

Lesson Content

Avoiding Formal Discipline

Introduction

Open communication with your employees every day is your best line of defense to avoid disciplinary problems. Practicing the following suggestions will help you minimize the need to use the disciplinary system:

- Show that you have respect for each employee as an individual.
- Recognize achievements at every level in your unit.
- Hear each employee out, even when he or she disagrees with you.
- Keep everyone informed of the rules and of any changes to those rules as they arise. Each employee should understand not only his or her duties, but also the work practices, safety and security requirements, and administrative practices common to your unit.

Deciding to take disciplinary action

Even if you do all the right things, you may find it necessary to take disciplinary action from time to time. In those instances you should:

- Re-emphasize the rules promptly to the employee. Correcting behavioral problems early reduces the need for formal discipline.
- Ensure that any disciplinary action taken is fully justified by the facts and circumstances and is consistent with activity policy, precedent, and any applicable labor agreement.
- Consult with your DLA Human Resources Center (DHRC) Employee Relations Specialist about the proper interpretation and application of regulations and rules.

Conduct Versus Performance Problems

Introduction

If a problem persists despite your attempts at open communication, you must first decide whether it is a conduct or performance problem. We correct misconduct through the use of a constructive disciplinary system. We correct performance problems through the performance management system, discussed in the Performance Management module in this supervisory training series.

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Conduct problems

Conduct problems usually occur when an employee knows what is required or expected but fails to adhere to requirements. Conduct problems involve a violation of the following:

- Law (e.g., stealing Government property)
- Regulation (e.g., failing to report for duty/absence without leave (AWOL)) (See the [DLA Instruction](#), "Leave.")
- Published policy (e.g., refusing to wear protective equipment to handle hazardous materials)
- Oral instructions from competent authority (e.g., refusing to answer the telephone after the supervisor of the unit tells all employees to answer the telephones by the third ring)

Performance problems

Performance problems usually involve an employee who is unable to meet requirements, either known or unknown. Performance problems involve aspects of the employee's work such as

- quality
- quantity, or
- timeliness.

Mixed cases

In some cases, you may find both conduct and performance problems together. In mixed cases, or if you are not sure, consult your DHRC Employee Relations Specialist.

Before Taking Disciplinary Action

Introduction

Before taking disciplinary action—an action initiated by a supervisor primarily to correct employee misconduct—you should conduct a timely, thorough, and objective preliminary inquiry to determine whether disciplinary action is appropriate. A preliminary inquiry will help you determine

- whether an offense has occurred
- who is at fault, and
- what corrective measures should be taken.

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Conducting a preliminary inquiry

The following table gives the steps a supervisor should take in conducting a preliminary inquiry.

Step	Action
1	Gather all the evidence—affidavits, witness statements, material evidence—quickly and objectively.
2	Determine whether the incident was a violation of law, regulation, published policy, or oral instruction from competent authority.
3	Determine if the employee is covered by a negotiated bargaining agreement <ul style="list-style-type: none">• If <u>yes</u>, read the agreement and comply with it. Then proceed to step 4.• If <u>no</u>, continue with step 4.
4	Investigate the employee's side of the story and determine if there were mitigating circumstances.
5	Determine the seriousness of the employee's offense and decide if it warrants disciplinary action.
6	Discuss your findings with the employee.
7	Decide whether to proceed with disciplinary action. <u>Note</u> : You may find that the necessary correction can be attained by means other than a formal disciplinary action.

When discipline may not be appropriate

Even though a work procedure or administrative requirement has been violated, there are times when mitigating circumstances make formal action less appropriate. Common circumstances that may affect the extent to which formal action is appropriate include the following:

- Failure of the employee to understand and follow instructions properly
- Failure of the supervisor to make his or her instructions clear to the employee
- An emotional disturbance that makes it difficult for an employee to control his or her behavior
- Burdensome personal problems
- Inadequate job training
- Medication taken under proper medical supervision

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- Physical limitations

Note: There may be situations when the Agency would offer or order and pay for a medical exam. Such circumstances require special consideration and must be discussed fully with your servicing DHRC Employee Relations Specialist.

When discipline is appropriate

Discipline is appropriate when

- extenuating factors have been considered, but circumstances warrant taking disciplinary action
- you can provide evidence that actionable misconduct—conduct that has an adverse impact on the efficiency of the Agency—took place, or
- there is proof of nexus (connection) between the misconduct and the efficiency of the service.

Proof of nexus

With regard to proof of nexus, you should be prepared to provide evidence that one of the following conditions is true. The employee's misconduct adversely impacts the ability of

- the employee to do his or her job
- other employees to do their jobs, or
- DLA to carry out its mission.

In certain circumstances, nexus can be presumed. Examples include the charges of AWOL and insubordination. The courts have also held that there is a legitimate presumption of nexus in certain cases of off-duty misconduct such as

- use of deadly force, and
- egregious sexual misconduct (e.g., child abuse).

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Taking Disciplinary Action

Introduction

As a Federal manager, it is your responsibility to administer discipline in accordance with the philosophy of employee correction called “constructive discipline.” After you complete the preliminary inquiry, a broad range of actions is available to choose from. Your servicing DHRC Employee Relations Specialist can best advise you concerning local precedent and policy.

Constructive discipline

The key concepts of constructive discipline are that the disciplinary action should be

- primarily corrective, not punitive
- progressive, i.e., from less severe to more severe, and
- taken only on actionable misconduct.

Counseling

Counseling an employee is not considered a formal disciplinary action but is often the best choice for the first instance of a minor problem. When counseling, it would be appropriate to describe to the employee the correct behavior and to make a memorandum for record (MFR) to be included as part of your informal supervisory files. Both you and the employee should initial the MFR, and a copy should be provided to the employee. If an employee violates the same rule or procedure after being counseled, you have a defensible position for imposing a more serious consequence.

Categories of disciplinary actions

Disciplinary action is divided into two broad categories:

- Informal action
- Formal action

Informal Actions

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Informal actions require the least paperwork, but the employee can still grieve the action under either the Agency administrative grievance process or the negotiated grievance process, if the employee is in a bargaining unit position. Your servicing DHRC Employee Relations Specialist will assist you in deciding which grievance process is appropriate.

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Examples of informal disciplinary actions

The following are examples of informal disciplinary actions:

- Oral admonishment
- Letter of instruction
- Letter of requirement
- Letter of warning

Oral admonishment

The least serious disciplinary action, an oral admonishment, is an informal action. An oral admonishment is used to informally call to an employee's attention a deficiency in conduct, work habits, or similar matters for the purpose of correcting the behavior. The following are key concepts about an oral admonishment:

- An oral admonishment is not considered a "first" offense in determining subsequent allowable penalties.
- An MFR is made and included with your supervisory files.
- No prior notice is required, and the employee has no right to reply.
- The action is recorded only as a memo in the employee record and is not placed in the employee's Official Personnel File (OPF).
- The employee can seek review through administrative grievance procedures or negotiated grievance procedures, as appropriate.

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Conducting an oral admonishment

The following table gives the steps a supervisor should take in conducting an oral admonishment.

Step	Action
1	Set up a timely, informal meeting and ensure privacy.
2	Explain the specific infraction, including when it occurred.
3	Permit the employee to explain.
4	Determine whether oral admonishment is appropriate. <ul style="list-style-type: none">• If <u>yes</u>, go to step 5.• If <u>no</u>, the process is complete.
5	Inform the employee that this is an oral admonishment and describe the desired behavior.
6	Create an MFR for the employee's record that an oral admonishment was given and include the date, the reasons, and the desired behavior.
7	Sign and initial the MFR and ask the employee to sign. If the employee refuses to sign, make a note of the refusal on the memo and provide a copy of the memo to the employee.

Formal Actions

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Formal actions are recorded in an employee's OPF and are divided into two categories based on the avenues for review open to an employee who has been subjected to this kind of penalty.

- Nonappealable formal disciplinary actions
- Appealable adverse actions

Nonappealable formal disciplinary actions

Nonappealable formal actions are disciplinary actions that can be grieved but cannot be appealed to the Merit Systems Protection Board (MSPB). Employees who believe they have been wrongly disciplined can grieve through the Agency administrative grievance

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procedure or the negotiated grievance procedure, as appropriate. Examples of nonappealable formal actions are

- reprimands, and
- suspensions of 14 or fewer calendar days.

Appealable adverse actions

Appealable adverse actions are disciplinary actions that have the most serious consequences for employees. Employees who believe that penalties have been improperly applied to them have the right to appeal to the MSPB or to grieve through the negotiated grievance procedure, if applicable. Examples of appealable adverse actions are

- suspensions for more than 14 calendar days
- demotions
- removals, and
- furloughs of 30 days or less.

Examples

The following are examples of formal actions:

- Reprimand
- Suspension or letter of discipline
- Demotion
- Removal

Reprimand

A reprimand is a one-step procedure used for minor offenses and may be the next step when the oral admonishment does not correct the behavior. A reprimand is a formal, written action that remains in the employee's OPF for a period of time not to exceed 2 years.

Note: For bargaining unit employees

- the time period may be different, or
- a different procedure may have been negotiated.

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Consult the applicable bargaining unit agreement.

Suspension or letter of discipline

A suspension is a temporary enforced absence from duty in a non-pay status. A suspension is used for significant misconduct or for repeated lesser infractions.

In lieu of a short suspension, supervisors have authority to issue a letter of discipline; however, this form of discipline is not used often in DLA. Specific instructions for preparing a letter of discipline are in the **DLA Instruction**, "Maintaining Discipline."

Note: The use of alternative forms of discipline such as the letter of discipline may be dictated by the terms of any applicable bargaining unit agreement.

Removal

Removal is usually the action of last resort. It is most often used when other disciplinary measures have failed to produce the behavior desired and in situations that are so serious that less severe corrective action is inappropriate.

Notice of proposed action

With the exception of a reprimand, all formal disciplinary actions have specific procedural guidelines that must be followed in preparing the written notice of proposed action:

- Consult the servicing DHRC Employee Relations Specialist on these matters to
 - determine appropriate disciplinary action
 - determine whether the employee would be in an active duty status during the notice period, and
 - ensure all required information is in the letter and that the letter is in the proper format.
- State the proposed penalty.
- State the specific charge(s).

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- State all the specific violation(s) including time, date, names, place, circumstances, etc. that support the charge(s).
- Provide an analysis of the relevant Douglas Factors (next lesson).
- Inform the employee of his or her right to review the material that supports the reasons for the action.
- Inform the employee of his or her rights with respect to the proposal, i.e., the right to reply, the right to representation, and the right to view all material used to support the proposed action.

Note: Bargaining unit agreements may have negotiated other information that must be included in a proposed disciplinary action.

The Douglas Factors

Introduction

The MSPB has listed 12 factors it considers generally relevant but not exhaustive in selecting an appropriate penalty. They are commonly referred to as the Douglas Factors. Because each discipline case is unique, different factors will apply with varying weight, depending on the particular circumstances of the case.

Three of the [Douglas Factors](#) address the relationship between the employee's position in the Agency and the seriousness of the offense:

- The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical, or inadvertent, or was committed maliciously or for gain, or was frequently committed
- The employee's job level and type of employment, including supervisory or fiduciary role, contacts with public, and the prominence of the position
- The notoriety of the offense or its impact upon the reputation of the Agency

Four Douglas Factors deal with the employee's personal situation:

- The employee's past disciplinary record

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- The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability
- The 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
- The potential for the employee's rehabilitation

The last five Douglas Factors deal with management's responsibility to ensure equity:

- Consistency of the penalty with those imposed upon other employees for the same or similar offenses
- Consistency of the penalty with any applicable Agency table of penalties
- The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question
- 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 the matter
- The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others

Selecting a proposed penalty

The **DLA Instruction**, "Maintaining Discipline," includes a table of offenses and recommended penalties. You will find it useful in guiding your selection of an appropriate penalty. You must also seek guidance on the appropriate penalty from the servicing DHRC Employee Relations Specialist.

Special situations

In the following special situations, you must work closely with the servicing DHRC Employee Relations Specialist to determine the appropriate response:

- If you suspect alcohol, drug abuse, or personal problems to be a contributing factor for the misconduct, you may refer the employee to the [Employee Assistance Program \(EAP\) Counselor](#).
- In a few cases, an employee's misconduct may represent not only an administrative problem but also a possible criminal violation. In some cases, reassignment or indefinite suspension until criminal procedures are completed is the appropriate response.

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Role of the Deciding Official

Deciding official

The employee is normally required to reply to the next higher level supervisor, the deciding official, either orally or in writing.

If you are the deciding official to whom the employee must reply, keep the following points in mind:

- If new facts or circumstances are brought to light that may explain the employee's behavior, make additional inquiries before you make a final decision.
- If there is reasonable doubt as to the propriety of the proposed action, consider whether canceling or reducing the action would be appropriate.
- Consider the proposing official's motivation in proposing the action.

Oral reply

If an oral reply is made to you, keep the following points in mind:

- If the discussion seems casual, ask whether this discussion should be considered a reply.
- Have the discussion in private, give the employee your undivided attention, and keep an open mind. Remember that the employee is entitled to have a representative of his or her choice in the meeting.
- Make notes of what the employee and the employee's representative say. Afterwards, record the discussion in an MFR, sign and date it, and give a copy to the employee.
- Do not advise the employee what the final decision is likely to be at the time of the reply.

Notice of decision

In preparing the notice of decision, remember the following:

- Specify any charges that have been sustained by the evidence.
- Specify any charges that have not been sustained by the evidence.

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- Refer to the employee's reply or replies.
- Do not argue with the employee's reply; however, you may respond to those points of the employee's reply with which you disagree.
- Do not introduce any charges not cited in the original proposal letter.
- Do not use the word "guilty" or imply that the employee has failed to prove his or her innocence. Your responsibility is to show that the action is for "good cause."
- Inform the employee of his or her right to seek review of the action and state the appropriate avenue(s) of review, i.e., grievance or appeal.

Note: You must consult the servicing DHRC Employee Relations Specialist on the

- contents of the decision letter
- proper effective date of the action, and
- best way to deliver the notice of decision.

Restoring the Relationship

After a disciplinary action

Once you have taken a disciplinary action, your employee is likely to be resentful and fearful of the future. You want to restore the relationship as quickly as possible. Here are some things you can say and do to overcome negative feelings:

- Reassure the employee at the time of the disciplinary action that correction of the problem is your goal and that if the behavior you have described as acceptable is observed, the past will not influence the future.
- Observe the employee in the same way as you do other members of your staff, not more closely and not less closely.
- Make an effort to provide positive reinforcement when improvements are observed.
- Offer special assistance, if you both think that will help. Make it clear that you want the employee to be successful in correcting the misconduct.
- Conduct a follow-up counseling session at a point in time you have both agreed to so that progress toward your objective is tracked.

- END -