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ADS Chapter 487

Disciplinary and Adverse Actions Based Upon Employee Misconduct - Civil Service

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 ADS 487 – Disciplinary and Adverse Actions Based Upon Employee Misconduct –
 Civil Service
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ADS 487 – Disciplinary and Adverse Actions Based On Employee Misconduct – Civil Service

487.1 OVERVIEW

Effective Date: 07/31/1998

This chapter provides the policy directives and required procedures for the administration of disciplinary and adverse actions as a result of Civil Service employee misconduct. It applies to employees covered under [5 Code of Federal Regulations \(CFR\) 752](#), specifically sections [752.201\(b\) and \(c\)](#), and [752.401\(c\) and \(d\)](#).

USAID normally takes performance-based actions under the implementing regulations of [5 CFR 432](#); however when both misconduct and performance problems are intertwined, the Agency must take disciplinary action under the procedures of this chapter.

For employees within the American Federation of Government Employees (AFGE) bargaining unit, the provisions of the negotiated agreement take precedence over any conflicting procedures in this chapter.

487.2 PRIMARY RESPONSIBILITIES

Effective Date: 07/31/1998

a. The **Office of Human Capital and Talent Management, Employee and Labor Relations Division (HCTM/ELR)** is responsible for providing advice and assistance to managers and supervisors, Bureau/Independent Office administrative management staffs (AMS), and employees concerning misconduct, discipline, and alternative discipline.

b. **Supervisors** are responsible for

1. Ensuring subordinates understand the standards of conduct they must adhere to and taking appropriate action when subordinates fail to meet those standards;
2. Providing an atmosphere conducive to good working relationships;
3. Taking preventive measures, such as counseling subordinates to preempt the need for disciplinary action;
4. Keeping systematic records of any events, dates, discussions with employees, letters, etc., concerning matters with potential for developing into a disciplinary problem;
5. Initiating corrective action for employee misconduct based on investigative reports, other documentation, or personal knowledge of facts and circumstances warranting such action;

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6. Implementing the appropriate level of discipline when other preventive measures have proven unsuccessful;
7. Consulting HCTM/ELR, prior to proposing or deciding to take a disciplinary action, to ensure that they are consistent with federal statute and regulations, as well as Agency policies and required procedures;
8. Determining when alternative discipline, in lieu of traditional discipline, is appropriate.

487.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

487.3.1 Standards of Conduct

Effective Date: 07/31/1998

The Agency expects its employees to adhere to the basic standards of conduct and integrity of public service (see [5 CFR 735](#) and [5 CFR 2635.101](#)). The Agency will make every effort to counsel employees and give constructive feedback regarding their misconduct to avoid situations in which there is no alternative to discipline.

487.3.2 Prohibition Against Discrimination

Effective Date: 07/31/1998

Under no circumstances will USAID take a disciplinary action based on race, sex, age, religion, color, national origin, or physical or mental disability, nor be in retaliation for a previously filed equal employment opportunity (EEO) complaint or grievance. Also prohibited are actions based on marital status or partisan political beliefs, affiliations, or activities.

487.3.3 Authority to Dispense Disciplinary Action

Effective Date: 09/28/2009

The employee's immediate supervisor will propose disciplinary or adverse action and the supervisor's immediate superior will be the Deciding Official. If it is inappropriate for the employee's supervisor to propose the discipline/adverse action, or inappropriate for the supervisor's immediate superior to decide the disciplinary/adverse action, the responsibility will fall to the next higher level supervisor in the employee's chain of command.

In cases of Letters of Reprimand, the Proposing and Deciding Officials will be the same individual.

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487.3.4 Traditional Discipline

Effective Date: 09/28/2009

Traditional discipline is formal chastisement designed to correct unacceptable behavior that has had a negative impact on the efficiency of the Federal Civil Service. It can take the form of a written reprimand, suspension without pay, or adverse action.

Supervisors are responsible for setting clear rules and management expectations of employee conduct. Supervisors should restate these rules and expectations to any employee whose behavior demonstrates a lack of understanding. Such counseling sessions are not disciplinary in nature, but rather are intended to communicate helpful information. Before imposing discipline, supervisors must ensure that their employees understand the rules.

The Agency reserves disciplinary action for those individuals who engage in misconduct even while aware, or reasonably should have been aware, that their behavior was unacceptable in the Federal Civil Service.

The Agency uses traditional discipline to deter the employee from repeating the misconduct, and to deter others from similar actions by demonstrating that management takes misconduct seriously.

487.3.4.1 Reasonableness of Action

Effective Date: 07/31/1998

The Agency must evaluate each situation on the basis of its own factual circumstances to ensure that the action supervisors and Deciding Officials take is reasonable. To aid in the selection of an appropriate penalty, supervisors should review the [Table of Offenses and Penalties](#) included with this chapter. The Table of Offenses and Penalties is not all-inclusive and is only one guide management should consider in determining the appropriate penalty.

487.3.4.2 Progressive Penalties

Effective Date: 07/31/1998

The Agency should impose the least serious penalty for an employee's first offense and more serious forms of discipline for repeated offenses of misconduct. The penalty should be appropriate to the offense, and the supervisor, in consultation with HCTM/ELR, will determine the appropriate severity of the discipline.

For more serious first offenses, such as repeated or extended Absence Without Leave (AWOL), criminal acts, and filing false travel claims, more severe discipline may be warranted. Repeated infractions indicate that previous disciplinary action was insufficient to effect the desired change. In such cases, supervisors will propose more severe corrective action (see [Table of Offenses and Penalties](#)).

Additionally, supervisors must recognize that there may be situations of misconduct so serious that the first instance of such misconduct warrants the employee's removal from federal service.

487.3.5 Alternative Discipline

Effective Date: 09/28/2009

In some circumstances, supervisors may offer employees a choice of negotiating an alternative discipline agreement. Alternative Discipline is any form of action taken to correct behavior other than the traditional disciplinary methods suggested in the [Table of Offenses and Penalties](#).

The Agency considers alternative discipline to address a situation where traditional discipline would otherwise have been used. This optional approach includes a variety of both punitive and non-punitive remedial corrective actions. In cases where the only appropriate penalty is removal, or where the employee's misconduct is so harmful to the Agency, supervisors must **not** use alternative discipline. The decision to use alternative discipline rests solely with management.

Examples of alternative discipline include, but are not limited to:

- Imposing a fraction of a pre-determined disciplinary suspension and holding the remainder in abeyance pending the employee's successful completion of an alternative discipline agreement;
- Offering employees a choice of suspension without pay or remaining on the job after voluntarily signing an agreement admitting fault or wrongdoing;
- Incrementally served suspensions;
- Donating leave under the Leave Transfer Program in lieu of suspension;
- Short suspensions held in abeyance;
- Negotiated resignation/retirement in lieu of removal;
- Agreement to undertake and complete counseling in lieu of traditional discipline;
- Accepting Leave Without Pay (LWOP) or forfeiture of annual leave in lieu of initiating formal disciplinary action; or
- Other mutually agreed upon corrective actions that promote the efficiency of the service.

Supervisors who are considering using alternative discipline must use the following criteria:

- The misconduct warrants a penalty less than removal from the Federal service and the penalty is not mandated by law;
- The Deciding Official determines that alternative discipline has a good probability of preventing further misconduct;
- The employee admits to being engaged in the identified misconduct, accepts responsibility for it, and agrees not to repeat the misconduct; and
- The employee agrees to waive any and all rights to grieve, appeal, complain, or otherwise contest the corrective measures the Agency implements as a result of the terms and/or conditions of an alternative discipline agreement.

Supervisors have the option of completing a disciplinary action through the decision phase and then enter into an alternative discipline agreement. If an employee violates the terms of an alternative discipline agreement, the supervisor must initiate one of the following three disciplinary options:

1. Impose the pre-determined penalty that had been held in abeyance;
2. Initiate formal disciplinary action upon violation of the agreement; or
3. Immediately impose the traditional penalty based on the employee's intentional waiver of due process rights.

487.3.6 Disciplinary and Adverse Action

Effective Date: 07/31/1998

Supervisors considering taking disciplinary or adverse action must consult HCTM/ELR to ensure that the action is appropriate and warranted. HCTM/ELR must review letters of reprimand, notices of proposed suspensions or adverse actions, and draft decision letters prior to issuance to the affected employee. This review will include the merits of the case and overall compliance of the disciplinary action being considered with legal, regulatory, and contractual requirements. Prior to proposing an adverse action, HCTM/ELR will consult with the Office of the General Counsel (GC) regarding any legal issues that may be involved.

The purposes of discipline are to correct inappropriate or unacceptable conduct by informing the employee of what is correct and/or of expected behavior; and establish a record of progressive discipline to support later disciplinary or adverse actions, if they prove necessary. Discipline can be either informal or formal. Informal discipline is an oral or written warning/admonishment that communicates or emphasizes a rule to an employee. Informal discipline is retained by the supervisor and is not made a part of the employee's official record. Formal discipline, such as a written reprimand, is an official sanction taken against an employee for misconduct, and a copy is scanned for inclusion in the employee's Electronic Official Personnel File (e-OPF).

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487.3.6.1 Proposing Official

Effective Date: 07/31/1998

Any supervisor or manager may propose formal disciplinary or adverse action as a result of personal knowledge, receipt of an investigative report, or other documentation concerning an act or behavior by an employee which may be grounds for such action. A Bureau/Independent Office administrative officer may propose a suspension when the supervisor or manager who would normally propose the action is unavailable due to reassignment, TDY, leave or similar reason. They may also propose action based on an investigative report, civil or criminal proceedings, or other circumstance where the events occurred away from the employee's normal duty station.

487.3.6.2 Deciding Official

Effective Date: 07/31/1998

For letters of reprimand, the Proposing and Deciding Official will be the same person. For suspensions or other adverse actions, the Deciding Official will be the next higher level supervisor or manager, unless the Proposing Official reports to the Office of the Administrator, in which case the Deputy Assistant Administrator for Human Capital and Talent Management will be the Deciding Official.

487.3.6.3 Disciplinary Actions

Effective Date: 07/31/1998

a. Reprimand. A reprimand is a written statement from a supervisor indicating that the employee has committed some act of wrongdoing. The supervisor first drafts a proposed letter of reprimand, to which the employee will have three calendar days to reply, orally and/or in writing. After considering the employee's response, the supervisor will decide whether the formal letter of reprimand is warranted and inform the employee accordingly. If warranted, the supervisor will scan the letter of reprimand and any employee response into the employee's e-OPF. A letter of reprimand will include:

- The reasons for its issuance;
- The length of time (from one to two years) that the letter will be in the e-OPF;
- The right of the employee to file a grievance under administrative or negotiated grievance procedures.

b. Suspension of 14 Calendar Days or Less. A suspension without pay is a significant disciplinary action. Suspensions remain a permanent part of the e-OPF. A letter proposing a suspension of 14 calendar days or less will include:

- The specific reasons for the proposed suspension, including times, places, names, dates, and relevant circumstances;

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- Previous efforts to correct relevant misconduct during the past two years, unless the action is serious enough in nature to warrant suspension on the first offense (see [Table of Offenses and Penalties](#));
- The right of the employee to respond orally and/or in writing to the Deciding Official within seven work days of the date of the proposed suspension. (The Deciding Official will determine whether to grant an employee's request for more time to respond);
- The right of the employee to no more than 16 hours of official time to prepare a written and/or oral response. (The Deciding Official will decide whether to extend official time beyond 16 hours when the issues are difficult or complex, the material voluminous, or for other extenuating circumstances.);
- The right of the employee to examine material used as a basis for the action;
- The right of the employee to be represented by an attorney or other representative, with the cost borne by the employee;
- The right of the employee to receive a written decision from the Deciding Official at the earliest practicable date. The Deciding Official will consider only the reasons specified in the letter of proposed action, and any answer made by the employee and/or their representative. Any decision to suspend will be effective no sooner than 7 calendar days from the day after the decision is issued; and
- The right of the employee to file a grievance under administrative or negotiated grievance procedures.

487.3.6.4 Adverse Actions

Effective Date: 09/28/2009

An adverse action is a personnel action USAID takes as the result of an administrative decision that results in an employee's removal, suspension for more than 14 calendar days (including an indefinite suspension), furlough for 30 calendar days or less, or a reduction in grade or pay. It is only taken for such cause as will promote the efficiency of the Federal service. The decision to take an adverse action must only be made after a thorough analysis of the Douglas factors cited in **487.3.6.6**. An employee will receive a minimum of 30 days advanced written notice prior to the effective date of an adverse action.

A proposed adverse action notice will include:

- a. The specific charges and reasons why the action is being proposed;

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- b.** The right of the employee to respond to the Deciding Official, orally and/or in writing, within 10 work days of the date of the proposal. (The Deciding Official will decide whether to grant an employee's request for additional time to respond.);
- c.** The right of the employee to reasonable official time of no more than 32 hours to prepare a response to the Deciding Official. (The Deciding Official will decide whether to extend official time beyond 32 hours when the issues are difficult or complex, the material voluminous, or for other extenuating circumstances.);
- d.** The right to examine all material used as the basis for the proposed action; and
- e.** The right of the employee to be represented by an attorney or other representative, with the cost of representation borne by the employee.

The decision letter will

- a.** Be written and signed by the Deciding Official;
- b.** Address the reasons specified in the notice of proposed action and take into consideration any response made by the employee and/or the employee's representative; and
- c.** Specify the employee's right of appeal to the Merit Systems Protection Board (MSPB) and, if applicable, to file a grievance under the negotiated grievance procedure, but not both. The letter must also include the address of the appropriate MSPB office for filing the appeal, a copy of the MSPB's regulations, and a copy of the MSPB's appeal form.

487.3.6.5 Exceptions to the Notice Period and Opportunity to Prepare a Response

Effective Date: 07/31/1998

The Agency may reduce the 30 calendar day advance written notice period for adverse actions when management has reasonable cause to believe that the employee may be found guilty of a crime punishable by a sentence of imprisonment. Under such conditions, the employee will have 7 calendar days to answer orally and/or in writing to the charges (see [5 USC 7513](#)).

No advance notice is required for furloughs for 30 calendar days or less without pay when the furlough is due to unforeseen circumstances such as sudden breakdowns in equipment or sudden emergencies requiring immediate curtailment of activities.

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487.3.6.6 Factors to Consider in Selecting Penalties in Adverse Action Cases

Effective Date: 09/28/2009

USAID management will consider the following mitigating or aggravating factors, known as Douglas factors, in selecting penalties in cases of employee misconduct:

1. 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, or inadvertent; committed maliciously or for gain; or frequently repeated;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and the prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow employees, and dependability;
5. 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;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with the Agency's table of penalties;
8. The notoriety of the offense or its impact upon the reputation of the Agency;
9. The extent to 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;
10. Potential for the employee's rehabilitation;
11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, bad faith, malice, or provocation on the part of others involved in the matter; and
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

487.3.6.7 Status of Employee Pending Adverse Action Decision

Effective Date: 07/31/1998

Usually, an employee is retained in an active duty status during the notice period. However, in those rare circumstances where the Agency determines that the employee's retention in an active duty status poses a threat to the employee or others,

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or could result in damage to Government property, or if the employee has had a security clearance suspended, or otherwise jeopardizes legitimate Government interests, the employee may be

- Assigned duties where the employee is no longer a threat to safety, the Agency mission, or to Government property;
- Allowed to take leave, or carried in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the employee has absented themselves from the worksite without requesting leave;
- Indefinitely suspended; or
- Placed in a non-duty status with pay and without charge to leave for such time as is necessary to effect the adverse action.

487.3.8 Indefinite Suspensions

Effective Date: 09/28/2009

1. Indefinite suspension means the placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further Agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

2. The notice informing the employee that an indefinite suspension is being proposed will include information required in **487.3.6.4**. The notice also will specifically state what conditions must be met for the indefinite suspension to terminate. However, the notice period may be shortened to 7 calendar days if the Agency has reasonable cause to believe that the employee may be found guilty of a crime punishable by a sentence of imprisonment (see **487.3.6.5**). Upon completion of its investigation or inquiry, the Agency will either return the employee to full duty and pay or proceed expeditiously to take further administrative action.

487.4 MANDATORY REFERENCES

487.4.1 External Mandatory References

Effective Date: 07/31/1998

- a. [5 CFR 432](#)
- b. [5 CFR 735](#)
- c. [5 CFR 752.201\(b\) and \(c\)](#)
- d. [5 CFR 752.401\(c\) and \(d\)](#)

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e. [5 CFR 2635.101](#)

f. [5 USC 7513](#)

487.4.2 Internal Mandatory References

Effective Date: 09/17/2015

There are no internal mandatory references for this chapter.

487.5 ADDITIONAL HELP

Effective Date: 09/28/09

a. [ADS 487saa, Table of Offenses and Penalties](#)

490.6 DEFINITIONS

Effective Date: 09/28/2009

The terms and definitions listed below have been incorporated into the ADS Glossary. See the [ADS Glossary](#) for all ADS terms and definitions.

adverse action

An action against an employee in the form of furlough for 30 days or less, suspension in excess of 14 days, removal, or reduction in grade or pay taken for such cause as will promote the efficiency of the service. (Chapter 487)

alternative discipline

An optional, non-traditional approach to employee discipline which provides for a variety of both punitive and non-punitive remedial corrective actions. (Chapter 487)

day

Means, unless otherwise specified, a calendar day. ([Chapter 442](#), [450](#), [485](#), 487)

deciding official

The designee authorized by the agency head to impose suspension and/or debarment. For USAID the deciding official is the Procurement Executive/Assistance Executive. This is the same as "Debarring official" and "Suspending official" in [FAR 9.4](#). (Chapter [313](#), [485](#), [487](#))

disciplinary action

Actions including, but not limited to, reprimand, suspension, demotion, and removal. ([Chapter 109](#), [405](#), [485](#), 487)

indefinite suspension

The placing of an employee, for disciplinary reasons, in a temporary status without duties and pay pending investigation, inquiry, or further Agency action. (Chapter 487)

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oral admonishment

The least severe disciplinary action, consisting of an oral warning advising the employee that personal conduct in a particular situation has failed to meet Agency standards. (Chapter 487)

progressive discipline

Progressive discipline means that the least serious penalty which will correct the problem must be imposed for the first offense. (Chapter 487)

Proposing Official

The management official who proposes a reprimand, suspension, or separation for cause to the deciding official. ([Chapter 485](#), 487)

removal

Involuntary separation of an employee from the Agency for such cause as will promote the efficiency of the Federal service. (Chapter 487)

reprimand

A written official rebuke, censure, or registration of disapproval of a specific action or actions by an employee. ([Chapter 485](#), 487)

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