HRDG 4752 - Disciplinary or Alternative Actions - Section K

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Subchapter 4752 - Disciplinary or Alternative Action
Section K - Other Personnel Actions Under Different Regulations

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Subchapter 4752 (this subchapter) mainly deals with how to handle employee problems and, in particular, corrective, disciplinary/adverse action or alternative measures. There are other personnel actions which may seem disciplinary in nature, but have different statutory and regulatory requirements.

Other Personnel Actions

The following list is not all-inclusive of other actions, but is intended to provide supervisors with more common situations on:

- Terminating temporary employees;
- Separating probationary or trial period employees;
- Terminations based on preemployment conduct; and
- Inability to perform due to medical conditions.

Terminating Temporary Employees

An employee serving under a temporary appointment may be separated at any time upon written notice, but supervisors should first check with their servicing Employee Relations Specialist (ERS) prior to issuing a termination letter to the employee in order to confirm the appointment is temporary. The written notice to the employee must state the reason(s) for the termination. If feasible, at least 1 week prior notice of separation should be given.

Temporary employees generally have no appeal or grievance rights regarding their termination; however, employees may file an Equal Employee Opportunity complaint alleging discrimination was a factor in the decision. Therefore, it is a good supervisory practice to have documentation to support the reasons for terminating a temporary employee.

A person selected for appointment through competitive examination must serve a 1 year probationary period. Supervisors should continually and closely appraise the work and effectiveness of these employees in order to evaluate whether or not the employee should be retained in that position or in the Federal service. Supervisors should contact their servicing ERS as early as possible during the probationary period when the supervisor determines the employee is not suitable due to conduct and/or performance reasons.

Separating Probationary Employees

Probationary employees, by virtue of their status, do not have the same rights as permanent employees; rather, they have limited rights of appeal to the Merit Systems Protection Board process.

The notice of termination letter is written by the servicing ERS. The notice must state the reasons for termination, and the date of the separation. The notice is ordinarily given to the employee at least 5 workdays in advance of the separation date, and **must be given before the employee has completed the probationary period** (or else the employee may be entitled to the adverse action procedures identified in **Section I**).

Supervisors should document the reasons for separating a probationary employee in case this action is challenged.

If termination of a probationer is based in whole or in part on an employee's conduct **before** employment (e.g., intentional falsification of application forms), the following entitlements apply:

	EMPLOYEE ENTITLEMENTS	DESCRIPTION
Preemployment Conduct of Probationers	Notice of proposed termination	States the specific reason(s) for the proposed action
	Employee can give an answer	Management will consider the answer in reaching their decision
	Decision Notice	States the reason(s) for the action and the effective date
	MSBP appeal rights	Confined to allegations of discrimination based on partisan political reasons or marital status, or that management failed to follow proper procedures

All long term Leave Without Pay (LWOP) requests and Office of Workers Compensation situations should be discussed with your servicing Employee Relations Specialist (ERS) (see **Section A**). When an employee has a medical condition and/or prolonged absence due to a health impairment which results from injury or disease (including psychiatric disease), or employee alleges that work conditions (i.e., toxins, irritants) interfere with or prevent him/her from performing the duties of his/her position, it is the employee's responsibility for identifying and proving a medical condition. It is necessary for the employee to submit medical information so that the agency can make an informed judgment as to how to proceed in addressing a medical condition.

Medical Condition

If a medical condition is brought to the attention of a servicing ERS, generally a letter is written by the ERS which requests more specific medical information from the employee's physician. The letter is signed by the employee's supervisor, and the employee is requested to obtain his/her physician's response to the questions asked (at the employee's expense since it is the employee's burden of proof to justify a medical condition).

Sometimes an employee can be accommodated in the position or in another position by various means which are identified by the employee's physician. If reasonable accommodation is suggested/requested by the physician or the employee, the agency must determine if the employee can **reasonably** be accommodated in his/her position or in another position within the agency without placing an undue hardship on the agency.

Factors to Consider

Factors which are considered in making an undue hardship determination may include, but are not limited to:

- Job restructuring, part-time or modified work assignments and schedules;
- Whether the employee could be placed in another position commensurate with his/her physical abilities;
- What is the nature and cost of the accommodation and impact on other positions and program;
- The overall size of the agency's program and the size of budget; and/or
- The type of operation, including the composition and structure of the agency's workforce.

Based on an analysis of the medical documentation, and consideration of possible reasonable accommodation, it is necessary to make a determination of whether or not it would be an undue hardship on the agency to reasonably accommodate the medical condition. It is important to be aware of the affirmative obligations of the provisions of the Equal Employment Opportunity regulations 29 CFR 1613.704 which require reasonable accommodation of a qualified employee who is disabled.

Inability to Perform

If the employee cannot perform the duties of the position, and there is no other position available within the agency for which the employee qualifies and can be accommodated, then it is necessary to take an inability to perform action which removes the employee from Federal service. The regulations governing this action are in accordance with the process described in Section F. Before effecting any removal action based on inability to perform, the servicing Employee Relations Specialist (ERS) must:

(1) Write to Human Resources Operations asking if there are any other vacant positions available within the agency and within the commuting area for which the employee qualifies and can be accommodated; and

(2) Advise the employee concerning disability retirement if he/she meets the 5-year service requirement for Civil Service Retirement System (CSRS) employees, or the 18-month service requirement for Federal Employees Retirement System (FERS) employees. However, an employee's application for disability retirement does not delay the Agency's removal action based on inability to perform the duties of the position.

Contact Your ERS

Supervisors should contact their servicing ERS (identified in **Section A**) whenever they need advice or guidance with employee PERFORMANCE or MISCONDUCT matters.

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