



U · S · DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM

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421

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Subject: Discipline and Adverse Actions

Approval: *Jed J. Christensen* Title: Director

1. Purpose. This directive contains policy and procedures for taking disciplinary actions and adverse actions covered under 5 U.S.C. 7502 and 7512 (suspensions; involuntary reductions in grade or pay; removals based on misconduct, or a combination of performance and nonperformance-related factors; furloughs of 30 days or less; and certain nondisciplinary demotions and separations). (For the purpose of this directive, terminations of temporary or term promotions are not considered adverse actions; reductions in pay do not include loss of pay differentials.)

Where there is a negotiated labor-management agreement, procedures set forth in that agreement will be adhered to when taking actions against employees represented by the labor organization.

2. Definitions.

- a. "Current continuous employment" or "service" means a period of employment or service immediately preceding an adverse action in the same or similar positions without a break of a workday.
- b. "Day" means a calendar day. Procedural timeframes in this directive are based on calendar days rather than workdays.
- c. "Furlough" means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.
- d. "Grade" means a level of difficulty and responsibility under a position classification system.
- e. "Indefinite suspension" means the involuntary placement of an employee on suspension for an indeterminate period of time which ends upon the occurrence of the condition(s) set forth in the notice of action.
- f. "Nonduty pay status" means excused absence ("administrative leave") of a temporary nature during which the employee continues to be paid.
- g. "Pay" means the rate of basic pay fixed by law or administrative action for the position held by the employee that is the rate of pay before any deductions and is exclusive of additional pay of any kind.
- h. "Performance related factors" means tasks or projects under job elements in the employee's written performance standards. When discipline or adverse actions are taken for a combination of performance and nonperformance related factors (i.e., misconduct), the provisions of this directive apply.

2.h.

i. "Removal" means involuntary separation of an employee from Federal employment for serious or recurring misconduct or for a combination of misconduct and unacceptable performance.

j. "Same or similar positions" mean positions in which the duties performed require the same qualifications and would demonstrate the same degree of difficulty and responsibility.

k. "Servicing Personnel Office" (SPO) means the appropriate personnel branch within the Division of Personnel or Administrative Service Centers (ASC).

f. "Suspension" means the placing of an employee for disciplinary reasons in a temporary status without duties and pay. Note: The involuntary placement of an employee on enforced annual leave or sick leave also constitutes a suspension even though the employee is in a pay status (See Section 8).

3. Policy.

a. All Office of Surface Mining Reclamation and Enforcement (OSMRE) employees are responsible for adhering to established standards of conduct, ethics and efficiency, and are expected to conduct themselves both on and off the job in a manner which will reflect credit on the Government, the Department, and OSMRE. Where there are deviations from these standards, corrective action might be necessary. Such actions will conform with governing statutory and regulatory directives.

b. Penalties imposed will be consistently applied and suitable. Factors such as the nature and gravity of the offense, the employee's position, and prior performance and disciplinary record should be considered in determining the penalty (See Section 9). It is important to assure that fairness and impartiality govern all such actions and that, where applicable, all available informal procedures are exhausted prior to taking disciplinary/adverse action.

c. Actions taken under this directive must not be based on discrimination because of race, color, age, religion, sex, or national origin, or for physical or mental handicap with respect to any position the duties of which may be efficiently performed by a person with a physical or mental handicap. Actions covered under this directive must not be taken as reprisal for the proper exercise of an employee's legal or administrative rights and privileges.

4. Responsibilities.

a. The Director is responsible for:

4.a.

(1) Establishing and requiring compliance of OSMRE policy concerning disciplinary and adverse actions in conformance with the requirements of the Federal Personnel Manual (FPM), Department of the Interior (DOI) Manual 370 DM 752, and making appropriate changes to existing policies;

(2) Delegating to supervisors appropriate authority for the direction and discipline of employees;

(3) Requiring the training of supervisors so that they are able to perform their functions as described in this directive; and,

(4) Requiring supervisors to properly exercise their disciplinary authority.

b. Supervisors (and any other official with line authority) are responsible for:

(1) Maintaining standards of conduct and performance among the employees he or she supervises;

(2) Gathering, analyzing, and documenting the facts concerning each disciplinary or adverse action;

(3) Recommending and taking appropriate and timely disciplinary or adverse actions;

(4) Reviewing existing policies and recommending appropriate changes; and

(5) Counseling employees and keeping adequate documentation.

c. The Division of Personnel is responsible for:

(1) Providing advice and guidance to Headquarters (HQ) supervisors and management officials on disciplinary and adverse action matters; and advising on the appropriateness and procedural soundness of remedial actions;

(2) Reviewing existing policies and recommending appropriate changes;

(3) Providing guidance and assistance to Administrative Service Centers (ASC) on the provisions of this directive or related statutes, regulations/or precedent case decisions, when requested;

(4) Establishing and implementing reporting requirements for actions taken under or relating to this directive;

4.c.(4)

(5) Assisting (HQ) supervisors in the preparation of proposal notices and decision letters prior to issuance to assure appropriateness of penalties and statutory and regulatory compliance;

(6) The maintenance and retention of all Headquarters and Senior Executive Service (SES) formal disciplinary and adverse action files;

(7) Advising and assisting HQ employees relative to their rights on appeals and grievance procedures; providing information and interpretation of disciplinary and adverse action procedures, regulations, and statutes; and,

(8) Ensuring that the policies and procedures for administering disciplinary and adverse actions are brought to the attention of ASC Chiefs and are made available to all HQ employees; including notifying them where appropriate reference documents, regulations, and this directive are available for review.

d. The Administrative Service Centers are responsible for:

(1) Providing advice and guidance to appropriate field supervisors and management officials on disciplinary and adverse action matters and advising on the appropriateness and procedural soundness of such actions;

(2) Providing assistance in the preparation of notices of proposal and decision for field actions prior to issuance to ensure appropriateness of the penalty and statutory and regulatory compliance;

(3) Advising and assisting field employees relative to their rights and appeal/grievance procedures; providing information and interpretation of disciplinary and adverse action procedures, regulations, and statutes;

(4) Ensuring that the policies and procedures for administering disciplinary and adverse actions are brought to the attention of and made available to all field employees including notifying each employee where appropriate documents, regulations and this directive are available for review; and

(5) Reviewing existing policies and procedures concerning disciplinary and adverse actions and recommending appropriate changes to the Division of Personnel.

e. Employees are responsible for:

(1) Knowing the standards of conduct expected of them and

4.e.(1)

conducting themselves, on and off the job, in a manner which will reflect creditably on the Department and OSMRE;

(2) Asking the supervisor to explain any standard of conduct or performance that is unclear; and,

(3) Cooperating in investigations and furnishing testimony as required in 355 DM 1-5, Departmental Investigations.

5. Determining the Facts and Reportable Incidents.

a. Determining the Facts. The supervisor will examine the evidence to determine what actions are warranted. If sufficient evidence to provide a proper basis for initiating action is available from official sources (e.g., time and attendance records), the supervisor will use those sources as supporting documentation. Where such evidence is not readily available, administrative review will be made into noncriminal incidents or situations as soon as possible. Ordinarily this inquiry will be made by the appropriate line supervisor, except where the conduct is required by 355 DM 1-5 to be reported to the Office of Inspector General (OIG). Prior to conducting the review, the supervisor should seek advice from the servicing personnel office. When necessary, the employee who is alleged to have committed the offense and any other persons who may have pertinent information about the case should be interviewed and signed statements obtained as appropriate. Information will be developed impartially, and a reasonable effort will be made to reconcile conflicting statements by developing additional evidence. The information obtained should be documented. When any additional information is needed, the responsible personnel office representative will so advise the line manager.

b. Reportable Incidents. The Office of Inspector General must be notified immediately of serious misconduct, alleged violations of Departmental Standards of Conduct or of Federal, criminal or civil fraud statutes, or similar incidents involving employees. (See 355 DM 2 for further guidance on reportable incidents.) In such instances, local inquiry into further details should await concurrence or assumption of jurisdiction by the OIG. When retention of the employee concerned in a duty status may present a hazard to employees or property, the OIG should be notified of the need to remove the employee from the worksite pending investigation.

c. Using Official Investigation Reports.

(1) It may not be necessary or appropriate for a supervisor to inquire into an incident where sufficient evidence to provide a proper basis for initiating action is available from other official sources (e.g. investigative reports, court records, affidavits of witnesses, etc.).

5.c.(1)

(2) When management relies on facts developed from an official investigation or other official inquiry to support a proposed disciplinary or adverse action, extracts which are relied upon will be assembled for the evidence file which the employee or representative may review. Investigative reports emanating from the OIG may not be released without prior approval from that office.

d. Determining Appropriate Action.

(1) After determining the facts in a case, the initiating official should consider any extenuating or mitigating circumstances which may have some bearing on the situation, including past record and/or the table of penalties, in determining the proposed action. Before recommending disciplinary or adverse action, the official must consult the servicing personnel office as to its propriety.

(2) Servicing personnel offices will also assure, prior to the taking of any specific disciplinary actions, that a proposed action is not based on discrimination or other prohibited reasons.

e. Status of Employee Pending Inquiry or Investigation, or Pending Decision on Proposed Action.

(1) Ordinarily, the employee will be retained in a pay and active duty status in his or her position, and at current grade and salary, pending inquiry or investigation, or pending decision on a proposed action. When immediate action to remove the employee from the worksite may be required and voluntary leave or an alternative assignment is not possible, an indefinite suspension following the procedures of 5 CFR 752.404 (b)(3) (except for subparagraph (iii)) should be imposed. The basis of the indefinite suspension would be the need to have the employee away from the worksite pending inquiry or investigation. During the notice period, the employee will be placed in a nonduty, pay status. If there is reason to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed, the procedures provided in 5 CFR 752.404(d)(1) apply (this allows for a shortened notice period).

(2) The indefinite suspension must specify a completion point (e.g. acquisition of medical documentation sufficient to make an informed decision). The suspension cannot continue once the inquiry has been completed or medical information obtained.

6. Disciplinary Actions.

a. Actions Covered.

- (1) Oral admonishments.
- (2) Letters of warning.
- (3) Letters of reprimand.

6.a.(3)

b. Employees Covered.

(1) An employee in the competitive service who is not serving a probationary or trial period under an initial or new appointment or who has completed one year of current continuous employment in the same or similar positions under other than a temporary appointment limited to one year or less.

(2) An employee with competitive status who occupies a position under Schedule B of Part 213 of the Office of Personnel Management regulations on a nontemporary appointment.

c. Informal Actions. Oral admonishments and letters of warning are the first steps in constructive discipline. Such actions are taken by the supervisor for the purpose of correcting an employee's conduct, attitude, work habits or other factors which have a relationship to his or her employment. Such informal actions play an important part in the maintenance of proper discipline. These actions not only place an employee on notice about his/her misconduct but may be all that are necessary to correct behavior.

(1) Procedures.

(a) The employee should be counseled by the immediate supervisor and be advised of the specific infraction or breach of conduct, exactly when it occurred, etc. and be permitted to explain his or her conduct.

(b) If there is evidence of wrongdoing on the part of the employee, then the admonishment or letter of warning should be documented on a Memorandum For Record (MFR) which outlined the counseling session. ✓

(2) Records. Letters of warning as well as any documentation such as MFR's are retained in the supervisory file and are not maintained in the Official Personnel Folder.

d. Formal Actions (Letters of Reprimand).

(1) A formal written reprimand is appropriate for use when more stringent disciplinary action than an oral admonishment or letter of warning is warranted and the circumstances justify the inclusion of a record of the action in the employee's official personnel folder. The supervisor must contact the servicing personnel office prior to implementing the procedures outlined below.

6.d.(1)

(2) Procedures.

(a) When a supervisor determines that formal disciplinary action may be required to correct misconduct on the part of a subordinate employee, the supervisor should obtain available information concerning the alleged misconduct. The supervisor should then discuss the incident with the employee to:

1 insure that all the relevant facts are known to both parties;

2 afford the employee the opportunity to explain the basis for his or her actions, and;

3 advise the employee that disciplinary action is under consideration. Since disciplinary action could result from this interview, the employee must be provided the opportunity to be accompanied by a personal representative if he or she is a member of a bargaining unit and requests representation. If the employee presents a satisfactory explanation for his or her conduct, the matter will be closed and the employee so advised. If the employee fails to provide a reasonable explanation for the misconduct, the supervisor will prepare a Memorandum For the Record of the meeting and initiate appropriate disciplinary action.

(b) The supervisor must contact the Personnel Division or Administrative Service Center (ASC), and provide that office with a written description of the offense, in sufficient detail to enable one to understand fully the conduct for which the employee is being disciplined. Such criteria as time, place, dates, and events are recorded to support the incident resulting in the disciplinary action.

(c) The reprimand will be drafted by the immediate supervisor with the assistance of the servicing personnel office and will include a description of the offense as outlined above and, in the event the reprimand is a follow-up of previous offenses and the action is considered a continuation of constructive discipline, the former incidents will be cited. Additionally, if the employee failed to take any remedial action previously agreed to, that fact will be included.

(d) In cases where it is determined to be advantageous for preventive purposes, a warning will be included that future misconduct may result in a more severe disciplinary action.

(e) If appropriate, advice regarding assistance available to the employee for remedial purposes or as a means to help overcome the deficiency and avoid future recurrence should be incorporated into the letter. Additionally, the employee will be informed regarding any specific action required.

6.d.(2)(e)

(f) The letter must include information on the appropriate grievance channel which the employee may use to contest the reprimand.

(g) The reprimand will also contain a statement of the withdrawal provisions.

(3) Withdrawal of Reprimand.

(a) After two years of its issuance or the employee's leaving the Department (except in a transfer of function), whichever comes first, a reprimand for misconduct will be removed from the employees' official personnel folder and destroyed. If the employee's conduct so warrants, the reprimand may be withdrawn for destruction prior to two years. Where the reprimand was issued by the employee's current supervisor, the supervisor may withdraw it. If the employee's current supervisor did not issue the reprimand he or she may wish to consult with the previous supervisor who did issue it before withdrawing it.

(b) In determining whether a reprimand should be withdrawn early, consideration should be given to the fact that a withdrawn reprimand may not be used thereafter to support future charges.

(c) When a reprimand has been withdrawn early and destroyed, the supervisory official will so inform the employee in writing.

(d) At the time that a reprimand is withdrawn from the official personnel folder, a review should be made of personnel and supervisory records and files and all references to the reprimand be removed.

(4) Records. Copies of letters of reprimand and employee response, if any, are retained in the official personnel folder for two years unless removed earlier. In addition, a copy of the letter and any supporting documentation shall be maintained by the Servicing Personnel Office and furnished to appropriate officials for third party review upon their request and to the employee affected upon the employee's request.

7. Adverse Actions.

a. Actions Covered.

- (1) Suspensions,
- (2) Removals,
- (3) Reductions in grade or pay not at the employee's request,
- (4) Furloughs of 30 days or less,
- (5) Other actions that result in an involuntary separation.

7.a.(5)

b. Suspension for 14 Days or Less.

(1) Employees Covered.

(a) An employee in the competitive service who is not serving a probationary or trial period under an initial or new appointment or who has completed one year of current continuous employment in the same or similar positions under other than a temporary appointment limited to one year or less.

(b) An employee with competitive status who occupies a position under Schedule B of Part 213 of the Office of Personnel Management regulations on a nontemporary appointment.

(2) Exclusions.

(a) An individual in the Senior Executive Service (SES).

(b) A reemployed annuitant.

(c) A National Guard Technician.

(d) An employee in the excepted service except an employee with competitive status occupying a position under Schedule B of Part 213 of the regulations of the Office of Personnel Management.

(3) Procedures.

(a) An employee against whom a suspension for 14 days or less is proposed is entitled to:

1 an advance written notice from the supervisor or other proposing official stating the specific reasons for the proposed action. Such notice must be reviewed by the servicing personnel office prior to issuance. The notice of proposal must inform the employee of his/her right to review the material which is relied on to support the reasons for action given in the notice;

2 a reasonable time, but not less than 24 hours, to answer orally and/or in writing and to furnish affidavits and other documentary evidence in support of the answer. An extension of the time limit for reply should be granted for good cause.

3 be represented by an attorney or other representative; and,

4 a written decision describing the specific reasons for that decision at the earliest practical date.

7.b.(3)(a)4

(b) Representation by an attorney or other representative pursuant to 370 DM 752, 3.9 or in accordance with applicable labor-management agreements. Employees may not be represented by:

1 an individual whose activities as a representative would cause a conflict of interest or position;

2 an employee whose priority work assignments preclude his or her release; or,

3 an employee whose release would give rise to unreasonable costs to the Government.

(c) Decision. The official designated to issue the decision must consider only the reasons specified in the notice of proposed action and must consider any reply made by the employee or his/her representative received within the time allotted for reply. The notice of decision must be delivered to the employee at or before the time the action will be effective. The notice of decision will inform the employee of applicable grievance rights and the time limits for submission of a grievance. The decision will be made by a higher level official than the person who proposed the action.

(4) Records. Copies of the notice of proposed action, the answer of the employee if written, a summary if made orally, the notice of decision and reasons, and the SF-50 effecting the suspension, together with any supporting material, shall be maintained and furnished to appropriate officials for third party review upon their request and to the employee affected upon the employee's request.

c. Suspensions for More Than 14 Days, Reduction in Grade or Pay, Furlough for 30 Days or Less, or Removal.

(1) Employees Covered.

(a) An individual in the competitive service who is not serving a probationary or trial period under an initial or new appointment or who has completed one year of current continuous employment under other than a temporary appointment limited to one year or less.

(b) A preference eligible in the excepted service, who has completed one year of current continuous service in the same or similar positions.

(c) An employee with competitive status who occupies a position under Schedule B of Part 213 of the Office of Personnel Management regulations on a nontemporary appointment.

7.c.(1)(c)

(2) Exclusions.

(a) An employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the United States Senate.

(b) A Presidential appointee.

(c) An employee in the excepted service who is not a preference eligible, except an employee with competitive status occupying a position in Schedule B of Part 213 of the regulations of the Office of Personnel Management.

(d) An individual serving a probationary or trial period under an initial or new appointment.

(e) An employee on a temporary appointment limited to one year or less.

(f) A reemployed annuitant.

(3) Procedures.

(a) An employee against whom action is proposed is entitled to:

1 at least 30 days advance written notice from the supervisor or other proposing official, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed (see paragraph 8a below), stating the specific reasons for the proposed action. The proposed notice must be reviewed by the servicing personnel office prior to issuance. (Contents of the advance notice are outlined in 370 DM 752,3.5C);

2 a reasonable time, but not less than 7 days to answer orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer;

3 representation by an attorney or other representative; and,

4 a written decision and the specific reasons at the earliest practical date;

5 notice of proposed action in a furlough - when some, but not all employees in a given competitive level are being furloughed.

7.c.(3)(a)5

The notice of proposal shall state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough;

6 review the material relied on to formulate the charge(s). An employee against whom action under this directive is proposed must be informed of his or her right to review the material on which the proposal was based. Material which cannot be disclosed to the employee or his or her representative or designated physician, under section 297.108(e)(1) of Part 297 of the regulations of the Office of Personnel Management, may not be used to support the reasons in the notice. The employee must be given a reasonable amount of official time to review the material relied on to support the proposed action and to prepare an answer and to secure affidavits, if the employee is otherwise in an active duty status.

(b) Official to hear reply. The official designated to hear the employee's answer must have authority either to make or recommend a final decision on the proposed adverse action.

(c) Representatives. An employee has a right to representation pursuant to 370 DM 752,3.9 or in accordance with applicable labor-management agreements. Employee may not be represented by:

1 an individual whose activities as a representative would cause a conflict of interest or position;

2 an employee whose priority work assignments preclude his or her release; or,

3 an employee whose release would result in unreasonable costs to the Government.

(d) Decision. The official designated to issue the decision must consider only the reasons specified in the notice of proposed action and must consider any reply made by the employee or his or her representative. The notice of decision must be delivered to the employee not less than 24 hours prior to the effective date of the action. A final decision must be made by a higher level official than the person who proposed the action. Content requirements of the decision notice are outlined in 370 DM 752,3.8C.

(4) Records. Copies of the proposed action, the answer of the employee if written, a summary if made orally, the notice of decision and reasons, and the SF-50 effecting the adverse action, together with any supporting material, should be maintained and furnished to appropriate officials for third party or Merit Systems Protection Board review upon request and to the employee affected upon the employee's request.

7.c.(4)

8. Specific Situations.

a. When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed, the employee may be given less than 30 days advance written notice. The employee may be required to provide an answer to the proposed action, with affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable. In no event, however, shall the employee be allowed less than seven days. When the circumstances require immediate action, the employee may be placed in a nonduty status with pay for such time as is necessary to effect the action.

b. Under ordinary circumstances, an employee whose removal or suspension (to include indefinite suspension) has been proposed shall remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances where it is determined that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, consideration should be given whether any of the following alternatives are feasible:

(1) carrying the employee on appropriate leave (annual, sick, leave without pay, or absence without leave) if he or she is voluntarily absent for reasons not originating with the organization;

(2) curtailing the notice period when the provisions of 5 CFR 752.404(d)(1), the "crime provision," can be invoked. This provision may be invoked even in the absence of judicial action if there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed; or

(3) placing the employee in a paid nonduty status during all or part of the advance notice period if none of the other alternatives is available.

9. Penalties. 370 DM 752,3, Appendix A, sets forth penalties which the Department of the Interior views as reasonable guides for particular offenses. The range of the discretionary penalties listed should be used as a general guide in administering discipline to assure that comparable disciplinary actions are taken for comparable offenses. While the table is provided only as a guide, experience indicates that the reasons for any deviation from the suggested penalties should be fully explained in the notice of proposed disciplinary/adverse action. The fact that an offense is not listed in the table does not mean that a penalty cannot be imposed

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if the offense is committed. In such instances, a reasonable penalty can be determined through comparison with those listed or based on previous agency actions.

10. Solicitor's Office Coordination. Servicing personnel offices are encouraged to obtain Solicitor's Office review and comment on appealable actions prior to delivery to the employee to insure that the decision is procedurally sound and legally supportable.

11. Reporting Requirements. To be developed.

12. References.

- a. 370 DM 752, Discipline and Adverse Actions.
- b. 355 DM 1-5, Departmental Investigations.
- c. 370 DM 711, Labor Management Relations.
- d. 370 DM 771, Employee Grievances.
- e. OPM-5, Delegation of Authority.

13. Effect On Other Documents. Supersedes Directive PER 21-1, Transmittal Number 228, dated August 2, 1984.

14. Effective Date. Upon Issuance.

15. Contact. Division of Personnel, Branch of Personnel Policy and Evaluation, FTS 343-1010.