

ARTICLE 12 DISCIPLINE

Section 12.01 - General.

(1) The objective of discipline is to correct and improve employee behavior so as to promote the efficiency of the service. The parties agree to the concept of private, progressive discipline designed primarily to correct and improve employee behavior. However, major offenses may be cause for severe action, including removal, regardless of whether previous discipline has been taken against the offending employee. Bargaining unit employees shall be the subject of disciplinary action only for just and sufficient cause.

(2) Actions shall be fair and equitable, i.e., Management shall consider the relevant factors given the circumstances of each individual case and similar cases, if any, to make a fair decision.

(3) Investigations and disciplinary actions shall be timely. Timeliness shall be based upon the circumstances and complexity of each case.

(4) The term "days" as used in this Article shall mean calendar days.

(5) This Article applies to:

- (a) An action based solely on misconduct reasons; or
- (b) An action that involves both performance and misconduct related reasons.

(6) This Article does not apply to:

- (a) Actions based solely on unacceptable performance; or
- (b) Termination of employees serving on temporary or probationary appointments; or
- (c) Non-preference eligibles in the excepted service who are suspended for more than fourteen (14) days, reduced in grade, or removed.

Section 12.02 - Counseling. Counseling shall be conducted in a private setting.

- (a) **Verbal Counseling.** Verbal counseling is not considered disciplinary action. It cannot be grieved by the employee nor be relied upon by Management in any disciplinary action.
- (b) **Written Counseling.** Letters of Counseling are not considered disciplinary actions but may be cited in any subsequent disciplinary or adverse action against the employee.

Section 12.03 - Definitions

Disciplinary Actions.

- (a) **Official Reprimand.** An official written notice which sets forth specific actions of misconduct of such a nature that routine discussions and/or counseling sessions are not sufficient.

(b) **Suspensions of fourteen (14) days or less.** The temporary placement of an employee in non-duty, non-pay status for disciplinary reasons.

Adverse Actions.

- (a) **Suspensions of fifteen (15) days or more.** The temporary placement of an employee in non-duty, non-pay status for disciplinary reasons.
- (b) **Reduction in Grade.** The involuntary assignment of an employee to a position at a lower classification or job grading level.
- (c) **Removal.** The involuntary separation of an employee from employment with the Department for misconduct reasons.
- (d) **Furloughs of thirty (30) days or less.** The placing of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.

Section 12.04 - Official Reprimands. Letters of reprimand shall be placed in an employee's Official Personnel Folder for a period not to exceed two (2) years. However, at Management's discretion, it may be for a lesser period of time.

Section 12.05 - Suspensions of Fourteen (14) Days or Less

- (1) Management shall provide the employee with at least fifteen (15) days advance written notice, stating the specific reasons for the proposed action with sufficient specificity so as to enable the employee to prepare a response (response time may result in delays beyond thirty (30) days). Management shall provide the employee and the Union with one (1) copy each of the documentation relied upon to support the proposed action, which shall include the names of witnesses, if any, involved in supporting the charges.
- (2) Upon receipt of the official notice of proposed suspension action, an employee shall have twenty-one (21) days to respond to the proposed action. The response may be made orally or in writing, or both. The employee's response may include any statements or material the employee believes is relevant to defending against the proposed action. Management will consider requests for duty time up to sixteen (16) hours for the preparation of oral and written responses.
- (3) Management shall issue a final written decision within twenty-one (21) days of the twenty-one (21) day response period, stating the specific reasons, including a statement of the employee's appeal rights. If Management determines that further investigation is necessary, the time limit for issuance of the decision shall be extended. The employee shall be notified of such an extension and shall continue to be notified at thirty (30) day intervals thereafter. The decision shall be made by a management official at or above the level of the official who proposed the action.
- (4) The employee may be represented by an attorney or other representative, which includes the right to Union representation.

- (5) If arbitration is not invoked by the Union within twenty (20) days, the matter is closed for purpose of the grievance/arbitration procedure.
- (6) Management may stay implementation of suspensions of fourteen (14) days or less pending a final decision. Such a stay shall last no longer than sixty (60) days from the date of issuance, and can be withdrawn at any time, for good cause. Disciplinary actions which have been stayed may be considered in any subsequent disciplinary action or proceeding.

Section 12.06 - Adverse Action

Suspensions of Fifteen (15) Days or More, Reduction in Grade or Pay, Removals, or Furloughs for 30 Days or Less.

An employee shall be entitled to:

- (1) At least thirty (30) days advance written notice of the proposed action with sufficient specificity so as to enable the employee to prepare a response. Management shall provide the employee and the Union with one (1) copy each of the documentation relied upon to support the proposed action, which shall include the names of witnesses if any, involved in supporting the charges.
- (2) Upon receipt of the official notice of proposed disciplinary action, an employee shall have twenty one (21) days to respond to the proposed action. The response may be made orally or in writing, or both. The employee's response may include any statements or material the employee believes is relevant to defending against the proposed action. Upon a reasonable written demonstration of need, the employee may be granted sufficient additional time to respond. This request for additional time must be made within the twenty one (21) day period.
- (3) Be represented by an attorney or other representative, which includes the right to Union representation.
- (4) Up to sixteen (16) hours of duty time, if needed, within the period in (1) above, for preparing the oral and/or written response. Requests for additional time will be considered. The supervisor authorizes when the time may be used. Disputes between the supervisor and employee regarding the scheduling of use of duty time will be resolved by the deciding official.
- (5) A written decision, which includes the specific reasons at the earliest practicable date. Such a decision, including a statement of the employee's appeal rights, shall be made within twenty-one (21) days of the receipt of the employee's response, or after the expiration of the twenty-one (21) day response period if the employee does not respond. The decision shall be made by a management official at or above the level of the official who proposed the action. If Management determines that further investigation is necessary, the time limit for issuance of the decision shall be extended. The employee shall be notified of such an extension and shall continue to be notified at thirty (30) day intervals thereafter.

- (6) Within thirty (30) days of the effective date of the action, the employee may appeal the matter to the Merit Systems Protection Board (MSPB).
- (7) If the employee elects not to appeal the matter to the Merit Systems Protection Board, then the Union may invoke arbitration in accordance with this Agreement.
- (8) If an employee believes the action to be based in whole or in part on prohibited discrimination (race, color, religion, sex, national origin, age, disability, etc.) they may either file a grievance or file an EEO complaint in accordance with the statutory appeals process.

(Note: Indefinite suspensions are covered under OPM regulations at 5 CFR 752.404(d))

Section 12.07 - Union Notification. When Management issues a notice of proposal and/or decision to suspend, reduce-in grade, or remove an employee in the unit, Management shall provide to the Union a general statement of the charges, proposed action, and subsequent decision.

Section 12.08 - Alternative Discipline.

(1) General:

- (a) Alternative discipline is an effort to correct behavior in lieu of traditional discipline when management determines an alternative has a greater potential to prevent repetition of the misconduct.
- (b) Alternative discipline may be used at management's discretion in lieu of an official reprimand or a suspension of fourteen (14) days or less.
- (c) Alternative discipline is not intended to diminish the seriousness of employee misconduct.

(2) Types of alternative discipline include:

- (a) The employee makes an annual leave donation through the leave donation program equal to the amount of time that would have been spent on suspension;
- (b) Employee attends an appropriate program approved by the Employee Assistance Program;
- (c) The employee's suspension is recorded as LWOP so that there will be no permanent record of a disciplinary action; and
- (d) The employee serves a suspension on paper only, no loss of pay, but the suspension is recorded in the employee's OPF.

The above is not intended to be an exhaustive list or to limit a manager's ability to propose other alternatives to traditional discipline. Any alternative discipline must be consistent with law, rule, regulation and/or HUD policy.

(3) Process:

If Management determines that alternative discipline is appropriate, it will offer in writing the alternative discipline simultaneously with providing the employee the notice of decision on the traditional discipline.

The disciplinary process will be put on hold for up to 5 days to provide the employee time to consider alternative discipline. During the 5 day period, the employee or union representative may request to meet with management to discuss or propose a type of alternative discipline.

Employees shall be notified of the manager's decision within five (5) days after the meeting.

If the employee accepts the alternative discipline proposed by management, the alternative discipline will be placed in a written agreement between the employee and management. The agreement may include, but is not limited to:

- (a) the specific form of the alternative discipline;
- (b) the date by which it is to be completed;
- (c) the charged misconduct and the proposed traditional discipline;
- (d) recognition by the parties that the alternative discipline may be referenced in any subsequent disciplinary action; and
- (e) a voluntary waiver of any appeal rights the employee may have regarding the matter.

If the employee declines or fails to respond to the alternative discipline, the disciplinary process will continue pursuant to this Agreement. If the employee accepts the alternative discipline and fails to meet the terms and conditions of the agreement, then the traditional penalty as identified in the agreement will be imposed.

The parties recognize that any alternative discipline taken by management is non-precedential. Alternative discipline is based on the unique circumstances of each situation and may not be appropriate in other situations.

12.09 - Last Chance Agreement.

If proposed, a Last Chance Agreement (LCA) is an offer by management to create a contract between an employee and the Department in which the Department agrees to hold an adverse action decision in abeyance, in exchange for:

- (a) an employee's commitment to a certain set of behaviors or conditions for a set period of time
- (b) an employee's waiver of their appeal rights.
- (c) If the employee fails to fulfill the terms of the agreement, the penalty is effectuated.

The effective period of a LCA will not exceed two (2) years, but at management's discretion may be for a shorter period of time. The Union will be notified when an employee is offered a LCA.