

EMPLOYEE RELATIONS

NOTES

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For the REE Agencies, USDA

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Employee Relations Branch: What do we do? How can we best help you?

The Employee Relations Branch (ERB) works closely with managers and supervisors to provide advice and guidance on how to best address employee performance and conduct issues. We assist you in taking corrective action in accordance with law, regulation, and Agency policies. We also assist and support managers in handling grievances and appeals, and counsel on such issues as workplace violence, employee assistance programs, conflict resolution, and mediation. Each manager has an Employee Relations Specialist assigned to his or her area. You should not wait until the problem is serious before calling. Call us early in the process for advice or direction on how to best handle problems.

Area Employee Relations Specialists, the REE Ethics Office, Cooperative Resolution Program staff, and Labor Relations Office are available to advise managers in their respective areas.

The Role of the Supervisor: Identify, Document, and Discuss

The discussions you have every day with your employees are the perfect opportunities to address problems or potential problems. As a supervisor, you're often the first person to notice a conduct or performance problem, to document what has been observed, and the most appropriate person to take immediate action.

1. How to Identify an Employee Problem

Performance problems are related to an employee's ability to do the job at an acceptable level. The acceptable level is usually documented in the written performance standards and is defined in terms of quantity, quality, and timeliness. If an employee cannot meet these standards, no matter how hard he or she tries, it's a performance problem.

Conduct problems are related to obeying the rules of the workplace. If an employee does not want to do what is expected or communicated in written or unwritten rules or policies, it is most likely a conduct problem. Conduct problems may include a variety of areas such as attendance and leave, disrespectful behavior, negligence, and failure to follow instructions.

2. When and How to Document an Employee Problem

When do you document?

Start small. Not all activity needs to be documented. However, if you had to speak to an employee more than once about a concern, whether it's about tardiness or unsatisfactory work, jot it down on your calendar or make a short note. A handwritten notation is all that is needed, but make sure that it's dated and initialed – brief notes are better than no documentation at all, and may serve to jog your memory or make a particular pattern of activity more apparent.

More detail needed. If you start to see a pattern, make your notes more detailed, remembering to date and sign them. Your e-mail instructions to an employee can also serve as documentation.

How do you document?

Describe observed behaviors. Describe the facts, including what happened. Include dates, times, locations, full names and work titles, and the observations/comments of witnesses. Be as accurate as possible and record your observations early while they are fresh in your mind. Describe exactly what the employee actually did or said. Do not use vague descriptions such as “obnoxious,” “idiotic,” “terrible,” or “bad language.”

Obtain statements from persons who witnessed the incident or who were involved in the incident. Federal employees are required to provide information on things they have seen or heard at work, and you can inform employees of this responsibility. A supervisor's observations and written statement carries weight in administrative hearings, even if he or she is the only witness. However, in most cases you should try to obtain a statement from the employee.

Weingarten Rights

Note: Employees in a labor union bargaining unit have the right to union representation during “investigative interviews” that could lead to disciplinary action, if such representation is requested by the employee. Call your ER Specialist with questions about this.

What does a supervisor provide to Employee Relations?

- All documents pertaining to the incident: witness statements, e-mails, counseling notes, performance standards, time and attendance sheets.
- A summary of the impact of the behavior or poor performance on the unit; include the adverse impact on your time, the work of others, and/or the ability to carry out agency mission.
- A description of local work rules, leave policies, operating procedures, and technical processes.
- A summary of prior training or experiences.
- A description of any extenuating or mitigating circumstances. Referred to EAP?

Common Documenting Errors

- 1) Personal thoughts or opinions. Do not include them in your notes. This information will become part of the official case record, and employees will have a right to see them. Your personal thoughts can provide the employee something to bring up in an appeal, grievance, or complaint. *Only include observed behaviors or statements.*
- 2) Unreadable notes. Type your notes if your handwriting is illegible.
- 3) Missing information. Include dates, signatures, titles, and identify who observed the behavior.

3. When and How to Discuss Conduct and Performance Problems

When to discuss the problem?

You should discuss the problem when your documented observations develop into a pattern, or if the misconduct is adversely affecting the employee's work or the workplace, or the employee is failing performance requirements. The discussion should be your primary supervisory tool. After discussion, the employee will know that the problem or problems have been observed, and understand what will happen if not corrected. Additionally, mutual feedback can often clarify issues and help to express feelings.

When not to discuss the problem with the employee?

In cases of serious or criminal misconduct (bribery, unauthorized removal of Government property, sexual misconduct, workplace violence), contact an Employee Relations Specialist for assistance first.

How to Hold an Effective Discussion

Prepare a plan. A prepared framework for the discussion will:

- Increase your comfort level
 - Increase the effectiveness of the discussion
 - Help the discussion go where you want and get the result that you want
1. **Clearly identify the problem** or issue to be solved. Clarify the bottom line and the change you are looking for. If two parties have different understanding, it is very difficult to solve the problem.
 2. **Let the employee know** upfront that they will have an opportunity to speak. This makes it easier for him or her to listen to you first.
 3. **Mention the positives first**, such as overall good performance or productivity.
 4. **Focus on the problem, not the employee.** Do not assume you know all the facts - focus on observed behavior.
 5. **Use clear language**, avoid phrases that make people defensive, be specific, and repeat key points.
 6. **Ask for, and listen to, the employee's explanation.** Give your employee a chance to vent feelings, frustrations, and thoughts on the

issue. Discontinue the meeting if the employee does not act in an acceptable manner.

7. **As a listener, stay involved in the conversation.** Remain alert, ask clarifying questions, don't interrupt too often, maintain eye contact, give feedback, and redirect the conversation back to the issue at hand.
8. **Ask the employee for solutions.** If the employee admits to the problem, ask him or her how they could see resolving it. The more ownership provided by the employee, the more effective the change.
9. **Decide on corrective actions.** If the employee and you cannot agree on a corrective action, then you must tell the employee your expectations and the possible consequences of not meeting those expectations.
10. **Document the discussion** and provide a copy to the employee. Include (1) what the employee was told, (2) how the employee responded, (3) what corrective actions were identified, and (4) any expectations for improvement. Have either the employee sign the summary, or make a note that you delivered a summary to the employee.

If the relationship has deteriorated to the point where communication has broken down, consider mediation or intervention by a third party. Contact the **Conflict Resolution Program** at 301-504-1460 for assistance.

If an issue presents itself that is of a personal nature, refer the employee to the **Employee Assistance Program (EAP)**. Do not attempt to diagnose the problem yourself. If you need help understanding a serious employee problem such as alcoholism or domestic violence, you can call EAP and speak to a counselor for assistance on how to handle employees with these issues. Go to the website for information: www.afm.ars.usda.gov/hrd/benefits/eap/EAP_Overview.htm

Workplace Violence: “Just in Case”

Workplace violence is rare, and it would be a mistake to become overly fearful. However, everyone should know something about it, and keep that knowledge in the back of their minds, "just in case."

What is Workplace Violence?

Any act of physical violence, threats of physical violence, harassment, intimidation, or other threatening, disruptive behavior that occurs at the work site. Workplace violence can affect or involve employees, visitors, contractors, and other non-Federal employees.

USDA Workplace Violence Policy

Violence or the threat of violence by or against any employee of USDA is unacceptable and will subject the perpetrator to serious disciplinary action and possible criminal charges. Each employee should report all acts of workplace violence promptly to supervisors or managers, and in case of emergency, directly to law enforcement officials.

REE Workplace Violence Policy

Managers, supervisor, and location officials will take all threats seriously; will inform employees of workplace violence policies; will respond to potential threats by utilizing appropriate resources, (e.g., local law enforcement personnel, EAP counselors, Human Resources staff, etc.)

Employees will treat each other and their customers with dignity and respect; secure their own workplace; report any threats, physical or verbal, to their supervisors immediately.

This problem needs to be approached at three levels:

- **Prevention**
- **Early Identification of Threats**
- **Appropriate Response**

1. Prevention: Good Leadership

When you look at what the experts have to say about preventing violence, the message is simply: “provide good leadership.”

- ✓ Keep in touch with employees, and show concern and fairness to each one.
- ✓ Carefully observe personnel practices. You should set clear standards, note employee problems promptly, counsel when necessary, and provide appropriate discipline.
- ✓ Your employees need to know that intimidation is entirely unacceptable in the workplace, and that they should tell you if they feel threatened for any reason.
- ✓ Trust. You must give your employees reason to believe that you will respond in a mature, constructive manner if they do share their concerns.

The experts also recommend programs to foster effective communication in the workplace and help employees resolve stressful issues at work or at home. Federal government agencies are fortunate in having a number of fine resources, such as the EAP, for work groups and individuals.

2. Early Identification of Threats

At an early stage, it's appropriate to listen to "gut level" reactions. Managers don't need to be experts on violent behavior. What is needed is a common-sense recognition that "Something seems wrong here," and a willingness to seek advice from those who are knowledgeable about different parts of the problem. The Employee Relations Branch will offer technical guidance and advice.

Warning Signs: No matter how good a job is done at prevention, it may not be possible to prevent violent situations. An employee can be driven to the point of violence by factors outside the organization's control.

What are the warning signs to look out for?

- ❖ Anybody who states, or even hints, that they might harm someone, perhaps by a particular means (i.e., by use of weapons or explosives)
- ❖ Extreme changes in normal behaviors (e.g., an obviously distraught person mentioning that they "have nothing to lose," or exhibiting behavior that is suddenly withdrawn or erratic)
- ❖ Anybody who expresses a real fear of being near another person
- ❖ Your own fear. As a supervisor, you may find yourself unable to counsel an employee because you feel afraid of the person.

Any of these signs should make the alarm bells go off in your mind. You're not making any decisions yet; you're just identifying a situation that needs to be explored.

REE Threat Management and Response Team is composed of Management Officials, Employee Relations, EAP counselors, Law Enforcement, and/or Security representatives.

The REE Employee Relations Branch staff (301-504-1355) will provide technical guidance to supervisors in the event of a violent or potentially violent situation, including an immediate action plan, and appropriate administrative action/discipline. The Cooperative Resolution Program (CRP) can provide mediation and conflict resolution services where appropriate, or EAP can provide guidance on employee assistance counseling for supervisors or employees.

Call if you need help:

- Assessing the potential seriousness of a threatening or intimidating situation
- With a situation involving threats or aggressive acts that have already occurred
- Managing the work environment after the event
- Addressing your own aggressive reactions to a workplace situation

3. Appropriate Responses to Threats

The key to an effective response is to **get all the help you need**. This is not the time to be self-reliant. You need the objectivity of an outside point of view, and the expertise of professionals from several fields.

You need a **strategy, not necessarily a procedure**. Call in the experts, get them working as a team, and utilize their combined expertise to come up with a solution. Communication should be given special attention in response to threats. Stress can interfere

with listening and memory, so it is important to express yourself clearly and check to make sure you have been understood.

Short-term and Long-term goals

Sometimes an objective evaluation shows that there really wasn't a serious problem after all. If this is the case, it's important that nobody is criticized for "over-reacting."

In the *short term*, you will be concerned with guarding against a possible immediate threat while a long-term solution can be developed. The long-term solution should address the root causes of the problem and prevent a recurrence of the threatening situation.

Support for those affected, whether as potential victims or as problem solvers, is an important concern. Since fear is a real source of stress, and responsibility for the safety of others is a heavy burden, you can alleviate tension by establishing an atmosphere of acceptance and open communication.

Your EAP can help by offering seminars, debriefings, or other group activities, and by welcoming individual employees to take advantage of its services. As a supervisor, you can call EAP for advice on how to handle a potential workplace violence situation.

Resources:

“The USDA Handbook on Workplace Violence Prevention and Response,”

<http://www.usda.gov/news/pubs/violence/wpv.htm>

REE Policy and Procedure 122.1, Preventing Workplace Violence

<http://www.afm.ars.usda.gov/ppweb/122-01.htm>

“A Manager’s Handbook Handling Traumatic Events,”

<http://www.usda.gov/da/shmd/wkviol.htm>

“Violence in the Workplace-Informational Material

<http://www.usda.gov/da/physicalsecurity/violentwp.htm>

Ethics Column: Outside Activities

This article briefly summarizes the policy for handling requests for approval to engage in outside activities with non-Federal organizations, and provides guidance to supervisors considering the approval of such requests, and to employees who are not required to seek prior approval through an Ethics Official at all. The REE Ethics Office can be reached at 301-504-1467.

Getting involved in professional associations, scientific societies, and other non-profit organizations is part of how we do business in REE. Serving as the chair of a publication’s steering committee or as a scientific/technical expert on a regulatory panel are just a couple of the ways our employees generate interest in particular fields of inquiry and safeguard the public’s interest in agriculture. Not only does our activity with non-Federal organizations serve the interests of the groups involved and help our employees to develop and hone professional skills, it is also a right we hold as citizens in a free society. Although the interests of USDA and other agricultural based, non-Federal organizations are often very similar (even complimentary), they are not identical. The conflict of interest laws and ethics regulations aim to delineate a boundary between USDA as a public body on the one hand; and related non-Federal organizations, as private bodies, on the other. This separateness must be respected in our attempt to maintain the utmost integrity in the performance of official duties.

Prior Approval

USDA requires that all employees who file a public or confidential financial disclosure report seek prior approval to engage in outside employment and activities, which involve a conflict of interest analysis. At REE, this approval process is done via form **REE-101**, Application for Approval to Engage in Non-Federal Employment or Activity. Upon receipt of the REE-101, a supervisor conducts a conflict

of interest analysis and, if appropriate, approves the request, while certifying that the employee will not be assigned responsibilities that will create a conflict of interest. The REE Ethics Office maintains a record of the REE-101, and provides expert guidance to employees and supervisors in conducting the required conflict of interest analysis.

Supervisor's Role

In considering whether to approve the REE-101, since a sizable portion of outside activity requests involve activities with organizations with missions that are similar to our own, supervisors should first consider whether the proposed activity might be more appropriately performed as part of the employee's official duties. What does this mean? First, the supervisor needs to assess whether: (1) the offer to engage in the activity was either based on, or related to, the employee's official duties; and whether (2) the employee was sought by an organization seeking to do business through formal processes with the Agency or from an organization whose interests could be significantly impacted by the performance or nonperformance of the employee's official duties. The supervisor may determine that intent of the activity fits into the mission of the agency, and within the scope of the official duties and responsibilities of the employee.

For example, outside activities should be denied if the offer to engage in the activity was based on the employee's official position or by someone whose financial interests may be significantly impacted by the performance or nonperformance of the employee's official duties. Also, the outside activity should be denied if it involves the use of non-published information or official work done by the employee in the previous 12-month period. This doesn't mean, however, that the activity cannot be conducted at all; in many cases, since the activity was extended based on the employee's official duties, the activity can be performed as part of official duties. The determination as to whether an outside activity request should be more appropriately performed as part of official duties should be made by a supervisor *prior* to consultation with an ethics official about the conflict of interest analysis.

Finally, it is important that employees who do not file public or confidential financial disclosure reports understand that the conflict of interest laws and ethics regulations still apply to them. For many new employees, the level of significant participation with non-Federal organizations parallels the increasing responsibility with the Agency. Since there is no formal process required for these employees to seek approval for outside activities with the REE Ethics Office (until they become financial disclosure filers), we recommend that employees and supervisors maintain an open discussion of all activities with non-Federal organizations. This is not only an important consideration for supervisors in monitoring the performance of employees, but also for employees who want to ensure that they do not violate ethics regulations unintentionally or unwittingly. A careful treatment of all activities with non-Federal organizations at the outset can provide a framework from which an employee can serve the public's interest in agriculture while maintaining the utmost integrity in the performance of official duties throughout his or her career at USDA.

REE Ethics Website: <http://www.afm.ars.usda.gov/hrd/ethics>

**Index to ERNotes-- Past issues soon to be on HRD/ERB webpage, <http://www.afm.ars.usda.gov/hrd/er/index.htm>.
If you have any comments on this issue, or suggestions or questions for future issues, please email: ARS-ERNotes@ars.usda.gov.**

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