

# MS 652 Disciplinary Procedure for Foreign Service Employees

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**Responsible Office:** M/PM

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**Related Interim Policy Statement:** [IPS 1-03 Fraternalization Policy](#)

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[Issuance Memo](#)

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### **Attachments**

Attachment A [Guide for Employee Conduct](#)

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### **1.0 Purpose**

The purpose of this Manual Section is to provide information on using discipline as a constructive tool in securing maximum employee contribution to the accomplishment of Peace Corps' mission; and to establish standard policies and procedures for disciplinary action for Foreign Service employees.

### **2.0 References**

- Sections 7(b) and 7(c) of the Peace Corps Act, as amended.
- Article XIX of the Negotiated Agreement.

### **3.0 Scope**

This Manual Section applies to all Foreign Service employees except:

- Presidential appointees, i.e., employees whose appointments are required to be confirmed by or made with the advice and consent of the Senate.
- Senior Foreign Service employees;
- Employees in confidential, policy making, policy determining, or policy advocating positions designated as serving at the pleasure of the Peace Corps Director in the SF-50, Notification of Personnel Action;
- Peace Corps Country Directors;
- Employees who hold temporary appointments; and
- Foreign Service Nationals (FSN);

#### **4.0 Policy**

Peace Corps employees are expected to maintain high standards of personal integrity, conduct and effectiveness as outlined in Manual Section 641, Employee Standards of Conduct. When such standards are not met, it is essential that prompt and just corrective action be taken. The policy of Peace Corps is to maintain at all times the standards of conduct and efficiency which will promote the best interests of the service. When clearly warranted, disciplinary actions are to be initiated promptly in accordance with the policy and procedures outlined herein. Any disciplinary action taken must be based on good cause, be consistent with laws and regulations governing such actions, and be fair and equitable.

#### **5.0 Matters Covered**

The reprimanding, suspension, or termination of a foreign service employee for personal cause is subject to the procedures set forth in this Manual Section.

#### **6.0 Definitions**

##### **6.1 Days**

Calendar days, unless otherwise specified.

##### **6.2 Deciding Official**

The Peace Corps Director, Associate Directors, Heads of Staff Offices, and the General Counsel.

##### **6.3 Discipline**

An action taken by a management official to correct an employee's behavior. Discipline includes, in ascending order of severity, oral admonishments, reprimands, suspension and termination of employment.

##### **6.4 Personal Cause**

Reasons which emanate from the employee and his or her actions on and off the job.

## **6.5 Proposing Official**

Officially designated unit supervisors and Peace Corps Country Directors.

## **6.6 Reprimand**

A written formal disciplinary action for misconduct, inadequate performance or repeated lesser infractions.

## **6.7 Suspension**

A temporary, enforced, absence from duty in a non-pay status which may be imposed as a penalty for significant misconduct or repeated less serious infractions.

## **6.8 Termination**

The involuntary severance of an employee's employment with the Agency.

## **7.0 Procedures**

### **7.1 Delegation of Authority**

#### **7.1.1 Issuance of Official Reprimands**

Officially designated unit heads in the United States and Country Directors overseas are authorized to both propose and decide to issue official reprimands to their subordinates.

#### **7.1.2 Suspension or Termination of an Employee for Cause**

The authority to propose a suspension or a termination for cause is delegated to officially designated unit supervisors in the United States and to Country Directors for overseas staff. The authority to decide is delegated to the Associate Directors, the General Counsel, and Directors of Staff Offices.

NOTE: These delegations are from the Director of the Peace Corps, through intervening management levels and in no way limit the authority of higher levels to initiate proposed actions which are within the authority of their subordinates (e.g., an Associate Director may propose discipline for any employee under his or her jurisdiction). Further, when an employee reports directly to an official who is the authorized deciding official at that level, that official shall assume the role of the proposing and deciding official.

### **7.2 Purpose of Disciplinary Actions**

In those cases where corrective action becomes necessary, the disciplinary measures taken should have a constructive effect. Disciplinary action will be taken for the purpose of correcting the conduct of offending employees and maintaining discipline and morale among other

employees. Where corrective action can be accomplished through closer supervision, on-the-job training, or oral admonishments, formal disciplinary action should not be taken. Constructive discipline, to be effective, must be timely. The results achieved diminish in proportion to the time allowed to elapse between the dates of the offense and the corrective action taken. For bargaining unit employees, the negotiated agreement requires that, where severe disciplinary actions might eventually be based on a series or pattern of minor offenses, each of the individual offenses be handled with increasing severity, beginning with counseling and oral admonishment.

### **7.2.1 Informal Disciplinary Actions**

Oral admonishments are the first step in constructive discipline. As a general rule, such actions are taken by the supervisor on his or her own initiative in situations of a minor nature involving violation of a rule, regulation, standard of conduct, safety practice, or authorized instruction. The employee should be interviewed and should be advised of the specific infraction or breach of conduct, exactly when it occurred, and should be permitted to explain the conduct or act of commission or omission. The supervisor shall advise the employee of his or her right to have a representative present.

If the employee's explanation is satisfactory, the supervisor should close the interview. If the explanation does not justify the actions or behavior of the employee, the supervisor should explain why and give specific advice as to how the employee can improve or correct the deficiency. The employee should also be told that repetition of the offense or of other offenses may result in more severe disciplinary action.

The oral admonishment is an informal process and shall not be made a matter of record.

### **7.2.2 Formal Disciplinary Action**

Formal disciplinary actions consist of official reprimands, suspensions, and terminations. These forms of discipline are defined in paragraph 6. Instructions for taking such actions are found in paragraph 7.4.

### **7.3 Choosing Among Disciplinary Actions**

Taking disciplinary action demands the exercise of responsible judgement so that an employee will not be penalized disproportionately to the character of the offense. This is particularly true of an employee who has a previous record of completely satisfactory service. A supervisor must evaluate each situation on the basis of its own factual circumstances to ensure that the disciplinary action proposed and taken is reasonable under those circumstances. Factors that should be considered are:

- 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, inadvertent, committed maliciously, for gain, or has been frequently repeated;
- Employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

- Employee's past disciplinary record;
- Employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- 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;
- Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- Notoriety of the offense or its impact upon the reputation of the Agency;
- Clarity in notifying or warning the employee of conduct which violated Agency rules;
- Potential for the employee's rehabilitation;
- Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in that matter; and
- Adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Not all of these factors apply in every case, neither is the above a complete list of possible considerations. Thus, management officials must consider the relevant factors of each case, and strike a responsible balance in deciding a reasonable action.

## **7.4 Procedures for Formal Discipline**

### **7.4.1. Reprimands**

Before issuing a reprimand, the authorized official should meet with the employee and his or her representative, if any, to notify him or her of the proposed reprimand and the information on which the reprimand is based. The employee then should be allowed to respond to the information on which the reprimand is based. The employee's response should be considered, and a determination made as to whether the reprimand is warranted. If warranted, the official issues a written reprimand which will include the specific facts on which the reprimand is based and informs the employee of his/her appeal rights. The reprimand will remain in the employee's Official Personnel File (OPF) for no more than one (1) year.

### **7.4.2 Notice of Proposed Action**

The notice of proposed reprimand must:

- Be in writing and signed by the employee's immediate supervisor or a higher management official;
- Cite specifically and in detail the factors or violations for which the reprimand is being issued and the reasons supporting the reprimand;
- State the period of time (not to exceed one (1) year) the supervisor is proposing to leave the reprimand in the employee's OPF;
- Specify that the employee has the right to have a representative and that the representative shall be designated in writing;

- State that the employee or the representative, or both, may reply orally and/or in writing to the proposing official and that such a reply must be received within five (5) days of the receipt of the notice;
- Inform the employee that the employee and the representative will have a reasonable amount of official time to prepare and present a reply and that they may review the material relied upon in proposing the action; and
- Furnish the name and telephone number of the Employee Relations Specialist who may be contacted for assistance regarding procedures.

### **7.4.3 Consideration of the Employee's Reply**

The employee's reply will be carefully considered by the proposing official. That official will then decide whether to modify, withdraw, or issue the reprimand as proposed. In no case may the penalty imposed be harsher than what was originally proposed, and in no case may the decision be based on charges or other considerations not stated in the proposal.

### **7.4.4 Notice of Final Decision**

The notice of decision, which will constitute the letter of reprimand, will be issued at the earliest possible date and must:

- Cite the notice of proposed reprimand and reiterate the charges in the proposed reprimand;
- Indicate if the employee replied and if so that the reply was considered;
- State the penalty, if any decided;
- State the employee's right to contest the reprimand by filing a grievance and the appropriate procedures and time limits for doing so; and
- State the name and telephone number of the Employee Relations Specialist who may be contacted for assistance regarding procedures.

### **7.4.5 Other Requirements**

The official reprimand should be personally delivered to the employee and written acknowledgement of receipt obtained on a copy of the reprimand. In addition, the employee will be provided with an extra copy for the representative, and that copy will be annotated as the representative's copy.

If personal delivery is not possible, two copies of the letter will be sent through the United States mail, one certified return receipt requested and the other by regular first class mail. The acknowledged copy of the reprimand must be forwarded to the Employee Relations Specialist, Office of Personnel Management (M/PM).

## **7.4.6 Suspensions and Terminations for Personal Cause**

### **7.4.6.1 General**

Suspension and termination for personal cause actions also require that an employee be given a notice of proposed action, an opportunity to reply, and a notice of decision. These notices will be prepared by the Employee Relations Specialist, Office of Personnel Management, at the request of an authorized official.

### **7.4.6.2 Notice of Proposed Action**

The notice of proposed action must:

- Identify specifically the proposed action, e.g., suspension for three workdays;
- Specify the reasons for the action;
- Specify that the employee has the right to have a representative; the representative shall be designated in writing;
- Inform the employee of his or her duty status during the notice period, and that no final decision will be made to effect the action until the employee's reply, if any, has been considered;
- Specify that the employee or the representative may reply orally, in writing, or both, to the action and submit affidavits in support of his/her answer and that the reply must be received by a cited official within fourteen (14) days of receipt of the notice;
- Inform the employee that requests for extension of the time limit to reply will be considered by a cited official if made within the fourteen day time limit to reply;
- Furnish the name and telephone extension of the Employee Relations Specialist who may be contacted for assistance concerning procedures;
- Inform the employee that the employee and representative will be given a reasonable amount of official time to prepare a reply if he or she is otherwise in an active duty status, that they may review the material on which the proposal is based, and the person to contact to review the material; and
- Specify whom the employee can contact to make arrangements to make an oral reply.

NOTE: The notice of proposed action must be delivered in accordance with paragraph 7.4.5. of this Manual Section.

### **7.4.6.3 Consideration of Employee's Reply**

The employee's reply will be carefully considered by the deciding official. It is that official's responsibility to determine the correctness of the charge(s). The reply may contain denials or other evidence which contradicts the charges or lessens their seriousness. Therefore, the deciding official must examine the reply objectively and in detail before deciding. If there is conflicting evidence, the decision whether to modify or withdraw the proposed action or to take the action as proposed depends upon the preponderance of credible evidence. In no case may the penalty imposed be harsher than what was originally proposed, nor may the decision to take action be based on charges or other considerations not stated in the proposed notice.



#### **7.4.6.4 Notice of Final Decision**

The notice of final decision must be issued at the earliest possible date and must:

- Cite the notice of proposed action and reiterate the charge(s), the reasons for the charge(s), and the proposed action.
- Indicate whether or not the employee replied and, if so, that the reply was considered.
- State the penalty decided on, if any, and when it is to be imposed. (The penalty may not be effected prior to delivery of the decision letter. A decision to suspend a bargaining unit employee will be effected no earlier than fifteen (15) days after delivery of the final decision notice.)
- State the employee's right to grieve the suspension or termination and the procedure and time limits to do so.

NOTE: The notice of final decision must be delivered in accordance with paragraph 7.4.5. of this Manual Section.

#### **7.4.7 Emergency Suspension**

In an emergency, when the retention of an employee in an active duty status may result in damage to government property or may be detrimental to the interest of the Government, or injurious to the employee, his or her fellow workers, or the general public; the employee may be placed in a non-duty status pending completion of action on a proposed suspension or termination. The deciding official, in consultation with the Director of Personnel Management, shall make a determination as to the appropriateness of the emergency suspension. The Union shall be notified of such suspension within a reasonable period of time.

#### **7.4.8 Appeals**

Employees may appeal reprimands, suspensions, and terminations for cause under one of the following:

- Bargaining unit employees may appeal under the provisions of Article XX of the Negotiated Agreement.
- Non-bargaining unit employees may appeal under the provisions of MS 655, Administrative Grievance Procedure.

#### **7.4.9 Representation**

An employee may have a representative of his or her own choosing to represent the employee at any step of the proceedings. A person chosen by an employee must be willing to represent the employee and must be free to do so. For example, the person chosen must not be disqualified because of conflicts between the duties of his or her position and the responsibilities of a representative or unavailable to serve because of prior needs of the service or because of unreasonable costs to the Government attendant upon his or her services.

#### **7.4.10 Use of Official Time**

The employee and the representative, if an employee of Peace Corps and otherwise in an active duty status, shall be on official time during the presentation of the appeal.

The employee and the representative shall be permitted a reasonable amount of official time for preparing an appeal. The amount of time depends upon the nature and complexity of the action against the employee, the volume of the supporting evidence, and the amount of time that is required to obtain statements or affidavits from employees, or to have access to Agency records and regulations. Requests for additional time may be made and will be granted when justified by the circumstances. Such requests may be made to the Director of Personnel Management.

#### **7.4.11 Freedom from Reprisal or Interference**

Employees who have received a proposed disciplinary action are free to use the appeal procedure without restraint, interference, coercion, discrimination or reprisal. An employee when acting in an official capacity for Peace Corps must not interfere with or attempt to interfere with another employee exercising his or her rights under the appellate system. No employee acting in an official or unofficial capacity shall take or threaten to take any act of restraint against an employee because he or she has exercised, or plans to exercise, any of his or her rights under this appellate system. An employee's representative is also free from restraint, interference, coercion, discrimination or reprisals for preparing and presenting a case as a representative of an employee in an appellate process.

#### **7.4.12 Access to Agency Records**

Employees are entitled to review their official personnel folder and any relevant information of the Agency for the purpose of preparing a reply to a proposed disciplinary action or in pursuing an appeal of such an action. However, employees may be restricted from examining certain documents. Typical documents or information which are restricted are:

- Documents to which the U.S. Office of Personnel Management limits access, e.g., certain medical information, certain documents in merit promotion files, suitability investigation reports, official personnel folders of other employees, etc.;
- Documents annotated as Top Secret, Secret, or Confidential; and
- Documents not subject to the disclosure requirements of the Freedom of Information Act, e.g., employment reference checks secured under a pledge of confidence, privileged communications between management officials, etc.

Peace Corps officials shall, upon the request of the employee or the representative, make available for review any non-restricted document or information relevant to the proposed discipline or appeal. Disputes as to the relevancy of documents or information shall be resolved by the Director of Personnel Management.

#### **7.4.13 The Employee Assistance Program (EAP)**

When a supervisor has reason to believe an employee's problems on the job are the result of alcohol or drug abuse, the supervisor is required by law to refer the employee to a specific assistance program prior to effecting disciplinary actions. Supervisors are encouraged to make such referrals in cases where the employee is having other types of personal problems; information on the Employee Assistance Program can be found in PCMS 658.

#### **8.0 Effective Date**

This Manual Section takes effect upon the date of issuance.