

3 FAM 4370

LIST OF OFFENSES SUBJECT TO DISCIPLINARY ACTION — FOREIGN SERVICE

(TL:PER-486; 10-28-2003)
(Office of Origin: HR/ER/CSD)

3 FAM 4371 PURPOSE OF LIST

(TL:PER-486; 10-28-2003)
(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)
(Applies to Foreign Service Only)

The purpose of this subchapter is to advise employees, supervisors, and managers of some of the types of employee conduct which can result in disciplinary action. It is intended that this material be required reading for new employees and that it be referred to during briefings on the behavior of employees, ethics, etc. It is believed that greater knowledge and understanding of employee responsibilities will lead to the avoidance of improper behavior and the need for disciplinary action. Disciplinary action is taken only after it has been determined that it, rather than less formal action, such as an admonishment, is necessary.

3 FAM 4372 LIST NOT ALL-INCLUSIVE

(TL:PER-486; 10-28-2003)
(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)
(Applies to Foreign Service Only)

It would obviously be impossible to list every possible punishable offense, and no attempt has been made to do this. The more common types of offenses experienced U.S. Government-wide are listed, as well as some which are for the most part of particular concern to the Foreign Service. Some offenses have been included mainly as a reminder that the particular behavior is to be avoided.

3 FAM 4373 PENALTY DETERMINED ON MERIT OF INDIVIDUAL CASE

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

The broad range of "possible" penalties in this subchapter is intended to serve as a general guideline. The proposing or deciding official, however, retains the discretion necessary to select the most appropriate action in any particular case in view of all the facts and circumstances. In deciding whether to discipline an employee and in selecting an appropriate disciplinary action, the proposing or deciding official takes into consideration the constructive purpose of discipline, which is intended to:

- (1) Correct, if possible, unacceptable conduct, attitude, or work habits;
- (2) In every case, ensure necessary action is taken to help maintain morale and the efficiency of the Service; and
- (3) Be fair and reasonable in its degree of severity.

3 FAM 4374 DETERMINING CORRECTIVE ACTION TO BE TAKEN

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

The following principles will be observed by supervisors and managers in the first instance, and by proposing and deciding officials when formal disciplinary action is being considered:

- (1) The disciplinary action taken should be consistent with the precept of like penalties for similar offenses with mitigating or aggravating circumstances taken into consideration. Whether or not offenses are alike will be based on the similarity of the underlying conduct rather than how the charge is worded. The action taken should be fair and equitable; and if a penalty is warranted, it should be no more severe than sound judgment indicates is required to correct the situation and maintain discipline. The penalties listed in this subchapter should serve as a guide for appropriate actions for most offenses. It is entirely possible, however, that an objective review of all facts and circumstances in a given case will indicate that a greater penalty, a less severe penalty, or no penalty should be recommended, as appropriate to obtain the general objective stated above;

(2) In determining what action should be taken, it should be established whether the employee knew, or could reasonably be expected to know, what standards of conduct or performance was expected of him or her. However, at a minimum, employees must understand that federal employees are expected to abide by the law, the Department's regulations, and common sense standards of conduct;

(3) Repetition of the same offense will be considered in assessing any penalty; as such, repetition implies a disregard for authority; and

(4) The decision as to the action to be taken shall in no way be influenced by the employee's race, color, religion, sex, national origin, marital status, handicapping condition, political opinions or affiliations, or sexual orientation.

3 FAM 4375 SOME CONSIDERATIONS IN DETERMINING PENALTY

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

The following items should be considered in determining the appropriate penalty:

(1) Nature of the offense, its seriousness, and the consequences;

(2) History of past conduct problems, whether or not discipline was imposed (nature and frequency of past offenses and how recent the occurrences);

(3) Intent (possibility of genuine misunderstanding), willfulness of the conduct;

(4) Enticement or provocation;

(5) Position of employee (nature or relationship between behavior and official responsibilities, sensitivity of position);

(6) Culpability of others;

(7) Length of employee's service, age;

(8) Quality of employee's work history;

(9) Past contributions and achievements;

(10) Record of cooperativeness, efforts toward rehabilitation; and

- (11) Other mitigating or extenuating circumstances.

3 FAM 4376 DISCIPLINE AND THE FOREIGN SERVICE

(TL:PER-486; 10-28-2003)
 (Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)
 (Applies to Foreign Service Only)

3 FAM 4130 sets forth guidelines for deciding an applicant's suitability for the Foreign Service and for taking disciplinary action against a Foreign Service employee. As explained in 3 FAM 4130, the attainment of foreign policy objectives requires the maintenance of the highest standards of conduct by employees of the Foreign Service. Because of the uniqueness of the Foreign Service, employees are considered to be on duty 24 hours a day and must observe especially high standards of conduct during and after working hours and when on leave or travel status. Accordingly the commission after work hours of many of the offenses listed here under "Conduct on the Job" would still be punishable if affecting the ability of the individual or the agency to carry out its responsibilities or mission. No action against a Foreign Service employee should be considered without a careful review of 3 FAM 4130.

3 FAM 4377 LIST OF DISCIPLINARY OFFENSES AND PENALTIES

(TL:PER-486; 10-28-2003)
 (Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)
 (Applies to Foreign Service Only)

| Nature of Offenses | Penalties |
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| | Penalties will generally fall within the range of a Letter of Reprimand to Removal except where indicated. |
| Relationship With Public | |
| 1. Failure to obtain any required clearance of speech or article involving matters of official concern (See 3 FAM 4170) | |
| 2. Discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within a one-year period (5 U.S.C. 7503(a)) | |
| 3. Making unauthorized commitments for contracts, grants, or cooperative agreements | |

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| Security Regulations | |
| 4. Commission of security infractions or violations (See 12 FAM 550) | |
| 5. Violation of security regulations relating to reporting contacts with, and restricting fraternization with <u>certain foreign</u> nationals. (See 12 FAM 262) | |
| 6. Violations of other security regulations, guidelines, or instructions such as unauthorized disclosure or exposure of classified/administratively-controlled information, improper handling of classified/administratively controlled information. | |
| Outside Employment and Interests | |
| 7. Engaging in private business activities of a prohibited or unethical nature. (See 3 FAM 4120 and 3 FAM 4130) | |
| 8. Accepting of improper dual employment or dual compensation by the U.S. Government. | |
| 9. Solicitation or acceptance by an employee of gratuity or gift which might reasonably be interpreted as tending to influence the performance of official duties. | |
| 10. Violation of regulations relating to acceptance of gifts and decorations from foreign governments. (See 3 FAM 4122) | |
| 11. Engaging, directly or indirectly, in financial or other transactions which create real or apparent conflicts of interest. | |
| Political Activity | |
| 12. Improper political activity (5 U.S.C. 7321, et seq.). | |
| * Attendance Related | Suspension or removal |
| 13. Unexcused or unauthorized absence from the job during working hours or on any scheduled day of work (AWOL). | |
| 14. A pattern of frequent lateness for duty (excessive tardiness). | |
| 15. Improper use of sick or home leave. | |

*(penalty depends on length and frequency of absences. Removal may be appropriate for a first or second offense if the absence is prolonged)

NOTE: A letter of leave restriction may be issued by an executive director or equivalent prior to the letter of reprimand.

| Conduct On the Job | |
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| 16. Intoxication caused by alcohol or other drugs. | |
| 17. Disruptive behavior, fighting, threatening or attempting to inflict bodily injury to another, engaging in dangerous horseplay, use of abusive or obscene language to or about another person, creating a disturbance which adversely affects efficiency or which reflects unfavorably on the Foreign Service or agency. | |
| 18. Making false or unfounded statements concerning another officer or employee of the U.S. Government. | |
| 19. Safety (nonmotor vehicle): violations of safety regulations, instructions, or prescribed safe practices, including failure to report accident or injury. | |
| 20. Safety (U.S. Government motor vehicle operation): violation of traffic laws, safety regulations or instructions, or safe driving practices, including failure to report accident or injury. | |
| 21. U.S. Government Property. <ul style="list-style-type: none"> a. Willful or negligent damage or defacement b. Willful misuse of, or allowing the use of U.S. Government motor vehicle, aircraft, or watercraft for other than official purposes. | 30- day suspension to removal |
| 22. Act of negligence or carelessness in performance of duty resulting in waste of public funds or inefficiency. | |
| 23. Use, or allowing use, of U.S. Government funds, property, or other resources for unofficial purposes or for private benefit. | |
| 24. Using U.S. Government equipment for prohibited activities, including gambling, advertising for personal gain, or viewing, downloading, storing, transmitting or copying materials that are sexually explicit, while on or off duty or on or off U.S. Government premises. | |
| 25. Conducting personal affairs while in duty status which negatively impacts on the efficiency of the Service. | |
| 26. Sleeping, loafing, or willful idleness while on duty. | |
| 27. Unauthorized maintenance or use of slush funds, gift funds, or other funds, which are undisclosed or unaccounted for. | |
| 28. Failure to follow proper instructions. | |

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| 29. Insubordination. | |
| 30. Misuse of U.S. Government credentials, diplomatic or official passports. | |
| 31. Misuse of U.S. Government sponsored or issued credit cards, or untimely payment or nonpayment of balance due, other than disputed charges. | |
| 32. Improper use of official authority or information. | |
| 33. Acceptance of voluntary services for U.S. Government contrary to statute. | Appropriate administrative discipline including, when circumstances warrant, suspension without pay or removal. (31 U.S.C. 1349(a)) |
| 34. Use or attempted use of influence or pressure to secure favor in appointment, transfer, advancement, or retention of a relative in the agency. | |
| 35. Violation of the "no strike" affidavit. | Removal |
| 36. Violation of merit principles or procedures with a demonstrable adverse effect on one or more persons. | |
| 37. Harassing, threatening, or taking reprisal action against an employee as a result of or in anticipation of a grievance, appeal, complaint, or other exercise of rights. | |
| 38. Misappropriation or misapplication of funds (see e.g., 31 U.S.C. 1341 or 31 U.S.C. 1301). | Appropriate administrative discipline including, when circumstances warrant, suspension without pay or removal. (See e.g., 31 U.S.C. 1349). |
| 39. Gifts to official supervisors, soliciting contributions for gifts or presents to those in superior official positions, accepting gifts or presents from U.S. Government employees receiving lower salaries, or making donations as a gift or present to official supervisors. (Exception: This does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, retirement, or transfer. (22 CFR 10.735-202(e) and 5 CFR 735.202(d)). | Removal (required by 5 U.S.C. 7351, see also 5 CFR 735.202(d)). |
| Personal Conduct or Character | |
| 40. Misconduct general — immoral, indecent, unethical, criminal, infamous, dishonest, or notoriously disgraceful conduct. | |

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| 41. Fraud (misrepresentation, falsification, or willful omission of material fact in connection with application, employment, or any record, report, investigation, or other proceeding). | |
| 42. Conduct demonstrating untrustworthiness, unreliability, or use of poor judgment. (3 FAM 4130). | |
| 43. Discrimination: As used in this table, discrimination refers to a specific act taken by an employee in the performance of his or her official duties which discriminates against one or more individuals on the basis of race, sex, religion, color, age national origin, handicapping condition, marital status, political affiliation, or sexual orientation. | |
| 44. Refusal to answer appropriate interrogation or otherwise cooperate in properly authorized inquiry. | |
| 45. Failure to pay a just financial obligation(s) in a proper and timely manner. | |
| 46. Unauthorized sale of personal property while stationed abroad. | |
| 47. Violation of host country, agency, or Foreign Service post currency exchange laws/regulations. | |
| 48. Violation of laws, regulations, or policies relative to possession, use, or transportation of firearms or other dangerous weapons. | |
| Miscellaneous Offenses | |
| 49. Violation of any administrative regulations which do not provide a penalty. | |

3 FAM 4378 THROUGH 4379 UNASSIGNED

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