such as lack of funds or work.

E487.5.7f Aggravating and Mitigating Factors to Consider in Selecting Penalties in Adverse Action Cases

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, technical, or inadvertent; committed maliciously or for gain; or frequently repeated;

2) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and the 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 employees, and dependability;

5) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the 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 the Agency's table of penalties;
- 8) The notoriety of the offense or its impact upon the reputation of the Agency;
- 9) The extent to 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, 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.

E487.5.7g Status of Employee Pending Adverse Action Decision

Usually, an employee is retained in an active duty status during the notice period. However, if retention of the employee in an active duty status poses a threat to the employee or others, may result in damage to Government property, has had a security clearance suspended, or otherwise jeopardize legitimate Government interests, the employee may be:

- 1) Assigned duties where the employee is no longer a threat to safety, the Agency mission, or to Government property;
- 2) Granted annual, sick, leave without pay, or absent without leave if the employee has been absent from the worksite without requesting leave;
- 3) Indefinitely suspended; or
- 4) Placed in a non-duty status with pay and without charge to leave.

E487.5.7h Indefinite Suspensions

Indefinite suspensions means the placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further Agency action. An indefinite suspension will terminate when an investigation or inquiry has been completed or when an Agency action has been taken.

The notice informing the employee that an indefinite suspension is being proposed shall contain information required in E487.5.7d, para. 1 (**See E487.5.7d, para. 1**). The notice also shall specifically state when the indefinite suspension will terminate. However, the notice period may be shortened to 7 days if there is reasonable cause to believe that a crime has been committed for which a sentence of imprisonment can be imposed (**See 487.4.7d, para. 3**). Upon completion of its investigation or inquiry, the Agency will either return the employee to full duty and pay or proceed expeditiously to take further administrative action.

487.6 Supplementary Reference

[Table of Offenses and Penalties](#)

487.7 Mandatory Reference

[5 CFR 432](#)

[5 CFR 735](#)

[5 CFR 752.201\(b\) and \(c\)](#)

[5 CFR 752.401\(c\) and \(d\)](#)

[5 CFR 2635.101](#)

[5 USC 7513](#)