# HRDG 4752 - Disciplinary or Alternative Actions - Section D

Last Modified:

**Subchapter 4752 - Disciplinary or Alternative Action**
**Section D - How to Properly Counsel an Employee**

- Advance Preparation
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**Advance Preparation**

Supervisors should consider the following before meeting with an employee about a sensitive issue:

| IF THE EMPLOYEE | AND | THEN |
|---|---|---|
| Is a member of a bargaining unit (a group of employees represented by a union) and the applicable agreement governs representation at an investigative or counseling meeting by a management representative | 1) The employee reasonably believes that the examination may result in disciplinary action; and<br><br>2) The employee requests representation | The employee has the right to be accompanied by a union representative during the meeting (Weingarten right). Supervisors should be familiar with the applicable negotiated agreement prior to such a meeting. |
| Appears to have a personal problem (e.g., drug, alcohol) that may be contributing to a problem | Supervisor suspects such problems are a contributing factor | Supervisor has an obligation to offer an employee help with such problem(s), and must give the employee the name and telephone number of an Employee Assistance Program (EAP) counselor. Also, employee should be offered liberal leave to obtain assistance with an EAP problem. (Be sure to document this effort). |

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|---|---|---|
| Wants to resign or retire after being informed orally or in writing that charges may result in a removal | The employee asks to resign or retire | The agency makes it a practice to give the employee an opportunity to resign or retire at any time. A supervisor may advise an employee of his/her right to resign/retire but should not require, suggest, or indicate that an employee resign/retire in lieu of being removed so as to constitute coercion. |

**Labor Relations Issues**

Supervisors should be familiar with any applicable negotiated agreement, and should contact their servicing Employee Relations Specialist or the Labor Relations Specialist in Marketing and Regulatory Programs Human Resources, Employee and Management Relations, on (30l) 734-4414 for advice or guidance on matters pertaining to labor issues.

A union representative has the right to ask relevant questions at an investigative meeting, and to make relevant comments to help an employee, but does not have the right to answer for the employee or to prevent a supervisor from getting answers to his/her questions.

When meeting with an employee about a suspected alcohol or drug problem, it is not the supervisor's role to **diagnose** the problem; rather, **supervisors should focus on the conduct or performance problem which is resulting from the suspected drug or alcohol problem.**

If a supervisor suspects that an employee may have a drug or alcohol problem, the supervisor has a responsibility to inform the employee of the Agency's Employee Assistance Program and provide the telephone number of a counselor.

**Drug/Alcohol Issues**

**Employee does not admit to a problem** - If an employee does not admit to a problem and fails/refuses to seek assistance, the agency may go forward with discipline.

**Employee admits to a problem** - If the employee admits to the problem, the employee should be given a "firm choice" between participating in a rehabilitation program or facing disciplinary action. If the employee chooses to participate in rehabilitation, disciplinary action is usually held in abeyance during the time the employee seeks assistance with his/her problem. Supervisors should consult with their servicing ERS about the possibility of using a "Last Chance Agreement."

**Resignation/ Retirement Issues**

Under no circumstances should a supervisor coerce an employee into resigning or retiring in lieu of being removed from his/her Federal position. If an employee can prove in a third party review that he/she was coerced into resigning or retiring, the agency's action may be reversed and the employee reinstated.

**List of Items to Remember**

The following is a checklist of items a supervisor should remember when counseling an employee:

- Be prompt in meeting with the employee;
- Meet in private (preferably in an area away from coworkers);
- Speak in a rational, non-emotional tone, remembering that the employee is innocent until proven guilty;
- Describe the situation in specific terms of what you observed, how long, how often, etc. (do not be vague);
- Listen to the employee's side of the story, and carefully summarize what you have heard-- stating whether or not you are satisfied with the employee's explanation/justification;
- If applicable, state what rule or regulation has been violated;
- State why the problem must be corrected, and what you expect the employee to do to correct the problem;
- If appropriate, explain the possibility of some disciplinary action if the problem is not corrected, or explain why it is necessary to recommend disciplinary action (but do not state specifically what action will be taken;
- Take good notes of what was said (see Section H on how to document properly);
- Arrange a followup meeting to stay abreast of particular problem;
- If appropriate, provide the employee with a written summary of your conversation and any terms agreed to, and obtain the employee's signature and date as proof of receipt.

**Uncooperative Employees**

If an employee refuses to answer your questions or refuses to cooperate with your inquiry, refer the employee to the Agency's "Conduct and Responsibilities" regulations (Section A-17) which states the following:

"Employees must give authorized personnel ALL truthful information and testimony about all official matters when involved in administrative proceedings. Refusal of ANY employee to testify or to provide information on pertinent matters under investigation or inquiry may result in disciplinary action unless the employee validly invokes the 5th Amendment to the Constitution."

An employee may validly invoke his/her 5th Amendment rights in investigations involving him/her criminal acts, but not to violations of administrative rules or regulations in administrative proceedings.

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