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HRDG 4752 - Disciplinary or Alternative Actions - Glossary

Last Modified:

Subchapter 4752 - Disciplinary or Alternative Action Glossary

The following contains the definitions of a number of terms used in this Human Resources Desk Guide:

1. **Administrative Leave** - An excused absence without loss of pay and without charge to leave in special situations such as an emergency situation involving the need to get an employee off the premises before any action has been initiated or decided upon. Contact your servicing Employee Relations Specialist (ERS) for further information.
2. **Adverse Action** - A disciplinary action (or nondisciplinary action such as correction of a classification error) taken against an employee for such cause as will promote the efficiency of the service. Examples of adverse actions are suspensions, removal, reduction in grade or pay, and furloughs for 30 days or less.
3. **Agency** - Refers to Animal and Plant Health Inspection Service (APHIS), Federal Grain Inspection Service (FGIS), and Packers and Stockyards Administration (P&SA).
4. **Agency Representative** - Title given an ERS (or other person) who represents the Agency in defending an action taken by the Agency that is before a third party (e.g., arbitration).

5. **Appealable Adverse Action** - An employee may request in writing to the Merit Systems Protection Board (MSPB) a review of an action taken against him/her such as a removal, suspension of 15-calendar days or more, or reduction in grade/pay. Under some negotiated grievance procedures, an adverse action may be grieved in lieu of an appeal to the MSPB.
6. **Burden of Proof** - If an agency takes an adverse action against an employee, the agency has the burden of proving (should that action be appealed) that: 1) the action taken was supported by a preponderance of the evidence; 2) there was a nexus present; and 3) the penalty was reasonable and appropriate.
7. **Crime Provision** - If there is reasonable cause to believe the employee is guilty of a crime for which a sentence of imprisonment can be imposed, an employee need not be given the full 30 days advance written notice of a proposed adverse action resulting from the criminal activity. Rather, the agency can revoke the crime provision for a shortened notice period if the criteria for crime provisions is met. Consult your servicing ERS (Section A) for guidance.
8. **Day** - Refers to calendar day.
9. **Deciding Official** - The designated agency official identified in APHIS Directive 400.4, Attachment 3, who has the authority to issue a decision letter based upon a proposed adverse action.
10. **Designated Representative** - A person (e.g., attorney, union representative, or other representative) whom an employee chooses to represent him/her in a disciplinary/adverse action that has been proposed or taken.
11. **Disabled Person** - A person who: 1) has a physical or mental impairment which substantially limits one or more of a person's major life activities; 2) has a record of such an impairment; or 3) is regarded as having such an impairment.
12. **Disciplinary Action** - An official written action taken by management to correct the conduct of an employee who has violated the conduct regulations. This action can range from a letter of reprimand through removal from Federal service.
13. **Documentation** - Written notes, records of telephone calls, memoranda to the file or to others, letters, summaries of conversations, eyewitness accounts, sworn statements, or other documentary evidence which provides factual or substantial support for observations made, statements made, conversations held, etc. (see Section D).
14. **Douglas Factors** - In determining the appropriate penalty for misconduct when taking disciplinary/adverse action, there are 12 mitigating or aggravating

factors which must be considered in the analysis of the case. The MSPB has defined these factors in a MSPB case, **Douglas vs. Veterans Administration**, and will consider these pertinent factors in reviewing the Agency's choice of penalty (see Section H).

15. **Equal Employment Opportunity Commission** - The Federal agency with authority for administrative review of Merit Systems Protection Board (MSPB) decisions on allegations of prohibited discrimination in connection with matters appealable to the MSPB.
16. **Efficiency of the Service** - A standard by which an action's decision is measured (i.e., when misconduct has an adverse effect on the employee's ability to do his/her job, the ability of other employees to do their jobs, the agency's ability to carry out its mission or its impact on the efficiency of the Federal service).
17. **Employee** - Per statutory requirements, "employee" refers to an individual in the competitive service who is not serving a probationary or trial period under an initial appointment and/or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; an individual in the excepted service who has completed 2 years of current continuous employment in the same or similar positions; or a veteran (preference eligible) in the excepted service who has completed 1 year of current continuous service in the same or similar positions.
18. **Employee Relations Specialist (ERS)** - Agency employee who provides advice and assistance to supervisors, managers, and employees on matters involving employee performance, conduct, and labor relations issues (see Section A).
19. **Enforced Leave** - If the employee is placed in a paid nonduty status without charge to leave, no advance notice is necessary. If the employee is placed in a nonduty status charged to the employee's leave account (annual, sick, or Leave without Pay (LWOP) **without** the employee's consent, then a 30 day advance notice period is required. Caution should be used when using enforced leave since it may constitute a suspension. Supervisors should consult with their servicing ERS before placing an employee on enforced leave.
20. **Evidence File** - A file which contains all the evidence which is relied upon to support the reasons for the contemplated or completed disciplinary/adverse action. The evidence file is made available to an employee at the time the action is proposed or when a letter of reprimand is issued.

21. **Furlough** - The placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.
22. **Grievable Adverse Action** - A letter of reprimand and suspension of 14 calendar days or less may be grieved through the agency's administrative grievance system or in accordance with the provisions stated in an applicable collective bargaining agreement.
23. **Harmful Error** - Error by the agency in the application of its procedures which, in the absence or cure of the error, might have caused the agency to reach a conclusion different than the one reached.
24. **Indefinite Suspension** - At the time a crime provision is invoked, there may be insufficient information available to determine if an administrative action is warranted. Therefore, an agency may impose an indefinite suspension pending the outcome of further investigation or court proceedings. An indefinite suspension places an employee in a nonpay, nonduty status, and requires that the employee be given advance written notice of this action. Supervisors must contact their servicing ERS prior to effecting this action.
25. **Letter of Caution/Warning** - Informal written guidance, counsel, caution, or warning by a supervisor to correct an employee's minor infraction or misconduct. Such action does not become part of the employee's Official Personnel Folder (OPF), but is maintained in a supervisor's file.
26. **Letter of Reprimand** - The least severe of official written disciplinary actions. A letter is given to the employee for violating the conduct and responsibility regulations, and a copy of this letter is placed in the employee's OPF for up to 2 years.
27. **Major Life Activities** - Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, etc.
28. **Merit Systems Protection Board (MSPB)** - An independent Agency in the Federal government which monitors the administration of the Federal Civil Service System. They adjudicate alleged violations of merit principles, and hear and decide other types of appeals such as suspensions of 15-calendar days or more, removals, reduction in grade and pay, etc.
29. **Mixed Case** - An allegation or complaint of discrimination based on race, color, religion, sex, national origin, handicap, age, and/or reprisal related to (or stemming from) a disciplinary/adverse action taken by the agency. Such actions may, in certain situations, be appealed to the MSPB or through the agency's formal Equal Employment Opportunity complaint process.

30. **Nexus** - A logical connection or relationship between the misconduct and the adverse effect the misconduct has on the agency.
31. **NonDisciplinary Action** - An action may be adverse to an employee, yet not disciplinary in nature. Examples are: removal of an employee because of refusal to accompany his/her activity to a new location (considered an involuntary separation); reduction in grade or pay because of a reclassification of a position; or separation due to disability.
32. **Official Disciplinary Action** - An officially documented action such as a letter of reprimand, suspension, demotion, or removal (see Section E).
33. **Oral Reply Conference** - A meeting at which an employee is given an opportunity to reply to proposed disciplinary/adverse action. The employee's reply is presented to an Oral Reply Official.
34. **Oral Reply Official** - An agency official designated to hear an employee's or an employee's representative's reply to the proposed disciplinary/adverse action charges (see Section F).
35. **Preponderance of the Evidence** - A legal definition which identifies how agencies must prove their charges: "by that degree of relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true."
36. **Progressive Discipline** - More severe action taken to correct unacceptable conduct beginning with the minimum remedy that can reasonably be expected to correct the problem and followed by more severe action if necessary for subsequent misconduct.
37. **Prohibited Personnel Practice** - A violation of law, regulation, or procedure.
38. **Proposing Official** - The designated Agency official (see APHIS Directive 400.4, Attachment 3) who has the authority to issue a letter proposing disciplinary/adverse action against an employee.
39. **Qualified Handicapped Employee** - A disabled employee who, with or without accommodation, is otherwise qualified to perform the essential functions of the position in question without endangering the health and safety of himself/herself or others.
40. **Reasonable Accommodation** - May include, but shall not be limited to: 1) making facilities readily accessible to and usable by disabled individuals, and 2) job restructuring, reassignment, part-time or modified work schedules, the provision of readers and interpreters, or other similar actions to assist the disabled.

41. **Removal** - A separation from employment for reasons of misconduct, delinquency, or for other cause.
 42. **Sexual Harassment** - Unwelcomed sexual advances, request for sexual favors and/or other verbal or physical conduct of a sexual nature when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment (see Section C).
 43. **Suspension** - The placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.
 44. **Third Party Review** - An employee may challenge an adverse action by requesting that the action be reviewed by a party outside the agency (i.e., Merit Systems Protection Board, Equal Employment Opportunity Commission, or an arbitrator). Third Party Review varies on a case by case basis, and is dependent upon such factors as the nature of the action taken, the employee's type of appointment, whether the employee is a member of a bargaining unit, etc.
 45. **Undue Hardship** - A determination made by the agency as to whether an accommodation would impose a hardship on the operation of the agency by considering factors such as the nature and cost of the accommodation, the size of the budget, the overall size of the agency's program with respect to the number of employees, number and type of facilities, or other factors.
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