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# Civilian Personnel Actions: Disciplinary, Adverse and Performance Based Actions



COMDTINST M12750.4A

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Headquarters units, Assistant Commandants for directorates, the Judge Advocate General (JAG), special staff offices at Headquarters, the Deputy Commandant for Mission Support, the Deputy Commandant for Operations, and the Superintendent of the Coast Guard Academy, subject to limitations imposed by this Manual and its enclosures. This delegation of authority can be re-delegated as low as the first level supervisor for proposing actions, as well as for actions not requiring a separate proposal (e.g., letters of reprimand, counseling, requirement, etc.) and the second level supervisor for deciding actions. However, if the supervisor is directly involved in the action taken, the authority to take the action may need to be elevated to the next higher level in the chain of command.

5. SPECIAL ATTENTION.

- a. All actions covered by this Manual shall be processed in accordance with applicable laws, controlling rules and regulations and the guidance and procedures set forth in this Manual.
- b. For bargaining unit employees covered by a collective bargaining agreement, where provisions of this Manual conflict with existing provisions of the collective bargaining agreement, the collective bargaining agreement provisions prevail.

6. DISCLAIMER. This guidance is not a substitute for applicable legal requirements, nor is it itself a rule. It is intended to provide operational guidance for Coast Guard personnel and is not intended to, nor does it, impose legally-binding requirements on any party outside the Coast Guard.

7. DISTRIBUTION. No paper distribution will be made of this Manual. Official distribution will be located on the following Commandant (CG-612) websites. Intranet: <http://cgweb.comdt.uscg.mil/CGDirectives/Welcome.htm>, Internet: <http://www.uscg.mil/directives/> and the CGPortal: <https://cgportal2.uscg.mil/library/SitePages/Home.aspx>

8. RECORDS MANAGEMENT CONSIDERATIONS. This Manual has been thoroughly reviewed during the directives clearance process and it has been determined that there are further records scheduling requirements, in accordance with Federal Records Act, 44 United States Code (U.S.C.) 3101 et seq., NARA regulations, and Information and Life Cycle Management Manual, COMDTINST M5212.12(series). This policy has substantial change to existing records management requirements.

9. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS.

- a. The development of this Manual and the general policies contained within it have been thoroughly reviewed by the originating office in conjunction with the Office of Environmental Management, and are categorically excluded (CE) under current Coast Guard CE #1 from further environmental analysis, in accordance with Section 2.B.2. and Figure 2-1 of the National Environmental Policy Act Implementing Procedures for Policy for Considering Environmental Impacts, COMDTINST M16475.1 (series). Because this Manual contains guidance on, and provisions for, routine personnel, fiscal and

administrative activities, actions, procedures and policies which clearly do not have any environmental impacts, Coast Guard categorical exclusion #1 is appropriate.

- b. This directive will not have any of the following: significant cumulative impacts on human environment; substantial controversy or substantial change to existing environmental conditions; or inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. All future specific actions resulting from the general policies in this Manual must be individually evaluated for compliance with the National Environmental Policy Act (NEPA), Department of Homeland Security (DHS) and Coast Guard NEPA policy, and compliance with all other environmental mandates. Due to the administrative and procedural nature of this Manual, and the environmental guidance provided within it for compliance with all applicable environmental laws prior to promulgating any directive, all applicable environmental considerations are addressed appropriately in this Manual.

10. FORMS/REPORTS. The forms referenced in this Manual are available in USCG Electronic Forms on the Standard Workstation or on the Internet: <http://www.uscg.mil/forms/>; CGPortal at <http://cgportal.uscg.mil.delivery/Satellite/uscg/References>; and Intranet at <http://cgweb.comdt.uscg.mil/CGForms>.



CURTIS B. ODOM /s/  
Director of Civilian Human Resources, Diversity  
and Leadership







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Encl: (1) Table of Offenses and Penalties Guideline



## CHAPTER 1. GENERAL PROVISIONS

A. General Policy. The primary objective of discipline is to correct an employee's work-related conduct and/or performance while maintaining high productivity, discipline, integrity and morale among all employees. Accordingly:

1. Standards of Conduct and Efficiency. It is the policy of the Coast Guard to maintain standards of conduct and efficiency that will promote its best interests and mission accomplishment. When acceptable standards of conduct and efficiency are not maintained, it is the responsibility of Coast Guard managers and supervisors to address the matter by taking prompt and just corrective action.
2. Disciplinary, Adverse, and Performance Based Actions. Actions are to be effected in accordance with the policies and procedures set forth here, and in applicable laws and regulations in accordance with references (a) and (b), as well as in accordance with collective bargaining agreements, as appropriate.
3. Discrimination. All disciplinary, adverse, and performance based actions will be taken without regard to political, religious, labor affiliation or non-affiliation, race, color, religion, national origin, sex, age, physical or mental disability, genetic information, pregnancy, marital status, or on the basis of a prohibited personnel practice (PPP) (5 U.S.C. Section 2302).

B. Responsibilities.

1. Commandant (CG-12). Commandant (CG-12) is responsible for:
  - a. Monitoring and evaluating the operation of the program within the Coast Guard.
  - b. Directing such corrective actions and changes in policies and procedures as are deemed necessary in the interest of the Coast Guard (primary support and operating assistance is provided by Commandant (CG-121)).
2. The Office of Civilian Human Resources (CG-121). Commandant (CG-121) is responsible for:
  - a. Providing primary human resources support and services to Coast Guard commands and employees with respect to disciplinary, adverse, and performance based actions.
  - b. Evaluating the efficiency and effectiveness of such programs and delivery of service.
3. The Office of Civilian Human Resources, Workforce Relations Division (CG-1214). Commandant (CG-1214) is responsible for:

- a. Developing, issuing, and evaluating Coast Guard-wide employee relations policy as well as issuing policy guidance as necessary for the effective implementation of this Manual and its policies.
  - b. Educating the workforce, supervisors, and managers by providing up-to-date advice and guidance and sharing and interpreting information on new or revised laws, rules, regulations, policies, case law, etc.
  - c. Providing technical guidance and oversight to supervisors and managers, as necessary, on all matters covered by this Manual.
  - d. Providing direct service, via the servicing Commandant (CG-1214) Human Resources (HR) Specialist, to supervisors, management, and employees on all matters covered by this Manual including: advice, guidance, and assistance involving disciplinary, adverse, and performance based actions. Advice and guidance must be consistent with this subchapter and any applicable collective bargaining agreement. The HR Specialist is responsible for reviewing all pertinent background material provided by the management official initiating the action to determine consistency and ensure conformity with policies and procedures. The HR Specialist will also assist in determining that there is sufficient basis for the action and that the charge(s) is fully supported by available evidence. The HR Specialist will also provide the proposing and deciding officials with assistance in conducting an analysis of the Douglas Factors for each employee charged with misconduct. Letters proposing and effecting actions shall be drafted by the HR Specialist for the management official initiating the action.
  - e. Advising employees of their procedural rights to include applicable grievance and/or appeal rights when disciplinary actions are taken.
  - f. Encouraging the use, where appropriate, of alternative discipline and assisting supervisors in developing alternative discipline strategies.
  - g. Serving as the technical representative at oral reply meetings, as appropriate, and in third party appeals.
  - h. Coordinating with the appropriate legal office prior to issuance of actions that have the potential for appeal to the Merit Systems Protection Board (MSPB) to ensure legal sufficiency for the action.
  - i. Maintaining the official case file for all disciplinary, adverse, and performance based actions in their servicing area.
4. Unit Commanding Officers. Unit commanding officers are responsible for:
- a. Administering a fair and consistent disciplinary, adverse, and performance based action program in compliance with this Manual and any applicable labor-management agreements.

- b. Communicating rules, practices, procedures, and conditions of employment to employees to ensure awareness of expectations.
  - c. Ensuring that supervisors properly exercise their authority in administering disciplinary, adverse, and performance based actions.
  - d. Monitor new supervisors (both military and civilian) of civilian employees completion of basic employee relations training (i.e. on-line training, classroom training) within the supervisor's first year of supervising civilians. The DHS Continuous Supervisory Leader Development Course (Course Code 502801) is available through the Coast Guard's on-line training system at <https://elearning.uscg.mil/>.
5. Supervisors of Civilian Employees. Supervisors (both military and civilian) of civilian employees are responsible for:
- a. Maintaining morale and discipline within the organization.
  - b. Promoting good employee-management relations.
  - c. Creating a work environment free from discrimination.
  - d. Taking supervisory training (i.e. on-line training, classroom training) in basic employee relations within the first year of supervising civilians.
  - e. Communicating requirements and expectations regarding standards of conduct and performance to employees.
  - f. Familiarizing themselves with the information contained in this Manual.
  - g. Reviewing and following procedures established by collective bargaining agreements for employees in certified bargaining units. Where conflicts exist between the provisions of this Manual and the collective bargaining agreement, the provisions of the agreement prevail.
  - h. Consulting with the servicing HR Specialist at the on-set of any performance and/or conduct problems observed or brought to their attention.
  - i. Initiating appropriate disciplinary, adverse, and performance based action, as applicable, to correct performance and conduct issues in the workplace.
  - j. Coordinating proposed and final decisions with the HR Specialist prior to issuing any letter or action.
6. Legal Staff. The Legal Staff is responsible for:
- a. Reviewing the following for legal sufficiency prior to issuance: adverse and performance based proposal and decision letters; performance improvement plans

(PIPs); within-grade increase (WGI) denials and requests for reconsideration; and any other actions that have the potential for appeal to the MSPB.

- b. Providing legal advice and assistance to HR Specialists. In coordination with the HR Specialist, prepare for and represent the Coast Guard before third-party proceedings, except for arbitrations and matters before the Federal Labor Relations Authority (FLRA) and Federal Service Impasses Panel (FSIP).

7. Employees. All civilian employees are responsible for:

- a. Meeting standards of conduct and performance required by law, rule, regulation and policy.
- b. Refraining from any activity, both on and off-duty, that would interfere with effective operations or would have an adverse impact on the Agency's reputation.
- c. Refraining from any activity which a reasonable person could determine would warrant corrective action.
- d. Providing full and truthful answers during any inquiry or investigation.

C. Definitions.

1. Active Duty Status. Any pay status, including paid leave, authorized overtime, holiday pay, and other forms of premium pay.
2. Admonishment (oral or written). An informal discussion or memorandum provided to an employee to address a minor conduct or performance issue, addressing what he/she did wrong and what is expected in the future.
3. Appealable Adverse Action. Removal, suspension of 15 calendar days or more, or reduction in grade or pay taken for such cause as will promote the efficiency of the service.
4. Appeal to the Merit Systems Protection Board (MSPB). A written or electronic request filed with the MSPB seeking the review of an appealable adverse action.
5. Appropriate Penalty/Reasonable Remedy. These terms are used interchangeably to refer to the corrective action determined to be appropriate after consideration of the facts of the case, the employee's response, and relevant "Douglas Factors".
6. Bargaining Unit Employee. An eligible employee in a unit, as certified by the FLRA, represented by a labor organization (union) as the exclusive representative.
7. Charge. The label or characterization of the specific act(s) of misconduct that forms the basis for taking action.

8. Collective Bargaining Agreement (CBA). A written agreement between the Employer and a labor organization, usually for an identified definite term, that defines conditions of employment, rights of employees and labor organizations, and the procedures to be followed in settling disputes or handling issues that arise during the life of the agreement. A collective bargaining agreement may also be referred to as the contract, the negotiated agreement, the agreement, or the CBA. **The collective bargaining agreement, where applicable, must always be checked prior to taking any action covered by this Manual to ensure that its provisions are followed. When the provisions of a collective bargaining agreement differ from the provisions of this Manual, the agreement prevails.**
9. Day. Calendar day. For actions taken under this Manual, the day a notice is delivered is not counted when counting days. If the last day of a notice period falls on a weekend, holiday or other non-workday, the last day of the notice period becomes the next following business day.
10. Deciding Official. The official within the employee's chain of command that is responsible for making the final determination (after a full and impartial review of the matter) and issuing a notice of final decision on a disciplinary, adverse, or performance based action. The deciding official in a matter should be at a higher level in the chain of command than the official proposing the action, unless the proposing official is the Commandant in which case the deciding official may be the same individual.
11. Douglas Factors (or Penalty Selection Factors). 'Douglas' comes from the lead name of a number of cases combined and argued before the MSPB (Douglas v. Veterans Administration, 81 FMSR 7037). The MSPB was investigating whether it had the authority to modify or reduce a penalty taken by an agency, and if so, by what standards that authority should be exercised. The Douglas decision established a series of factors, thereafter referred to as the Douglas Factors, which the MSPB would use in determining whether agencies properly analyzed the various aggravating and mitigating considerations present in a disciplinary/adverse action. Therefore, proposing and deciding officials are required to consider, at a minimum, the applicable factors set forth by the MSPB when contemplating the appropriate action to be taken. (See further information on Douglas Factors in Chapter 2.)
12. Efficiency of the Service. The standard agencies must meet in supporting adverse actions. This term embraces a wide variety of considerations, including the efficiency and effectiveness of operations, the health, well-being and safety of Federal employees and property, and the ability of the agency to serve the public interest effectively by maintaining its confidence.
13. Employee Assistance Program. A program designed to provide free, confidential, professional assessment and short-term counseling/referral services to help employees and their family members with personal, job, or family problems. The program also provides services such as financial, legal and supervisory consultations. CGSUPRT is the Coast Guard's employee assistance program, reference (c).

14. Equal Employment Opportunity Commission (EEOC). The Federal agency responsible for enforcing Federal laws making it illegal to discriminate because of an individual's race, color, religion, sex (including pregnancy), national origin, age, disability or genetic information. It is also responsible for reviewing allegations of reprisal for filing a complaint or participating in the Equal Employment Opportunity (EEO) complaint process. The laws enforced apply to all types of work situations, including hiring, firing, promotions, discipline, harassment, training, wages, and benefits.
15. Formal Disciplinary/Adverse Action. An action that is made a matter of record for inclusion in an employee's Official Personnel Folder, either on a temporary or permanent basis. Formal Disciplinary/Adverse Actions include letters of reprimand, suspensions, removals and demotions.
16. Human Resources (HR) Specialist. The Commandant (CG-1214) specialist responsible for providing advice and assistance on matters addressed in this Manual.
17. Indefinite Suspension. The placement of an employee in a non-duty, non-pay status for an indefinite period of time through the use of adverse action procedures. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action that may include the completion of any subsequent administrative action.
18. Informal Disciplinary Action. An action taken by management in an effort to correct minor misconduct or delinquency that is not made a matter of record in an employee's Official Personnel Folder. Informal disciplinary actions include: oral or written admonishments; letters of counseling, caution, instruction or warning, as well as letters of requirement.
19. Letter of Caution or Counseling. A written, informal disciplinary letter issued to an employee, the purpose of which is to address minor misconduct or performance deficiencies, clarify expectations, and inform the employee that more severe disciplinary action will be taken should the issue(s) continue.
20. Letter of Instruction. A written letter to an employee providing specific instructions related to expectations regarding the individual's behavior and/or performance. A letter of instruction is not considered formal discipline.
21. Letter of Requirement. A written letter to an employee addressing specific requirements the employee is to follow, usually related (but does not have to be limited) to attendance matters. A letter of requirement is not disciplinary in and of itself, but failure by the individual to follow the requirements can result in disciplinary or adverse action.
22. Management Representative. The individual representing the Coast Guard during third party proceedings such as before an administrative judge of the MSPB or before an arbitrator.
23. Merit Systems Protection Board (MSPB). An independent, quasi-judicial agency in the Executive branch of the government whose primary statutory function is to protect

Federal merit systems against partisan political and other prohibited personnel practices by adjudicating employee appeals over which the Board has been given jurisdiction.

24. Mixed Case. A term referring to a case in which an employee contests an action that is appealable to the MSPB and alleges that the action was discriminatorily taken based on race, color, religion, sex, national origin, age or disability. The employee can elect to appeal the action either to the MSPB or to file a complaint of discrimination with the EEOC, but cannot do both.
25. Negotiated Grievance Procedure (NGP). A procedure, negotiated by the Agency and a representing union, through which a covered complaint or issue may be submitted for review by higher level authority in an attempt to resolve the matter. The NGP contains specific steps and deadlines to be followed and ends, if not resolved, with a process allowing for submission of the matter to arbitration.
26. Nexus. Refers to the connection that must exist between the behavior forming the basis for taking an action and the adverse impact the behavior has on the employee's ability to perform the duties of his/her position or on the agency's operations (i.e., the efficiency of the service).
27. Official Case File. The official file, maintained by the servicing HR Specialist, containing documentation related to any disciplinary or adverse action taken on an employee. The Official Case File should contain any letter or notice of proposed action, any written response provided by the employee and/or his/her representative, a summary of any oral response provided, and the written decision on any proposed action. The Official Case File should also contain any documented evidence or material that was used to support the reasons relied on in taking the action. This documentation may include, but is not limited to, the employee's statement, witness statements, prior documented disciplinary actions, affidavits, investigative reports (or relevant extracts from investigative reports), time cards, transcripts, computer reports, travel records, etc.
28. Official Personnel Folder (OPF)/Electronic Official Personnel Folder (e-OPF). The OPF, or its approved electronic equivalent (e-OPF), is an official file containing all permanent records covering an individual's entire Federal employment history.
29. Oral Counseling. A very specific discussion between a supervisor and an employee, the purpose of which is to address performance deficiencies or minor misconduct, clarify expectations, and warn of more severe disciplinary action should the issue(s) continue.
30. Performance Improvement Plan (PIP). A specific written notice to an employee whose performance is not at an acceptable level that serves to inform the individual of what must be done in order to raise performance to a satisfactory level of competence. The PIP also outlines assistance to be provided to the employee during the specified improvement period.
31. Performance Standard. Written identification of the task, function, and results an employee is required to perform in order to attain a specified performance rating, e.g., meets, exceeds, or achieved excellence.

32. Preponderance of the Evidence. That degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted or contested is more likely to be true than untrue.
33. Probation/Trial Period. A period of one calendar year in length, during which an individual can be terminated without resorting to the procedures and appeals process that applies to tenured Federal employees.
34. Progressive Discipline. Discipline is progressive when it starts at a low level of discipline and progresses in steps to higher levels of severity up to removal from Federal service. The purpose of using progressive discipline is to deter further misconduct by allowing an employee to correct his or her behavior before more severe action is required. Offenses need not be identical to support progressively more severe adverse action against an employee.
35. Proposing Official. The supervisory or management official, within an individual's chain of command, who proposes to take an action requiring due process (e.g., a suspension, demotion, removal). The proposing official is normally, but not necessarily, the first level supervisor.
36. Reduction in Grade. The involuntary assignment of an employee to a position of a lower job-grading level. (Note, an individual can request a voluntary change to lower grade. In such a situation, the action would not be considered an adverse action.)
37. Removal. The involuntary separation of an employee from employment with the agency through adverse action procedures.
38. Reprimand. A formal disciplinary letter given to an employee for violation of a rule, regulation, official instruction, or particular responsibility, about which the individual is on notice of the unacceptability of the conduct.
39. Suspension. The temporary, formal placement of an employee in a non-duty and non-pay status for disciplinary or other reasons.
40. Termination. The involuntary separation of an individual during the probationary or trial period.
41. Unacceptable Performance. Performance that fails to meet established performance standards in one or more core competencies or performance goals and objectives. For purposes of Chapter 3 of this Manual, unacceptable performance means the same as unsatisfactory performance.
42. Written Warning. A very specific memorandum issued to an individual to address minor misconduct or explain performance deficiencies, clarify expectations, and warn of consequences should the matter addressed not be resolved. A written warning is an informal disciplinary measure and is not made a matter of record in an individual's OPF.

- D. Relationship to the Employee Assistance Program (CGSUPRT). Referral of an employee to the Employee Assistance Program (EAP) supplements, but does not replace, taking corrective action in conduct or performance based cases. The purpose of employee assistance is to provide aid to an employee who may be experiencing personal or work-related issues contributing to issues at work. Referring an employee for assistance through the EAP is not a bar to taking corrective action.
- E. Consideration of Medical Conditions. Supervisors are required to consider medical documentation provided by employees in defense of proposed disciplinary, adverse, or performance based actions.
1. Employee's Responsibility. If an employee alleges that a medical condition may be contributing or causing a conduct or performance problem, the employee must normally furnish supporting medical certification. Since the employee bears the burden of proof to demonstrate that a raised medical condition exists, the burden reasonably includes the cost of any necessary medical examination. If additional medical documentation is needed in order for management to make an informed decision, the supervisor, with the assistance of the servicing HR Specialist and medical personnel, may assist the employee by identifying, in writing, medical documentation necessary and relevant to the situation at hand. Requested medical documentation must be received no later than 15 days after the date of the agency's request in accordance with 5 Code of Federal Regulations (CFR) 630.403, or for bargaining unit employees, the applicable provisions of any negotiated agreement.
  2. Management's Responsibility. Medical documentation provided by an employee may be reviewed by a Coast Guard physician, if needed. After review of the medical documentation provided, a medical examination under the provisions of 5 CFR 339.302 may be offered or ordered, as appropriate.
    - a. If the employee submits acceptable medical documentation to support his/her medical condition, management may have an affirmative obligation under 29 CFR 1630.3, reference (d), to provide reasonable accommodation to a qualified individual with a disability. Reasonable accommodations will be handled in accordance with the Coast Guard Civil Rights Manual, reference (e), or the applicable provisions of any negotiated agreement pertaining to bargaining unit employees.
    - b. If an employee has at least five (5) years of service under the Civil Service Retirement System (CSRS), or 18-months of service under the Federal Employees' Retirement System (FERS), the employee may be eligible for, and may be provided information on, disability retirement when appropriate. An employee's application for disability retirement does not preclude or delay any other personnel action. An agency may file an application for disability retirement on behalf of an individual only as set forth in 5 CFR 831.1203.
  3. HR Specialist Responsibility. The servicing HR Specialist will provide advice and guidance in regard to the above and will draft for the manager any needed request for medical information.

- F. Voluntary Action by an Employee. An employee who is confronted with a potential disciplinary or adverse action may volunteer to accept a lower graded position, a reassignment, or to resign in lieu of the action. While management may give consideration to such a request, management must not coerce the employee into taking such action. Any discussions regarding the option of a voluntary action, including resignation, should be between the employee and the HR Specialist (and not directly with the manager/supervisor). The HR Specialist will discuss the employee's request with the appropriate management official. An employee approaching management to discuss such an action should be referred to the Office of Civilian Human Resources so as to avoid any appearance of coercion. It is permissible for the Office of Civilian Human Resources representative to discuss with the employee the options available when action is being contemplated in order that no record is made in the individual's eOPF. It is not permissible, however, to tell an employee that he/she must resign or face a removal action. Such a statement would cause the action to appear involuntary without providing due process, which could then be appealed to the MSPB. For bargaining unit employees, reference should be made to any applicable provisions of the collective bargaining agreement.
- G. Records Management. The servicing HR Specialist shall maintain the official agency case files on all disciplinary, adverse, and performance based actions. These files are kept separate from the OPF and are to be disposed of five years after the case closes in accordance with reference (f). Note: if an action has been made a matter of record or reference in a subsequent action, the record should not be disposed of until five years from the final action.

## CHAPTER 2. DISCIPLINARY AND ADVERSE ACTIONS

- A. Policy. This Chapter establishes general policies and procedures for correcting an employee's work-related conduct and/or performance while maintaining high productivity, discipline, and morale among all employees. Actions, up to and including removal, may only be taken for such cause as will promote the efficiency of the service and without regard to race, color, religion, national origin, sex, age, physical or mental disability, genetic information, pregnancy, political affiliation, marital status, or on the basis of a Prohibited Personnel Practice (PPP) (5 U.S.C. 2302). Normally, the lowest level of discipline necessary to correct an employee's behavior shall be imposed, with the principle of progressive discipline followed, as appropriate. However, if the conduct exhibited by the employee is egregious enough or is accompanied by sufficient aggravating factors, more severe action, up to and including removal may be warranted. Such determinations are made on a case-by-case basis in consultation with the servicing HR Specialist.
- B. Administration of Disciplinary and Adverse Actions. 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, as applicable, 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:
1. The reason(s) for the disciplinary or adverse action.
  2. That the action promotes the efficiency of the Service.
  3. That the penalty imposed is within the tolerable bounds of reasonableness.
- C. Fair and Equal Consideration. It is the policy of the Coast Guard to ensure that supervisors and management officials treat all employees under their supervision fairly and with equal consideration.
- D. Authority to Initiate Actions. The authority to initiate disciplinary or adverse actions is delegated to the lowest practical level of supervision within an employee's chain of command consistent with good management practices. Normally this is the first level of supervision. However, any supervisor, at any level of supervision within an individual's chain of command, may initiate action consistent with this Manual. Decisions on proposed actions shall normally be made by a management official within the employee's chain of command, at least one level higher than the supervisor proposing the action, unless the proposing official is the Commandant. Prior to initiating an action, a supervisor shall seek advice and assistance from the servicing HR Specialist to ensure regulatory compliance and consistency of actions.
- E. Coverage.

1. Employees Covered. This Chapter applies to all Coast Guard Civilian employees covered under 5 U.S.C. 7511, 5 CFR 752.201 and 5 CFR 752.401, including Academy faculty members.
2. Employees Excluded. This Chapter excludes all Coast Guard employees specifically excluded by law or Executive Order, such as employees excluded from procedural protections under 5 U.S.C. 7511, 5 C.F.R. 752.201, and 5 C.F.R. 752.401. Among those excluded are:
  - a. Non-Appropriated Fund (NAF) civilian employees
  - b. Employees serving under a temporary appointment
  - c. Preference eligibles with less than one (1) year of current continuous employment in the excepted service
  - d. Administrative Law Judges
  - e. Experts and consultants
  - f. Employees in the Senior Executive Service (SES)
  - g. Military members
  - h. An individual in the excepted service, other than a preference eligible, who has not completed 2 years of current continuous service in the same or similar position in an Executive agency
3. Actions Covered. This Chapter covers actions taken under the provisions of 5 CFR 752.201 and 5 CFR 752.401 including written reprimands, suspensions, reductions in grade and/or pay, and removals for cause. Also covered are informal disciplinary actions such as oral and/or written admonishments, warnings, cautions, counselings and letters of requirement or instruction.
4. Actions Excluded.
  - a. A suspension or removal taken in the interests of national security (5 U.S.C. 7531).
  - b. A suspension or removal taken against an Administrative Law Judge (5 U.S.C. 7521).
  - c. An action imposed by the MSPB (5 U.S.C. 1206).
  - d. A reduction-in-force action (5 U.S.C. 3502).
  - e. 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 (5 U.S.C. 3321(a)(2)).

- f. An action which entitles an employee to grade retention and an action terminating this entitlement (5 U.S.C. 5262).
- g. A voluntary action initiated by the employee.
- h. An action taken under a provision of statute other than one codified in Title 5 U.S.C. which excepts the action from Subchapter II of Chapter 75 of the Title 5 U.S.C.
- i. An action taken or directed by the Office of Personnel Management (OPM) for suitability reasons (5 CFR 731).
- j. Involuntary retirement because of disability.
- k. Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made.
- l. 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 it was to be of limited duration.
- m. Cancellation of a promotion to a position not classified prior to the promotion.
- n. Placement of an employee serving on an intermittent or seasonal basis in a temporary non-duty, non-pay status in accordance with conditions established at the time of appointment.
- o. Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation.
- p. An action against a re-employed annuitant.
- q. A reduction in grade or removal under 5 U.S.C. 4303.

F. Guidelines for Establishing Facts and Selecting the Appropriate Remedy.

1. General Guidelines. Supervisors and managers shall make an objective inquiry, as needed, to establish the facts and circumstances concerning an observed or reported issue. A determination of the appropriate corrective action to be taken, if any, shall be made after consideration of all relevant facts and available information. In deciding what action to take, keep in mind that the most appropriate action is the lowest level of action that will serve to correct the employee's behavior and maintain morale and good order in the organization. Penalties shall be imposed with consistency and equity to the extent possible and appropriate given the circumstances involved in the matter. If formal disciplinary action is determined to be appropriate, the Table of Offenses and Penalties Guideline - Enclosure (1) of this Manual, provides guidance on selecting appropriate actions for typical offenses. Past offenses, if made a matter of record, may form the basis for proposing a higher penalty for any subsequent offense. The offenses need not be

identical, or even similar in nature, to count as a prior offense. Normally, progressive disciplinary measures are applied in an effort to correct an employee's conduct. However, if the conduct is sufficiently egregious, it may warrant more severe action or removal of the employee for a first offense. Material that cannot be disclosed to the employee and/or the employee's representative cannot be used to support an action. The servicing HR Specialist must be consulted for guidance and assistance prior to taking any disciplinary or adverse action.

2. Penalty Selection Factors (Douglas Factors). After reviewing all of the relevant evidence, facts and information available, a determination should be made, in consultation with the servicing HR Specialist, as to the appropriate action to be taken. The level of action taken (penalty) needs to be reasonable in relation to the behavior with which the individual is being charged. In order to determine reasonableness, the MSPB held, in *Douglas v. Veterans Administration* (see Definitions section), that it is management's burden to show the reasonableness of the remedy by demonstrating that appropriate consideration was given to the applicable factors (listed below) set out in the case decision. These factors are referred to as the Douglas Factors. Note that not all factors listed may be applicable in each case and the factors may serve as either mitigating (weigh in the employee's favor) or aggravating elements depending on the specifics of the individual case. The proposing and deciding official should balance the relevant mitigating and aggravating factors in determining the appropriate remedy.
  - a. The nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional, technical, or inadvertent, or was committed maliciously or for gain, or was frequently repeated.
  - b. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.
  - c. The employee's past disciplinary action.
  - d. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
  - e. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties.
  - f. Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
  - g. Consistency of penalty with the table of penalties.
  - h. The notoriety of the offense or its impact upon the reputation of the Agency.
  - i. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

- j. Potential for the employee's rehabilitation.
- k. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairments, harassment, or bad faith, malice, or provocation on the part of others involved in the matter.
- l. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

G. Informal Disciplinary Actions.

1. After reviewing the matter and all pertinent information related to the situation, it is sometimes determined that something less than formal disciplinary action will correct an employee's minor conduct deficiencies. Informal discipline such as oral or written admonishments, letters of warning, caution, counseling, instruction and requirement are generally available as a first step in constructive discipline and can be administered prior to taking formal disciplinary action. Refer to the Definitions section of this Manual for an explanation of each type of informal discipline.
2. Informal disciplinary actions may not be counted as a prior action when determining a remedy under the Table of Penalties and Offenses, nor do they become matters of record in the employee's OPF/eOPF.
3. Informal disciplinary actions may be cited in future disciplinary action as evidence that the employee was made aware of acceptable standards of conduct or performance and that the employee was warned that future instances of misconduct or performance deficiencies could result in disciplinary action.
4. Informal disciplinary actions are not grievable under the administrative grievance procedure as set forth in reference (g).
5. Supervisors may maintain records of informal disciplinary actions for up to one (1) year from the date of issuance.
6. For bargaining unit employees covered by a negotiated agreement or contract, reference should be made to the applicable contract for specific requirements and/or provisions related to the use and grievability of informal disciplinary actions.

H. Termination of Probationary Employees during the Probationary Period and Termination of Term Employees and Veterans Readjustment Appointees during the First Year of Service (Trial Period).

1. General. The probationary or trial period is the final step in the hiring process and is used to determine an individual's fitness for Federal service. During this period, it is important that the supervisor work closely with the individual in order to establish expectations and closely evaluate the conduct, general character traits, and performance to determine whether or not the person demonstrates the qualifications necessary for a successful career in the Federal service. While still under probation, the individual is not

an employee as defined by 5 U.S.C. 7511 and has limited job protections. However, once the probationary period ends, the individual becomes an employee with the full protections of Federal employment. Therefore, it is imperative that the manager and supervisor use this period effectively. If the individual fails to demonstrate fully his/her qualifications and fitness for continued employment, either through performance or work-related conduct, the supervisor shall initiate action to separate the individual, in consultation with the servicing HR Specialist. The procedures set forth in Section I.3. of this Chapter (removals) are not applicable to terminations of an individual during a trial or probationary period who has not completed one year of current continuous service under other than a temporary appointment limited to one year or less. Termination of a probationer during the probationary or trial period is processed as follows depending on whether the reason for termination is based on pre- or post-appointment behavior.

2. Termination for Conduct and/or Performance after Entrance on Duty. A supervisor should consult with the servicing HR Specialist for advice and assistance when contemplating or initiating the termination of an individual during probation/trial period. After consulting with the HR Specialist, if the determination is made to terminate employment based on conduct or performance occurring after the individual's entrance on duty, reference (b) requires that the individual be notified in writing of the reason he/she is being terminated and the effective date of the termination. The notice must, at a minimum, consist of the agency's conclusions as to the inadequacies of the performance and/or conduct. Since the probationary period ends when the individual completes his or her scheduled tour of duty on the day before the anniversary date of his/her appointment, it is important to work with the HR Specialist as soon as conduct or performance issues are observed. An individual terminated for post-appointment conduct or performance may only appeal the termination to the MSPB if the individual alleges that the termination is based on partisan political reasons or marital status or based on other discriminatory factors **ONLY** if raised in addition to an allegation of partisan political reasons or marital status. An appeal of alleged discrimination based solely on race, color, religion, sex, national origin or physical or mental disability is not appealable to the MSPB by itself, but is subject to EEOC regulations, references (d) and (e).
3. Termination for Pre-Employment Conduct and/or Performance. When a termination during the probationary or trial period is contemplated based in whole or in part on conditions arising before his/her appointment, the supervisor must confer with the servicing HR Specialist. If, after reviewing the matter in its entirety, the decision is made to propose the individual's termination, the employee is entitled to:
  - a. Advance written notice of the proposed action stating the specific detailed reasons for the proposed action.
  - b. A reasonable amount of time to submit a written answer to the notice of proposed action and for furnishing affidavits in support of the response (the individual is not entitled to an examination of witnesses or a hearing).
  - c. Consideration of the individual's timely response by the deciding official in reaching a decision.

- d. Written notification, at the earliest date possible, of the decision on the proposed action including the reasons for the action (the decision must be received by the individual on or before the effective date of any action).
  - e. Notice of the right to appeal the action to the MSPB, including the time limits for filing. (The MSPB's review of the action is limited to an allegation that the termination was based on partisan political reasons or marital status, or improper procedure, or a discriminatory basis ONLY if such discrimination is raised in addition to partisan political/marital status or improper procedure.)
- I. Formal Disciplinary and Adverse Actions. Formal disciplinary actions consist of letters of reprimand and suspensions of 14 days or less; adverse actions consist of suspensions of 15 days or more (including indefinite suspensions), demotions, and removals. The purpose of these actions is to correct deficiencies involving employee conduct or performance (see Chapter 3 for more information on taking performance based actions) and is usually initiated by the individual's immediate supervisor. As with informal discipline, specific requirements set forth in a collective bargaining agreement related to disciplinary and adverse actions must be adhered to for bargaining unit employees. A supervisor must consider the factors described in section F.2 of this Manual in determining the appropriate penalty to be imposed. All disciplinary/adverse actions must be coordinated with the servicing HR Specialist prior to initiating any action.
- 1. Letters of Reprimand.
    - a. A letter of reprimand is the least severe form of disciplinary action and is issued to an employee in writing. If, after consideration of all relevant factors and evidence, the determination is made to issue a letter of reprimand, then the written notification shall:
      - (1) Include a description of the specific misconduct or performance deficiencies in sufficient detail that the employee understands the basis for its issuance.
      - (2) If applicable, include reference to any past counseling or other attempts to correct the employee's behavior.
      - (3) Provide a warning that any recurrence of the behavior may result in more severe administrative action being taken.
      - (4) Contain a statement that a copy of the letter will be placed on the temporary (left) side of the employee's eOPF for a period not to exceed two (2) years, or not to exceed the date upon which the employee leaves the U.S. Coast Guard, whichever occurs first. Note: A management official is authorized to request removal of the official reprimand after one (1) year if the employee's behavior warrants such removal. Timeframes for letters of reprimand of bargaining unit employees may differ based on the provisions of the applicable collective bargaining agreement.
      - (5) Advise the employee of grievance rights according to either the administrative grievance procedure set forth in reference (g) or, for bargaining unit employees,

the negotiated grievance procedure set forth in the appropriate collective bargaining agreement.

- (6) Include the name of the HR Specialist that may be contacted for procedural guidance.
  - (7) Be signed and dated by the supervisor imposing the letter of reprimand.
  - (8) Include any additional requirements set forth by an applicable collective bargaining agreement.
- b. The management official taking the action shall coordinate the reprimand with the servicing HR Specialist. The HR Specialist will draft the letter of reprimand for the issuing official.
  - c. The management official taking the action shall personally deliver the original letter of reprimand to the employee, if possible, and shall attempt to obtain written acknowledgment of receipt on a copy of the letter. Should the employee refuse to sign acknowledging receipt, the official issuing the letter shall indicate that the letter was presented to the employee on (XX-XX-XX) date, that the employee refused to sign, and then initial and date the copy. In cases where personal delivery is not possible, the letter shall be sent to the employee by ordinary First Class mail and also by:
    - (1) First Class mail, certified with a return receipt, or
    - (2) Small Package Express carrier (FedEx or UPS) with signature required.
  - d. A copy of the signed letter shall be provided to the servicing HR Specialist for inclusion in the employee's official case file and eOPF.
  - e. The issuing management official should refer to any specific provisions related to the issuance of a letter of reprimand to a bargaining unit employee as set forth in the applicable collective bargaining agreement.
2. Suspensions of 14 Calendar Days or Less. Under the provisions of references (a) and (b), an employee may be suspended from duty and pay for a period of one (1) to 14 calendar days for such cause as will promote the efficiency of the service. Unlike a preliminary warning (informal discipline) or a letter of reprimand, a suspension action can only be effected after providing the employee due process (a notice proposing the action, an opportunity to respond, and a written decision). If effected, a suspension becomes a permanent record in the employee's eOPF, as documented by a Notification of Personnel Action, SF-50. Suspensions of 14 calendar days or less are grievable actions and are not appealable to the MSPB.
- a. Prior to effecting a suspension of 14 calendar days or less, an employee is entitled to a notice proposing the action, a reasonable opportunity to respond to the charges, and a written decision.

- b. A supervisor contemplating the proposal of a suspension should consult with his/her servicing HR Specialist prior to initiating any action. The HR Specialist will provide advice and guidance related to information to be considered, appropriateness of the action, sufficiency of evidence, etc., and will draft the notice of proposed action for the issuing official.
- c. A supervisor serving as either the proposing or deciding official in a suspension action must consider the factors described in section F.2. of this Manual in determining the appropriate penalty to be imposed, weighing any mitigating and/or aggravating factors, and should document his/her consideration. A copy of this documentation and any evidence considered should be provided to the servicing HR Specialist for inclusion in the official case file.
- d. Advance notice of proposed action: If a suspension of 14 calendar days or less is proposed, the employee is entitled to advance written notice which shall:
  - (1) Include the proposed length of the suspension.
  - (2) Include a statement that the employee will be retained in an active duty and pay status during the advance notice period (unless the employee is not currently in an active pay status [e.g., absent without leave or leave without pay] at the time the notice is issued).
  - (3) Include a statement that the action is being taken for such cause as will promote the efficiency of the service.
  - (4) Include a description of the specific charges and supporting specifications for the proposed action – describing in detail the specific issues of misconduct or performance deficiencies, and how it violated acceptable standards of conduct, in sufficient detail that the employee understands the basis for its issuance and can reply to the charges stated.
  - (5) If applicable, include reference to any past counseling or other attempts to correct the employee’s behavior and any other matters considered in determining the appropriate action proposed.
  - (6) Inform the employee of his/her right to provide a response, orally and/or in writing, to the deciding official and the number of days allowed (no less than seven calendar days unless specified otherwise in an applicable collective bargaining agreement) for the response.
  - (7) Inform the employee of his/her right to furnish affidavits and other documentary evidence in support of the reply.
  - (8) Inform the employee of his/her right to representation by an attorney or other representative of choice, but that the Agency may disallow a representative having a conflict of interest (such as a supervisor, management official or

HR/EEO Specialist), whose duties will not allow release, or whose services would give rise to unreasonable costs to the government.

- (9) Inform the employee that consideration will be given to a request to extend the reply period if a justifiable reason(s) is provided.
  - (10) Contain a statement that the employee will be given a reasonable amount of official duty time, if requested and is otherwise in an active duty status, to review the material relied upon to support the proposal and to prepare a response and secure affidavits. The name and phone number of the individual to be contacted to make arrangements for reviewing the information should be included.
  - (11) Include the name, title and contact information of the official designated to hear and/or receive the employee's response to the proposed action. (The official so designated must have the authority either to make or recommend a final decision on the proposed action.)
  - (12) Contain a statement that no decision has been made or will be made until after a written and/or oral reply has been received and considered, or until after the reply period has passed.
  - (13) Be signed and dated by the proposing official.
- e. The management official proposing the action shall personally deliver the proposal to the employee, if possible, and shall attempt to obtain written acknowledgment of receipt on a copy of the letter. Should the employee refuse to sign acknowledging receipt, the official issuing the proposal letter shall indicate that the letter was presented to the employee on (XX-XX-XX) date, that the employee refused to sign, and then initial and date the copy. A copy of the signed proposal shall be provided to the HR Specialist for inclusion in the official case file. In cases where personal delivery is not possible, the letter shall be sent to the employee by ordinary First Class mail, and also by:
- (1) First Class mail, certified with a return receipt, or
  - (2) Small Package Express carrier (FedEx or UPS) with signature required.
- f. Written decision: An employee is entitled to a written decision at the earliest practical date following the close of the reply period. The written decision shall:
- (1) Inform the employee that only the reason(s) specified in the advance notice of proposed action and any amendments thereto, were considered.
  - (2) Specify the reasons for the decision, including which incidents and/or charges were sustained or not sustained.

- (3) Inform the employee that full consideration was given to any reply made by the employee and/or the employee's representative. If a reply was not made by the employee, a statement to that effect should be included.
  - (4) Warn the employee that any future incident(s) of misconduct or performance deficiencies may result in more serious disciplinary action, up to and including removal from the Federal service.
  - (5) Advise the employee of the availability of the EAP, as applicable.
  - (6) Specify that the employee has the right to file a grievance or complaint of discrimination with the EEOC, as applicable, as well as the timeframe for filing a grievance or complaint. The servicing HR Specialist will assist in notifying of the applicable grievance and/or appeal rights depending on the status of the employee as a non-bargaining or bargaining unit employee covered by a negotiated grievance procedure. The notice will inform the employee that only one procedure may be elected and that whichever procedure is elected first will constitute the employee's election.
  - (7) Advise the employee of the decision, its effective date and, if the decision is to suspend, the return-to-duty date from the suspension. (Note that a less severe action than proposed in the advance notice may be effected, but a more severe action than proposed may not be taken unless a separate advance notice is proposed.)
  - (8) Be signed and dated by the deciding official.
- g. The supervisory or management official taking the action shall coordinate with the servicing HR Specialist.
- h. The management official taking the action shall personally deliver the decision letter to the employee, if possible, and shall attempt to obtain written acknowledgment of receipt on a copy of the letter. The decision letter must be received by the employee on or before the effective date of the action. Should the employee refuse to sign acknowledging receipt, the official issuing the decision letter shall indicate that the letter was presented to the employee on (XX-XX-XX) date, that the employee refused to sign, and then initial and date the copy. In cases where personal delivery is not possible, the letter shall be sent to the employee by ordinary First Class mail, and also by:
- (1) First Class mail, certified with a return receipt, or
  - (2) Small Package Express carrier (FedEx or UPS) with signature required.
- i. The management official taking the action shall provide a copy of the signed decision letter to the HR Specialist for inclusion in the official case file. If the decision was to effect a suspension, the management official taking the action shall also provide the

HR Specialist a signed SF-52, Request for Personnel Action, for the both the suspension and return-to-duty actions.

3. Suspensions of 15 Calendar Days or More (including indefinite suspensions), Demotions, and Removals. Like short-term suspensions (14 days or less), these actions – hereafter referred to as adverse actions – are effected under the provisions of references (a) and (b), for such cause as will promote the efficiency of the service. Adverse actions can only be effected after providing the employee due process (a notice proposing the action, an opportunity to respond, full consideration of all relevant matters and a written decision). If effected, an adverse action becomes a permanent record in the employee’s eOPF, as documented by a Notification of Personnel Action, SF-50. Adverse actions are not grievable under the administrative grievance procedure found in reference (g), but may be grievable under certain negotiated grievance procedures, and are appealable to the MSPB.
  - a. Prior to effecting an adverse action, an employee is entitled to at least 30 days advance written notice proposing the action, a reasonable opportunity to respond to the charges, and a written decision.
  - b. A supervisor contemplating the proposal of an adverse action should consult with his/her servicing HR Specialist prior to initiating any action. The HR Specialist will provide advice and guidance related to information to be considered, the appropriateness of the action, the sufficiency of the evidence, consistency with other actions, etc., and will draft the notice of proposed action for the issuing official.
  - c. A supervisor serving as either the proposing or deciding official in an adverse action must consider the factors described in section F.2. of this Manual in determining the appropriate penalty to be imposed, weighing any mitigating and/or aggravating factors, and must document his/her consideration. A copy of this documentation and any evidence considered should be provided to the servicing HR Specialist for inclusion in the official case file.
  - d. Advance notice of proposed action: If an adverse action is proposed, the employee is entitled to advance written notice which shall:
    - (1) Identify the action being proposed (i.e., suspension and number of days proposed, demotion, or removal).
    - (2) Include a statement that the employee will be retained in an active duty and pay status during the advance notice period (unless the employee is not currently in an active pay status [e.g., absent without leave or leave without pay] at the time the notice is issued). There are some situations when the employee’s continued presence in the workplace during the notice period may pose a threat to the employee or others, or may result in a loss of or damage to Government property, or otherwise jeopardize legitimate Government interests. A proposing official should consider, in consultation with the servicing HR Specialist, alternatives, such as placing the individual on administrative leave, during the

notice period in order to avoid potential threats or damage to Government property.

- (3) Include a statement that the action is being taken for such cause as will promote the efficiency of the service, and that if effected, the action will not be taken for at least 30 calendar days from the date of receipt of the advance notice of proposed action.
- (4) Include a description of the specific charges and supporting specifications forming the basis of the proposed action – describing in sufficient detail the specific issues of misconduct or performance deficiencies and how acceptable standards of conduct were violated, in sufficient detail that the employee understands the basis for its issuance and can reply to the charges stated.
- (5) If applicable, include reference to any past counseling, discipline, or other attempts to correct the employee’s behavior and any other matters considered in determining the appropriate action proposed.
- (6) Inform the employee of his/her right to provide a response, orally and/or in writing, to the deciding official and the number of days allowed for the response (no less than seven calendar days unless specified otherwise in an applicable collective bargaining agreement, or unless the crime provision is invoked – see 5 CFR 752.404(d)).
- (7) Inform the employee of his/her right to furnish affidavits and other documentary evidence in support of the reply.
- (8) Inform the employee of his/her right to representation by an attorney or other representative of choice, but that the Agency may disallow a representative having a conflict of interest (such as a supervisor, management official or HR/EEO Specialist), whose duties will not allow release, or whose services would give rise to unreasonable costs to the government.
- (9) Inform the employee that consideration will be given to a request to extend the reply period if a justifiable reason(s) is provided.
- (10) Contain a statement that the employee will be given a reasonable amount of official duty time, if requested and is otherwise in an active duty status, to review the material relied upon to support the proposal and to prepare a response and secure affidavits. The name and phone number of the individual to be contacted to make arrangements for reviewing the information should be included.
- (11) Include the name, title and contact information of the official designated to hear and/or receive the employee’s response to the proposed action. (The official so designated must have the authority either to make or recommend a final decision on the proposed action.)

- (12) Contain a statement that no decision has been made nor will it be made until after a written and/or oral reply has been received and considered, or until after the reply period has passed.
  - (13) Be signed and dated by the proposing official.
- e. The management official proposing the action shall personally deliver the proposal to the employee, if possible, and shall attempt to obtain written acknowledgment of receipt on a copy of the letter. Should the employee refuse to sign acknowledging receipt, the official issuing the proposal letter shall indicate that the letter was presented to the employee on (XX-XX-XX) date, that the employee refused to sign, and then initial and date the copy. A copy of the signed proposal shall be provided to the HR Specialist for inclusion in the official case file. In cases where personal delivery is not possible, the letter shall be sent to the employee by ordinary First Class mail, and also by:
- (1) First Class mail, certified with a return receipt, or
  - (2) Small Package Express carrier (FedEx or UPS) with signature required.
- f. Written decision: An employee to whom an adverse action is proposed, is entitled to a written decision at the earliest practical date following the close of the reply period. The written decision shall:
- (1) Inform the employee of the action decided and that only the reason(s) specified in the advance notice of proposed action, and any amendments thereto, were considered. (Note that a less severe action than proposed in the advance notice may be effected, but a more severe action than proposed may not be taken unless a separate advance notice is proposed.)
  - (2) Specify the reasons for the decision, including which incidents and/or charges were sustained or not sustained.
  - (3) Inform the employee that full consideration was given to any reply made by the employee and/or the employee's representative. If a reply was not made by the employee, a statement should be included to that effect.
  - (4) For decisions other than removal, warn the employee that any future incident(s) of misconduct or performance deficiencies may result in more serious disciplinary action, up to and including removal from the Federal service.
  - (5) Advise the employee of the availability of the EAP, as applicable.
  - (6) Specify that the employee has the right to file an appeal, a negotiated grievance, if applicable, a complaint of discrimination with the EEOC, or a whistleblower complaint with the Office of Special Counsel (OSC), as applicable, as well as the timeframe for filing such an appeal/complaint. The servicing HR Specialist will assist in notifying of the applicable grievance and/or appeal rights

depending on the status of the employee as a non-bargaining or bargaining unit employee covered by a negotiated grievance procedure. The notice will inform the employee that only one procedure may be elected and that whichever procedure is elected first will be the one chosen.

- (7) Advise the employee of the timeframe (within 30 calendar days after the effective date of the action) for filing an appeal with the MSPB, as well as providing the employee access to the MSPB's appeal form, regulations and information on electronic filing of an appeal.
  - (8) Advise the employee of the effective date of the action and, if the decision was to suspend, the return-to-duty date from the suspension.
  - (9) Be signed and dated by the deciding official.
- g. The supervisory or management official taking the action shall coordinate with the servicing HR Specialist prior to issuing any action.
  - h. Since adverse actions are appealable to the MSPB, all such actions (both proposal and decision letters) must be reviewed for legal sufficiency by the appropriate legal office prior to issuance to the employee. Coordination of legal review will be done by the servicing HR Specialist.
  - i. The management official taking the action shall personally deliver the decision letter to the employee, if possible, and shall attempt to obtain written acknowledgment of receipt on a copy of the letter. Should the employee refuse to sign acknowledging receipt, the official issuing the decision letter shall indicate that the letter was presented to the employee on (XX-XX-XX) date, that the employee refused to sign, and then initial and date the copy. The decision letter must be received by the employee on or before the effective date of the action. In cases where personal delivery is not possible, the letter shall be sent to the employee by ordinary First Class mail, and also by:
    - (1) First Class mail, certified with a return receipt, or
    - (2) Small Package Express carrier (FedEx or UPS) with signature required.
  - j. The management official taking the action shall provide a copy of the signed decision letter to the HR Specialist for inclusion in the official case file. The management official taking the action shall also provide the HR Specialist a signed SF-52, Request for Personnel Action, if applicable, in order for any action effected to be processed.

J. Conducting an Oral Reply Meeting.

1. The purpose of an oral reply meeting is to give the employee and/or the employee's designated representative an opportunity to provide a response to the charges presented in the notice of proposed action. The employee may offer any information or evidence he/she believes may influence the decision in his/her favor or to reduce the penalty. The

employee may present argument or evidence of mitigating circumstances, provide an explanation related to any provocation of his/her behavior, or refute the charges altogether. An oral reply meeting is scheduled at the request of the employee or designated representative and is not a hearing during which witnesses can be called and cross-examined. During the meeting, questions may be asked of the employee or the employee's representative to clarify general or vague allegations. Final decisions are not made by the deciding official during the reply meeting.

2. The deciding official may personally receive the employee's oral reply or may designate another official to receive it. If another official is designated to receive the oral reply, the designation should be in writing and should direct the designee to present a written summary of the oral reply to the deciding official and the servicing HR Specialist for the official case file.
3. The deciding official, or designee to hear the oral reply, must include individual(s), such as the HR Specialist and/or legal advisor, to be present during the oral reply for the purpose of taking notes, asking questions to clarify vague or general allegations, answering procedural questions, verifying the employee's statements after the meeting, preparing a summary of the oral response, and providing advice and guidance to the deciding official.

#### K. Official Duty Time.

1. An employee who is otherwise in an active duty status is entitled to a reasonable amount of duty time to review the material relied on by management in making its decision to propose or take an action, to secure affidavits, and to prepare a response. The amount of time to be granted will be determined on a case-by-case basis, by considering 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 and research abilities. The supervisor should avoid granting more official duty time than is absolutely necessary.
2. Official duty time will not be granted unless requested by the employee. If and when requested, the supervisor shall grant a reasonable amount of time at a time that reasonably comports with the workload and the employee's needs. Requests for time by an employee should only be denied when the request is clearly unreasonable. Supervisors should consult with their servicing HR Specialist for guidance on approving and denying requests for duty time to respond to disciplinary and adverse actions.

### **CHAPTER 3. REDUCTION IN GRADE, REMOVAL, AND REASSIGNMENT ACTIONS BASED ON UNACCEPTABLE PERFORMANCE**

A. Policy. This chapter establishes general policy and procedures for addressing deficient performance by employees. Employees shall be rated and retained on the basis of adequacy of their work performance. Supervisors must evaluate each employee's performance on a continuing basis and take steps to correct inadequate performance. Employees who cannot or will not improve their performance may be reassigned, reduced in grade, or separated when they fail to meet the acceptable performance standards for their core competencies, performance goals, or performance objectives. For bargaining unit employees covered by a collective bargaining agreement, the agreement should be referred to for specific requirements and/or provisions related to performance based actions.

B. Coverage.

1. Employees Covered. This Chapter applies to all Coast Guard civilian employees covered under 5 C.F.R. 432.102.
2. Employees Excluded. This Chapter excludes the following employees:
  - a. Non-appropriated Fund (NAF) civilians
  - b. Employees outside of the United States who are paid in accordance with local native prevailing wage rates from the area in which employed
  - c. Administrative Law Judges
  - d. Experts and Consultants
  - e. Employees in the Senior Executive Service (SES)
  - f. An individual appointed by the President
  - g. Military members
  - h. An employee occupying a position not in the competitive service excluded from coverage by OPM regulations
  - i. An individual serving an initial probationary or trial period (see Chapter 2.H.)
3. Actions Covered. This Chapter covers reduction in grade and removal actions under 5 C.F.R. 432.102.
4. Actions Excluded. This Chapter excludes the following actions:
  - a. An action initiated under authority of the Special Counsel (5 U.S.C. §1206).
  - b. An action taken against an administrative law judge (5 U.S.C. §7521).
  - c. An action taken in the interests of national security (5 U.S.C. §7532).

- d. An action taken under a provision of statute, other than one codified in 5 U.S.C., which excepts the action from the provisions of 5 U.S.C.
  - e. A removal from the SES to a civil service position outside of the SES.
  - f. A reduction-in-force action.
  - g. A voluntary action initiated by an employee.
  - h. An adverse action for cause.
  - i. An action which terminates a temporary or term promotion and returns the employee to the position from which the employee was temporarily promoted, or reassigns or demotes the employee to a different position that is not lower grade or pay than the position from which the employee was temporarily promoted.
  - j. An involuntary retirement because of disability.
  - k. A termination in accordance with terms specified at the time the appointment was made.
  - l. An action against a reemployed annuitant.
  - m. A reduction in grade or removal/termination of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed one (1) year of current continuous employment under other than a temporary appointment limited to one (1) year or less.
  - n. The reduction in grade or removal/termination of an employee in the excepted service who has not completed one (1) year of continuous employment in the same or similar positions.
- C. Taking Performance-Based Actions. When performance deficiencies are first observed, management should begin documenting the problems observed and should bring the problems to the employee's attention in order to give the employee every opportunity to improve before formal action is needed.
- 1. Work Plans. Work plans are an excellent supervisory tool for further defining an employee's core competencies, performance objectives, projects and tasks.
  - 2. Performance Counseling. As soon as performance deficiencies are observed, the supervisor should begin counseling the employee and should document these counseling sessions. In counseling the employee, the supervisor should explain the performance deficiencies observed, explain why it is unacceptable and provide guidance to the employee for improving performance. These counseling sessions may eliminate the need for any additional performance based action. However, in the event that performance deficiencies are not corrected, the documentation kept on these counseling sessions, as well as reference to the counseling provided during progress reviews, will be used in support of further corrective action.

3. Next Steps. If performance deficiencies continue, the supervisor shall consult with the servicing HR Specialist. The supervisor shall submit the employee's performance plan and work plan, if applicable, progress reviews, documented performance counseling and any other available documentation of performance deficiencies to the HR Specialist for review. The documentation provided will be reviewed to ensure that the performance deficiencies relate to the core competencies, performance goals, and/or performance objectives established and that the performance standards are reasonable and sufficiently objective in the sense that most people would understand what is meant and what is required. If the documentation supports that the employee is performing below an acceptable level, and has been sufficiently put on notice of these deficiencies to no avail, the employee will be issued a notice of unacceptable performance and provided with an opportunity to demonstrate acceptable performance.

D. Notice of Unacceptable Performance.

1. Preparation of the Notice of Unacceptable Performance and Opportunity to Improve. When an employee's performance does not meet the established performance standards, the supervisor shall request that the servicing HR Specialist draft a notice of unacceptable performance and opportunity to improve letter which includes a performance improvement plan (PIP). The supervisor shall provide the HR Specialist sufficient information to support the PIP. This notice may be issued at any time during the performance cycle providing that the employee has served a minimum of 90 days under his or her performance standards and is not grievable. If the PIP occurs at the end of the rating cycle, the rating period shall be extended to allow for completion of the opportunity period.
2. Prior to Issuance. Prior to being presented to the employee, the notice, along with any applicable supporting document, shall be submitted by the HR Specialist for legal review and to ensure technical compliance with controlling laws, rules, regulations, and case law.
3. Contents. The notice shall:
  - a. Advise the employee that his/her performance does not meet acceptable performance standards.
  - b. Identify the employee's core competencies, performance goals, or objectives for which his/her performance is deficient and the acceptable level of performance which must be attained.
  - c. Provide the employee specific taskings with time limits, as applicable, pertaining to the failed standards.
  - d. Advise the employee that failure to perform acceptably with respect to each component of the performance standard could be a basis for reassignment, reduction in grade or removal.
  - e. Establish the length of the PIP. PIPs should normally be a minimum of 60 calendar days and a maximum of 120 calendar days. PIPs may need to be extended due to circumstances such as extended absence by the employee. In such situations, the

extension should be provided to the employee in writing in consultation with the servicing HR Specialist.

- f. Establish a schedule of periodic reviews with the employee during the performance period.
- g. Advise the employee of any assistance available, such as reference manuals and guides.
- h. Advise the employee of any training (informal or formal) available.
- i. Include a referral to EAP, if appropriate.
- j. Advise the employee that if his/her performance does not improve to an acceptable level of performance on all core competencies goals or objectives identified, a reassignment, reduction in grade, or removal action may result.
- k. For bargaining unit employees covered by a collective bargaining agreement, reference should be made to any specific provisions in the agreement.

E. Opportunity Period.

1. Documentation Required During the Opportunity to Demonstrate Acceptable Performance. Although the desired outcome of the opportunity period is that an employee will improve his/her performance to an acceptable level during the PIP, a supervisor must take action if the employee fails to do so in all stated performance standards. Since the burden of proof is on management to support any subsequent resulting action, such as a reduction in grade or removal, the supervisor must document the employee's performance during the opportunity period. The supervisor must consult with the servicing HR Specialist concerning the adequacy of the documentation during this period. Documentation must relate to the requirements outlined in the notice of unacceptable performance and shall include, as applicable:
  - a. Specific results of performance or lack thereof.
  - b. Samples of work produced by the employee during the period.
  - c. Documentation of discussions related to efforts made to help the employee, including summaries of remarks, and dates of discussions.
  - d. Discussions related to the performance standards, and the importance of each component of a performance standard, if applicable.
  - e. Record of any training provided to the employee during the period.
  - f. Dates, places and witnesses, if applicable.
  - g. Referrals to the EAP, if applicable.
2. Completion of the Opportunity Period. At the end of the opportunity period, the supervisor shall consult with the servicing HR Specialist and initiate the appropriate

action. The HR Specialist shall draft the required notice for the supervisor. Depending on the level of the employee's performance, appropriate action must be taken as follows:

- a. Acceptable Level of Performance. If the employee improves to an acceptable level of performance, or better, on all identified standards, the supervisor shall issue a notice to the employee recognizing the employee's improved performance and encouraging the employee to continue the good efforts. The notice should also advise the employee that the acceptable level of performance must be sustained, and if not sustained, action to reassign, remove or reduce in grade may be initiated within one (1) year from the beginning of the opportunity period without the benefit of an additional opportunity period in those elements covered in the PIP.
- b. Unacceptable Performance. If the employee's performance does not improve to an acceptable level of performance in any of the identified performance standards, the supervisor shall consider removal, reduction in grade, or reassignment of the employee. If action is taken to remove or reduce in grade, the action is appealable to the MSPB. If the action is taken under the provisions of Chapter 43 of reference (a), the MSPB has no authority to mitigate management's choice of sanction (i.e., removal or reduction in grade), if the action is sustained on its merits. Therefore, the Douglas Factors addressed in Chapter 2 of this Manual are not required for actions taken under the authority of 5 CFR 432. For removal and reduction in grade actions, the process addressed in the following paragraphs must be followed in consultation with the servicing HR Specialist. If the decision is to reassign the employee, written notice with justification, to be drafted by the HR Specialist, must be provided to the employee.

#### F. Proposed Action.

1. 30 Day Notice: An employee whose reduction in grade or removal is proposed is entitled to a thirty (30) day advance notice of proposed action. The advanced notice period may normally be extended for a period of no more than 30 days. An Agency may extend this notice period further without prior approval from the Office of Personnel Management for the following reasons:
  - a. To obtain and/or evaluate medical information when the employee has raised a medical issue in the answer to a proposed reduction in grade or removal.
  - b. To arrange for the employee's travel to make an oral reply to an appropriate official or the travel of an official to hear the employee's oral reply.
  - c. To consider the employee's answer if an extension to the period for an answer has been granted (e.g., because of the employee's illness or incapacitation).
  - d. To consider reasonable accommodation of a disabling condition.
  - e. To consider positions to which the employee might be reassigned or reduced in grade.
  - f. To comply with a stay ordered by a member of the MSPB under 5 U.S.C. 1208(b).

2. If an extension of the advance notice period is necessary for another reason than those listed above, prior approval for such extension may be requested from the Chief, Family Programs and Employee Relations Division, Office of Labor Relations and Workforce Performance, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415.
3. The advance notice shall be in writing and shall:
  - a. Identify the proposed action (reduction in grade or removal).
  - b. Identify the core competencies, goals or objectives the employee's performance failed to meet.
  - c. Include the reasons for the proposed action. Cite the specific instances of unacceptable performance as they relate to the acceptable performance standards. The instances of unacceptable performance are restricted to a one year period ending on the date of the advance notice. If the employee met some but not all of the components of a standard which resulted in an overall rating of unsatisfactory, explain the adverse consequences to the Coast Guard based on the employee's failure to perform at an acceptable level.
  - d. Provide the employee with the right to reply orally and in writing and the timeframe in which any response must be received. The reply period may not be less than seven (7) calendar days.
  - e. Advise the employee that consideration will be given to a request for extending the answer period provided the employee provides a justifiable reason for the extension.
  - f. Provide the employee with the name of individual who will be making the decision on the action (i.e., the deciding official).
  - g. Contain a statement that no decision will be made until after the reply period has expired and that no action will be taken until after the 30 day notice period has expired.
  - h. Advise the employee of the right to representation. The employee may be represented by an attorney or other representative of their choosing; however, the Agency may disallow a representative having a conflict of interest (such as a supervisor, management official or HR/EEO Specialist), whose duties will not allow release, or whose services would give rise to unreasonable costs to the government.
  - i. Inform the employee of the right to review the material relied on to support the proposal, to include the name of the person to contact for making arrangements to review the material.
  - j. Advise the employee that, if requested and otherwise in a duty status, he/she has the right to a reasonable amount of official duty time to review the material relied on and prepare a response.

- k. Advise the employee of his/her status during the advance notice period. Normally, the employee is retained in an active duty status during the notice period.
4. Preparation of Notice of Proposed Action: The servicing HR Specialist will draft the notice of proposed action for the supervisor. Prior to being presented to the employee, the notice, along with any applicable supporting documentation, shall be submitted by the HR Specialist to the appropriate Legal representative for legal review to ensure technical compliance with controlling laws, rules, regulations, and case law.
  5. Delivery of the Notice of Proposed Action: The notice of proposed action should normally be delivered to and reviewed with the employee by the supervisor. The employee should acknowledge receipt in writing on a copy of the notice. Acknowledgement of receipt does not signify agreement with the content of the notice. In cases where personal delivery is not possible, the letter shall be sent to the employee by ordinary First Class mail, and also by:
    - a. First Class mail, certified with a return receipt, or
    - b. Small Package Express carrier (FedEx or UPS) with signature required.
- G. Written Decision. An employee is entitled to a written decision within 30 calendar days after the expiration of the advance notice period. The written decision shall:
1. Inform the employee that only the reasons specified in the advance written notice of proposed action, and any amendments thereto, were considered.
  2. State the action decided upon and the effective date.
  3. Inform the employee that full consideration was given to any replies made by the employee and/or the employee's representative. If a reply was not made, a statement to that effect shall be included.
  4. Specify the employee's appeal, complaint and/or grievance rights to include the timeframes which must be followed and filing information in accordance with governing regulations.
  5. Advise the employee that he/she may elect only one appeal procedure and that whichever process is filed first will designate his/her election.
  6. If the decision is to remove, the employee should be informed that he/she may be eligible, depending on age and length of service criteria, to apply for discontinued service retirement. Information on who the employee should contact regarding retirement options should be included in the notice.
  7. Be presented to the employee on or before the effective date of any action decided.
- H. Roller Coaster Employee. A "roller coaster employee" is one who is able to perform at least marginally for a short period of time, but who is unable to sustain an acceptable level of performance following the PIP. If the employee's performance improves to an acceptable level after being given an opportunity to improve and then again becomes unacceptable in the

same standards previously failed, action may be proposed to remove or reduce in grade without being afforded another PIP. However, if an employee has performed acceptably for one (1) year from the beginning of the opportunity period, and then the employee's performance again becomes unacceptable, the employee must be afforded an additional opportunity to improve.

- I. Official Case File. An official case record documenting the action shall be maintained by the servicing HR Specialist. The record must contain copies of the signed advance written notice of proposed action, any written response provided by the employee, a summary of any oral reply provided, the signed written decision, and any supporting material which was used to support the reasons in the notice. The supporting documentation may include, but is not limited to, the employee's performance appraisal, the notice of unacceptable performance and opportunity to improve, work products, statements of witnesses, affidavits, other documents and evidence relied on.

## **UNITED STATES COAST GUARD Table of Offenses and Penalties Guideline**

This guideline on the use of the Coast Guard's Table of Offense and Penalties (TOP) provides managers, supervisors, and Human Resource (HR) Specialists assistance in determining an appropriate penalty for certain common types of misconduct and performance deficiencies. This TOP sets out a uniform code and range of penalties for certain offenses, and provides flexibility in administering disciplinary and adverse actions.

### **Discipline is Not Limited to Those Offenses Listed in the TOP**

The TOP does not cover the entire range of possible offenses, but it does cover many of the more frequent or common types of misconduct occurring on-duty and off-duty for which management may take action. The fact that certain misconduct is not covered in the guide does not mean that it cannot serve as a basis for taking disciplinary or adverse action (discipline). The standard or basis for taking discipline against an employee is that the action will promote the efficiency of the service. When a disciplinary/adverse action is proposed against an employee, the notice must sufficiently inform the employee of the factual basis for the proposed action, and cite reasons. Consequently, if particular misconduct is not covered in the TOP, action may still be taken against the employee so long as the conduct is detrimental to the "efficiency of the service" and the employee is informed of the reason he or she is facing discipline. If the particular misconduct is not covered in the TOP, do not try to force fit the misconduct into one of the listed offenses. Again, your servicing HR Specialist is available to provide additional guidance and assistance.

### **Applying the Principles of Progressive and Constructive Discipline**

In keeping with the principles of progressive and constructive discipline, the TOP provides a higher range of penalties for subsequent incidents of employee misconduct and performance deficiencies. The penalty ranges shown in the table are considered to be typical for the identified offense(s). For the penalty range for subsequent offense to apply, the current offense is NOT required to be of the same type as the earlier offense(s). For example, if a three (3) day suspension has been imposed against Employee A for "failure to follow established leave procedures" (section A4 on the TOP) and a few months later, Employee A "inflicts bodily harm to another" (section D3 on the TOP), you would look to the range of penalties associated with subsequent offenses under D3. Although this is the first time Employee A is being disciplined for inflicting bodily harm to another, it is not the first offense for which action is being initiated.

Of course, some misconduct is egregious enough, or is accompanied by such aggravating circumstances, that progressive discipline is inappropriate and removal or other severe action would be warranted for a first offense. Your servicing HR Specialist should always be consulted in making this determination or in taking any disciplinary/adverse action.

### **TOP Does Not Limit Exercise of Managerial Judgment or Use of Other Corrective Actions**

The TOP establishes no mandatory rules, i.e., it is not a rigid standard which provides an automatic response based upon the particular offense(s) involved. Thus, it does not serve as a substitute for the exercise of good management judgment, nor control the advice of the HR Specialist. It is a matter of prudent management to consider the relevant mitigating and aggravating factors specific to the case. The TOP provides suggested ranges of penalties and maximizes management flexibility to determine appropriate action.

The TOP also does not exclude the use of corrective measures other than disciplinary or adverse actions. Depending upon the particular circumstances, the supervisor or manager may determine that counseling, training, a memorandum instructing the employee of needed changes in conduct or performance, closer day-to-day guidance, or other approaches may be effective. In addition, various alternative discipline measures may be used in correcting a conduct or performance problem. Your servicing HR Specialist is able to provide guidance on other actions that may be taken in lieu of discipline, which would serve as the equivalent of a disciplinary action for purposes, among others, of applying the principle of progressive and constructive discipline.

### **Consideration of Aggravating and Mitigating Factors**

Supervisors and managers may impose greater or lesser penalties than those the TOP associates with a particular offense, as they determine warranted by the mitigating and aggravating circumstances surrounding the offense. Although not an exhaustive list of factors that should be considered when assessing penalties, the following Douglas Factors are to be considered for disciplinary and adverse actions:

- The nature and seriousness of the offense.
- The relation of the offense to the employee's duties, position and responsibilities.
- Whether the offense was intentional, technical or inadvertent, committed maliciously or for gain or frequently repeated.
- Whether the employee's position is one for which it is appropriate to hold the employee to higher than usual standards, e.g., supervisory, law enforcement, fiduciary responsibilities, interaction with the public.
- The employee's discipline record or conduct history.
- The employee's work record, performance on the job, ability to get along with co-workers, dependability, length of service.
- The clarity with which the employee was on notice that the conduct or performance would be considered unacceptable.
- Impact of the offense on the other employees, on the supervisor's confidence in the employee's continued ability to perform and conduct him/herself acceptably, or on the reputation of the Coast Guard and/or DHS, especially if there has been notoriety.
- Consistency of the penalty with penalties imposed against other similarly situated employees and with the Table of Penalties.
- The employee's potential for "rehabilitation", including willingness to accept responsibility for his/her actions.
- Whether there were any mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairments, harassment, or bad faith, malice or provocation on the part of others involved.

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

These Douglas Factors are based on the 1981 Merit Systems Protection Board (MSPB) decision in *Douglas v. Veterans Administration*. They are typical considerations that a prudent supervisor or manager may consider in proposing and/or deciding on a penalty. Should an employee appeal an action to the MSPB, the Board will be reviewing these factors to determine if the action was reasonable or if it was arbitrary and capricious. In any particular case, not all the factors will be relevant and there may be other relevant considerations that are not on the list.

In utilizing past offenses in determining a corrective action, they may only be counted if the employee was disciplined in writing, the employee had the right to dispute the action to a higher level, and the action was made a matter of record in the Official Personnel Folder (*Howard v. Department of the Army*, 6 MSPB 180, May 14, 1981).

### **TOP is Provided to Assist Management and Does Not Create Enforceable Rights**

The TOP and this guidance are intended only to assist in the internal management of the disciplinary and adverse actions program within the Coast Guard. They are not intended to, and do not, create any rights, administrative or judicial, whether substantive or procedural, which can be enforced against the Coast Guard. In particular, they do not provide any basis which the MSPB or arbitrators may use to require justification for deviating from the suggested range of penalties or to mitigate a penalty decision made by Coast Guard managers or supervisors.

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	<b>NATURE OF OFFENSES</b>	<b>REFERENCES/ EXPLANATORY NOTES</b>	<b>FIRST OFFENSE</b>	<b>SUBSEQUENT OFFENSES</b>
<b>A</b>	<b>Attendance and Leave</b>			
1	Unexcused tardiness or short absences	These are brief periods of unauthorized absence for which AWOL is not charged against pay, e.g., taking excessively long breaks (coffee, smoking, meal, etc.), overdue return after absence from worksite for official business, early departure at end of workday or leaving worksite during workday without authorization	Written reprimand	1-day suspension to removal
2	AWOL of 5 workdays or less		Written reprimand to 5-day suspension	6-day suspension to removal
3	AWOL of more than 5 workdays		5-day suspension to 14-day suspension	14-day suspension to removal
4	Failure to follow established leave procedures, including when on leave restriction		Written reprimand to 5-day suspension	6-day suspension to removal
5	Improper use of sick leave	Using sick leave for purposes not supported by regulations, e.g., claiming sick leave to engage in outside employment, while incarcerated or to take a trip/vacation. Charge may or may not be in conjunction with a charge of AWOL.	Written reprimand to 5-day suspension	6-day suspension to removal
6	Failing to report to, unexcused delay in reporting for, or unauthorized absence during an overtime assignment	Includes both involuntary and voluntary overtime assignments	Written reprimand to 3-day suspension	4-day suspension to removal

	<b>NATURE OF OFFENSES</b>	<b>REFERENCES/ EXPLANATORY NOTES</b>	<b>FIRST OFFENSE</b>	<b>SUBSEQUENT OFFENSES</b>
<b>B</b>	<b>Discriminatory Behavior</b>			
1	Using offensive, critical, demeaning, or degrading remarks, comments, observations, statements, or actions based on another’s race, color, religion, national origin, sex, age, disability, sexual orientation, parental status or genetic information (“protected group”); includes creating a hostile work environment based on protected group membership	May occur either on or off-duty so long as there is a nexus with the employee’s employment; does not require a finding of unlawful discrimination	Written reprimand to 3-day suspension	4-day suspension to removal
2	(a) Acting or failing to act on an official matter in a manner which improperly takes into consideration an individual’s protected group; (b) taking reprisal or retaliatory action against an individual involved in the EEO discrimination complaint process; (c) failing to take appropriate action to prevent or curtail prohibited discrimination or harassment of a subordinate when the supervisory employee knew or should have known the conduct was discriminatory	On or off-duty; e.g., in employment, appraisal, advancement or treatment of employees (present and former) and applicants; does not require a finding of unlawful discrimination	5-day suspension to removal	Removal
3	Inappropriate and/or unwelcome verbal or physical behavior of a sexual nature	On or off-duty; examples include: touching, teasing, gestures, phone calls, notes, emails, jokes, display of visual material of a sexual nature; pressure for dates; requests for sexual favors	Written reprimand to 14-day suspension  In egregious cases, removal may be warranted for a first offense	14-day suspension to removal

	<b>NATURE OF OFFENSES</b>	<b>REFERENCES/ EXPLANATORY NOTES</b>	<b>FIRST OFFENSE</b>	<b>SUBSEQUENT OFFENSES</b>
<i>B</i>	<i>Discriminatory Behavior-con't</i>			
4	Taking, threatening to take or inferring official action will be taken as a result of, rejection or submission to, a request for sexual favors	On or off-duty; includes behavior or actions directed to employees and non-employees (such as customers, contractors, vendors, passengers, or members of a regulated industry), both favorable or unfavorable, based on granting or withholding a sexual favor(s)	30-day suspension to removal	Removal
<b>C</b>	<b>Retaliation/Reprisal</b>			
	Retaliating against an employee by taking, threatening to take or inferring official action will be taken as a result of an employee's filing of a complaint/grievance or participation in protected activity	Retaliation may concern any aspect of employment including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment	14-day suspension to removal	Removal
<b>D</b>	<b>Disruptive Behavior</b>			
1	Using abusive, defamatory, malicious, or similarly inappropriate language, gestures, or conduct to or about other employees or members of the public		Written reprimand to 14-day suspension	14-day suspension to removal
2	Using rude, impolite, discourteous, disrespectful, unprofessional, foul, derogatory or similarly inappropriate language, gestures or conduct to or about other employees or members of the public		Written reprimand to 5-day suspension	6-day suspension to removal
3	Fighting, threatening, intimidating, attempting to inflict or inflicting bodily harm to another; harassing or provoking quarrel; engaging in dangerous horseplay; any violent, reckless or disorderly act, language, gestures or conduct toward other employees or members of the public		5-day suspension to removal	30-day suspension to removal

	<b>NATURE OF OFFENSES</b>	<b>REFERENCES/ EXPLANATORY NOTES</b>	<b>FIRST OFFENSE</b>	<b>SUBSEQUENT OFFENSES</b>
<b>E</b>	<b>Drugs and Alcohol</b>			
1	Unauthorized possession, transfer, storage or consumption of alcoholic beverage(s) while on duty or on government-owned or leased property (including vehicles); drinking alcoholic beverage(s) when carrying a weapon on or off-duty		Written reprimand to removal	14-day suspension to removal
2	Refusing or failing to submit to, or interfering with, a properly ordered or authorized drug or sobriety test	Includes substituting, adulterating, or otherwise tampering with a test sample	14-day suspension to removal	Removal
3	Reporting for or being on duty under the influence of alcohol or other impairing substance to a degree that would interfere with proper performance of duty, be a risk to safety, or be prejudicial to the maintenance of discipline	In addition to any disciplinary action, the employee must be immediately removed from duties that put safety or security at risk; if armed, employee must relinquish weapon; employee should not be allowed to return to the work site or drive – transportation should be arranged for the employee	Reprimand to removal	5-day suspension to removal
4	Consuming alcoholic beverages within a designated abstinence period prior to reporting for duty; reporting for or being on duty with a blood alcohol level exceeding established limits	In addition to any disciplinary action, the employee must be immediately removed from duties that put safety or security at risk. If on duty, the employee should not be allowed to return to the work site or drive – transportation should be arranged for the employee	14-day suspension to removal	Removal
5	Operating a government-owned or leased vehicle or equipment, on or off-duty, or a privately owned vehicle, on duty, while under the influence of alcohol or other impairing substance	Includes automobiles, trucks, seagoing vessels, aircraft, or other equipment; 31 USC 1349. If on duty, the employee should not be allowed to return to the work site or drive – transportation should be arranged for the employee	30-day suspension to removal	Removal

	<b>NATURE OF OFFENSES</b>	<b>REFERENCES/ EXPLANATORY NOTES</b>	<b>FIRST OFFENSE</b>	<b>SUBSEQUENT OFFENSES</b>
<i>E</i>	<i>Drugs and Alcohol –con't</i>			
6	Possession, use, sale, or distribution of illegal drugs; unauthorized possession, use, sale or distribution of controlled substances	On or off-duty; 21 USC 844. If using while on duty, the employee should not be allowed to return to the work site or drive – transportation should be arranged for the employee	60-day suspension to removal	Removal
7	Unauthorized sale or transfer of alcohol on duty		Reprimand to removal	5-day suspension to removal
<b>F</b>	<b>Failure/Refusal to Follow Orders</b>			
1	Flagrant and/or contemptuous disrespect towards a supervisor or other management official	Written, oral, or gesture; includes such behavior towards team leaders and acting supervisors/officials	Written reprimand to 14-day suspension	14-day suspension to removal
2	Failure to promptly and fully comply with directions, instructions or assignments of a supervisor or other management official; failure to follow a regulation, policy, instruction, procedure, practice, protocol or rule		Written reprimand to 14-day suspension	14-day suspension to removal
3	Willful or intentional delay or refusal to comply with an order, direction, instruction, or assignment of a supervisor or other management official; willful or intentional delay or refusal to follow regulation, procedure, policy, instruction, practice, protocol or rule	Includes insubordination and failure to report for required training or for duty as detailed, transferred or reassigned	5-day suspension to removal	30-day suspension to removal
4	Failure to carry, display or present required government identification, badge or credentials on duty or on government controlled premises		Written reprimand to 5-day suspension	6-day suspension to removal

	<b>NATURE OF OFFENSES</b>	<b>REFERENCES/ EXPLANATORY NOTES</b>	<b>FIRST OFFENSE</b>	<b>SUBSEQUENT OFFENSES</b>
<b>G</b>	<b>Falsification/Dishonesty/ Misstatement</b>			
1	Making misstatements or misrepresentations; failing to provide honest and complete information to investigators or displaying lack of candor in any official inquiry or proceeding; failure to provide material fact or pertinent information	Includes, but is not limited to, statements or documents related to travel, employment, promotion, leave forms, attendance logs or records, administrative and judicial proceedings, EEO investigations, workers' compensation claims, transactions with the public, or any other official record; investigation, inquiry or proceeding may be either internal (e.g., by CG) or external (e.g., other Federal agency/local law enforcement)	Written reprimand to 14-day suspension  Law enforcement officers may be removed for a first offense based on <i>Giglio/Henthorn</i> considerations	14-day suspension to removal
2	Material and intentional falsification, exaggeration or concealment; omission of fact to mislead; forgery	18 USC 1001; includes perjury, providing false testimony, and knowingly making a false statement or accusation; for employees in positions with potential to testify in court, this violation often jeopardizes their ability to serve as a Federal witness	Removal	
3	Unauthorized recording or monitoring of telephone calls, conversations, meetings, electronic communications, etc.	Includes all forms of electronic surveillance	Written reprimand to 14-day suspension	14-day suspension to removal
<b>H</b>	<b>Inquiries and Investigations</b>			
	Failing or refusing to give oral or written statements or testimony or cooperate otherwise in connection with any official inquiry, investigation or proceeding; interfering with an official inquiry, investigation or administrative or adjudicatory proceeding	18 USC 1621-1622; includes attempting to influence others involved in an inquiry, releasing information regarding an official inquiry or proceeding when one knows or should know not to do so, failing to timely complete background re-investigation forms	Written reprimand to removal	14-day suspension to removal

	<b>NATURE OF OFFENSES</b>	<b>REFERENCES/ EXPLANATORY NOTES</b>	<b>FIRST OFFENSE</b>	<b>SUBSEQUENT OFFENSES</b>
<b>I</b>	<b>Integrity and Ethics</b>			
1	Accepting or soliciting a bribe; agreeing to accept or solicit a bribe	18 USC 201; a bribe may include anything of value, loans, or personal gain to the employee's family	Removal	
2	Failing to promptly report an offer of a bribe or attempted bribe	Regardless of personal involvement or lack thereof	14-day suspension to removal	Removal
3	Use of position or authority for other than official purposes	On or off-duty; includes reprisal against an employee for whistleblowing and/or providing information or testimony, or otherwise participating in an official investigation or inquiry; directing subordinates to perform work not related to official duties; attempting to use one's position to avoid a legal citation or arrest	5-day suspension to removal	14-day suspension to removal
4	Using government identification, including badges and/or credentials, for other than official purposes	18 USC 701; for example, to attempt to coerce, intimidate, or deceive, or for private gain or advantage	Written reprimand to 14-day suspension	14-day suspension to removal
5	Using government property, property under government custody, or the property of others, other than as authorized or for other than official purposes	Includes querying confidential or sensitive databases for other than official purposes or other than as authorized	Written reprimand to 14-day suspension	14-day suspension to removal
6	Improper, fraudulent, abusive, or negligent use of a government charge card or travel card	For example, using a government-sponsored travel card other than for official travel, misuse of purchase card for private gain	Written reprimand to removal	14-day suspension to removal
7	Knowingly and inappropriately associating with sources of information, illegal aliens, or persons connected with criminal activities	On or off-duty; includes social, romantic, sexual, financial (including acceptance of gifts), or business relationship	14-day suspension to removal	14-day suspension to removal

	<b>NATURE OF OFFENSES</b>	<b>REFERENCES/ EXPLANATORY NOTES</b>	<b>FIRST OFFENSE</b>	<b>SUBSEQUENT OFFENSES</b>
<i>I</i>	<i>Integrity and Ethics – con’t</i>			
8	Failure to obtain required approval before engaging in outside employment		Written reprimand to 3-day suspension	4-day suspension to removal
9	Entering into an unauthorized procurement commitment or personal services contract		Written reprimand to 14-day suspension	14-day suspension to removal
10	Disclosure of proprietary or source selection information regarding a procurement action		Written reprimand to 14-day suspension	14-day suspension to removal
11	Failure to pay just debts in a timely manner	5 CFR 2635; includes untimely payment of government-sponsored travel card bills unless employee is awaiting pending reimbursement for timely-filed request	Written reprimand to 14-day suspension	14-day suspension to removal
12	Gambling or betting on duty, on government controlled premises or while using government controlled property	Includes gambling on the Internet; does not include such things as purchasing legal lottery tickets sold at snack bars on government controlled property or purchasing raffle tickets sold by officially recognized organizations, e.g., CFC or employee recreation association	Written reprimand to 14-day suspension	14-day suspension to removal
13	Engaging in political activity that violates the Hatch Act	5 USC 7323 & 7324  NOTE: Alleged Hatch Act violations are referred to the Office of Special Counsel for investigation and, if warranted, prosecution before the MSPB; if a violation is found, the MSPB will order removal or, by unanimous decision, may order a suspension of not less than 30 days	30-day suspension to removal (see NOTE at left)	

	<b>NATURE OF OFFENSES</b>	<b>REFERENCES/ EXPLANATORY NOTES</b>	<b>FIRST OFFENSE</b>	<b>SUBSEQUENT OFFENSES</b>
<i>I</i>	<i>Integrity and Ethics – con’t</i>			
14	Criminal, infamous, immoral or notoriously disgraceful conduct; conduct that results in a felony or misdemeanor conviction (or finding of not guilty by reason of insanity), guilty or no contest plea, or equivalent or similar legal result or action (the misconduct shall not be deemed “mitigated” by a plea arrangement, suspended sentence, parole in lieu of confinement, sentence limited to time served, probation or other modification of penalty attached to the conviction or associated with the crime)	5 CFR 735.203; may be on or off-duty; includes misconduct that may be related to the mission of the Coast Guard or DHS, may include misconduct that receives adverse news media attention or concern by other governmental entities.  Criminal misconduct under this provision may include behaviors addressed elsewhere in this Table, such as ethics violations; if the conduct is addressed through criminal processes, use this offense and range of penalty rather than the other provision	30-day suspension to removal  NOTE: Conduct that results in a felony or misdemeanor indictment or warrant for arrest pending further court proceedings will usually result in an indefinite suspension until the matter is resolved	Removal
15	Interfering with employees’ rights, or taking reprisal against employees for exercising their rights, to file or participate in a grievance or appeal, or for their affiliation or non-affiliation in labor unions	On or off-duty	Written reprimand to 14-day suspension	14-day suspension to removal
16	Violations of Standards of Ethical Conduct	5 CFR 2635	Written reprimand to removal	5-day suspension to removal
17	Committing a prohibited personnel practice not elsewhere covered in this Table	5 USC 2302	Written reprimand to removal	5-day suspension to removal

	<b>NATURE OF OFFENSES</b>	<b>REFERENCES/ EXPLANATORY NOTES</b>	<b>FIRST OFFENSE</b>	<b>SUBSEQUENT OFFENSES</b>
<b>J</b>	<b>Neglect of Duty</b>			
1	Failure or delay in carrying out orders, work assignments, instructions of superiors, policies, or procedures		Written reprimand to 3-day suspension	4-day suspension to removal
2	Failure to follow applicable laws, rules, regulations, or policies in the performance of duties		Written reprimand to 14-day suspension	14-day suspension to removal
3	Sleeping on the job or inattention to duty where there is no potential danger to life or property or potential loss of revenue	Includes wasting time or loafing	Written reprimand to 3-day suspension	4-day suspension to removal
4	Sleeping on the job or inattention to duty where human life, property, or revenue is jeopardized or damage/injury/loss actually occurs		14-day suspension to removal	Removal
5	Covering up, attempting to conceal, removing, or destroying defective work, without authorization		Written reprimand to 14-day suspension	14-day suspension to removal
<b>K</b>	<b>Personal Appearance and Hygiene/Uniform Requirements</b>			
1	Failure to maintain a neat, clean and businesslike appearance or to comply with uniform or dress standards while on duty		Written reprimand to 3-day suspension	4-day suspension to removal
2	Failure to maintain proper hygiene to the extent that it is either a health or safety consideration or is detrimental or disruptive in the workplace		Written reprimand to 4-day suspension	5-day suspension to removal

	<b>NATURE OF OFFENSES</b>	<b>REFERENCES/ EXPLANATORY NOTES</b>	<b>FIRST OFFENSE</b>	<b>SUBSEQUENT OFFENSES</b>
<b>L</b>	<b>Property Misuse/Loss/ Damage</b>			
1	When willfulness or intent is not a factor, improper or negligent operation of government owned or leased property	Includes automobiles, seagoing vessels, aircraft and other equipment	Written reprimand to 14-day suspension	14-day suspension to removal
2	Losing or damaging government property, equipment, records, etc.; concealing, removing, mutilating, altering, or destroying government records prior to expiration of retention guidelines	18 USC 2071; penalty depends on value of property, extent of damage, and degree of fault	Written reprimand to 14-day suspension	14-day suspension to removal
3	Willful misuse of (or authorizing the use of) any government-owned or leased passenger vehicle (including aircraft and seagoing vessel); authorizing the use of the government vehicle for other than official purposes	31 USC 1349(b)	30-day suspension to removal	Removal
4	Unauthorized personal use of government computers, software systems, fax machines, telephones, copiers, etc.	Includes use that interferes with one's work or the work of others, excessive personal use of such equipment or systems, accessing or transmitting sexually explicit material	Written reprimand to 14-day suspension	14-day suspension to removal
5	Careless workmanship resulting in spoilage, waste of materials or delay in production		Written reprimand to 5-day suspension	5-day suspension to removal
<b>M</b>	<b>Reporting Responsibilities</b>			
1	Concealing or failing to report missing, lost, or damaged government property or funds or property or funds in the government's custody or care		Written reprimand to 14-day suspension	14-day suspension to removal
2	Failing to timely complete or submit required financial disclosure forms		Written reprimand to 3-day suspension	4-day suspension to removal

	<b>NATURE OF OFFENSES</b>	<b>REFERENCES/ EXPLANATORY NOTES</b>	<b>FIRST OFFENSE</b>	<b>SUBSEQUENT OFFENSES</b>
<b>N</b>	<b>Safety/Security/Health</b>			
1	Failure to observe and/or enforce safety and health regulations, rules, signs, and instructions or to perform duties in a safe manner; failure to wear protective clothing and equipment including vehicle safety restraints; failure to observe rules, posted signs, emergency alarms, oral safety instructions		Written reprimand to 14-day suspension	14-day suspension to removal
2	Endangering the safety of, or causing injury to, any person through carelessness or failure to follow instructions		5-day suspension to removal	14-day suspension to removal
3	Willful or reckless disregard for the safety of others		30-day suspension to removal	Removal
4	Violation of local traffic laws of any state or political subdivision while operating a government-owned or leased vehicle	Does not apply to authorized surveillance or other law enforcement operations	Written reprimand to 14-day suspension	14-day suspension to removal
5	Violation of traffic regulations, reckless driving, or improper operation of a vehicle on duty or on government controlled premises	Disciplinary action may be taken in addition to any applicable traffic fine or penalty	Written reprimand to 14-day suspension	14-day suspension to removal
6	Violation of security procedures covering information, documents, records, or other material classified or sensitive to the government		Written reprimand to 14-day suspension	14-day suspension to removal
7	Failure to observe 'no smoking' regulations or carrying matches in restricted areas		Written reprimand to removal	5-day suspension to removal

	<b>NATURE OF OFFENSES</b>	<b>REFERENCES/ EXPLANATORY NOTES</b>	<b>FIRST OFFENSE</b>	<b>SUBSEQUENT OFFENSES</b>
<b>O</b>	<b>Unauthorized Taking or Possession</b>			
1	Unauthorized use, removal, or possession of a thing of value belonging to another employee or private citizen; colluding with others to commit such acts		Written reprimand to 14-day suspension	14-day suspension to removal
2	Theft* or unauthorized taking, diversion or possession of funds or property owned or controlled by the government; colluding with others to commit such acts	18 USC 641; conversion of seized property to personal use or sale may result in removal for first offense	Written reprimand to removal	14-day suspension to removal
<b>P</b>	<b>Weapons Related</b>			
	Failure to report the discharge of a government issued firearm or weapon as required by applicable policy	For all items in section P: "weapon" refers to, but is not limited to, authorized firearms, batons, and chemical spray	Written reprimand to removal	5-day suspension to removal

	<b>NATURE OF OFFENSES</b>	<b>REFERENCES/ EXPLANATORY NOTES</b>	<b>FIRST OFFENSE</b>	<b>SUBSEQUENT OFFENSES</b>
<b>Q</b>	<b>Safeguarding Personally Identifiable Information</b>	<p>Public Law No. 93-579, 88 Stat 1897 (12/31/74), codified in part at 5 USC §552a; OMB Memorandum M-07-016, “Safeguarding Against and Responding to the Breach of Personally Identifiable Information” issued on 5/22/07; Coast Guard Freedom and Privacy Acts Manual, COMDTINST M5260.3; and the Handbook for Safeguarding Sensitive Personally Identifiable Information at the Department of Homeland Security.</p> <p>The term “personally identifiable information” refers to information which can be used to distinguish or trace an individual’s identity-such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.</p>		
1	Careless and/or negligent handling of PII or other materials covered by the Privacy Act		Written reprimand to 14-day suspension	14-day suspension to removal
2	Unauthorized disclosure of PII or other materials covered by the Privacy Act		Written reprimand to removal	14-day suspension to removal
3	Unauthorized access, or providing unauthorized access, to PII or other materials covered by the Privacy Act	Includes access to classified and/or law enforcement sensitive databases, systems or information	Written reprimand to 14-day suspension	14-day suspension to removal
4	Failure to comply with instructions on the handling of PII and/or Privacy Act material	Includes instruction on the handling of privacy incidents, as promulgated by the DHS Privacy Office	Written reprimand to removal	14-day suspension to removal

\*Do not use “theft” as a charge unless the definition in Black’s Law Dictionary can be met.