



## Defense Health Agency

### **Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR)**

### **Fiscal Year 2016 Report**

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## I. INTRODUCTION

The Defense Health Agency's working environment and external human resources markets, both military and civilian, are diverse, complex and competitive, with new innovative systems and flexibilities with potential for increased risk if not properly coordinated and managed by managers and supervisors, human resources, and Equal Opportunity and Diversity Management (EODM) partners.

DHA has a truly diverse workforce in terms of employee status (military, civilian; appropriated, non-appropriated; and contractors); in terms of equal opportunity demographics (gender, race, ethnicity, veteran status, disability status, age groups, religious affiliations, etc.); in terms of career programs (Medical, Contracting and Acquisition, Finance, IT, etc.). This complexity, diversity, non-traditional working relations, and competition, all contribute to increased ideas, innovation, problem solving ability, and the need for communication, collaboration and cross-functional teams. To operate successfully in the employment market and sustain a challenging, innovative, productive performance-based work environment that contributes to both individual and organizational effectiveness, DHA must continue to recruit, develop and retain the right mix of people and talent reflective of the nation's demographics from both an equal opportunity and business perspective. Accordingly, valuing and understanding diversity beyond the traditional EEO demographics and complying with EODM principles and policies, both are integral parts of DHA's human capital acquisition (recruitment and placement), and sustainment (training and development, and retention) strategies.

With the ever shrinking Department of Defense (DoD) budget and the Global War of Terrorism (GWOT), it is not only important but imperative that managers and supervisors, human resources, and military and civilian EEO personnel minimize risk and increase effectiveness by maintaining open communications and work in a collaborative team effort to:

1. increase their knowledge of each other's functional areas;
2. ensure consistency and fairness in selection and promotions;
3. ensure that all civilian personnel actions are in compliance with applicable OPM, EEO, and statutory and regulatory requirements;
4. develop innovative solutions to resolve personnel issues; and
5. provide a work environment in which DoD values, Merit System, and EODM principles are modeled by all.

## II. REPORTING REQUIREMENTS

a. *The number of cases in federal court pending or resolved in each fiscal year and arising under each of the respective provisions of the federal antidiscrimination laws and whistleblower protection laws applicable to them as defined in 5 C.F.R. §724.102, in which an employee, former federal employee, or application alleged a violation of these laws, separating data by the provision of law involved (5 C.F.R. 724.302(a)(1)) and the status or disposition of such cases (5 C.F.R. 724.302(a)(2)(i)).*

Statute	Cases Opened in FY16	Cases Resolved in FY16		Cases Pending at Close of FY16
		Settled	Other	
<b>Title VII, Civil Rights Act of 1964</b> 42 U.S.C. 2000e-16	19	23	8	31
<b>Age Discrimination in Employment Act</b> 29 U.S.C. 631, 633a	10	10	4	11
<b>Fair Labor Standards Act of 1938</b> 29 U.S.C. 206(d)	0	0	0	0
<b>Section 501 of Rehabilitation Act</b> 29 U.S.C. 791	4	12	1	16
<b>Equal Pay Act</b> 29 U.S.C. 206(d)	0	2	0	2
<b>Whistleblower Protection Act</b> 5 U.S.C. 2302(b)(1)	0	1	0	0

b. *The amount of money required to be reimbursed to the Judgment Fund by the agency for payments as defined in 5 C.F.R. §724.102 (5 C.F.R. 724.302(a)(2)(ii)), and the amount of reimbursement to the Fund for attorney's fees where such fees have been separately designated (5 C.F.R. 724.302(a)(2)(iii)), and any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred (5 C.F.R. 724.302(a)(8)).*

\$ Reimbursed to Judgment Fund	\$ Attributed to Attorneys' Fees	Adjustment Needed
0	\$331,500.00	0

c. *In connection with the cases identified above, the total number of employees in each fiscal year disciplined (reprimand, suspension without pay, reduction in grade or pay, or removal) and the specific nature of the disciplinary actions taken, separated by the provision(s) of law involved (5 C.F.R. 724.302(a)(3)) and the number of employees in each fiscal year disciplined in accordance with any agency policy, regardless of whether or not the matters are in connection to a federal court case (5 C.F.R. 724.302(a)(5)).*



Statute	# of Employees Disciplined	Nature of Disciplinary Action (e.g., reprimand, dismissal, etc.)
<b>Title VII, Civil Rights Act of 1964</b> 42 U.S.C. 2000e-16	7	LETTER OF WARNING, LETTER OF COUNSELING (2), TERMINATION, REPRIMAND (2)
<b>Age Discrimination in Employment Act</b> 29 U.S.C. 631, 633a	2	REPRIMAND, SUSPENSION
<b>Fair Labor Standards Act of 1938</b> 29 U.S.C. 206(d)	0	NA
<b>Section 501 of Rehabilitation Act</b> 29 U.S.C. 791	6	LETTER OF COUNSELING (20), REPRIMAND, TERMINATION (2), SUSPENSION
<b>Equal Pay Act</b> 29 U.S.C. 206(d)	0	NA
<b>Whistleblower Protection Act</b> 5 U.S.C. 2302(b)(1)	0	NA
<b>Matters that did <u>NOT</u> result in a federal court case</b>	4	LETTER OF COUNSELING, TERMINATION, REPRIMAND, SUSPENSION

d. *The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations 29 C.F.R. §§1614.701, et seq. (5 C.F.R. 724.302(a)(4)).*

**See Appendix A**

e. *A detailed description of the agency's policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws (5 C.F.R. 724.302(a)(6)).*

**See Appendix B – input link if available on web-site.**

f. *The agency's written plan to train its employees (5 C.F.R. 724.302(a)(9)).*

**See Appendix C**

### III. ANALYSIS

*An analysis of the information provided in paragraphs (a)(1) through (6) of this section in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with 29 CFR part 1614 subpart F of the Code of Federal Regulations. Such analysis must include: (i) An examination of trends; (ii) Causal analysis; (iii) Practical knowledge gained through experience; and (iv) Any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace (5 C.F.R. 724.302(a)(7)).*

#### a. Examination of Trends

The DHA EEO Division stood up initial operating capability (IOC) on October 1, 2013, and became the DHA Equal Opportunity and Diversity Management (EODM) Division on April 28, 2015. This is the second No FEAR Act submission since IOC in October 1, 2013.

During FY16 the DHA absorbed the EEO functions of the National Capital Region (NCR) Medical Directorate, Bethesda, MD, with over 9,000 employees to service. This resulted in a 70 percent increase in complaints processing in FY16. Based on the additional workload, we will be using the FY16 data as a baseline for comparison in FY2017.

For FY16, DHA recorded 110 formal complaints, with 55 carried over from FY15. Overall, 55 new complaints were filed in FY16.

#### b. Causal Analysis

##### Bases of Formal Complaints

During FY16 complainants in DHA used one of the bases listed in Title VII of the Civil Rights Act of 1964 in filing their complaint of discrimination: Race, Color, Religion, Sex (Male/Female/Pregnancy/LGBT), National Origin (Hispanic/Other), Age, Disability (Mental/Physical), Genetic Information, and reprisal/or retaliation.

In FY16, DHA recorded 313 bases overall in 110 complaints, with Race (57), Sex (56), Reprisal (55), Disability (50), and Age (44) the high five.

##### Issues for Formal Complaints

Following selection of a base(s) for filing a complaint of discrimination, the complainant must provide specific issue(s) that show: How they have been harmed? And; what alleged adverse employment action affected a term, condition or privilege of employment. Issues tracked for complaints fell in over 29 areas recorded on the annual EEOC 462 Report.



Of the 648 issues identified in FY16, with Harassment (235), Assignment of Duties (74), Promotion/Non-selection (59), Evaluation/Appraisal (54), and Time and Attendance (40) the five highest areas.

### **c. Practical Knowledge Gained Through Experience**

Complaint activity involving harassment and hostile work environment resulted in the establishment of an Anti-Harassment Policy in Dec 2015. Also, we designed an Anti-Harassment Training briefing in January 2016 that was put on-line for employees to take annually in FY16. In FY16 we established a Diversity Management position, funded it and recruited a person in December 2016. The Anti-Harassment Program will be under the DM Manager responsibilities. Additionally, we are drafting an Administrative Instruction for the Anti-Harassment Program in FY17.

### **d. Actions Planned or Taken for Improvement Measures**

Efforts to enhance and enforce federal antidiscrimination and whistleblower protection laws centered on establishing the Diversity Management (DM) Branch, Military Equal Opportunity (MEO) Branch, and the Anti-Harassment Program. In addition, the establishment of the DHA Inspector General Office supported efforts under whistleblower protection laws.

#### **Diversity Management (DM) Program**

1. Obtained initial operational capability (IOC) on January 1, 2015 for DM Branch with full operational capability (FOC) schedule for June 2017.
2. Updated and disseminated Equal Opportunity and Diversity Management Policy (Dec 2015) that included Equal Opportunity and Diversity Management information.
3. Funded, recruited, and hired DM Manager (GS-0260-13) in December 2016 to replace additional duty individual.
4. Drafted and staffing DHA Diversity and Inclusion Strategic Plan (Jan-Sep 2016).
5. Drafted and staffing DHA Diversity and Inclusion Council Charter (Jan-Sep 2016).

#### ***No Fear Program***

1. Updated, published, and disseminated No Fear Policy (Feb 2016) that included antidiscrimination and whistleblower protection laws information.
2. 178 individuals completed No FEAR Act training on line.

#### ***Anti-Harassment Program***

1. Drafted, published, and disseminated Anti-Harassment Policy (Dec 2015) that included sexual harassment, harassment, and hostile work environment information.
2. Drafted and staffing Anti-Harassment Administrative Instruction (Jan-Jun 2016).
3. 189 individuals completed Anti-Harassment training on line.

4. 60 individuals completed

*EEO for Managers and Supervisors Training*

1. EODM staff presented at eight sessions in DHA Human Resources Management (HRM) Course: five in house (42 attendees), and three on-line virtual sessions (18 attendees).

**Military Equal Opportunity (MEO) Program**

1. Obtained initial operational capability (IOC) on January 1, 2015 for MEO Branch with full operational capability (FOC) scheduled for June 2017.
2. Drafted, published, and disseminated MEO Policy (Dec 2015).
3. Recruited and hired new MEO Manager (GS-0260-14 in December 2015 (Moved to Army position in August 2016).
4. Recruited and hired replacement MEO Manager (GS-0260-14) in December 2016.

*Sexual Assault Prevention Response (SAPR) Program*

1. Established Sexual Assault Prevention Response (SAPR) Program in January 1, 2016.
2. Drafted, published, disseminated SAPR Policy (January 2016).
3. Drafted and published Sexual Harassment Assault Response Prevention (SHARP) Training briefing, and uploaded into DHA Training Web Site for on line access use.
4. Conducted SHARP training at three off-site locations in San Antonio, TX and Aurora, CO for over 300 employees.
5. 63 individuals completed SHARP training on line.

Note: These elements can be combined into one narrative as long as all four issues are addressed.

#### IV. CONCLUSION

Efforts to ensure harassment and hostile work environment is eliminated in DHA will be a continuing effort in our Division. The recruitment of a DM manager in December 2016 demonstrates the level of commitment the DHA senior leadership has towards ensuring EEO and Diversity are critical to the success of our mission, and fostering a working environment of diversity and inclusion that empowers individuals to participate constructively to their fullest potential in support of our mission. Further, we strive to maintain an environment in which employees are encouraged to offer their thoughts and opinions, viewpoints and perspectives, before critical decisions are made. DHA is an organization where the expression of honestly stated ideas and opinion is welcomed and encouraged.



## APPENDIX A

*The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations 29 C.F.R. §§1614.701, et seq. (5 C.F.R. 724.302(a)(4)).*

# Equal Employment Opportunity Data Posted Pursuant to the No Fear Act:

## Defense Health Agency

For FY 2016 period October 1, 2015 ending September 30, 2016

Complaint Activity	Comparative Data				
	Previous Fiscal Year Data				2016 Thru 30-Sep
			2014	2015	
Number of Complaints Filed			11	8	55
Number of Complainants			11	8	51
Repeat Filers			4	3	23
Complaints by Basis	Comparative Data				
	Previous Fiscal Year Data				2016 Thru 30-Sep
			2014	2015	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>					
Race			15	20	54
Color			6	5	23
Religion			1	0	8
Reprisal			11	25	54
Sex			12	11	54
National Origin			6	7	19
Equal Pay Act			1	0	0
Age			7	5	44
Disability			12	12	50
Non-EEO			0	0	0
Complaints by Issue	Comparative Data				
	Previous Fiscal Year Data				2016 Thru 30-Sep
			2014	2015	
<i>Note: Complaints can be filed alleging multiple issues.</i>					
Appointment/Hire			0	0	0
Assignment of Duties			6	5	22
Awards			2	2	4
Conversion to Full-time			0	0	0
<b>Disciplinary Action</b>					
Demotion			0	1	0
Reprimand			1	0	5
Suspension			0	0	3
Removal			2	0	0
Other			0	0	6
Duty Hours			0	0	6
Evaluation Appraisal			6	5	19
Examination/Test			0	0	0
<b>Harassment</b>					
Non-Sexual			11	8	55
Sexual			0	0	2
Medical Examination			0	0	0
Pay (Including Overtime)			1	0	11
Promotion/Non-Selection			2	3	16
<b>Reassignment</b>					
Denied			2	2	2
Directed			0	0	0
Reasonable Accommodation			5	5	9
Reinstatement			0	0	0

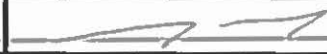
Retirement				0	0	0																													
Termination				0	2	8																													
Terms/Conditions of Employment				1	1	0																													
Time and Attendance				1	0	15																													
Training				2	2	3																													
Other				0	0	0																													
Processing Time	Comparative Data																																		
	Previous Fiscal Year Data																2016 Thru 30-Sep																		
					2014	2015																													
Complaints pending during fiscal year																																			
Average number of days in investigation					102.5	0											241																		
Average number of days in final action					0	0											295.67																		
Complaint pending during fiscal year where hearing was requested																																			
Average number of days in investigation					627.5	664.37											431.76																		
Average number of days in final action					0	0											0																		
Complaint pending during fiscal year where hearing was not requested																																			
Average number of days in investigation					0	0											0																		
Average number of days in final action					0	0											295.67																		
Complaints Dismissed by Agency	Comparative Data																																		
	Previous Fiscal Year Data																2016 Thru 30-Sep																		
					2014	2015																													
Total Complaints Dismissed by Agency					3	3											16																		
Average days pending prior to dismissal					70.33	94.67											60.69																		
Complaints Withdrawn by Complainants																																			
Total Complaints Withdrawn by Complainants					0	2											5																		
Total Final Agency Actions Finding Discrimination	Comparative Data																																		
	Previous Fiscal Year Data										2016 Thru 30-Sep																								
									2014		2015																								
	#	%	#	%	#	%	#	%	#	%	#	%																							
Total Number Findings										0	0	0	0	0	0																				
Without Hearing										0	0	0	0	0	0																				
With Hearing										0	0	0	0	0	0																				
Findings of Discrimination Rendered by Basis	Comparative Data																																		
	Previous Fiscal Year Data										2016 Thru 30-Sep																								
									2014		2015																								
	#	%	#	%	#	%	#	%	#	%	#	%																							
<i>Note: Complaints can be filed alleging multiple bases.</i>																																			
<i>The sum of the bases may not equal total complaints and findings.</i>																																			
Total Number Findings										0	0	0	0	0	0																				
Race										0	0	0	0	0	0																				
Color										0	0	0	0	0	0																				
Religion										0	0	0	0	0	0																				
Reprisal										0	0	0	0	0	0																				
Sex										0	0	0	0	0	0																				
National Origin										0	0	0	0	0	0																				
Equal Pay Act										0	0	0	0	0	0																				
Age										0	0	0	0	0	0																				
Disability										0	0	0	0	0	0																				
Non-EEO										0	0	0	0	0	0																				
Findings After Hearing										0	0	0	0	0	0																				
Race										0	0	0	0	0	0																				
Color										0	0	0	0	0	0																				
Religion										0	0	0	0	0	0																				
Reprisal										0	0	0	0	0	0																				
Sex										0	0	0	0	0	0																				
National Origin										0	0	0	0	0	0																				
Equal Pay Act										0	0	0	0	0	0																				
Age										0	0	0	0	0	0																				
Disability										0	0	0	0	0	0																				
Non-EEO										0	0	0	0	0	0																				

<b>Findings Without Hearing</b>							0	0	0	0	0	0
Race							0	0	0	0	0	0
Color							0	0	0	0	0	0
Religion							0	0	0	0	0	0
Reprisal							0	0	0	0	0	0
Sex							0	0	0	0	0	0
National Origin							0	0	0	0	0	0
Equal Pay Act							0	0	0	0	0	0
Age							0	0	0	0	0	0
Disability							0	0	0	0	0	0
Non-EEO							0	0	0	0	0	0
<b>Findings of Discrimination Rendered by Issue</b>	<b>Comparative Data</b>											
	<b>Previous Fiscal Year Data</b>										<b>2016 Thru 30-Sep</b>	
							<b>2014</b>		<b>2015</b>		<b>#</b>	<b>%</b>
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>		
<b>Total Number Findings</b>							0	0	0	0	0	0
Appointment/Hire							0	0	0	0	0	0
Assignment of Duties							0	0	0	0	0	0
Awards							0	0	0	0	0	0
Conversion to Full-time							0	0	0	0	0	0
Disciplinary Action												
Demotion							0	0	0	0	0	0
Reprimand							0	0	0	0	0	0
Suspension							0	0	0	0	0	0
Removal							0	0	0	0	0	0
Other							0	0	0	0	0	0
Duty Hours							0	0	0	0	0	0
Evaluation Appraisal							0	0	0	0	0	0
Examination/Test							0	0	0	0	0	0
Harassment												
Non-Sexual									0	0	0	0
Sexual									0	0	0	0
Medical Examination									0	0	0	0
Pay (Including Overtime)									0	0	0	0
Promotion/Non-Selection									0	0	0	0
Reassignment												
Denied									0	0	0	0
Directed									0	0	0	0
Reasonable Accommodation									0	0	0	0
Reinstatement									0	0	0	0
Retirement									0	0	0	0
Termination									0	0	0	0
Terms/Conditions of Employment									0	0	0	0
Time and Attendance									0	0	0	0
Training									0	0	0	0
Other - User Defined									0	0	0	0
<b>Findings After Hearing</b>									0	0	0	0
Appointment/Hire									0	0	0	0
Assignment of Duties									0	0	0	0
Awards									0	0	0	0
Conversion to Full-time									0	0	0	0
Disciplinary Action												
Demotion									0	0	0	0
Reprimand									0	0	0	0
Suspension									0	0	0	0
Removal									0	0	0	0
Other									0	0	0	0
Duty Hours									0	0	0	0
Evaluation Appraisal									0	0	0	0
Examination/Test									0	0	0	0
Harassment												
Non-Sexual									0	0	0	0
Sexual									0	0	0	0
Medical Examination									0	0	0	0



Pay (Including Overtime)									0	0	0	0
Promotion/Non-Selection									0	0	0	0
Reassignment												
Denied									0	0	0	0
Directed									0	0	0	0
Reasonable Accommodation									0	0	0	0
Reinstatement									0	0	0	0
Retirement									0	0	0	0
Termination									0	0	0	0
Terms/Conditions of Employment									0	0	0	0
Time and Attendance									0	0	0	0
Training									0	0	0	0
Other - User Defined									0	0	0	0
Findings Without Hearing									0	0	0	0
Appointment/Hire									0	0	0	0
Assignment of Duties									0	0	0	0
Awards									0	0	0	0
Conversion to Full-time									0	0	0	0
Disciplinary Action												
Demotion									0	0	0	0
Reprimand									0	0	0	0
Suspension									0	0	0	0
Removal									0	0	0	0
Other									0	0	0	0
Duty Hours									0	0	0	0
Evaluation Appraisal									0	0	0	0
Examination/Test									0	0	0	0
Harassment												
Non-Sexual									0	0	0	0
Sexual									0	0	0	0
Medical Examination									0	0	0	0
Pay (Including Overtime)									0	0	0	0
Promotion/Non-Selection									0	0	0	0
Reassignment												
Denied									0	0	0	0
Directed									0	0	0	0
Reasonable Accommodation									0	0	0	0
Reinstatement									0	0	0	0
Retirement									0	0	0	0
Termination									0	0	0	0
Terms/Conditions of Employment									0	0	0	0
Time and Attendance									0	0	0	0
Training									0	0	0	0
Other - User Defined									0	0	0	0
Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data											
	Previous Fiscal Year Data					2016 Thru 30-Sep						
				2014	2015							
	Total complaints from previous Fiscal Years					55						
	Total Complainants					51						
	Number complaints pending											
	Investigation					11						
	ROI issued, pending Complainant's action					0						
	Hearing					33						
	Final Agency Action					3						
Appeal with EEOC Office of Federal Operations					11							
Complaint Investigations	Comparative Data											
	Previous Fiscal Year Data					2016 Thru 30-Sep						
				2014	2015							
	Pending Complaints Where Investigations Exceed Required Time Frames					6						

Releasing Authority	Signature/Date
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Gregory S. Byard, DHA EODM Director	 30 DEC 16

## APPENDIX B

*A detailed description of the agency's policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws (5 C.F.R. 724.302(a)(6)).*

If the policy is available electronically, please only include the public link.

- a. **Administrative Instruction 29, Disciplinary and Adverse Actions, dated July 17, 2012**
- b. **Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act Policy, dated February 7, 2014**



# TRICARE Management Activity ADMINISTRATIVE INSTRUCTION

NUMBER 29  
November 7, 2012

TMA Human Resources Division

SUBJECT: Disciplinary and Adverse Actions

References: See Enclosure 1.

1. PURPOSE. This Administrative Instruction (AI) sets forth the authority, criteria, and responsibilities for implementing and managing the TRICARE Management Activity (TMA) policy on disciplinary and adverse actions. The Instruction:

a. Establishes policy, guidance, and procedures for taking disciplinary and adverse actions consistent with References (a) through (d).

b. Issues a Table of Offenses and Penalties to use as a guide for selecting an appropriate penalty for actionable misconduct. See Enclosure 2.

2. APPLICABILITY. This AI applies to:

a. All organizational entities of TMA, Office of the Secretary of Defense (SecDef).

b. All employees except those identified below and those specifically excluded in Enclosure 3 of this Instruction and in part 752 of Reference (c).

(1) Re-employed annuitants in the competitive or excepted service.

(2) Employees serving under temporary appointments with a definite time limit.

(3) Employees serving a probationary or trial period, or who have completed less than 1 year of current continuous employment.

(4) Preference eligible in the excepted service with less than 1 year of current continuous employment.



(5) Non-preference eligible in the excepted service with less than 2 years of current continuous service.

(6) Employees appointed according to Section (Sec.) 1601 of Title 10, United States Code (U.S.C.), (Reference (d)), during a national emergency.

c. While excluded from coverage according to this Instruction, the employees listed in paragraph b may be suspended, demoted, admonished, warned, or reprimanded consistent with this Instruction. However, when separation is warranted, their appointments may be terminated without complying with the procedures outlined in this Instruction. Prior to taking action, the supervisor shall seek advice and assistance from the Management Employee and Labor Relations (MELR) Branch.

3. DEFINITIONS. See Glossary.

4. POLICY. According to Sec. 7513 of Reference (b), the objective of a disciplinary or adverse action is to promote “the efficiency of the service” by ensuring high standards of Government service and maintaining public confidence in the Department of Defense (DoD). Disciplinary actions shall be taken “only for such cause as will promote the efficiency of the service” and, when warranted, shall be initiated promptly. The administration of disciplinary and adverse actions balances essential management decisions with employee rights established by law, regulation, policy, and/or a collective bargaining agreement. Actions are effected through due process that may include a notice of proposed action, an opportunity to respond to charges, a notice of decision, and access to Appellate or grievance procedures. Management carries the obligation to prove the following by a preponderance of the evidence:

- a. The reason for the disciplinary or adverse action.
- b. That the action promotes the efficiency of the service.
- c. That the penalty is reasonable.

The authority to initiate disciplinary or adverse actions shall be delegated to the lowest practical level of supervision consistent with good management practices. Normally this authority is placed at the first level of supervision. However, any supervisor at any level of supervision may initiate action consistent with this Instruction. Decisions to suspend, reduce in grade, or remove shall normally be made by a management official at least one level higher than the supervisor who proposed the action, unless the proposing official is SecDef. Prior to initiating action, a supervisor shall seek advice and assistance from MELR to ensure regulatory compliance and consistency of actions across organizations. In deciding whether to take disciplinary or adverse action, there shall be no discrimination against an employee for political beliefs, physical

handicap, sex, race, religion, color, national origin, or age.

5. RESPONSIBILITIES. See Enclosure 3.

6. PROCEDURES. See Enclosure 4.

7. INFORMATION REQUIREMENTS. See Enclosure 5.

8. RELEASABILITY. RESTRICTED. This Instruction is approved for restricted release. It is available for Health Affairs/TMA employees only.

9. EFFECTIVE DATE. This AI is effective immediately.



W. Bryan Gamble, M.D., FACS  
Brigadier General, US Army  
Deputy Director

Enclosures:

1. References
2. Table of Offenses and Penalties
3. Responsibilities
4. Procedures
5. Information Requirements
6. Guidelines for Proposing Officials - Disciplinary and Adverse Actions
7. Guidelines for Deciding Officials - Disciplinary and Adverse Actions
8. Guidelines for Deciding Officials when Hearing an Employee Oral Response
9. Checklist for Deciding Officials - Disciplinary and Adverse Actions
- 9-A. Analysis of Douglas Factors
10. Sample Memorandum of Warning
11. Sample Notice of Requirements - Attendance
12. Sample Memorandum of Return to Duty - Medical
13. Sample Notice of Discharge during Probationary Period
14. Sample Letter of Reprimand
15. Sample Notice of Proposed Suspension of 1-14 Days
16. Sample Notice of Decision on Proposed Suspension of 1-14 Days

- 17. Sample Notice of Proposed Adverse Action - Suspension of 15 Days or More, Reduction in Grade, or Removal
  - 18. Sample Notice of Decision on Proposed Adverse Action - Suspension of 15 Days or More, Reduction in Grade, or Removal
  - 19. Merit Systems Protection Board Regional or Field Office for Filing Appeals
- Glossary

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ENCLOSURE I

REFERENCES

- (a) DoD Directive 5110.4, "Washington Headquarters Services (WHS)," October 19, 2001.
- (b) Chapters 43 and 75 and Secs. 1204(a)(2), 3103, 3105, 3321(a)(2), 3321(b), 4302, 5501, 7323, 7325, 7351, 7513, 7521, and 7532 of Title 5, U.S.C.
- (c) Parts 213, 316, 351, 359, 430, 432, 731, 754, and 752 of Title 5, Code of Federal Regulations.
- (d) Sec. 1601 of Title 10, U.S.C.
- (e) DoD Directive 5500.7, "Standards of Conduct," August 30, 1993.
- (f) TMA AI Number 30, "TRICARE Management Activity Performance Appraisal Program for General Schedule, Federal Wage System, and Certain Other Employees," April 27, 2010.
- (g) TMA AI Number 20, "TRICARE Management Activity Administrative Grievance System," May 27, 2012.
- (h) DoD 8500.2, "Information Assurance (IA) Implementation." September 15, 2012.
- (i) DoD Chief Information Officer (CIO) memorandum, "DoD Guidance on Protecting Personally Identifiable Information," August 18, 2006.
- (j) DoD CIO memorandum, "Encryption of Sensitive Unclassified Data at Rest on Mobile Computing Devices and Removable Storage Media," July 3, 2007.

## ENCLOSURE 2

### TABLE OF OFFENSES AND PENALTIES

1. GENERAL. The Table of Offenses and Penalties is intended for use as a guide for selecting an appropriate penalty for actionable misconduct. This table does not substitute for supervisory judgment and does not dictate penalties. Rather, this table provides a general framework within which supervisors exercise judgment on a case-by-case basis.

2. OFFENSE COLUMN. The OFFENSE column is not intended to be an exhaustive listing. No attempt has been made to list every possible cause for disciplinary or adverse action. The fact that a specific offense is not listed does not mean a penalty cannot be imposed. Supervisors should compare a specific misconduct to the offenses described and use a cause of action that most closely describes the misconduct.

3. PENALTY COLUMN.

a. The PENALTY column establishes a range of penalties from minimum to maximum for a specific type of offense. The penalty column is further divided into columns for FIRST OFFENSE, SECOND OFFENSE, and THIRD OFFENSE. The penalty range typically becomes more severe as offenses progress from first through third. Previous informal disciplinary actions are not counted as previous offenses for the purpose of penalty selection. To be considered a second or third offense, the subsequent misconduct does not have to be the same or similar as the first type of misconduct. For example, if an employee who previously was reprimanded for a first offense of absence without leave (AWOL) subsequently engages in insubordination, the penalty range would be derived from the second offense column for insubordination. Also, various factors can combine to either enhance or mitigate a penalty selection. For example, the presence of multiple charges would tend to enhance a penalty selection.

b. A supervisor has a choice of severity of action ranging from no penalty, a range of informal disciplinary actions, to the maximum penalty stated in the range. When significant aggravating circumstances exist, the penalty range may be exceeded. For example, if the table shows a 14-day suspension as a maximum penalty, the supervisor may determine no penalty is needed, or may issue an oral admonishment, a letter of warning, a reprimand, or a suspension of up to 14 days. Using this same example, the penalty could be greater than a 14-day suspension if there are significant aggravating circumstances. Deviation from the suggested penalties should be justified in the notice of proposed action and notice of decision. Whenever prior offenses are used to support a more severe penalty, those offenses shall be cited in the notice of proposed action. When a series of offenses have been committed and action could not have been taken on each before another was committed, a more severe penalty may be assessed for the combined offenses than would be appropriate for any one single offense.

ENCLOSURE 2 (TABLE 1)			
TABLE OF OFFENSES AND PENALTIES			
OFFENSE (CAUSE OF ACTION)	FIRST OFFENSE PENALTY	SECOND OFFENSE PENALTY	THIRD OFFENSE PENALTY
<b>T1.1. Attendance-Related Misconduct. Penalty should correlate to the absence.</b>			
T1.1.1. AWOL from the regular scheduled tour of duty. Includes leaving work area without permission.	Reprimand to 5-Day Suspension	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.1.2. Failure to follow established procedures to request leave.	Reprimand to 5-Day Suspension	1-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
T1.1.3. Unexcused tardiness.	Reprimand	Reprimand to 5-Day Suspension	5-Day Suspension to Removal
T1.1.4. Prolonged or extended period of AWOL.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
<b>T1.2. Insubordination.</b>			
T1.2.1. Refusal to obey an order that a superior is entitled to give and have obeyed.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.2.2. Impertinence, insolence, disrespectful conduct toward a supervisor.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.2.3. Delay in carrying out instructions, loafing. Failure or delay in carrying out work assignments or instructions in a reasonable time. Idleness or failure to work on assigned duties.	Reprimand to 5-Day Suspension	5-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
<b>T1.3. Fighting and/or creating a disturbance in the workplace. Penalties may be enhanced if directed at a supervisor.</b>			
T1.3.1. Creating a disturbance causing an adverse impact on morale, production, or discipline. Penalty may be enhanced in relation to the disruption.	Reprimand to 5-Day Suspension	5-14 Day Suspension	14-Day Suspension to Removal
T1.3.2. Threatening or attempting to inflict bodily harm.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
T1.3.3. Hitting, pushing, or other acts	30-Day Suspension to Removal		Removal



against another, causing injury.			
T1.3.4. Hitting, pushing, or other acts against another, without causing injury.	14-Day Suspension to Removal	30-Day Suspension to Removal	Removal
T1.3.5. Intimidating or aggressive conduct.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
<b>T1.4. Sleeping on Duty.</b>			
T1.4.1. Where safety of personnel or property is not endangered.	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	14-Day Suspension to Removal
T1.4.2. Where safety of personnel or property is endangered.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
<b>T1.5. Discourtesy.</b>			
T1.5.1. Rude, impolite acts or remarks (non-discriminatory).	Reprimand to 5-Day Suspension	5-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
T1.5.2. Use of offensive or abusive language, gestures, or similar conduct (non-discriminatory).	Reprimand to 14-Day Suspension	14-Day Suspension to Removal	30-Day Suspension to Removal
<b>T1.6. Unauthorized Use, Possession, or Transfer of an Alcoholic Beverage.</b>			
T1.6.1. Unauthorized use, possession, or transfer of an alcoholic beverage on Government property while in a duty status.	Reprimand to 14-Day Suspension	14-Day Suspension to 30-Day Suspension	30-Day Suspension to Removal
T1.6.2. Reporting to work or being under the influence of alcohol that interferes with proper performance of duty. (Removal for a first or subsequent offense may be warranted if personnel or property is endangered.)	Reprimand to Removal	30-Day Suspension to Removal	Removal
<b>T1.7. Unauthorized Use and/or Possession of Illegal Drugs and/or Controlled Substances.</b>			
T1.7.1. Bringing illegal drugs and/or unauthorized controlled substances to a work area or onto Government property for personal use.	Removal		
T1.7.2. Bringing illegal drugs and/or unauthorized controlled substances to a work area or onto Government property for distribution.	Removal		
T1.7.3. Reporting to work under the influence of illegal drugs and/or unauthorized controlled substances.	Removal		
T1.7.4. Testing positive under the Drug Free Workplace Program,	Removal		



providing an adulterated sample, failing to take a drug test, or failing to comply with testing procedures.			
<b>T1.8. Gambling.</b>			
T1.8.1. Participating in an unauthorized gambling activity while on Government property or in a duty status.	Reprimand to 5-Day Suspension	5-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
T1.8.2. Operating, assisting, or promoting an unauthorized gambling activity while on Government property while in a duty status, or while others are in a duty status.	14-Day Suspension to Removal		Removal
<b>T1.9. False Statements.</b>			
T1.9.1. Making or providing false statements, misrepresentations, or entitlement fraud. Includes falsifying information on a time card, leave form, travel voucher, or other documents for entitlements.	Reprimand to Removal	30-Day Suspension to Removal	Removal
T1.9.2. Making or providing false statements or misrepresentation on documents pertaining to qualifications, or on any other official record.	Reprimand to Removal	30-Day Suspension to Removal	Removal

T1.9.3. Making a false or malicious statement against coworkers, supervisors, subordinates, or Government officials.	Reprimand to Removal	30-Day Suspension to Removal	Removal
T1.9.4. Misrepresentation, concealing, or withholding of a material fact. Includes perjury, making false sworn statements, and lying to a supervisor.	Reprimand to Removal	30-Day Suspension to Removal	Removal
<b>T1.10. Unauthorized Taking and/or Possession of Others' Property. Actual or attempted taking or carrying away of Government property or the property of others, or collusion with others to commit such acts.</b>			
T1.10.1. Where substantial value is not involved.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.10.2. Where substantial value is involved.	14-Day Suspension to Removal		Removal
<b>T1.11. Misuse or Abuse of Government Property, Employees, Contractors, or Processes.</b>			
T1.11.1. Using Government property, employees, or contractors for other than official purposes.	Reprimand to Removal	14-Day Suspension to Removal	Removal
T1.11.2. Loss of or damage to Government property, records, or information when the employee is entrusted to safeguard the property as a job requirement (e.g., cashier, warehouse worker, property book officer).	Reprimand to 14-Day Suspension	14-Day Suspension to Removal	30-Day Suspension to Removal
T1.11.3. Misuse of Government credentials.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.11.4. Misuse of any Government-issued charge card (e.g., purchase charge cards, travel charge cards).	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.11.5. Unauthorized use of or failure to appropriately control use of Government Purchase Charge Card as a cardholder (approving official responsible for use or oversight of the card).	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.11.6. Misuse of Government computer, network, intranet, internet, e-mail, etc.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.11.7. Misuse of a Government vehicle. Willfully using or authorizing the use or misuse of a Government passenger motor vehicle	Minimum 30-Day Suspension to Removal	60-Day Suspension to Removal	Removal



or aircraft for other than official purposes. (See Sec. 1349 of Title 31, U.S.C. (Reference (h))).			
T1.11.8. Abuse of discretion, malfeasance, misfeasance, or non-feasance.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
<b>T1.12. Failure to Follow Written Regulations, Orders, Rules, or Procedures.</b>			
T1.12.1. Violation where safety to persons or Government property is not compromised.	Reprimand to 5-Day Suspension	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.12.2. Violation where safety to persons or Government property is compromised.	Reprimand to Removal	14-Day Suspension to Removal	Removal
<b>T1.13. Conduct Unbecoming a Federal employee. Includes off-duty misconduct if nexus is established.</b>			
T1.13.1. Immoral, indecent, illegal, or disgraceful conduct.	5-Day Suspension to Removal	14-Day Suspension to Removal	Removal
T1.13.2. Soliciting or accepting anything of value or other benefit for financial gain.	14-Day Suspension to Removal	30-Day Suspension to Removal	Removal
<b>T1.14. Refusal to Cooperate or Testify, Interfering, and/or Obstructing in Administrative Inquiries or Investigations.</b>			
T1.14.1. Refusal to cooperate or testify in an administrative inquiry or investigation.	5-Day Suspension to Removal	14-Day Suspension to Removal	Removal
T1.14.2. Interference with, attempting to influence, or attempting to alter testimony of witnesses or participants.	14-Day Suspension to Removal	30-Day Suspension to Removal	Removal
T1.14.3. Attempting to impede an investigation or to influence investigating officials.	30-Day Suspension to Removal		Removal
<b>T1.15. Job Actions. Participating in or promoting a strike, work stoppage, slow down, sick-out, or other action.</b>	Removal		
<b>T1.16. Delinquent Debt. Failure or delay to honor valid debts where the agency mission or employee performance is affected (e.g., delinquent travel charge card account).</b>	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	14-Day Suspension to Removal
<b>T1.17. Sexual Misconduct. Where sexual misconduct contributes to a hostile work environment, is quid pro quo, or involves deliberate or repeated offensive comments, gestures, or physical contact, removal may be warranted for a first offense.</b>			
T1.17.1. Involving a subordinate.	5-Day Suspension to	14-Day Suspension to	30-Day Suspension to

	Removal	Removal	Removal
T1.17.2. Not involving a subordinate.	Reprimand to 30-Day Suspension	5-Day Suspension to Removal	14-Day Suspension to Removal
<b>T1.18. Discrimination because of race, color, religion, age, gender, national origin, handicapping condition, political affiliation, or marital status. Also, prohibited discriminatory practice in any aspect of employment (e.g., hiring, appraisal, development) and/or failure to prevent or curtail discrimination or prohibited practice of a subordinate when the supervisor knew, or should have known, of the discrimination.</b>	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal

ENCLOSURE 3  
RESPONSIBILITIES

1. The Chief, MELR/Human Resources Division (HRD), shall:
  - a. Provide advice and assistance to supervisory and management officials on disciplinary and adverse actions.
  - b. Counsel employees concerning their rights, privileges, and standards of conduct.
2. The Director, HRD, shall:
  - a. Ensure that employees are advised of their rights according to this Instruction.
  - b. Coordinate all formal disciplinary actions with MELR to ensure conformance with established laws and regulations.
  - c. Ensure each case is processed promptly and fairly and that discipline is uniformly applied.
3. The Proposing Official shall:
  - a. Gather, document, and analyze the facts concerning each potential disciplinary or adverse action.
  - b. Issue a notice of proposed disciplinary or adverse action.
4. The Deciding Official shall:
  - a. Review and consider all relevant material regarding a proposed action.
  - b. Issue a notice of final decision on a disciplinary or adverse action.
5. Supervisors shall:
  - a. Conduct themselves so as to set a good example for their subordinate employees.
  - b. Communicate their expectations regarding standards of conduct and performance to employees.
  - c. Refer employees to the Employee Assistance Program (EAP) as necessary.
  - d. Consult with MELR prior to initiating action in accordance with this Instruction.



6. Employees shall:

- a. Conduct themselves, both on and off duty, in a way that ensures their conduct does not reflect adversely on DoD.
- b. Follow the work rules and directives provided by their supervisors.
- c. Comply with the standards of conduct prescribed in DoD Directive 5500.7 (Reference (e)).

ENCLOSURE 4PROCEDURES1. Adverse Actions.

a. Disciplinary. Disciplinary adverse actions may be taken against an employee covered by this Instruction only for such cause as will promote the efficiency of the service. A just and substantial cause is necessary as a basis for a disciplinary adverse action. The nature of the cause shall be determined on a case-by-case basis.

b. Non-disciplinary. Certain kinds of adverse actions are considered non-disciplinary in nature (e.g., separation based on performance, failure to meet medical or other job requirements, reductions in grade or pay as a result of classification actions or reorganization, and furloughs of 30 days or less).

c. Reduction in Grade or Pay. Reductions in grade or pay are subject to the procedural provisions of paragraph 6.d. of this Instruction, with the exception of reductions based upon unacceptable performance, which are subject to the provisions of paragraph 10 in accordance with References (b) and (c), and TMA AI Number 30 (Reference (f)).

d. Furlough. A furlough is an adverse action according to part 752 of Reference (c) if it is for a period of 30 calendar days or less and is based on a decision of an appropriately designated management official. Military or similar furloughs required by law or regulation are not actions based on decisions of a management official. They are actions required by established facts and are not adverse actions. Furloughs for more than 30 calendar days are reduction-in-force actions.

2. Disciplinary and Removal Actions: Guidelines for Selecting Penalties.

a. General. When discipline is necessary, a wide variety of penalties may be applicable to the misconduct. In selecting a penalty, all of the specific circumstances of the case shall be taken into account. In deciding what action to take, careful judgment must be used to ensure that the penalty is not out of proportion to the character of the offense, especially a first offense, and to ensure that penalties are imposed with consistency and equity throughout the organization. Past offenses may form the basis for proposing a higher penalty for subsequent offenses. The offenses need not be identical or even similar in nature.

b. Penalty Selection Factors. After reviewing all the evidence, the servicing Employee Relations Specialist, MELR, will make recommendations regarding the appropriate penalty. The factors most commonly used in selecting the penalty are listed in paragraphs (1) through (11) below. Not all factors listed will be pertinent in each case. Additionally, the factors may serve as either mitigating or aggravating depending on the specifics of the action.

(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 or 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. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon a supervisor's confidence in the employee's ability to perform assigned duties.

(5) Consistency of the penalty with those imposed upon other employees for the same or similar offenses.

(6) Consistency of the penalty with the TMA Table of Offenses and Penalties. See Enclosure 2.

(7) The notoriety of the offense or its impact upon the reputation of the agency.

(8) The clarity with which the employee was on notice of any rules violated in committing the offense, and whether he or she had been warned about the conduct in question.

(9) The potential for the employee's rehabilitation.

(10) 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.

(11) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

3. Table of Offenses and Penalties. The Table of Offenses and Penalties at Enclosure 2 provides guidance on selecting appropriate penalties for typical offenses. Normally a progression of disciplinary measures is applied in an effort to correct an employee's conduct. A first offense normally does not warrant the removal of an employee. When appropriate action other than removal will correct an employee's conduct, a lesser action is the proper course of action.

4. Informal Disciplinary Actions. Oral admonishments or written warnings are usually the first step in constructive discipline. These measures may be used for an offense that does not, by itself, warrant a reprimand but that will, if repeated, warrant formal disciplinary action. In the case of an oral admonishment, the supervisor should make an informal record of the date of the discussion and the subjects covered. Reference to the admonishment can be cited in any future action as evidence that the employee was on notice of the seriousness of the offense and of possible future disciplinary action. The employee must be advised that an informal record is being kept and that the incident may be cited in future disciplinary action.

5. Formal Disciplinary Actions. Formal disciplinary actions consist of official reprimands, suspensions, and removals. Formal disciplinary action is usually initiated by the immediate supervisor of the employee being disciplined. The final decision for all disciplinary actions rests with the deciding official.

a. Reprimands. A reprimand is official discipline given to an employee in a formal letter for violation of a rule of conduct, law, regulation, official instruction, or particular responsibility. A reprimand also may be given for repeated minor offenses about which the employee is on clear notice that the conduct is unacceptable.

b. Suspensions and Removals. When an employee is suspended, he or she is not allowed to work or earn pay for a specified number of days. Suspension from a pay and duty status for misconduct or delinquency is generally imposed when an employee fails to improve his or her conduct after receiving informal discipline and/or being reprimanded. A removal is the strongest action and is usually reserved for the most serious offenses or when other actions have not served to correct the misconduct. The action selected depends on the seriousness of the offense. The amount of notice, right to reply, and appeal rights depend upon the employee's appointment, bargaining unit status, and tenure.

#### 6. Requirements for Disciplinary and Adverse Actions.

a. General. Federal law and regulations mandate procedures which must be followed when taking a disciplinary or adverse action against an employee. Failure to adhere to these procedures may lead to reversal of an action upon appeal without consideration of the merits of the case. Before initiating a disciplinary or adverse action, the supervisor must investigate the incident and obtain witness statements, as appropriate, and any other documentation relating to the misconduct. This documentation should include a written or oral explanation from the employee. If the supervisor personally witnesses the misconduct, he or she should prepare a memorandum for the record summarizing the incident. All pertinent information gathered during the course of the investigation will be forwarded to MELR for review and preparation of the action.

#### b. Requirements for Official Reprimands.

(1) Issuance of the Reprimand. The supervisory or management official taking the action shall:

(a) Notify the employee in writing of the reprimand. The written notification shall:

1. Contain the reason specifically and in detail for the reprimand.
2. Provide a warning that any recurrence of the misconduct may result in a more severe action.
3. If applicable, include reference to any past counseling or other attempts to correct the employee's behavior.
4. Contain a statement that a copy of the letter of reprimand will be placed in the employee's official personnel file (OPF) for a period not to exceed 2 years.
5. Management officials are authorized to request expungement of these documents at an earlier date if desired.

(b) Advise the employee of grievance rights according to TMA AI No. 20, TMA Administrative Grievance System.

(c) Coordinate all reprimands with MELR.

(2) Delivery and Recording of the Reprimand. The official taking the action shall personally deliver the reprimand to the employee, if possible, and shall obtain written acknowledgment of receipt on a copy of the reprimand for placement in the employee's OPF.

c. Requirements for Suspensions of 14 Days or Less.

(1) Coverage. For the purposes of this section, employee means:

(a) An employee in the competitive service who is not serving a probationary or trial period under an initial appointment, or who has 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.

(b) A preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions.

(c) An employee with competitive status who occupies a position under a Schedule B appointment.

(2) Excluded Employees. This section does not apply to:

(a) Employees serving a probationary or trial period.

(b) Employees serving with less than 1 year of current continuous service. An employee serving under a temporary appointment pending establishment of a register or a special tenure appointment, or serving as a status quo employee, does not serve a probationary or trial period. During the first year of current continuous employment, however, the employee is not covered by part 752 of Reference (c).

(c) Employees serving with temporary tenure. In the competitive service, an employee in a temporary appointment with a definite time limitation serves with temporary tenure and is not covered by Reference (c).

(d) Employees serving under a limited executive assignment.

(e) Re-employed annuitants.

(f) Preference eligible employees with less than 1 year of current continuous employment in the excepted service.

(g) Employees whose appointment requires Senate confirmation.

(h) Schedule B employees without competitive status.



(i) Employees whose positions have been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character (Schedule C employees).

(j) Employees appointed according to Reference (c) during a national emergency.

(3) Standards for Issuance of Advance Notice. Except in emergency situations, the employee must be given at least 10 days advance written notice of the proposed suspension. The notice must:

(a) Identify the proposed action.

(b) State the reasons for the proposed suspension with specificity and sufficient detail to allow the employee to reply to the charge(s).

(c) Inform the employee of his or her right to reply orally and/or in writing to the proposed action and identify the name of the deciding official.

(d) Allow the employee a minimum of 10 calendar days to secure affidavits and/or other documentation and submit a written reply to the proposed action. A reasonable amount of official time shall be provided the employee for purposes of preparing a reply (this is usually hours, not days). The amount of time allowed depends on the facts and circumstances of the case and shall be sufficient to afford the employee an opportunity to review the material relied on to support the proposed action, to prepare a reply, and to secure affidavits.

(e) Inform the employee of his or her right to be represented by an attorney or other representative and the right to review the material supporting the proposed suspension. An employee's choice of representative may be disallowed if such representation would result in a conflict of interest or position.

(f) Indicate that a request for an extension of the time limit allowed for a reply shall be considered by the deciding official. Inform the employee of his or her duty status during the notice period.

(g) Indicate that a final decision on the proposed action may not be made until after the employee's reply, if any, has been considered, or after the time allotted the employee to reply has expired.

(4) Standards for Issuance of Notice of Final Decision. If, after consideration of the employee's reply to the written notification of the proposed suspension, it is decided that the suspension is warranted, the notice of final decision must:

(a) Consider only the reasons specified in the notice of proposed action and specify the reasons for the decision.

(b) Indicate whether or not the employee replied to the advance notice and, if so, that his or her reply was considered.

(c) Inform the employee of his or her grievance rights in accordance with Reference (g).

(d) Be signed by the deciding official.

(e) Be delivered to the employee at or before the effective date of the suspension.

d. Requirements for Removals, Suspensions for More than 14 Days, Furlough Without Pay of 30 Days or Less, and Reductions in Grade or Pay.

(1) Coverage. For the purposes of this paragraph, employee means:

(a) An employee in the competitive service who has completed a probationary or trial period.

(b) An employee in the competitive service serving in an appointment that requires no probationary or trial period, and who has completed 1 year of current continuous service in the same or similar positions under other than a temporary appointment limited to 1 year or less.

(c) An employee in the excepted service who is preference eligible and has completed 1 year of current continuous service in the same or similar positions.

(d) An employee in the excepted service who is non-preference eligible and who has completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less.

(e) An employee with competitive status who occupies a position in Schedule B of part 213 of Reference (c).

(f) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service (see Glossary) and who still occupies that position.

(2) Excluded Employees. This section does not apply to:

(a) Employees whose appointment is made by the President with the advice and consent of the Senate.

(b) Employees whose positions have been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by the Office of Personnel Management (OPM) for positions that are excepted from competitive service, or by the President, or the head of a Federal agency for positions excepted from competitive service by statute.

(3) Excluded Actions. This section does not apply to:

(a) A suspension or removal taken in the interest of national security.

(b) A reduction-in-force action.

(c) A reduction in grade of a supervisor or manager who has not completed the probationary period, if such reduction is to the grade held immediately before becoming a supervisor or manager.

(d) A reduction in grade or removal based solely on unacceptable performance.

(e) An involuntary retirement because of disability.

(f) An action that entitles an employee to grade retention and an action to terminate this entitlement.

(g) An action against a re-employed annuitant.

(h) A reduction of an employee's rate of pay from a rate that is contrary to law or regulation to a rate required or permitted by law or regulation.

(i) An action against a Presidential appointee.

(j) An action initiated under the authority of the U.S. Special Counsel.

(k) An action taken as provided by statute that excepts the action from Subchapter II of Chapter 75 of Reference (b).

(l) A voluntary action initiated by the employee.

(m) An action taken or directed by OPM for suitability reasons.

(n) A termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made.

(o) An action that 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.

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

(q) Cancellation of a promotion to a position not classified before the promotion.

(r) Placement of an employee serving on an intermittent, part-time, or seasonal basis in a non-duty, non-pay status in accordance with conditions established at the time of appointment.

(4) Standards for Issuance of Advance Notice. An employee against whom an action is proposed is entitled to:

(a) A minimum of 30 days advance written notice stating the specific reasons for the proposed action.

(b) A reasonable time, but not less than 10 days, to answer orally and/or in writing (unless the action is taken according to the crime provision set forth in Reference (c) and (6)(a) below and to furnish affidavits and other documentary evidence in support of the answer.

(c) Consideration of requests for extension of time to reply to the proposed action by the official designated to receive the response.

(d) Representation by an attorney or other representative, and a reasonable amount of official time to review the supporting evidence.

(5) Standards for Notice of Final Decision. A written decision shall be provided to the employee at the earliest practical date after the employee's reply, if any, has been received, or after expiration of the time allotted the employee to reply. The notice of decision shall be delivered to the employee at or before the time the action is made effective, and shall inform the employee of his or her appeal rights.

(6) Other Considerations.

(a) Crime Provision. The crime provision is used when the agency has reasonable cause to believe that an employee has committed a crime for which a sentence of imprisonment may be imposed. According to this provision, an employee is required to furnish an answer, including affidavits and other documentary evidence, within 7 calendar days. Reasonable cause to believe is not established by the mere fact either of an arrest or an ongoing agency investigation of possible criminal misconduct. A criminal indictment will usually constitute reasonable cause. However, caution must be exercised before proposing an action according to the crime provision.

(b) Status during Notice Period. Under ordinary circumstances, employees will remain in a duty status in their regular positions during the advance notice period. Other options (e.g., voluntary use of leave, reassignment, or detail) may be appropriate in a given situation. If all other options have been explored and found not feasible, the employee may be excused from duty, without charge to leave or loss of pay, during the notice period. Excused absence for this purpose should be used only in those rare circumstances where retention of the employee in an Active Duty status during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize Government interests. Care shall be exercised to use the minimum amount of excused absence necessary in any individual situation.

(7) Personal or Medical Considerations.

(a) If a supervisor suspects that an employee has a personal or medical problem that is impacting his or her conduct or performance, the employee shall be encouraged to use EAP.

(b) If an employee responds to counseling or discipline by asserting a medical condition, the supervisor should request medical documentation. MELR will prepare the request for medical information. When received, a TMA-designated physician will review the information and interpret its significance. Following the review, the supervisor, with assistance from MELR, must decide how to proceed to support the assertion.

7. Records of Disciplinary and Adverse Actions. MELR shall maintain the official agency files on all disciplinary and adverse actions. These files shall be kept apart from OPF. If the employee appeals an action to the Merit Systems Protection Board (MSPB), the record shall be furnished to the employee and MSPB.

8. Requirements for Trial and Probationary Employees.

a. General. The requirement that all career Federal employees serve a probationary period of 1 year provides protection against the retention of any person who, in spite of having passed preliminary tests, is found lacking in fitness and capacity for permanent Government service. If an employee fails to demonstrate fully his or her fitness for continued employment, the supervisor must initiate action to separate the employee.

(1) Discharge Action. When a discharge action is based on deficiencies in performance or conduct after entrance on duty, the employee must be notified in writing of the reason he or she is being terminated and the effective date of the action. If the reason for the discharge is based on the employee's conduct before employment, the employee must be provided:

- (a) An advance written notice stating the specific reason for the proposed action.
- (b) A right to reply.
- (c) A reasonable amount of time to submit a written response to the proposal and for furnishing affidavits in support of the response.
- (d) Consideration of any reply.
- (e) A written notice of the final decision at or before the effective date.
- (f) A notice of the right to a procedural review of the action by MSPB.



## 9. Requirements for Excepted Service Employees.

a. General. While the rights of employees serving in positions outside the competitive service generally are limited with regard to disciplinary adverse actions, some excepted employees have the same protection as competitive employees because of veteran's preference or prior competitive status.

b. Disciplinary and Removal Actions. An excepted service employee with no protection according to law or regulation shall be given written notification of the proposed action before the effective date of the action. The written notification shall contain a brief statement of the reasons for the action and specify the effective date of the action.

10. Requirements for Adverse Actions Based Solely on Unacceptable Performance. This paragraph covers reductions in grade and removals based only on unacceptable performance according to Sec. 4302 of Reference (b).

a. Excluded Employees. This section does not apply to:

(1) Employees in the competitive service who are serving a probationary or trial period under an initial appointment.

(2) Employees in the competitive service serving in appointments that require no probationary or trial period and who have not 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.

(3) Employees in the excepted service who have not completed 1 year of current continuous employment in the same or similar positions.

(4) Employees outside the United States who are paid in accordance with local native-prevailing wage rates for the area in which employed.

(5) Administrative law judges appointed according to Sec. 3105 of Reference (b).

(6) Individuals in the Senior Executive Service (SES).

(7) Individuals appointed by the President.

(8) Employees occupying Schedule C positions.

(9) Re-employed annuitants.

(10) Individuals occupying positions in the excepted service for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

(11) Employees appointed according to Reference (d) during a national emergency.

b. Excluded Actions. This section does not apply to:

(1) The reduction in grade of a supervisor or manager who has not completed the probationary period according to Sec. 3321(a) (2) of Reference (b), if such a reduction is based on supervisory or managerial performance and the reduction is to the grade held immediately before becoming a supervisor or manager in accordance with Sec. 3321(b) of Reference (b).

(2) The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment.

(3) The reduction in grade or removal of an employee in the competitive service serving in an appointment that requires no probationary or trial period who has not 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.

(4) The reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions.

(5) Discharge of an employee in the competitive service who is serving a probationary or trial period under an initial appointment.

(6) An action imposed by the Special Counsel, MSPB.

(7) An action taken according to Sec. 7521 of Reference (b) against an administrative law judge.

(8) An action taken or directed by OPM according to part 731 (for suitability) or part 754 of Reference (c) in the interest of national security.

(9) An action taken as provided by statute, other than one codified in Reference (c), which excepts the action from the provisions of Reference (c).

(10) A removal from SES to a civil service position outside SES according to part 359 of Reference (c).

(11) A reduction-in-force governed by part 351 of Reference (c).

(12) A voluntary action by the employee.

(13) A performance-based action taken according to part 752 of Reference (c).

(14) An action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the agency informed the employee that the position was to be of limited duration.

(15) A termination in accordance with terms specified as conditions of employment at the time the appointment was made.

(16) An involuntary retirement because of disability.

c. Timing of Actions.

(1) Prerequisites for Action. An employee may be reduced in grade or removed at any time during the performance appraisal cycle that performance in one or more critical elements of the job becomes unacceptable, but only after the employee has been given an opportunity to improve by placing him or her on a Performance Improvement Plan (PIP). PIP must advise the employee of the critical elements and performance standards in which his or her performance is unsatisfactory and be given a reasonable opportunity to demonstrate improvement. The employee must also be advised of the consequences of failing to improve and the type of assistance to be provided by the supervisor during PIP. If the employee fails to meet minimally acceptable standards by the end of PIP, action must be taken to remove, reduce in grade, or reassign.

(2) Limitations on Action. The decision to reduce in grade or remove may be based only on those instances of unacceptable performance that occurred during the 1-year period ending on the date of notice of the proposed action. If, because of the employee's improved performance during the notice period, he or she is not reduced in grade or removed, and if his or her performance continues to be acceptable for 1 year from the date of the advance written notice, any entry or other notation of the unacceptable performance for which the action was proposed according to this section shall be removed from any TMA record relating to the employee.

d. Standards for Notice of Action. An employee whose reduction in grade or removal is proposed according to this section is entitled to:

(1) A minimum of 30 days advance written notice that identifies specific instances of unacceptable performance on which the proposed action is based and the critical elements of the employee's position in each instance of unacceptable performance.

(2) A reasonable time to reply to the advance notice, orally, and/or in writing. A request for additional time to reply to the proposed action shall be considered by the official designated to receive the response.

(3) Representation by an attorney or other representative.

(4) A written decision within 30 days after expiration of the notice period that:

(a) Specifies the instances of unacceptable performance by the employee on which the action to reduce in grade or remove is based.

(b) The deciding official has concurred.

(c) Advises the employee of his or her appeal rights.

11. Requirements for Adverse Actions Based on a Combination of Misconduct and Unacceptable Performance. An action against an employee that is considered a combination of misconduct and unacceptable performance shall be reviewed in accordance with part 432 of Reference (c) prior to being processed according to part 752 of Reference (c). The provisions of Sec. 4302 of Reference (b) shall not be used until a performance appraisal plan is approved.

ENCLOSURE 5

INFORMATION REQUIREMENTS

1. Consistent with DoD security and information technology policies, employee relations issues under this AI will be handled in accordance with DoD 8500.2, "Information Assurance (IA) Implementation," DoD CIO memorandum, "DoD Guidance on Protecting Personally Identifiable Information," and DoD CIO memorandum, "Encryption of Sensitive Unclassified Data at Rest on Mobile Computing Devices and Removable Storage Media." See Reference (j).
2. Sensitive information shall not be placed on removable devices—to include, but not limited to, laptops, personal digital assistants, flash or thumb drives, compact disks, diskettes, and removable hard drives—without proper encryption as required by DoD policy.
3. Records containing sensitive information may not be disclosed to anyone except those authorized access as a requirement of their official responsibilities.



ENCLOSURE 6GUIDELINES FOR PROPOSING OFFICIALS - DISCIPLINARY  
AND ADVERSE ACTIONS

1. The proposing official shall review the notice of proposed action to ensure that all facts are correct and supported by the evidence. Any substantive changes to the notice shall be coordinated with MELR.
2. When issuing the notice of proposed action, the proposing official does not need to discuss the memorandum with the employee. The reason(s) for the proposal is/are articulated in the memorandum, as are the employee's due process rights and whom the employee is to contact regarding procedural questions.
3. The proposing official shall:
  - a. Sign and date the memorandum (printed on his or her office letterhead) and make one copy. (The original goes to the employee and the copy serves as a receipt acknowledgment copy).
  - b. Issue the original to the employee and request the employee to sign and date the receipt acknowledgment copy. If the employee chooses not to sign, the proposing official shall annotate, "Employee refused to sign," and sign and date the annotation.
  - c. Make and keep a file copy of the receipt acknowledgment and send the copy signed by the employee to MELR.
4. After the proposing official has issued the proposal notice, the initiative moves to the employee. The employee has the right to:
  - a. Representation by either an attorney or other representative (with limitations).
  - b. An opportunity to present a written and/or verbal reply to the deciding official within a specified reply period, usually 10 calendar days. The employee may request an extension to the reply period.
  - c. A reasonable amount of official time to prepare and present a reply to the deciding official.
  - d. A copy of the materials relied on to support the action.
  - e. A written decision.
5. The proposing official **MUST** avoid discussing the case with the deciding official. Such discussions can be ruled as improper ex parte communications, which can result in the agency's decision being reversed by a third party, which means the agency is ordered to provide a "make

whole” remedy for the employee with back pay to cover the period of any uncompensated absence, if applicable.

ENCLOSURE 7GUIDELINES FOR DECIDING OFFICIALS - DISCIPLINARY  
AND ADVERSE ACTIONS

1. DECIDING OFFICIAL'S DECISION. The deciding official must render a decision on a proposed disciplinary action after considering all relevant evidence, including the employee's reply. The official shall follow the guidance in this enclosure carefully to prevent procedural errors that might jeopardize the action if it is later reviewed. When the deciding official has made his or her decision, he or she must notify MELR by memorandum.

2. EMPLOYEE REPLY.

a. The employee may reply to the deciding official in person, in writing, or both, and may furnish any evidence he or she wishes to support the reply. The proposal notice gave the employee 10 calendar days from the date he or she received it to reply. He or she may request more time to reply, but the request must be in writing and state the reasons for the request. The deciding official must inform the employee and MELR in writing of any decision to extend the reply period. The deciding official should call his or her servicing Human Resources Specialist with any questions about granting or denying an extension.

b. In his or her reply, the employee may bring up any evidence or arguments that he or she feels might sway the decision in his or her favor. The deciding official shall not restrict the employee's reply. During a personal reply, the deciding official's role is to listen, not to make an on-the-spot decision, and to ask questions to clarify what the employee has said. Unless the employee brings it up, the deciding official shall not ask any questions or make comments about any incidents or events not mentioned in the notice of proposed disciplinary action.

c. The employee may be accompanied by one representative when making a personal reply. The representative may be a relative, friend, co-worker, lawyer, union representative, or other person. A union officer or steward may only use official time to represent a bargaining unit member.

d. The deciding official shall make a written summary of any personal reply, give a copy to the employee, and note the date and time the copy was provided. The employee has 2 workdays to review the summary and either sign it, attesting to its accuracy, or submit signed, written exceptions to it. If the employee fails to respond in the time allowed, the deciding official shall make a note to this effect on the summary.

e. The deciding official shall avoid engaging in any improper ex parte communications concerning the proposed disciplinary action. Improper ex parte communications are private, undisclosed communications between agency decision makers and management personnel who are actively involved in the disciplinary action. The deciding official shall not discuss any incidents or offenses or previous disciplinary/adverse actions not mentioned in the notice. If someone with a vested interest in the outcome of the case provides new information, the deciding official must let the employee rebut it before making a decision.

### 3. MAKING THE DECISION.

a. The deciding official shall review the charge(s) and specification(s), the case file, and any reply from the employee to determine if the charge(s) is/are supported by a preponderance of the evidence. If supported, the deciding official shall then analyze the proposed penalty to determine its appropriateness. The deciding official may sustain the proposing official's proposal or may mitigate to a lesser penalty. The deciding official should take into account relevant factors such as the seriousness of the offense(s), the employee's past work record, the effect of the offense on the employee/employer relationship, the employee's potential for rehabilitation, and the consistency of the proposed penalty to penalties given other employees for similar offenses to determine the appropriateness of the penalty. Other relevant factors to consider in determining if the penalty is appropriate can be found in paragraph E3.2.b. of this Instruction. The decision shall be issued to the employee in writing.

b. The deciding official must base his or her decision on some or all of the reasons given in the notice of proposed disciplinary action and on no other reasons.

c. The decision must be to sustain, reduce, or cancel the proposed penalty, but not to increase it.

d. The decision must be sent to MELR by memorandum. In the memorandum, the deciding official shall state the specific reasons in the notice that were sustained by the evidence and what penalty, if any, shall be imposed. The decision must reflect the consideration given to aggravating and mitigating factors, and explain what weight aggravating factors were given in reaching the decision and choice of penalty. If the deciding official finds all the reasons sustained, a statement to this effect is sufficient. Similarly, if the deciding official sustains the penalty based on the justification for the penalty in the notice, a statement to this effect is sufficient. The deciding official shall include the original of any written reply, his or her summary of any personal reply, and any written exceptions to his or her summary that the employee submitted. The deciding official should also state the consideration given to specific elements of the employee's reply. When MELR receives the decision and attachments, MELR shall prepare a notice of decision to the employee for the deciding official's signature. The notice of decision shall include the employee's grievance rights. The deciding official shall not inform the employee of the decision except by the written notice of decision.

ENCLOSURE 8GUIDELINES FOR DECIDING OFFICIALS WHEN HEARING AN EMPLOYEE ORAL RESPONSE

When an employee avails himself or herself of the opportunity to present an oral reply, the deciding official shall:

1. Understand that this is the employee's opportunity to present a defense and consider his/her input in making the decision.

2. Not debate the issues with the employee, discuss the relative merits of the case, or signal what the outcome might be. The deciding official is there to listen and obtain clarification, if needed. A discussion with the employee is appropriate **ONLY** if the employee raises exculpatory information but does not provide detail. In that case, the deciding official may ask questions and/or ask for documentation if the employee indicates there is proof of some fact he or she has not yet submitted.

3. Document the main points of the employee's presentation. If the employee admits to the offense, denies the facts, is remorseful, or requests mitigation, the deciding official shall include these statements in his or her notes. The notes shall capture the type of defense the employee is presenting.

4. Save his or her notes. He or she will need them if the employee files a grievance or an appeal.

5. Document the oral reply; consider **ALL** replies an employee makes. If the employee gives an oral reply, it must be made part of the record. For example, if the employee stops a deciding official in the hall and mentions the proposed action, the official shall treat the employee's comments as a formal reply, write a memorandum summarizing the reply, and reference the memorandum in the decision.

6. Not restrict the employee's response. The employee shall be permitted to expand the discussion into any area he or she believes is relevant.

7. Inform the employee that it is his or her responsibility to provide medical documentation and to explain how the medical condition caused or is related to the misconduct or unsatisfactory performance, *if the employee raises an issue of health (either mental or physical) as an excuse, explanation, or mitigating circumstance*. The deciding official shall ask the employee to articulate a reasonable accommodation and to explain how the accommodation would enable him or her to correct the behavior or performance.

8. If the employee raises an allegation of discrimination, ask the employee to explain the basis (i.e., race, sex, age, color, religion, handicapping condition, or national origin) and to articulate why he or she believes the proposed action is discriminatory.



ENCLOSURE 9**CHECKLIST FOR DECIDING OFFICIALS - DISCIPLINARY AND ADVERSE ACTIONS**

EMPLOYEE'S NAME: \_\_\_\_\_  
 NATURE OF PROPOSED ACTION: \_\_\_\_\_  
 DATE OF PROPOSED ACTION: \_\_\_\_\_

**CHECK APPROPRIATE STATEMENTS**

- \_\_\_\_ Employee did not reply.  
 \_\_\_\_ Employee replied in writing. (Attach the original reply.)  
 \_\_\_\_ Employee replied orally. (Attach your notes and/or a summary of the reply; ensure you annotate the date of the reply.)  
 \_\_\_\_ Employee alleged discrimination. (Provide details including the date these actions allegedly occurred and the basis; i.e., race, color, religion, sex, national origin, age, or handicapping condition.)  
 \_\_\_\_ I have considered the factors outlined in the *Checklist of Mitigating and Aggravating Circumstances* (attached). Check only if action is based on misconduct. (NOTE: *Mitigating and aggravating circumstances are not relevant in a performance-based adverse action.*)

**DECISION:** After reviewing all the material relied upon and giving full and impartial consideration to the circumstances surrounding the proposed action and the employee's reply(ies), I have decided to:

- \_\_\_\_ Cancel the proposed action in its entirety.  
 \_\_\_\_ Sustain the action as proposed.  
 \_\_\_\_ Reduce the penalty to \_\_\_\_\_.

**NOTE:** Deciding officials cannot impose a more severe penalty than the one proposed. If additional facts come to light or the official feels strongly that a more severe penalty is warranted, the employee must be issued a new proposal and given additional time to reply, and the decision must be made by a higher level official.

**NAME/TITLE/SIGNATURE OF DECIDING OFFICIAL AND DATE SIGNED**

\_\_\_\_\_  
*Name/Title*

\_\_\_\_\_  
*Date*

ENCLOSURE 9-AANALYSIS OF DOUGLAS FACTORS

<b>Analysis of Douglas Factors: Mitigating and Aggravating Circumstance Checklist</b>
---

**Employee's Name:** \_\_\_\_\_

**Deciding Official:** \_\_\_\_\_

**Action Proposed and Date of Proposal:** \_\_\_\_\_

**Check one or more of the following:**

- ☐ The employee did not reply to the proposed action.
- ☐ The employee replied in writing (attached).
- ☐ The employee replied orally (Memorandum for Record signed by the employee is attached).

---

**NOTICE**

As the deciding official, you are responsible for considering all relevant "Douglas Factors" (listed below) in determining whether the proposed disciplinary action is appropriate. Your analysis of the "Douglas Factors" will be considered part of the case file and you could be asked to testify regarding your analysis, should the employee appeal to a third party (MSPB, equal employment opportunity (EEO), etc.). Be sure to include ALL information that you relied upon in making your determination regarding the appropriateness of the penalty included in this analysis of the Douglas Factors.

**INSTRUCTIONS**

Each of the factors should be considered in light of the facts and circumstances presented in management's proposal letter (and supporting documents) and in the employee's reply. For each factor, you should annotate whether the factor has been considered as aggravating, mitigating, or has had no impact (was neutral) in your formulation of your final decision. Write a brief explanation for each factor you determine to be aggravating or mitigating—particularly with respect to those factors you consider "aggravating."

**AGGRAVATING:** to make more severe, intense, serious, worse, or grave.

**NEUTRAL:** neither a contributing nor detracting factor; applicable.

**MITIGATING:** to make less severe, intense.

### ANALYSIS OF DOUGLAS FACTORS

#### **1. Nature and seriousness of the offense:**

Nature of the offense (BRIEFLY summarize what happened and how it relates to employee's duties, position, and responsibilities):

Seriousness of the offense (Explain how serious and why so serious (e.g., misconduct was committed intentionally, maliciously, for gain, or is a repeat offense, etc.):

Place X on selected response.			
<b>Aggravating</b>		<b>Neutral</b>	<b>Mitigating</b>
Explanation:			

#### **2. Employee's job level and type of employment:**

- Employee's Title, Series, Grade: \_\_\_\_\_
  
- Is employee a supervisor? Yes\_\_\_ No\_\_\_
  
- Is the position a special trust position? Yes\_\_\_ No\_\_\_
  
- Is public contact required by job and misconduct related? Yes\_\_\_ No\_\_\_  
 (e.g.: rude to customers)
  
- Is misconduct directly related to job? Yes\_\_\_ No\_\_\_  
 (e.g.: supply clerk who steals supplies in his/her care)

Place X on selected response.			
Aggravating		Neutral	
Mitigating			
Explanation:			

**3. Employee's past disciplinary record:** [This ONLY includes documented discipline for which the employee received a written proposal notice, an opportunity to respond, and a decision letter; any disciplinary action taken against the employee should have been made an official record in the employee's official personnel file. Memorandums of record for the supervisor's personal use does not belong here.]

List all previous disciplinary actions considered: *NONE*

Action Effected:  
Action Effected:  
Action Effected:

Date:  
Date:  
Date:

Place X on selected response.			
Aggravating		Neutral	
Mitigating			
Explanation:			

**4. Employee's past work record:**

- How long has employee been with current organization? \_\_\_\_\_
- How long has employee been with federal government? \_\_\_\_\_
- Ratings of last three performance appraisals?

Last rating of record \_\_\_\_\_  
Year prior rating of record \_\_\_\_\_  
Two years prior rating of record \_\_\_\_\_

- Is performance currently acceptable? Yes\_\_\_ No\_\_\_

(If no, need to provide documentation of counseling)

Place X on selected response.			
Aggravating		Neutral	Mitigating
Explanation:			

**5. Effect of the offense on the employee's ability to perform his/her job and effect on supervisor's confidence in the employee:**

Did offense effect:

- The employee's ability to do job? Yes\_\_\_ No\_\_\_  
e.g.: If employee was AWOL, (s)he could not perform job duties.
- Your confidence in employee's ability to do job? Yes\_\_\_ No\_\_\_  
e.g.: Employee responsible for approving leave but (s)he lied on his/her timecard.
- Your confidence in employee's ability to uphold org. mission? Yes\_\_\_ No\_\_\_  
e.g.: PFPA mission is to protect the Pentagon; misconduct was breach in Pentagon security.



Place X on selected response.			
Aggravating		Neutral	Mitigating
Explanation:			

6. Consistency of penalty with other employees' penalties for similar offenses:

- ☐ No other employee under your supervision has committed offenses similar to those alleged.
- ☐ The penalty is similar to those given to other employees under your supervision.
- ☐ The penalty is NOT consistent with other penalties; however, I feel a more severe or less severe penalty is appropriate. **This must be thoroughly explained.** (CAUTION! Disparate treatment often forms the basis for claims of discrimination.)

Place X on selected response.			
Aggravating		Neutral	Mitigating
Explanation:			

7. Consistency with TMA Table of Penalties (Enclosure 2): [The table is only a guide, but reasons for departing from it must be rational, well-reasoned, and explained. CAUTION! Disparate treatment often forms the basis for claims of discrimination.]

The employee is being charged with \_\_\_\_\_

- ☐ This is a first offense.
- ☐ This is a second offense.
- ☐ This is a third offense.

Identify the most closely related charge in the TMA Table of Penalties:

The Table of Penalties recommends \_\_\_\_\_ for a [highlight one: first, second, or third] offense of \_\_\_\_\_.

Place X on selected response.			
Aggravating		Neutral	Mitigating
Explanation:			

8. **Notoriety of the offense or its impact on the agency's reputation:** [Adverse publicity or the possibility of adverse publicity outside the agency that could have a negative impact on the reputation of the agency or the agency's mission is a factor that may be considered to enhance a penalty.]

Place X on selected response.			
Aggravating		Neutral	Mitigating
Explanation:			

9. **Clarity of notice to employee of unacceptable conduct:** [Was the employee aware that their actions or behavior were inappropriate? How were they made aware (meeting, e-mail, policy issuance, prior counseling, prior discipline, etc.)? Should they have known without being told? If so, why do you believe they should have known better?]

Place X on selected response.			
Aggravating		Neutral	Mitigating
Explanation:			

10. **Potential for employee's rehabilitation:** [There may be issues raised by the employee in his/her response, which lead you to believe this employee has high potential for rehabilitation. On the other hand, if the misconduct was clearly wrong and the employee should have known

better, you may believe the potential for rehabilitation is low. Remorse or lack of remorse is often listed here as a show of rehabilitative potential.]

Place X on selected response.			
Aggravating		Neutral	Mitigating
Explanation:			

### 11. Mitigating circumstances:

The following factors do not excuse the misconduct; however, they may encourage you to reduce (mitigate) the penalty:

The employee

- Was under unusual job stress? Yes\_\_\_ No\_\_\_  
e.g.: Contributed to employee's insubordination.
- Was experiencing personal problems? Yes\_\_\_ No\_\_\_
- Was provoked? Yes\_\_\_ No\_\_\_  
e.g.: Coworker threatened employee before employee punched coworker.
- Was apologetic? Yes\_\_\_ No\_\_\_
- Brought the misconduct to management's attention? Yes\_\_\_ No\_\_\_  
e.g.: Employee confessed misuse of Government credit card.

Place X on selected response.			
Aggravating		Neutral	Mitigating
Explanation:			

**12. Adequacy of alternative sanctions to deter misconduct:**

- ☐ I believe **no lesser** sanction will deter future misconduct.
- ☐ I believe a **lesser** sanction will deter future misconduct.
- ☐ I believe an **alternative** sanction is more appropriate.

Place X on selected response.			
Aggravating		Neutral	Mitigating
Explanation:			

**DECISION:** After giving full and impartial consideration to the circumstances surrounding the proposed action, the evidence supporting the proposed action, the employee's reply (if reply provided), and factors above, I have decided to (check one of the following:)

- ☐ Sustain the action as proposed.
- ☐ Reduce the penalty to \_\_\_\_\_.
- ☐ Offer the employee an Alternative Sanction (Discuss options with HR).
- ☐ Cancel the proposed action in its entirety.

Additional Comments:

I (*print name*) \_\_\_\_\_ certify that all of the information I considered in determining the appropriateness of the proposed penalty has been included in this analysis of the Douglas Factors and that I have considered all relevant Douglas Factors.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



ENCLOSURE 10SAMPLE MEMORANDUM OF WARNING

MEMORANDUM FOR

SUBJECT: Memorandum of Warning

The purpose of this memorandum is to counsel and warn you concerning (e.g., failure to follow established written procedures). Details supporting this memorandum of counseling and warning are as follows.

a. (All specifics, i.e., who, what, where, when, and how.)

Your failure to \_\_\_\_\_ has caused and created \_\_\_\_\_. Therefore, you are hereby on notice that it is your responsibility to \_\_\_\_\_. You are on further notice that any future failure to \_\_\_\_\_ will not be tolerated. You are warned that any future incident as described above will result in appropriate administrative action.

If you have a problem that you believe is impacting your ability to conduct yourself in an appropriate manner, you may avail yourself of the services of the Employee Assistance Program (EAP) by calling (800) 222-0364. Official time will be granted for an initial visit if you seek assistance from EAP. I assure you that discussions with EAP counselors are private matters that will not be disclosed to anyone, including me, without your permission.

You are requested to sign and date the Acknowledge Receipt copy of this notice. Your signature does not indicate your agreement or disagreement with its content.

Failure to sign will not void the content of this proposed action. I am available to explain policies or procedures related to this matter in order to preclude future recurrences.

(Name)

(Title)

I acknowledge receipt of this notice.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

ENCLOSURE 11SAMPLE NOTICE OF REQUIREMENTS - ATTENDANCE

## MEMORANDUM FOR

Subject: Notice of Requirements - Attendance

On several occasions I have discussed with you the detrimental effect your sporadic, frequent use of unscheduled leave has had on the efficiency of the \_\_\_\_\_ Office. I have advised you that your leave use makes it difficult to assign work to you when your attendance is irregular. Regular attendance is considered a part of your job, i.e., a condition of employment. Further, absences from duty must be requested and approved in advance in order to eliminate the adverse effect unscheduled absences have on the accomplishment of our mission and on the morale of your co-workers.

Your regular work schedule is Monday through Friday, from \_\_\_\_ a.m. to \_\_\_\_ p.m., with a 30-minute lunch break. Your lunch break must be taken between the hours of 11:30 a.m. and 1:00 p.m., daily, effective the beginning of the next pay period, \_\_\_\_\_. If more time is needed for lunch, you must request approval for additional time in advance from me or, in my absence, from \_\_\_\_\_. In the event of absence due to illness:

a. You are to personally notify me at \_\_\_\_\_ not later than (enter time, usually within 2 hours of normal start time) a.m. on the first day of any absence due to illness and on each succeeding day you are ill, unless you provide a statement signed by your health care provider documenting the duration of your illness. In order to assess whether I should require you to contact me daily regarding your absences, I must have your original health care provider's statement before the end of your incapacitation period. If you choose to provide your documentation concerning your absence when you return to work, you must personally telephone me, or in my absence, \_\_\_\_\_, to report the circumstances that necessitate your absence and to request that you be placed in the appropriate leave status each day that you are absent due to illness. \_\_\_\_\_ can be reached at (enter phone number). If neither of us is available, you are to leave me a voice message explaining the nature of your illness and provide a telephone number where you can be reached. The fact that you leave such a message does not guarantee approval of your leave.

b. You are to present to me, on the first day of your return to duty after your absence due to illness, administratively acceptable medical documentation to support your absence. Administratively acceptable medical documentation is a statement signed by your health care provider certifying that you were incapacitated for work. The statement should be dated and should provide the inclusive date(s) of the incapacitation period and the nature of your incapacitation. Conclusory statements and subjective medical information will not be considered administratively acceptable.

c. The requirements outlined above are applicable for absences due to illness regardless of the type of leave you request (e.g., sick, annual, leave without pay (LWOP)). Should you fail to follow these procedures or should a determination be made that your statement from your health

care provider is not administratively acceptable, you will be subject to a charge of absence without leave (AWOL) and appropriate disciplinary action.

For routine requests for leave:

a. You are to request leave (i.e., sick, annual, LWOP, credit hours, or compensatory time) in advance for any routine medical appointments, including dental, optical, and family member medical appointments that require your absence from work. Your request to be absent must be made on OPM Form 71, "Application for Leave or Approved Absence," and be submitted to me at least 24 hours in advance of the scheduled appointment. Upon your return to work, you must provide me an original statement from your health care provider attesting to your presence for examination or treatment. The statement should be signed and dated and provide the time of your scheduled appointment and the amount of time spent at the facility.

b. If you request leave for family medical care (i.e., to provide care for a family member as a result of physical or mental illness, injury, pregnancy, or childbirth; or for medical, dental, or optical examination or treatment); for bereavement (i.e., to make arrangements necessitated by the death of a family member or to attend the funeral of a family member); or for required absence for adoption-related purposes, you must request leave at least 24 hours in advance utilizing OPM Form 71. In cases where advanced approval is not possible, you must personally telephone me, or in my absence, \_\_\_\_\_, not later than \_\_\_\_ a.m. to report the circumstances necessitating your absence.

c. All requests for annual leave (or LWOP, compensatory time, credit hours, etc.) must be made on OPM Form 71 at least 24 hours in advance, except in the case of a bona fide emergency. I will determine whether the emergency justifies approval of leave. In my absence, \_\_\_\_\_ will make the determination. You will be required to bring in acceptable documentation supporting the necessity for emergency leave. This documentation should be submitted to me on the first day you return to work from leave. Telephone requests for emergency leave must be made by you personally by \_\_\_\_ a.m. If you are unable to reach me, you must contact \_\_\_\_\_. If neither of us can be reached, you must leave a message that includes a telephone number where you can be contacted. The fact that you leave such a message does not guarantee approval of your absence.

Should you fail to follow the procedures outlined above, should it be determined that your unscheduled absence is not a bona fide emergency, or should a determination be made that the documentation you present to support your request is not acceptable, you will be subject to a charge of AWOL and appropriate disciplinary action. A copy of this memorandum will be retained in my file. However, this notice of requirements is not a disciplinary action and will not be made a matter of record in your official personnel folder. It is issued with the intent of impressing upon you the detrimental effect your excessive leave has upon the efficient operation of this office. It is expected that this notice will cause you to take corrective action on your own to improve your record of leave use and attendance.

I will review these requirements and your attendance record 6 months after you receive this memorandum. If your attendance has shown satisfactory improvement within this period, I will remove the memorandum from my file. If satisfactory improvement is not shown within the 6-month period, the contents of this memorandum shall continue until I determine that the restrictions are no longer needed.

If you have a problem that you believe is impacting your ability to maintain a regular work schedule, you may seek assistance from the Employee Assistance Program (EAP). Official time will be granted for an initial visit if you avail yourself of the EAP. I assure you that discussions with the counselor are private matters that will not be disclosed to anyone, including me, without your permission. An EAP Counselor may be reached at (800) 222-0364.

You are requested to sign and date the Acknowledge Receipt copy of this notice. Your signature does not indicate your agreement or disagreement with its content. Failure to sign will not void the content of this proposed action. I am available at any time to discuss with you the content of this memorandum.

(Name)  
(Title)

I acknowledge receipt of this notice.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

ENCLOSURE 12SAMPLE MEMORANDUM OF RETURN TO DUTY - MEDICAL

## MEMORANDUM FOR

SUBJECT: Return to a Regular, Full-time Work Schedule

This memorandum concerns your failure to work a regular, full-time work schedule. You were diagnosed with the condition of \_\_\_\_\_ by letter dated \_\_\_\_\_. Your physician, Dr. \_\_\_\_\_, stated that your condition is \_\_\_\_\_. Since that time, you have been substantially absent from the workplace. Specifically, between the pay periods ending \_\_\_\_\_ and \_\_\_\_\_, you have used approximately \_\_\_\_\_ hours of annual leave, \_\_\_\_\_ hours of sick leave, \_\_\_\_\_ hours of leave without pay, and \_\_\_\_\_ hours of donated leave.

While your health remains a concern to me, your substantive, continuing absences are placing a burden on the remaining staff, as they and I have to perform the duties normally assigned to you, as well as our own. In addition, your frequent absences make it difficult for me to manage the day-to-day work assignments for this organization. As such, your continuing absence has resulted in a disruption to the efficiency of the operations of this office.

Based on the above, you are hereby directed to return to work on a regular, full-time basis not later than \_\_\_\_\_. If you are unable to return to work on a regular, full-time basis on \_\_\_\_\_, I need to know when you will be able to do so. In addition, if you are unable to return to work on a regular, full-time basis, I may have to initiate your removal from your position and the Federal service.

If you are unable to return to work because you have a serious health condition, you may be entitled to a total of 12 workweeks of unpaid leave in accordance with the Family and Medical Leave Act (FMLA). A fact sheet that explains FMLA is at Enclosure 1. If you plan to invoke your FMLA entitlement, your physician(s) must complete Form WH-380, "Certification of Health Care Provider (Family and Medical Leave Act of 1993)," at Enclosure 2. If you have any questions regarding any of the enclosures to this memorandum, please contact \_\_\_\_\_, Employee Relations Specialist, Human Resources Division, at (703) 681-\_\_\_\_\_. I hope that all has gone well with your treatment and look forward to your return to a regular, full-time work schedule on \_\_\_\_\_.

Please sign and date the receipt acknowledgment copy of this correspondence and return it in the enclosed self-addressed envelope (Enclosure 3). Your signature does not mean that you agree or disagree with this letter. Failure to sign the receipt acknowledgment will not void its content.

(Supervisor Name)  
(Title)

Enclosures:  
As stated

Acknowledge Receipt:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



ENCLOSURE 13SAMPLE NOTICE OF DISCHARGE DURING PROBATIONARY PERIOD

## MEMORANDUM FOR

SUBJECT: Notice of Discharge during Probationary Period

The purpose of this memorandum is to notify you of the decision to discharge you during your probationary period from the position of \_\_\_\_\_ with the \_\_\_\_\_ and from the Federal service, effective close of business \_\_\_\_\_. This action is supported by the following:

- a. (All specifics, i.e., who, what, where, when, and how.)

There are no appeal rights to this action unless you allege that your discharge was taken because of (1) partisan political reasons, (2) marital status, or (3) conditions arising before appointment, and that the action is based on improper procedure. An appeal may also be based on discrimination because of race, color, religion, sex, national origin, handicapping condition, or age (provided that at the time of the alleged discriminatory action, you were at least 40 years of age) but only if it is raised in addition to partisan political reasons, marital status, or improper procedure.

You have the right to appeal this action to the Merit Systems Protection Board (MSPB). If you choose to appeal this action, your petition of appeal must be filed in writing or electronically anytime during the period beginning the day after the effective date of the action being appealed, but no later than 30 calendar days after the effective date of the action you are appealing. You may not file your appeal before the effective date. If you file your appeal in writing, you must file at the appropriate address since MSPB has different geographical locations.

Chief, xxxxxxx Regional/Field Office

U.S. Merit Systems Protection Board

*(To file appeal to appropriate location, see Enclosure 19 for listing of MSPB addresses.)*

Your appeal must set forth your reason(s) for contesting this decision with such proof and pertinent documents as you are able to submit. If you do not submit your appeal within the cited timeframe, the administrative judge may dismiss it as untimely unless a good reason for the delay is shown. You will be provided the opportunity to show why the appeal should not be dismissed as untimely.

A copy of the MSPB Appeal Form with instructions is attached. Access to a copy of the MSPB rules and regulations is available at major libraries and on the Internet in many locations such as [www.mspb.gov](http://www.mspb.gov). Additionally, you may as an alternative file electronically with MSPB at <https://e-appeal.mspb.gov>. You also may obtain a copy by contacting \_\_\_\_\_ of the Human

Resources Division, Management Employee & Labor Relations Branch; you may contact Mr./Ms. \_\_\_\_\_ at (703) 681-\_\_\_\_\_, or at [XXXXXX@tma.osd.mil](mailto:XXXXXX@tma.osd.mil). Should you decide to file an appeal, be sure to specify in Part II, Item 8, on the appeal form the following agency address:

Director, Human Resources Division  
 TRICARE Management Activity  
 Attn: Management Employee & Labor Relations Branch  
 Room 3M684A  
 7700 Arlington Boulevard  
 Falls Church, VA 22042

If you believe that this action is being taken for any discriminatory reason covered by equal employment opportunity (EEO) regulations as detailed in the paragraph above that lays out appeal rights for probationary terminations, you have the right to file an EEO complaint. If you elect to file a complaint of discrimination, you should contact Mr. Gregory Byard, EEO Director, TRICARE Management Activity, within 45 calendar days of the effective date of this action. You may contact him at (703) 681-4029. You may not file both an EEO complaint and an appeal with MSPB concerning this action. Where you first file will determine how this matter will be processed. Should you elect to file a complaint of discrimination, your complaint will be processed in accordance with Equal Opportunity Commission regulations at Title 29, Code of Federal Regulations, Part 1614, Sec. 301. If you elect to file an appeal with MSPB, your appeal will be processed in accordance with their rules.

You are asked to sign and date the Acknowledge Receipt copy of this memorandum. By doing so, you will not forfeit any of the rights mentioned herein. Your signature does not indicate your agreement or disagreement with this action. Your failure to sign will not void the content of the memorandum.

(Supervisor Name)  
 (Title)

Enclosures:  
 As stated

Acknowledge Receipt:

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

ENCLOSURE 14SAMPLE LETTER OF REPRIMAND

## MEMORANDUM FOR

SUBJECT: Letter of Reprimand

The purpose of this memorandum is to advise you that I am officially reprimanding you for \_\_\_\_\_. Details supporting this reprimand are as follows:

- a. (All specifics, i.e., who, what, where, when, and how.)

The incident(s) cited above reflect(s) behavior on your part that is totally unacceptable and will not be condoned. Therefore, this action is being taken to stress upon you the need for more responsible behavior on your part, and to emphasize the intolerance of this organization toward such misconduct as cited in the preceding paragraph(s). This reprimand is considered to be constructive and corrective in nature. The proposed penalty is consistent with TRICARE Management Activity (TMA) Administrative Instruction (AI) No. 29, "Disciplinary and Adverse Actions." A copy of this reprimand will be filed in your official personnel folder for a period not to exceed 2 years from the date you receive it.

You have the right to grieve this decision according to the agency administrative grievance procedure set forth in TMA AI No. 20, "TRICARE Management Activity Administrative Grievance System." If you choose to grieve this action, you must submit your grievance in writing to the address below, for receipt no later than 15 calendar days after your receipt of this decision. Your grievance must identify you by name, title, grade, and organizational unit. You must state the exact nature of your grievance and the corrective or remedial action you are seeking.

TRICARE Management Activity  
Human Resources Division  
Attn: Management Employee and Labor Relations Branch  
Room 3M684A  
7700 Arlington Boulevard  
Falls Church, VA 22042

You are entitled to represent yourself or you may choose as your representative an attorney or other representative to assist you in the preparation and presentation of your grievance. Your representative may not be a member of the TRICARE Management Activity (TMA) Human Resources staff; an Equal Employment Opportunity Manager, investigator counselor, or specialist; or anyone whose service as a representative would result in a conflict or apparent conflict of interest or position, conflict with the priority needs of the agency, or cause unreasonable costs to the Government. You must make all arrangements for and pay all costs associated with representation. Any choice of representative or change in representative must be designated in writing and include your representative's name, address, and phone number; be

signed and dated by you; and be submitted with your grievance. If your representative is an employee of the TMA customer-service area, he or she is also entitled to official time to assist you in the presentation of your grievance, if he or she is in a duty status. He or she must make arrangements for the use of official time for this purpose with his or her supervisor.

You are not entitled to use Government resources, such as typing assistance, copy machines, typewriters, or word processing equipment; facsimile transmission equipment; or supplies and material, including letterhead or bond paper, envelopes, etc., in preparing your grievance. Furthermore, you are not entitled to official time to prepare (organize and reproduce materials, compose, type, etc.) your grievance. You are cautioned that use of any of these resources may result in the initiation of further disciplinary action against you.

You are entitled to a reasonable amount of official time to present your grievance if you are in a duty status. Arrangements for the use of any official time for this purpose must be made with your supervisor.

Should you desire additional information, \_\_\_\_\_ of Management Employee and Labor Relations will provide you guidance relative to procedures and make pertinent regulations available for your review. If you and/or your representative wish to review this material, please call \_\_\_\_\_ at (703) 681-\_\_\_\_ to schedule an appointment. You are entitled to a reasonable amount of official time to obtain such official information if you are in a duty status and request and schedule the time for this purpose in advance from your supervisor.

If you believe that this action is being taken for any discriminatory reason covered by equal employment opportunity (EEO) regulations as detailed in the paragraph above that lays out appeal rights for probationary terminations, you have the right to file an EEO complaint. If you elect to file a complaint of discrimination, you should contact Mr. Gregory Byard, EEO Director, TMA, within 45 calendar days of the effective date of this action. You may contact him at (703) 681-4029. You may not file both an EEO complaint and an appeal with the Merit Systems Protection Board (MSPB) concerning this action. Where you first file will determine how this matter will be processed. Should you elect to file a complaint of discrimination, your complaint will be processed in accordance with Equal Opportunity Commission regulations at Title 29 CFR, Part 1614, Sec. 301. If you elect to file an appeal with MSPB, your appeal will be processed in accordance with their rules.

If you have a problem that you believe is impacting your ability to conduct yourself in an appropriate manner, you may avail yourself of the services of the Employee Assistance Program (EAP) by calling (800) 222-0364. Official time will be granted for an initial visit if you seek assistance from EAP. I assure you that discussions with EAP counselors are private matters that will not be disclosed to anyone, including me, without your permission. Please sign and date the Acknowledge Receipt copy of this decision. Your signature does not indicate your agreement or disagreement with this action. Failure to sign will not void the content of this notice.

(Supervisor Name)  
(Title)

Acknowledge Receipt:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

ENCLOSURE 15SAMPLE NOTICE OF PROPOSED SUSPENSION OF 1-14 DAYS

MEMORANDUM FOR

SUBJECT: Notice of Proposed Suspension

The purpose of this memorandum is to advise you that I propose to suspend you from a duty and pay status from your position of \_\_\_\_\_ for \_\_\_\_ calendar days for \_\_\_\_\_. Details supporting this proposed action are as follows:

a. (All specifics, i.e., who, what, where, when, and how.)

The incident cited above reflects behavior on your part that is totally unacceptable and will not be condoned. Therefore, this proposed action is being taken to stress upon you the need for more responsible behavior on your part, and to emphasize the intolerance of this organization toward such misconduct as cited above. This proposed suspension is considered to be constructive and corrective in nature and for such cause as to promote the efficiency of the service. The proposed penalty is consistent with TRICARE Management Activity (TMA) Administrative Instruction No. 29, "Disciplinary and Adverse Actions."

You have the right to reply to this proposal in person, in writing, or both, stating why this proposed action should not be taken. You may submit affidavits and other documentary evidence to support your reply. Any reply should be made to \_\_\_\_\_ no later than 10 calendar days after you receive this notice. You may schedule an appointment to reply in person at \_\_\_\_\_. If more time is needed for the preparation of your reply, you must request an extension in writing from \_\_\_\_\_ explaining why you need more time within the stated time period. Your reply will be given full and fair consideration. Whether you reply or not, you will receive a written notice of final decision. You will remain in a duty status during the notice period, and any absence during this period will be charged appropriately.

You have the right to select an attorney or other representative to assist you in the preparation and presentation of your reply. However, you may not choose a member of the TMA Human Resources staff; an agency Equal Employment Opportunity Manager, counselor, investigator or specialist; or anyone whose service as a representative would result in a conflict or apparent conflict of interest or position, conflict with the priority needs of the agency, or cause unreasonable costs to the Government. Any choice of representative or change in representative must be designated in writing; include your representative's name, address, and phone number; be signed and dated by you; and be submitted to \_\_\_\_\_. You may request a reasonable amount of official time to prepare and present your reply if you are in a duty status. Arrangements for the use of official time for this purpose must be made with me. You must make all arrangements for and pay all costs associated with representation. Your representative, if an employee of the TMA customer-service area, may also request a reasonable amount of official time for these purposes if he or she is in a duty status. He or she must make arrangements for the use of official time for such purpose with his or her supervisor.



The material being relied upon to support the reasons for this proposed action, to include documents and applicable regulations, are available for review by you and/or your representative. If you and/or your representative wish to review the material, please contact (703) 681-\_\_\_\_\_, Employee Relations Specialist, to schedule an appointment.

If you have a problem that you believe is impacting your ability to conduct yourself in an appropriate manner, you may avail yourself of the services of the Employee Assistance Program (EAP) by calling (800) 222-0364. Official time will be granted for an initial visit if you seek assistance from EAP. I assure you that discussions with EAP counselors are private matters that will not be disclosed to anyone, including me, without your permission.

Please sign and date the Acknowledge Receipt copy of this memorandum. Your signature does not indicate your agreement or disagreement with this action. Failure to sign will not void the content of the memorandum. I am available to explain policies or procedures related to this matter in order to preclude a recurrence.

(Supervisor Name)  
(Title)

Acknowledge Receipt:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

ENCLOSURE 16SAMPLE NOTICE OF DECISION ON PROPOSED SUSPENSION OF 1-14 DAYS

## MEMORANDUM FOR

SUBJECT: Notice of Decision on Proposed Suspension of (Number of) Days

On \_\_\_\_, you were advised of the proposal to suspend you from a duty and pay status for \_\_\_\_ calendar days for \_\_\_\_\_. By that same memorandum, you were advised that you had 10 days to reply orally, in writing, or both to the proposed action. You (did/did not) reply. In making this decision, I have carefully and objectively reviewed the charge and specification in the Notice of Proposed Suspension, the supporting evidence in the record, and your written reply from the address below (if one was made).

(Address information included in the response if one was made.)

After full consideration of all the facts, I find that (Insert what was found and whether the incident occurred or did not occur. If a reply was made, discuss why it was/was not persuasive.). My review has led me to conclude that the charge(s) stated in the (date) Notice of Proposed Suspension (is (are)/is (are) not) supported by a preponderance of the evidence. (In determining the appropriate penalty, write out the penalty factors considered.) After careful deliberation of the above, I find that the severity of the incident and the possible repercussions outweigh the mitigating factors and a (number of days) suspension is warranted. This discipline is considered corrective in nature. Please note that any further misconduct on your part could result in more severe disciplinary action, up to and including your removal from Federal service.

You have the right to grieve this decision according to the agency administrative grievance procedures set forth in TRICARE Management Activity (TMA) Administrative Instruction No. 20, "TRICARE Management Activity Administrative Grievance System." If you choose to grieve this action, you must submit your grievance in writing to the following address for receipt no later than 15 calendar days after your receipt of this decision. Your grievance must identify you by name, title, grade, and organizational unit. You must state the exact nature of your grievance and the corrective or remedial action you are seeking.

TRICARE Management Activity  
Human Resources Division  
Attn: Management Employee and Labor Relations Branch  
Room 3M684A  
7700 Arlington Boulevard  
Falls Church, VA 22042

You are entitled to a reasonable amount of official time to present your grievance if you are in a duty status. Arrangements for the use of any official time for this purpose must be made with your supervisor.

You are entitled to represent yourself or you may choose as your representative an attorney or other representative to assist you in the preparation and presentation of your grievance. Your representative may not be a member of the TMA Human Resources staff; an Equal Employment Opportunity Manager, investigator, counselor, or specialist; or anyone whose service as a representative would result in a conflict or apparent conflict of interest or position, conflict with the priority needs of the agency, or cause unreasonable costs to the Government. You must make all arrangements for and pay all costs associated with representation. Any choice of representative must be designated in writing and include your representative's name, address, and phone number; be signed and dated by you; and be submitted with your grievance. Similarly, any change in representative must be submitted in writing to the Director, Human Resources Division (HRD), at the address listed above. The representative, if an employee of the TMA HRD-serviced area, is also entitled to official time to assist you in the presentation of your grievance if he or she is in a duty status. He or she must make arrangements for the use of official time for this purpose with his or her supervisor.

You are not entitled to use Government resources, such as typing assistance, copy machines, typewriters, or word processing equipment; facsimile transmission equipment; or supplies and material, including letterhead or bond paper, envelopes, etc., in preparing your grievance. Furthermore, you are not entitled to official time to prepare (organize and reproduce materials, compose, type, etc.) your grievance. You are cautioned that use of any of these resources may result in the initiation of further disciplinary action against you.

If you believe that this action is being taken for any discriminatory reason covered by equal employment opportunity (EEO) regulations as detailed in the paragraph above that lays out appeal rights for probationary terminations, you have the right to file an EEO complaint. If you elect to file a complaint of discrimination, you should contact Mr. Gregory Byard, EEO Director, TMA, within 45 calendar days of the effective date of this action. You may contact him at (703) 681-4029. You may not file both an EEO complaint and an appeal with the Merit Systems Protection Board (MSPB) concerning this action. Where you first file will determine how this matter will be processed. Should you elect to file a complaint of discrimination, your complaint will be processed in accordance with Equal Opportunity Commission regulations at Title 29, Code of Federal Regulations, Part 1614, Sec. 301. If you elect to file an appeal with MSPB, your appeal will be processed in accordance with their rules.

Should you desire additional information, \_\_\_\_\_ of the Management Employee and Labor Relations Branch, Human Resources Division, will provide you with guidance relative to procedures and make pertinent regulations available for your review. If you and/or your representative wish to review this material, please call \_\_\_\_\_ at (703) 681-\_\_\_\_ to schedule an appointment. You are entitled to a reasonable amount of official time to obtain such official information if you are in a duty status and request and schedule the time for this purpose in advance from your supervisor.

Please sign and date the Acknowledge Receipt copy of this decision. Your signature does not indicate your agreement or disagreement with this action. Failure to sign will not void the content of this notice.

(Deciding Official Name)  
(Title)

Acknowledge Receipt:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

ENCLOSURE 17SAMPLE NOTICE OF PROPOSED ADVERSE ACTION - SUSPENSION  
OF 15 DAYS OR MORE, REDUCTION IN GRADE, OR REMOVAL

## MEMORANDUM FOR

SUBJECT: Notice of Proposed Suspension, Reduction in Grade, or Removal

The purpose of this memorandum is to advise you that I propose to suspend you from a duty and pay status from your position of \_\_\_\_\_ for \_\_\_\_ calendar days for \_\_\_\_\_. A decision will be effected not earlier than 30 calendar days following your receipt of this notice.

Details supporting this proposed action are as follows.

- a. All specifics (i.e., who, what, where, when, and how.)

The incident cited above reflects behavior on your part that is totally unacceptable and will not be condoned. Therefore, this proposed action is being taken to stress upon you the need for more responsible behavior on your part, and to emphasize the intolerance of this organization toward such misconduct as cited above. This proposed suspension is considered to be constructive and corrective in nature and for such cause as to promote the efficiency of the service. The proposed penalty is consistent with the TRICARE Management Activity (TMA) Administrative Instruction No. 29, "Disciplinary and Adverse Actions."

You have the right to reply to this proposal in person, in writing, or both, stating why this proposed action should not be taken. You may submit affidavits and other documentary evidence to support your reply. Any reply should be made to \_\_\_\_\_ no later than 10 calendar days after you receive this notice. You may schedule an appointment to reply in person at \_\_\_\_\_. If more time is needed for the preparation of your reply, you must request an extension in writing from \_\_\_\_\_ explaining why you need more time within the stated time period. Your reply will be given full and fair consideration. Whether or not you reply, you will receive a written notice of final decision. You will remain in a duty status during the notice period, and any absence during this period will be charged appropriately.

You have the right to select an attorney or other representative to assist you in the preparation and presentation of your reply. However, you may not choose a member of the TMA Human Resources Division (HRD) staff; an agency Equal Employment Opportunity Manager, counselor, investigator, or specialist; or anyone whose service as a representative would result in a conflict or apparent conflict of interest or position, conflict with the priority needs of the agency, or cause unreasonable costs to the Government. Any choice of representative or change in representative must be designated in writing; include your representative's name, address, and phone number; be signed and dated by you; and be submitted to \_\_\_\_\_. You may request a reasonable amount of official time to prepare and present your reply if you are in a duty status. Arrangements for the use of official time for this purpose must be made with me. You must make all arrangements for and pay all costs associated with representation. Your representative, if an employee of the TMA HRD-serviced area, may also

request a reasonable amount of official time for these purposes if he or she is in a duty status. He or she must make arrangements for the use of official time for such purpose with his or her supervisor.

The material being relied upon to support the reasons for this proposed action, to include documents and applicable regulations, are available for review by you and/or your representative. If you and/or your representative wish to review the material, please contact me at \_\_\_\_\_ to schedule an appointment.

Please sign and date the Acknowledge Receipt copy of this memorandum. Your signature does not indicate your agreement or disagreement with this action. Failure to sign will not void the content of the memorandum. I am available to explain policies or procedures related to this matter in order to preclude a recurrence.

(Supervisor Name)  
(Title)

Acknowledge Receipt:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



ENCLOSURE 18SAMPLE NOTICE OF DECISION ON PROPOSED ADVERSE ACTION - SUSPENSION  
OF 15 DAYS OR MORE, REDUCTION IN GRADE, OR REMOVAL

## MEMORANDUM FOR

SUBJECT: Notice of Decision on Proposed \_\_\_\_\_

This is my decision on your proposed \_\_\_\_\_. By memorandum dated \_\_\_\_\_, and received by you on \_\_\_\_\_, you were informed of a proposal to \_\_\_\_\_ you from your position of \_\_\_\_\_, and the Federal service, for \_\_\_\_\_. By that same memorandum, you were advised that you had 10 days to reply orally, in writing, or both to the proposed action. You (did/did not reply). In making this decision, I carefully and objectively reviewed the charge and specification in the Notice of Proposed Suspension, the supporting evidence in the record, and your written reply from the address below (if one was made).

(Address information included in the response if one was made.)

After full consideration of all the facts, I find that (Insert what was found and whether the incident occurred or did not occur. If a reply was made, discuss why it was/was not persuasive.) My review has led me to conclude that the charge(s) stated in the \_\_\_\_\_, Notice of Proposed Suspension, (is (are)/is (are) not) supported by a preponderance of the evidence.

(In determining the appropriate penalty, write out the penalty factors considered.) After careful deliberation of the above, I find that the severity of the incident and the possible repercussions outweigh the mitigating factors and \_\_\_\_\_ is warranted. You have the right to appeal this action to the Merit Systems Protection Board (MSPB). If you choose to appeal this action, your petition of appeal must be filed in writing or electronically anytime during the period beginning the day after the effective date of the action being appealed, but no later than 30 calendar days after the effective date of the action you are appealing. You may not file your appeal before the effective date. If you file your appeal in writing, you must file at the appropriate address since MSPB has different geographical locations.

Chief, xxxxxxx Regional/Field Office  
U.S. Merit Systems Protection Board

*(To file appeal to appropriate location, see Enclosure 19 for listing of MSPB addresses.)*

Your appeal must set forth your reason(s) for contesting this decision with such proof and pertinent documents as you are able to submit. If you do not submit your appeal within the cited timeframe, the administrative judge may dismiss it as untimely unless a good reason for the delay is shown. You will be provided the opportunity to show why the appeal should not be dismissed as untimely.

A copy of the Merit Systems Protection Board (MSPB) Appeal Form with instructions is attached. Access to a copy of the MSPB rules and regulations is available at major libraries and on the Internet in many locations such as [www.mspb.gov](http://www.mspb.gov). Additionally, you may as an

alternative file electronically with MSPB at <https://e-appeal.mspb.gov>. You also may obtain a copy by contacting \_\_\_\_\_ of the Human Resources Division, Management Employee & Labor Relations Branch; you may contact Mr./Ms. \_\_\_\_\_ at (703) 681-\_\_\_\_\_, or at [XXXXXX@tma.osd.mil](mailto:XXXXXX@tma.osd.mil). Should you decide to file an appeal, be sure to specify in Part II, Item 8, on the appeal form the following agency address:

Director, Human Resources Division  
 TRICARE Management Activity  
 Attn: Management Employee & Labor Relations Branch  
 Room 3M684A  
 7700 Arlington Boulevard  
 Falls Church, VA 22042

If you believe that this action is being taken for any discriminatory reason covered by equal employment opportunity (EEO) regulations as detailed in the paragraph above that lays out appeal rights for probationary terminations, you have the right to file an EEO complaint. If you elect to file a complaint of discrimination, you should contact Mr. Gregory Byard, EEO Director, TMA, within 45 calendar days of the effective date of this action. You may contact him at (703) 681-4029. You may not file both an EEO complaint and an appeal with MSPB concerning this action. Where you first file will determine how this matter will be processed. Should you elect to file a complaint of discrimination, your complaint will be processed in accordance with Equal Opportunity Commission regulations at Title 29, Code of Federal Regulations, Part 1614, Sec. 301. If you elect to file an appeal with MSPB, your appeal will be processed in accordance with their rules.

Please sign and date the Acknowledge Receipt copy of this notice and return to me in the self-addressed stamped envelope. Your signature does not indicate your agreement or disagreement. Failure to sign will not void the content of this memorandum.

(Deciding Official Name)  
 (Title)

Acknowledge Receipt:

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

ENCLOSURE 19MERIT SYSTEMS PROTECTION BOARD  
REGIONAL OR FIELD OFFICE FOR FILING APPEALS

All submissions shall be addressed to the Regional Director, if submitted to a regional office, or the Chief Administrative Judge, if submitted to a field office, Merit Systems Protection Board, at the addresses listed below, according to geographic region of the employing agency or as required by Sec. 1201.4(d) of this part. The facsimile numbers listed below are telecommunications device for the deaf (TDD) capable; however, calls will be answered by voice before being connected to TDD. Address of Appropriate Regional or Field Office and Area Served:

1. Atlanta Regional Office, 401 West Peachtree Street, N.W., 10th floor, Atlanta, Georgia 30308 3519, Facsimile No.: (404) 730-2767, (Alabama, Florida, Georgia, Mississippi, South Carolina, and Tennessee).
2. Central Regional Office, 230 South Dearborn Street, 31st floor, Chicago, Illinois 60604-1669, Facsimile No.: (312) 886-4231, (Illinois; Indiana; Iowa; Kansas City, Kansas; Kentucky; Michigan; Minnesota; Missouri; Ohio; and Wisconsin).
3. Northeastern Regional Office, 1601 Market Street, Suite 1700, Philadelphia, Pennsylvania 19103, Facsimile No.: (215) 597-3456, (Connecticut; Delaware; Maine; Maryland except the counties of Montgomery and Prince George's; Massachusetts; New Hampshire; New Jersey except the counties of Bergen, Essex, Hudson, and Union; Pennsylvania; Rhode Island; Vermont; and West Virginia).
- 3a. New York Field Office, 26 Federal Plaza, Room 3137-A, New York, New York 10278-0022, Facsimile No.: (212) 264-1417, (New Jersey counties of Bergen, Essex, Hudson, and Union; New York; Puerto Rico; and Virgin Islands).
4. Washington Regional Office, 1800 Diagonal Road, Alexandria, Virginia 22314, Facsimile No.: (703) 756-7112, (Maryland counties of Montgomery and Prince George's; North Carolina; Virginia; Washington, DC; and all overseas areas not otherwise covered).
5. Western Regional Office, 201 Mission Street, Suite 2310, San Francisco, California 94105-1831, Facsimile No.: (415) 904-0580, (Alaska; California; Hawaii; Idaho; Nevada; Oregon; Washington; and Pacific overseas).
- 5a. Denver Field Office, 165 South Union Blvd., Suite 318, Lakewood, Colorado 80228-2009, Facsimile No.: (303) 969-5109, (Arizona, Colorado, Kansas except Kansas City, Montana, Nebraska, New Mexico, North Dakota, South Dakota, Utah, and Wyoming).
6. Dallas Regional Office, 1100 Commerce Street, Room 620, Dallas, Texas 5242-9979, Facsimile No.: (214) 767-0102, (Arkansas, Louisiana, Oklahoma, and Texas).

## GLOSSARY

### PART I. ACRONYMS

AWOL	Absence without Leave
EAP	Employee Assistance Program
EEO	Equal Employment Opportunity
HRD	Human Resources Division
MELR	Management Employee and Labor Relations
MSPB	Merit Systems Protection Board
OPF	Official Personnel Folder
OPM	Office of Personnel Management
SES	Senior Executive Service
TMA	TRICARE Management Activity

### PART II. DEFINITIONS

advance notice. A written notice whose period of time is computed as follows:

A calendar day is the 24-hour period between 12 midnight of one day and 12 midnight of the next. The day on which the notice is delivered is not counted. Saturday, Sunday, or a legal holiday is never counted as the last day.

adverse action. A disciplinary or non-disciplinary removal, suspension of more than 14 days, furlough without pay for 30 days or less, or reduction in grade or pay taken for such cause as will promote the efficiency of the service.

bargaining unit employee. An employee included in an appropriate bargaining unit for which a labor organization has been granted exclusive recognition.

charge. The label or characterization of an offense; the reason stated in a notice of proposed action and in the final decision when the action is disciplinary.

critical element. A component of the employee's job that is of such importance that performance below the minimum standard requires remedial action and may be the basis for reduction in grade, removal, or other corrective action without regard to performance on other components of the job.

day. A calendar day. The day a notice is delivered is not counted. If the last day of a notice period falls on a weekend or holiday, the last day of the notice period becomes the next business day following the weekend or holiday.

**Deciding Official.** The official who issues a notice of final decision on a disciplinary or adverse action. The deciding official shall be of a higher level than the official who proposes the action, unless the proposing official is SecDef.

**formal disciplinary action.** An action that is made a matter of record for inclusion in the employee's OPF, such as a reprimand or a suspension of 14 days or less.

**furlough.** A temporary non-duty and non-pay status of 30 days or less because of lack of work or funds, or for other non-disciplinary reasons.

**harmful error.** An error by management in the application of its procedures that, if corrected or alleviated, might have resulted in a different conclusion.

**indefinite suspension.** A temporary non-duty and non-pay status for disciplinary or other reasons, pending inquiry.

**informal disciplinary action.** An action taken by management to correct minor misconduct or delinquency. Informal disciplinary actions include counseling, oral admonishments, and written warnings and are not made a matter of record in the employee's OPF.

**nexus.** A reasonable connection of factual relationship between the reason(s) for a disciplinary action and the efficiency of the service.

**oral admonishment.** A very specific discussion between a supervisor and employee to address minor misconduct, clarify expectations, and warn of progressively more severe disciplinary action when the intent of that discussion is to correct the misconduct without initiating more serious disciplinary or adverse action. An oral admonishment is an informal disciplinary measure and should be documented with a memorandum for the record.

**penalty selection factors.** The factors most commonly used in determining the appropriateness of a penalty include, but are not limited to: the seriousness of the offense, the employee's past disciplinary record, consistency with the table of penalties, consistency with penalties imposed on other employees, effect of the offense on the supervisor's confidence in the employee's ability to perform assigned duties, the employee's potential for rehabilitation, length of service, and past disciplinary record. (See paragraph 2 of Enclosure 3 for further detail.)

**preponderance of the evidence.** That degree of relevant evidence that a reasonable individual, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true. The agency is required to prove actions taken according to part 752 of Reference (d) with a preponderance of the evidence.

**Proposing Official.** The management official who proposes the action, normally (but not necessarily) the first-line supervisor.

**reduction in grade.** The involuntary assignment of an employee to a position of lower classification or job-grading level.

**removal.** An involuntary separation of an employee from employment with an agency.

reprimand. A formal memorandum issued for employee misconduct. A letter of reprimand is the least severe formal disciplinary action. A copy is placed in the employee's OPF for a set period of time.

Schedule A, B, or C (of the excepted service). OPM provides excepted service hiring authorities to fill special jobs or to fill any job in unusual or special circumstances under "Schedules A, B, and C." These excepted service authorities enable agencies to hire when it is not feasible or not practical to use traditional competitive hiring procedures, and can streamline hiring. Agencies may use any excepted service authority under Schedule A or Schedule B when it applies to a specific situation. Schedule A authorities describe special jobs and situations for which it is impractical to use standard qualification requirements and to rate applicants using traditional competitive procedures. Schedule B authorities also apply to jobs and situations for which it is impractical to rate applicants using competitive procedures. However, under Schedule B authorities, applicants must meet the qualification standards for the job. Only OPM can provide exceptions on a case-by-case basis under Schedule C for jobs having a confidential or policy-determining character. Schedule C appointees keep a confidential or policy-determining relationship to their supervisor and agency head. Generally, the authority to fill a Schedule C job is revoked when the incumbent leaves and agencies need specific approval from OPM to establish or re-establish the position.

substantial evidence. Such evidence that a reasonable individual might accept as adequate to support a conclusion. Substantial evidence is a lesser burden of proof than a preponderance of the evidence and is required to support inefficiency actions taken according to part 432 of Reference (d).

suspension. A temporary non-duty and non-pay status for disciplinary or other reasons, pending inquiry.

unacceptable performance. Performance of an employee that fails to meet established standards in one or more critical elements of the employee's position.

written warning. A very specific memorandum issued to an employee to address minor misconduct, clarify expectations, and warn of progressively more severe disciplinary action when the intent of issuing the memorandum is to correct the misconduct without initiating more serious formal disciplinary or adverse action. A written warning is an informal disciplinary measure and is considered to be more severe than an oral admonishment.





DEFENSE  
HEALTH AGENCY

**OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE  
HEALTH AFFAIRS**

7700 ARLINGTON BOULEVARD, SUITE 5101  
FALLS CHURCH, VIRGINIA 22042-5101

FEB - 7 2014

**MEMORANDUM FOR ALL DEFENSE HEALTH AGENCY EMPLOYEES**

**SUBJECT: Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR)  
Act Policy**

On May 15, 2002, Congress enacted Public Law 107-174, the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," commonly referred to as the No FEAR Act. The Act requires that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws and that each Federal agency:

- Provide notice to Federal employees, former Federal employees, and applicants for Federal employment of their rights and protections available under Federal antidiscrimination and whistleblower protection laws
- Post statistical data quarterly on its public web site, relating to Federal sector equal employment opportunity (EEO) complaints filed with such agency, and for other purposes
- Train all employees on their rights, responsibilities, and remedies under the No FEAR Act

**Antidiscrimination Laws**

A Federal agency cannot discriminate against an employee or applicant with respect to terms, conditions, or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, or reprisal for previous participation in EEO-protected activity. If you believe you have been discriminated against on one or more of the above bases you must contact an EEO official within 45 calendar days of the action or, in the case of a personnel action, within 45 calendar days of the effective date of the action before you can file a formal complaint of discrimination with your agency. Also, if you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the United States Office of Special Counsel (OSC) using Form OSC-11, at 1730 M Street NW, Suite 218, Washington, DC 20036-4505 or online at <http://www.osc.gov>.

**Whistleblower Protection Laws**

A Federal employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule, or regulation; gross management; gross waste of funds; an abuse of authority; or a substantial and specific

danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs. Also, retaliation against an employee or applicant for making a protected disclosure is prohibited by Title 5, United States Code (U.S.C.), Section (Sec.) 2302(b)(8). If you believe you have been the victim of whistleblower retaliation, you may file a written complaint with OSC.

#### Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws. If you believe you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination and Whistleblower Protection Laws section, or if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

#### Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under Title 5, U.S.C., Sec. 1214(d); however, according to Title 5, U.S.C., Sec. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Further, nothing in the No FEAR Act alters existing laws, or permits an agency to take unfounded disciplinary action against a Federal employee, or to violate the procedural rights of a Federal employee who has been accused of discrimination.

#### Existing Rights Unchanged

Pursuant to Sec. 205 of the No FEAR Act, neither the Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of the law specified in Title 5, U.S.C., Sec. 2302(d). Antidiscrimination laws not only include those under the purview of the Defense Health Agency (DHA) EEO Office, but also include discrimination based on genetic information. In addition, it is the policy of the United States as reflected in Executive Order that discrimination on the basis of sexual orientation and status as a parent in Federal employment is also prohibited.


#### Training

According to No FEAR Act implementing guidance, Federal agencies must train all employees on their rights, responsibilities, and remedies available under Federal Antidiscrimination and Whistleblower Protection Laws. This training is mandatory for all employees and will be accomplished within 90 calendar days after assignment for newcomers,

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and every 2 years thereafter. Training may be accessed through the DHA Intranet site under Quick Links: Equal Employment Opportunity, Training and Education, No FEAR Act. Once completed, employees should fill out the certificate at the end of the slide show, print out for their records, and forward a copy to their supervisor.

The No FEAR Act reaffirms our commitment to ensuring that all Federal employees feel free to come forward with allegations of discrimination, wrong doing, or misconduct, and are aware of their rights. If you require more information regarding the No FEAR Act, please contact Mr. Gregory Byard, DHA EEO Director. Mr. Byard may be reached at DSN 761-4029 or commercial (703) 681-4029, or Gregory.Byard@dha.mil.



Douglas J. Robb, DO, MPH  
Lieutenant General, USAF, MC, CFS  
Director

## **APPENDIX C**

*The agency's written plan to train its employees (5 C.F.R. 724.302(a)(9)).*



DEFENSE  
HEALTH AGENCY

**OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE  
HEALTH AFFAIRS**

7700 ARLINGTON BOULEVARD, SUITE 5101  
FALLS CHURCH, VIRGINIA 22042-5101

JAN 8 2016


**MEMORANDUM FOR ALL DEFENSE HEALTH AGENCY FEDERAL EMPLOYEES**

**SUBJECT: Mandatory Federal Civilian Equal Employment Opportunity Training Requirements**

The Defense Health Agency (DHA) Equal Opportunity and Diversity Management (EODM) Division established Equal Employment Opportunity (EEO) training in accordance with federal agency training requirements for civilian government employees. The following four trainings are mandatory for Federal employees indicated:

- a. Reasonable Accommodations Training: Per EEO Commission Management Directive 715, Part G, Essential Elements; all Federal civilian managers and supervisors will complete annually each Fiscal Year.
- b. No FEAR Act Training: Per No FEAR Act of 2002; all Federal employees will complete within 90 calendar days after assignment for newcomers, and every two Fiscal Years thereafter.
- c. Anti-Harassment Training: Per Title 5, United States Code, Section 2302 "Prohibited Personnel Practices;" all Federal employees will complete annually each Fiscal Year.
- d. Sexual Harassment/Assault Response & Prevention (SHARP) Training: Per Department of Defense Directive 6495.01; all Federal managers and supervisors who supervise Military and uniformed service members, will complete annually each Fiscal Year. Military service members only, assigned to DHA, will be required to take their service specific SHARP training per service annual requirements, and not DHA SHARP training.

Each individual will be required to log in at: <https://mhs.health.mil/DHATraining> and take required training by the end of Fiscal Year 2016. Quarterly, EODM will check the status of completed training and notify DHA activities of compliance. The point of contact for training is Mr. Peter J. Flanagan, EO Deputy Director. Mr. Flanagan may be reached at (571) 217-8602, or [peter.j.flanagan2.civ@mail.mil](mailto:peter.j.flanagan2.civ@mail.mil).

  
R. C. BONO  
VADM, MC, USN  
Director