

# Addressing and Resolving Poor Performance

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*A Guide for Supervisors*



**United States  
Office Of  
Personnel  
Management**

Office of Workforce Relations

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# Introduction

## What Is the Purpose of This Booklet?

Most Federal employees work hard, and their performance is considered good or even exceptional. However, at times Federal supervisors are faced with employees whose performance is not acceptable. The purpose of this booklet is to help you address and resolve poor performance. This guidance should be used in concert with the technical advice you receive from your agency's human resources staff. You should also be aware that most agencies have specific procedures and requirements that must be followed, whether they are part of a negotiated bargaining agreement or other internal agency regulation.

## How Should I Use This Booklet?

Addressing and resolving poor performance is a three-step process. These three steps are:

### STEP

# 1

COMMUNICATING EXPECTATIONS AND  
PERFORMANCE PROBLEMS

### STEP

# 2

PROVIDING AN OPPORTUNITY TO IMPROVE

### STEP

# 3

TAKING ACTION

This booklet is organized accordingly into three steps. At the end of each section, you will find a checklist as well as answers to commonly asked questions. In the appendix, you will find samples of documents that can be used throughout this process.







# *Questions and Answers*

## **STEP** **1**

**COMMUNICATING  
EXPECTATIONS  
AND  
PERFORMANCE  
PROBLEMS**

*Tips*

*Key  
Points*

*Checklists*

**STEP**  
**1**

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# STEP 1

At times, you will need the assistance of the Employee Assistance Program (EAP) that is available to provide counseling for physical or mental conditions, or other personal problems. It's a smart idea to know the name of the EAP specialist in your organization and to make sure you understand the services offered through the EAP and how to refer an employee. By doing so, you are prepared to respond if employees raise personal problems that are impacting their work.

## Topics Discussed During Counseling Session

- ✓ Your Expectations
- ✓ The Employee's Performance Standards
- ✓ Critical Element(s) Where the Employee Is Failing
- ✓ What the Employee Must Do To Bring Performance to an Acceptable Level

## Effective Counseling Tips

- Before counseling, make sure you can state clearly what would constitute acceptable performance.
- Whenever possible, conduct the counseling session in a private place.
- Arrange adequate time for your comments as well as comments from the employee.
- Clearly state performance expectations and seek confirmation that the employee understands those expectations.
- Focus on the poor performance, not on personalities or other distractions.
- Always maintain a constructive tone, along with a calm and professional demeanor.
- Seek cooperation, NOT confrontation.
- Remember that your goal is to improve the employee's performance, not to win an argument with the employee.
- Try to end the session on a positive note by emphasizing that your mutual goal is improving the employee's performance.

Note: A more detailed discussion on how to prepare for and conduct a counseling session is provided at the end of this section.











**STEP**  
**1**

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# *Questions and Answers*

*Tips*



PROVIDING AN  
OPPORTUNITY  
TO IMPROVE

*Key  
Points*

*Checklists*









## STEP 2

If the employee demonstrates that he or she is a qualified individual with a disability, you will need to work with your human resources office to determine whether the accommodation request will cause an undue hardship.

### Does the accommodation request cause an undue hardship?

#### Consider the following factors . . .

- ✓ The number of employees in the organization.
- ✓ The type of facilities.
- ✓ The size of the organization's budget.
- ✓ The cost of the requested accommodation(s).

An accommodation should be designed to address an employee's physical or mental limitations so that the employee has as much of a chance to achieve acceptable performance as a non-disabled person. While each case may be different, as a supervisor your responsibility is to resolve the performance problem, not the mental or physical disability. Keep in mind that a request for accommodation does not preclude you from proceeding with a performance-based action. In many situations, accommodations can be put in place at the same time an opportunity period is started.

#### Requests for Leave

Another issue that sometimes "stumps" supervisors is what to do when an employee requests leave during the opportunity period. You should consider each request for leave based on the specific circumstances in the request. Know your agency's rules for approving or disapproving leave and get some technical advice from the human resources office before you deny any leave during this time. Additionally, keep these thoughts in mind:

- An employee on approved leave (annual, sick, or leave without pay) cannot be penalized for work that is not completed while on approved leave.
- An employee should be aware of agency (or office) procedures for requesting leave and for providing medical documentation (especially important for accommodation requests). The employee should also be aware of what action the agency may take if these procedures are not followed.
- Be sure you understand the various family-friendly leave entitlements available to employees, such as the *Family and Medical Leave Act of 1993* and the *Family Friendly Leave Act of 1994*.
- If an employee is on approved leave for a significant period of time during the opportunity period, you may want to extend the period to allow the employee a "reasonable" time on the job to improve.











# *Questions and Answers*

*Tips*



TAKING  
ACTION

*Key  
Points*

*Checklists*







**STEP**  
**3**

Figure C. Comparison of Part 432 vs. Part 752

5 CFR Part 432 vs. Part 752		
	PART 432	PART 752
<b>Types of Actions</b>	Actions: Demotion or Removal	Actions: Suspension, Demotion, or Removal
<b>Actions Taken For</b>	Actions taken for “unacceptable performance.”	Actions taken for “such cause as will promote the efficiency of the service.”
<b>Proof</b>	Actions must be proven by “substantial evidence” (lower standard than Part 752).	Actions must be proven by a “preponderance of the evidence” (higher standard than Part 432).
<b>Actions Based On</b>	Actions can only be based on an employee’s formal, established, communicated standards.	Actions can be based on expectations or established/formal standards.
<b>Opportunity Period</b>	Employee is entitled to an opportunity period.	No requirement for an opportunity period.
<b>Time Limits</b>	Time limited to performance “deficiencies” occurring within the 1 year prior to the proposal notice.	No time limit for inclusion of “incident/charges” in Part 752.
<b>Immediacy of Action</b>	Employee remains on the job throughout the opportunity period.	Can take immediate action because no requirement for an opportunity period exists.
<b>Mitigation</b>	Action may not be mitigated (action will either be sustained or reversed).	Action may be mitigated (penalty reduced).

As you can see, there are distinct differences between these regulations. For example, Part 432 requires that you give the employee an opportunity to bring his or her performance up to an acceptable level, while Part 752 does not require such an opportunity period. With this difference in mind, you may question the reasoning behind providing an opportunity period if it is not required. Keep in mind that third parties (for example, arbitrators, judges) place a strong emphasis on a supervisor’s effort to communicate what is expected to the employee as well as the supervisor’s effort to assist the employee in improving his or her performance. An opportunity period addresses both of these concerns. While an opportunity period may not be required under Part 752, providing such an opportunity may assist the agency in developing a stronger case before a third party.





# STEP 3

Use the following checklist to make sure that you have completed all the actions related to Step Three.



<b>Step Three Checklist</b>	<b>Yes</b>	<b>No</b>
<b>For Actions Based on 5 CFR Part 432</b>		
Do you have written performance standards/elements for the employee?	<input type="checkbox"/>	<input type="checkbox"/>
Do you have copies of any supervisory notes of counseling or assistance given to the employee?	<input type="checkbox"/>	<input type="checkbox"/>
Do you have copies of memoranda of counseling provided to the employee?	<input type="checkbox"/>	<input type="checkbox"/>
Do you have a copy of the written notice providing an opportunity to improve?	<input type="checkbox"/>	<input type="checkbox"/>
Did you document the employee's performance during the opportunity period?	<input type="checkbox"/>	<input type="checkbox"/>
<b>For Actions Based on 5 CFR Part 752</b>		
Do you have written performance standards/elements for the employee OR evidence that performance expectations were communicated?	<input type="checkbox"/>	<input type="checkbox"/>
Is there documentation that the employee was clearly "on notice" of performance expectations?	<input type="checkbox"/>	<input type="checkbox"/>
Do you have copies of any supervisory notes of counseling or assistance given to the employee?	<input type="checkbox"/>	<input type="checkbox"/>
Do you have copies of memoranda of counseling provided to the employee?	<input type="checkbox"/>	<input type="checkbox"/>
Do you have a copy of the written notice providing an opportunity to improve OR can you explain your reasons for not providing an opportunity to improve?	<input type="checkbox"/>	<input type="checkbox"/>
Did you document the employee's performance during the period in question?	<input type="checkbox"/>	<input type="checkbox"/>







**SPECIAL  
TOPICS**













# APPENDIX











































