HRDG 4752 - Disciplinary or Alternative Actions - Section I

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Subchapter 4752 - Disciplinary or Alternative Action
Section I - Legal and Regulatory Requirements

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Chart on Adverse Action Process	The following chart gives an overview of the legal and regulatory requirements in the adverse action process. It compares Title 5, CFR A & B actions against CFR C & D actions. For more specific information, contact your servicing ERS.

	5 CFR 752 A & B	5 CFR 752 C & D
Coverage	Suspension for 14 days or less	- Suspension of 15 days or more - Reduction in grade/pay - Removal - Furlough of 30 days or less
Regulatory Requirements	**Proposal Notice** - must give employee at least 24 hours advance written notice **Decision Notice** - must give written decision of action being taken	**Proposal Notice** - must give employee at least 30-calendar days advance written notice (unless crime provision) **Decision Notice** - must give written decision of action being taken
Proposal Notice	Must state: - Specific reason(s) - Right to answer - Right to representation* - Right to review material relied upon (official time not authorized)	Must state: - Specific reason(s) - Right to written and/or oral response - Right to representation* - Reasonable amount of official time to review documents relied upon - Must give at least 30-calendar days written notice
Employee's Response	Agency must consider any reply employee or representative makes during response period	Agency must consider any reply employee or representative makes during response period
Decision Notice	Must: - Consider only reasons specified in proposal notice - Consider any answer the employee made - Deliver notice to employee on or before action is effective - Give specific reason(s)	Must: - Consider only reasons specified in proposal notice - Consider oral/written reply - Deliver notice on or before effective date - Give specific reason(s) - Tell employee of applicable appeal, Equal Employment Opportunity (EEO), and grievance rights

Foreign Service Regulations	Members of the Foreign Service are subject to different regulations than those cited previously. Their regulations are contained in the Agricultural Foreign Affairs Manual (3 AFAM 766, Disciplinary Action (including Separations for Cause). The Foreign service also utilizes the provisions of Foreign Affairs Manual 3 FAM 660, Foreign Affairs Grievance System, for their employees to seek redress for actions or inactions taken by supervisors and/or managers. Foreign Service managers are, however, guided by APHIS Directive 400.4, Delegation of Authority, as to who can take disciplinary actions. Contact Resource Management Support, International Services, on (301) 734-6490 for more guidance.
Preparing Proposal Notice	Upon receipt of all relevant documentation and evidence, the servicing Employee Relations Specialists (ERS) will write the proposal notice (i.e., proposed suspension, removal, etc.). The proposed penalty is determined by the proposing official who will sign the letter. The signed letter should be re moved by the ERS if changes are made to it or a delegated supervisor.

The official who signs the proposal notice or a delegated supervisor normally will personally deliver the disciplinary/adverse action proposal notice to the employee receiving it. When making personal delivery of this correspondence, a written acknowledgment of receipt must be received from the employee. This is accomplished by the employee signing a copy identified as "Receipt Acknowledged Copy." It is important to send this copy to your servicing ER S so that it may be maintained in the employee's adverse action file.

Delivery of Proposal Notice

It is recommended that another management official be present to witness the letter being given to the employee. In the event that an employee will not acknowledge receipt of the letter, the witness can sign a statement saying he/she witnessed the delivery.

If personal delivery is not possible, (e.g., the employee is absent) adverse action correspondence must be mailed both regular mail and certified mail (return receipt requested) to the employee's last known home address. It is important to be able to prove the date that the employee received adverse action correspondence, and any unusual circumstances. All adverse actions delivery correspondence must be marked "For Official Use Only" on all pages. Also, envelopes must be sealed and marked "To Be Opened By Addressee Only."

Status During Notice Period

The employee is normally retained in an active duty status during the notice period. However, there are exceptional circumstances when an employee's continued presence in the workplace may pose a threat to the employee or others, result in a loss of or damage to government property, or otherwise jeopardize legitimate government interests. In such cases, it may be necessary to elect one or a combination of the following alternatives:

- Assign employee to other duties;
- Allow employee to take leave (with his/her consent);
- If employee is absent from the workplace without leave approval, charge to Absent Without Official Leave (AWOL);
- When there is a medical incapacitation, place on involuntary sick or other leave (consult your ERS prior to doing this);
- Curtail the notice period when the Agency can invoke the "crime provisions" (e.g., if the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed). In this circumstance, a curtailed reply and notice period of not less than 7-calendar days may be imposed; or
- Place the employee in a paid, nonduty status for such time as is necessary to effect the action.

The purpose of the oral reply conference is to give an employee and/or the employee's representative an opportunity to respond personally to the written proposal notice (i.e., suspension, reduction in grade/pay, o r removal).

An oral reply is scheduled only if the employee or his/her designated representative requests, either verbally or in writing, to have one. Normally, the only persons in attendance at an oral reply conference are the Oral Reply Official, the employee, and/or the employee's designated representative.

The Oral Reply Official is a management official within the agency designated to hear the employee's oral reply. A designated official or the Deciding Official may serve as Oral Reply Official to hear the employee's oral reply during the notice period.

Oral Reply Conference

An oral reply is not a hearing in which the employee is entitled to call or cross-examine witnesses. Rather, it is an opportunity for the employee to make any plea he/she believes may influence the decision in his/her favor or to reduce the penalty. The oral reply need not be restricted solely to the reasons cited in the advance proposal notice. For example, the employee may present evidence of mitigating circumstances which are of a highly personal nature.

The major role of the Oral Reply Official is to hear the employee's reply and present a written summary of the employee's oral reply with a written recommendation of the appropriate action to take. The Oral Reply Official generally asks questions in an attempt to clarify general or vague allegations. The Oral Reply Official does not inform the employee of his/her recommendation. Nor does the Deciding Official state his/her final decision to the employee (if the Deciding Official serves as the Oral Reply Official).

The servicing Employee Relations Specialist will provide a letter to the Oral Reply Official prior to the Oral Reply Conference. This letter will clarify the role of the Oral Reply Official.

Official Time

An employee who is subject to a suspension for 15 calendar days or more, reduction in grade or pay, or furlough, is entitled to a reasonable amount of official time to review the material relied upon in making the decision to propose a disciplinary/adverse action. If an employee makes a request for official time, and if the action falls under the requirements of 5 CFR 752, Subpart D, the agency policy is to allow the employee up to 8 hours of official duty time in which to review the material relied upon in proposing the action.

The amount of official time to be granted, however, is determined on a case-by-case basis and must reasonably adapt with the workload, the employee's needs, and comply with any pertinent bargaining agreement.

The supervisor should consider the gravity and complexity of the charges, the amount of legal or regulatory research that may be appropriate, and the employee's knowledge of disciplinary proceedings. It is recommended that requests for official time be done in writing, and responses to these requests also be in writing.

Based on the Deciding Official's decision of what final action to take, the servicing Employee relations Specialist prepares the decision letter which either:

- Takes the proposed action;
- Cancels the proposed action; or
- Mitigates the penalty.

Preparing Decision Letter

The decision letter may not increase the proposed penalty that was stated in the proposal notice. Also, the decision notice may not add additional charges that were not stated in the proposal letter. If there are additional offenses which occur during the response period, it may be necessary to issue a new proposal notice.

Decision letters contain information on the employee's rights to challenge the action before a third party. The decision letter is delivered by the Deciding Official or a person designated by the Deciding Official in the same manner as the proposal notice.

Employee Rights

An employee may challenge certain actions by whatever rights to which he/she is entitled by law. Such rights are stated in the decision letter and may be one of the following:

- Administrative grievance or negotiated grievance procedure;
- Merit Systems Protection Board appeal; or
- An Equal Employment Opportunity complaint based on alleged discrimination because of race, color, religion, sex, national origin, age, or physical/mental disability.

If the employee challenges the action to a third party, the burden of proof is on the agency to defend the action taken by proving:

- The charges by a preponderance of the evidence;
- The action was taken for the efficiency of the Federal service; and
- The penalty selected was reasonable and appropriate.

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