



UNITED STATES MARINE CORPS

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StaO 12751.2
HRO

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STATION ORDER 12751.2

From: Commanding General
To: Distribution List

Subj: DISCIPLINARY AND ADVERSE ACTIONS INVOLVING CIVIL SERVICE
EMPLOYEES

Ref: (a) 5 U.S.C. Chapter 75
(b) CPI 752
(c) StaO 12630.3
(d) 5 U.S.C. Chapter 771
(e) 5 U.S.C. Chapter 339
(f) 5 U.S.C. Chapter 831

1. Purpose. To publish principles and prescribed procedures per reference (a) to be followed in effecting disciplinary actions.

2. Information

a. Policy. The purpose of disciplinary action is to correct the behavior of offending employees and to maintain discipline and morale among all employees. In most instances, the disciplinary actions taken should be of a progressive nature ranging from an oral admonishment to reprimand to more serious action. Disciplinary actions will only be taken for such cause as will promote the efficiency of the service.

b. Definitions

(1) Appealable Adverse Action. Removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less.

(2) Days. Calendar days.

(3) Employee

(a) For Purposes of Grievable Adverse Actions. An individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and:

(b) For Purpose of Appealable Adverse Actions

1 Those employees listed in paragraph (a) above.

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2 A preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar position.

3 An employee who occupies a professional and administrative career (PAC) position on Schedule B or part 213 of the title, provided that the employee has completed a trial period of 1 year after initial appointment in such a position.

(4) Furlough. 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.

(5) Grade. A level of classification under a position classification system.

(6) Grievable Adverse Action. A letter of reprimand or a suspension for 14 days or less.

(7) Letter of Caution. A written correction by a superior official of an employee's improper conduct. This is not a disciplinary action.

(8) Letter of Reprimand. A written remedy by a superior official for an employee's improper conduct.

(9) Official. An employee who has been delegated authority to propose or decide an adverse action under this instruction.

(10) Oral Admonishment. An oral (nonwritten) correction by a superior official of an employee's improper conduct.

(11) Pay. The rate of basic pay fixed by law or administrative action for the position held by an employee.

(12) Removal. The involuntary separation of an employee from the activity except when taken as a reduction in force (RIF) action.

(13) Suspension. The placing of an employee in a temporary status without duties or pay for disciplinary reasons.

c. Coverage. This Order applies to all employees as defined in paragraph 2b(3) above except:

(1) Schedule B excepted service employees without competitive status; and Schedule B professional and PAC position employees who are serving a 1 year trial period.

(2) An employee whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by:

(a) The Office of Personnel Management for a position that it has excepted from the competitive service; or:

(b) The President or the Secretary of the Navy for a position which is excepted from the competitive service by statute.

d. Exclusions

(1) A suspension or removal taken in the interests of national security. (See Section 7532 of reference (a)).

(2) A RIF action.

(3) The reduction in grade of a supervisor or manager who has not satisfactorily completed the probationary period, if such reduction is to the grade held immediately before becoming such a supervisor or manager. (See Section 3321 of reference (b)).

(4) A reduction in grade or removal based solely on unacceptable performance. (See Section 4303 of reference (b)).

(5) An action initiated under authority of the Special Counsel or taken at the direction of the Merit Systems Protection Board. (See Sections 1205, 1206 and 1207 of reference (b)).

(6) An action taken under provisions of statute, other than one codified in Title 5 USC, which excepts the action from subchapter II of Chapter 75 of reference (a).

(7) An action which entitles an employee to grade retention and an action to terminate this entitlement. (See Section 5362 of reference (a)).

(8) A voluntary action initiated by the employee.

(9) An action taken or directed by the Office of Personnel Management for suitability reasons. (See CFR Part 731 and 754 of reference (a)).

(10) Involuntary retirement because of disability.

(11) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made.

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(12) Action which terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which temporarily promoted, or reassigns or demotes the employee to a different position not at a lower grade or level than the position from which temporarily promoted.

(13) An action which terminates a term promotion at the completion of the project or a specified period, or at the end of a rotational assignment in excess of 2 years but not more than 5 years, and returns the employee to the position from which promoted or to a position of equivalent grade and pay.

(14) Cancellation of a promotion to a position not classified prior to the promotion.

(15) Placement of an employee serving on an intermittent, part-time, or seasonal basis in a nonduty, nonpay per the conditions established at the time of appointment.

(16) Reduction of an employee's rate of pay from a rate which is contrary to law or regulation to a rate which is required or permitted by law or regulation.

(17) An action against a reemployed annuitant.

e. Delegation of Authority. The authority to propose or effect disciplinary action may be exercised by an official acting in the absence of the official to whom the respective authority is herein delegated, but may not be exercised by direction. The following delegation of authority is established:

(1) Immediate Supervisors. The immediate supervisor is authorized to issue letters of reprimand and proposed suspensions. Supervisors, normally, will recommend the disciplinary or adverse action to be taken.

(2) Branch Heads or Officials of Comparable Levels. Branch heads or the equivalent are authorized to issue decisions to suspend employees, and to propose removals, furloughs without pay for 30 days or less, and reductions in grade or pay.

(3) Department Directors or Officials of Comparable Levels. Department directors are authorized to issue decisions on removals, furloughs without pay for 30 days or less, and reductions in grade or pay.

(4) Commanding General. The Commanding General retains the authority to render any final decision and to effect such actions as appropriate.

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f. Representation

(1) An employee is entitled to be represented by an attorney or other representative. The activity may disallow an employee's representative:

(a) An individual whose activities as representative would cause a conflict of interest or position.

(b) An employee of the activity whose release from the official position would give rise to unreasonable costs, or whose priority work assignments preclude release.

(c) An individual whose performance of representative duties would conflict with the terms of any applicable collective bargaining agreement.

(2) An employee may grieve the decision to disallow the choice of representative, in writing, to the official whose decision it was to disallow the choice of representative.

(3) The official receiving the grievance must redelegate the authority to make the decision to another official higher than the level of the official designated to render a final decision on the original grievance.

(4) The official charged with rendering a decision on the grievance must do so in writing to the grieving employee at the earliest practical time.

(5) Whenever an employee of a bargaining unit represented by an exclusively recognized labor organization believes that an investigatory examination or interview with an official of the activity may result in disciplinary action, that employee may request and receive union representation. Supervisors and other management representatives are not required to notify employees of this right on an individual basis. The right to representation applies only where an employee is being questioned or examined in connection with an investigation. It does not apply to everyday work-related communications between supervisors and employees. When a union representative is present the employee should be permitted to consult the representative; however, the union representative is not entitled to answer on behalf of the employee or to bargain with management regarding the results of the investigation.

g. Preaction Investigation. Prior to initiating disciplinary or adverse action, supervisors must ascertain whether there is substantial evidence to warrant contemplated action, by conducting a preproposal investigation if necessary. The investigation should

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develop and document all facts. The investigative process will normally include interviews with and statements from witnesses or others who have direct knowledge of the circumstances, securing pertinent documents or records, inspection of work site, if relevant and documentation in detail of all circumstances and conditions, i.e., dates, times, specific instances. An important part of the investigation is an informal interview with the employee involved to obtain the employee's version of the facts and to afford the employee an opportunity to explain the circumstances. A prima facie case must exist before any action is initiated. Factors to consider in developing such as case include:

(1) That the proposed action can be demonstrated to be for "such cause as will promote the efficiency of the service."

(2) That management has made good faith effort to assist the employee in correcting deficiencies and that those efforts have failed.

(3) That evidence has been thoroughly documented and can be supported by testimony or documents in an appeal.

(4) The preaction investigation reports will be submitted to the Personnel Management Specialist, in the Human Resources Office, who will prepare an action letter for signature of the appropriate official. Resulting actions will be initiated within 30 days after completion of the investigation. Employees will be provided copies of any written statements they make.

h. Selecting the Offense and Penalty. The Guideline Schedule of Disciplinary Offenses and Recommended Remedies for Civilian Employees in the Department of the Navy, as included in reference (b), is a management guide for administering discipline. It provides a range of penalties for a list of offenses. Care should be taken in selecting that offense which appropriately describes the infraction. The penalty assigned will be the minimum reasonably expected to correct the offending employee and maintain discipline and morale. Supervisors/Managers will take an action against an employee only for such cause as will promote the efficiency of the service. In arriving at the proper remedy, consideration should be given to:

(1) The nature and seriousness of the offense, and its relations to the employee's duties, position, and responsibilities, including whether the offense was intentional, technical, or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

(2) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and 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 workers, 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) The consistency of the penalty with any applicable agency table of penalties.
- (7) The consistency of the penalty with any applicable agency table of penalties.
- (8) The notoriety of the offense or its impact upon the reputation of the agency.
- (9) 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.
- (10) The potential for the employee's rehabilitation.
- (11) Any 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.
- (12) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

i. Types of Disciplinary Actions and Procedures

(1) Oral Admonishments. Oral admonishments or warnings are informal actions and are normally the first step in progressive discipline. As a rule, they are taken by the immediate supervisor for minor violations of a rule or regulation, or to call an employee's attention to deficiencies in conduct or work performance. They will not be made a matter of record in the Official Personnel Folder. Events for which an employee is orally admonished will not be counted as prior offenses; however, they may be used in specifications of a proposed disciplinary action for a current offense if occurring within 1 year preceding the date of the notice of proposed action.

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(2) Letters of Caution. Letters of Caution are not considered disciplinary actions; however, they are mentioned here because they are valuable management tools for calling employee's attention to certain aspects of their employment. Events discussed in such a letter will not be counted as a prior offense when determining the remedy for a subsequent offense, but will serve to establish that the matters discussed in it have been brought to the employee's attention and that acceptable standards of conduct or performance have been set forth for the employee's guidance. There is no requirement that a supervisor issue a Letter of Caution prior to initiating official disciplinary action. Letters of Caution will not be filed in the employees Official Personnel Folder, however, they will be retained by the issuing authority for a period not to exceed 1 year. The Letter of Caution must include:

- (a) The reason for the issuance.
- (b) A statement that it will not be made a matter of record in the employee's Official Personnel Folder.
- (c) A statement that the Letter of Caution is grievable.
- (d) A statement that it will not be counted as a prior offense when determining a remedy under the Guideline Schedule of Disciplinary Offenses and Recommended Remedies for Civilian Employees in the Department of the Navy, as included in reference (b).

(3) Letters of Requirement. Letters of Requirement are not considered disciplinary action; however, they are a valuable management tool for calling an employee's attention to suspected abuse of the sick or annual leave regulations. Events discussed in such a letter will not be counted as a prior offense when determining the remedy for a subsequent offense, but will serve to establish that the matters discussed have been brought to the employee's attention. There is no requirement that a supervisor issue a Letter of Requirement prior to initiating official disciplinary action. Letters of Requirement will not be filed in the employee's Official Personnel Folder. The Letter of Requirement must include statements specifying the following:

- (a) The reasons for the issuance.
- (b) The employee is to submit a doctor's certificate attesting to incapacity for duty because of illness, for each period of sick leave requested.

(c) Requests for scheduled sick leave such as medical, dental and optical examinations or treatment are to be submitted no less than 1 duty day before such leave is to be taken.

(d) The employee is to make a telephone report within 2 hours after the beginning of the workday of any incapacitating illness or emergency which would prevent them from reporting for work.

(e) Annual leave will not be approved unless it is requested per reference (c). Approval or disapproval of leave not requested in advance will be based on the nature of the emergency claimed. Mere unforeseen circumstances, such as transportation difficulties, will not in themselves be automatically considered justification for granting emergency annual leave or leave without pay.

(f) The letter will not be made a matter of record in the employee's Official Personnel Folder.

(g) The letter will not be counted as a prior offense when determining a remedy under the Guideline Schedule of Disciplinary Offenses.

(4) Letter of Reprimand

(a) A Letter of Reprimand is fair warning that the employee has failed or is failing to meet prescribed standards of behavior or performance. This is the first in a possible series of formal disciplinary actions each more progressive in nature if the reprimand does not serve its purpose.

(b) The appropriate supervisor, before issuing a letter of reprimand, will conduct a preaction investigation, if necessary, to determine the facts. If the facts indicate a letter of reprimand may be warranted, the supervisor will hold an informal meeting with the employee and inform the employee of the reasons for the meeting, state the problem, and facts developed in a way that the employee can understand and give the employee the opportunity to present their side of the matter. The supervisor should make a summary of the discussion. After considering the employee's response, the supervisor will determine what further action, if any, may be appropriate.

(c) The Letter of Reprimand must include statements specifying the following:

- 1 The reason for its issuance.

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2 The employee's right to file a grievance under reference (d) or the negotiated agreement.

3 The length of time, not more than 1 year that it will be a matter of record in the employee's Official Personnel Folder.

4 That it may be counted as a prior offense when determining a remedy under the Guideline Schedule of Disciplinary Offenses and Recommended Remedies for Civilian Employees in the Department of the Navy, as included in reference (a).

(d) A copy of the Letter of Reprimand will be filed on the temporary side of the employee's Official Personnel Folder for a period not to exceed 1 year.

(5) Suspensions. A suspension places an employee temporarily in a nonpay, nonduty status and may be the final warning step in the progressive disciplinary process before removal action. Suspensions fall into two categories, i.e., suspensions for 14 calendar days or less and suspensions for more than 14 calendar days. Each category is individually addressed below. The number of days set at a point within the recommended range should be corrective rather than punitive in nature.

(6) Suspension of 14 Calendar Days or Less

(a) Following the preaction investigation, the employee will be issued a written advance notice of proposed action.

(b) The notice of proposed suspension of 14 calendar days or less must:

1 State the specific reasons for the proposed action.

2 Advise the employee of the right to review (for a reasonable amount of official time), the material relied on to support the reasons given.

3 Advise the employee of the right to be represented by an attorney or other representative.

4 Advise the employee that they will be given 7 days to reply orally, in writing, or both to a specified management official.

5 Advise the employee of the right to submit affidavits and other documents in support of the answer.

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(c) If an oral reply is made, the official receiving such reply will prepare a written summary of the reply for inclusion in the case file.

(d) The opportunity to reply orally must be an opportunity for the employee to make known their point of view. The reply need not relate solely to the reasons specified in the notice, but may relate to any representations which the employee considers appropriate. The meeting is not interrogatory, nor is it an extension of the preaction investigation.

(e) In arriving at a decision, the official rendering the decision will consider only the reasons specified in the notice of proposed action and any answer the employee and/or the employee's representative made to the proposed notice.

(f) The employee will be issued a written decision within 10 days after the expiration of the time allowed for the employee's response. The decision letter will:

1 Specify the reasons for the decision, but consider only the reasons specified in the notice of proposed action;

2 State that the employee responded orally and/or in writing (if this occurred) and the decision considered the employee's response;

3 Advise the employee of appeal rights under reference (d) or under the negotiated procedure.

4 Include the signature of an official in a higher position than the official who proposed the action.

5 Be delivered to the employee on or before the effective date of the action.

(g) If the employee and/or the employee's representative requests in writing an extension on the amount of time specified to reply in the proposal letter, the official designated to accept the response must make a decision on such a request.

(7) Removal, Suspension for More than 14 Calendar Days or Reduction in Grade or Pay

(a) After a preaction investigation is conducted, the employee will be issued, in writing, a 30 day advance written notice of the proposed action (unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed).

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(b) The letter of advance written notice must include:

- 1 The specific reasons for the proposed action.
- 2 The name and title of the official designated to hear an oral reply and/or receive the written reply (the official so designated must have authority to either make or recommend a final decision on the proposed adverse action).
- 3 The fact that the employee is allowed 15 days to answer orally and/or in writing.
- 4 The right of the employee or the employee's representative to review the material which is relied upon to support the reasons given in the notice.

(c) The employee will be provided a reasonable amount of official time to review the material relied upon to support the proposal, to prepare an answer and to secure affidavits, if the employee is otherwise in a duty status.

(d) The employee will be provided 15 days to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer including medical documentation as defined in reference (e) if the employee wishes the activity to consider any medical condition alleged to contribute to the reasons for the proposed action.

(e) A written decision will be issued within 15 days after the expiration of the time allowed for the employee's response and will:

- 1 Specify the reasons for the decision, considering only the reasons specified in the notice of proposed action.
- 2 State that the decision made took into consideration the verbal or written response of the employee (if the employee did respond) including any medical documentation submitted. This must include an awareness of the affirmative obligation of 29 CFR 1613.704, which requires reasonable accommodation of a qualified handicapped employee.
- 3 Be signed by an official in a higher position than the official who proposed the action.
- 4 Specify that the employee may either appeal or grieve the decision but not both. If appealed to the Merit Systems Protection Board (MSPB), it will specify the time limits for filing

an appeal to MSPB, the address for filing the appeal, a copy of the Board's regulations and a copy of the Board's appeal form. If grieved, it will specify the time limits for filing the grievance.

5 Be delivered to the employee on or before the effective date of the action.

(f) When the crime provision is invoked, the action may be effected in less than 30 days following the advance written notice. The employee will be required to furnish any answer to the proposed action and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than 7 days. When the circumstances require immediate action, the employee may be placed in a paid non-duty status for such time, not to exceed 10 days, as is necessary to effect the action.

(g) An employee or an employee's representative may request in writing an extension of time to reply orally or in writing to the proposal letter. The official designated to accept the response will make a decision regarding such request.

(h) After its review of any medical documentation supplied by the employee in reply to a proposed action, the activity may if authorized, require a medical examination, or, at its option, offer a medical examination as per the criteria and procedures established in reference (d). If the employee has 5 years of service, the activity will provide information concerning disability retirement. An employee's application for disability retirement will not preclude or delay any other appropriate personnel action. An activity will file application for disability retirement for an employee only under the conditions set forth in paragraph 510 of reference (f).

3. Action

a. The immediate supervisor will maintain discipline and morale among employees supervised and will initiate or recommend appropriate disciplinary or adverse actions when warranted. Supervisors will exercise maximum responsibility over their subordinates and will generally instruct and/or discipline their assigned employees. This does not preclude disciplinary action being initiated by higher levels of supervision. When this is done, the higher level of supervision should consult with and, to the extent possible, work through the immediate supervisor.

b. The Personnel Management Specialist, Human Resources Office will:

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- (1) Provide technical advice and assistance to all levels of management in disciplinary matters.
 - (2) Prepare all letters proposing or effecting disciplinary or adverse actions for the appropriate management official's signature.
 - (3) Provide assistance on technical matters relating to the exercise of protective and appeal rights upon request of the employees against whom disciplinary action is proposed or taken.
4. Applicability. This Order applies to appropriated fund civilian employees of the competitive service who are not serving a probationary or trial period under an initial appointment, or who have completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less.


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Chief of Staff

Distribution: A