

1 **Article 23**

2
3 **Disciplinary and Adverse Actions**

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5 **Section 1. Statement of Purpose and Policy**

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7 The parties agree that the objective of discipline is to correct and improve employee
8 behavior so as to promote the efficiency of the service. The parties agree to the
9 concept of progressive discipline which is designed primarily to correct and improve
10 employee behavior. A common pattern of progressive discipline is reprimand, short
11 term suspension, long term suspension and removal. Any of these steps may be
12 bypassed where management determines by the severe nature of the behavior that a
13 lesser form of discipline would not be appropriate.

14
15 The parties further agree that normally, discipline should be preceded by counseling
16 and assistance including oral warnings which are informal in nature and not recorded.
17 Counseling and warnings will be conducted privately and in such a manner so as to
18 avoid embarrassment to the employee. Bargaining unit employees will be subject to
19 disciplinary or adverse action only for just cause.

20
21 **Disciplinary and adverse actions will be consistently applied. The Agency will**
22 **administer disciplinary and adverse action procedures and determine appropriate**
23 **penalties to all employees in a fair and equitable manner. The deciding official**

24 **will always be different from the official who proposed a disciplinary or adverse**
25 **action. Normally the deciding official will be at a higher level of management than**
26 **the proposing official.**

27

28 **Section 2. Timeliness of Discipline**

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30 If the Agency feels that disciplinary or adverse action is necessary, such action will be
31 initiated timely after the offense was committed or made known to the Agency.

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33 **Section 3. Definition of "Day"**

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35 For the purpose of this Article, the word "day" means calendar day unless otherwise
36 specified.

37

38 **Section 4. Investigations**

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40 **A. Prior to issuing any proposed disciplinary or adverse action, the Agency will**
41 **conduct an investigation that will determine whether such action is warranted.**

42 **This investigation will include the following facets:**

43 **1. Employees who are alleged to have committed some offense will be**
44 **interviewed and told that they are the subject of an investigation;**

45 **2. Signed statements will be obtained from any employees, management**
46 **officials, or others who are interviewed in the course of the investigation;**

47 **3. All employees being interviewed will be told the subject matter of the**
48 **interview with as much specificity as possible, including whether the**
49 **interview involves criminal or non-criminal matters, if known, except when**
50 **doing so would undermine the investigation;**

51 **4. Additional evidence will be sought to reconcile any conflicting**
52 **statements;**

53 **5. All evidence, whether for or against the employee(s) being investigated,**
54 **shall be documented;**

55 **6. No supervisory notes will be admitted in any disciplinary or adverse**
56 **action case unless they were shown to the employee in a timely matter;**

57 **7. The Union will be given an opportunity to have a representative present**
58 **at any examination in an investigation that may result in disciplinary or**
59 **adverse action.**

60 **B. Investigations due to reports of management misconduct will be conducted**
61 **once the Agency makes a determination that such an investigation is deemed**
62 **necessary. The investigation will be conducted by an investigative team**
63 **consisting of one management official, one union official, and one additional**
64 **party of mutual consent.**

65

66 **The investigation will be a fact-finding investigation conducted within the**
67 **parameters of a mutually determined set of ground rules which will include a**
68 **notice of why the investigation is being conducted, the right of representation for**
69 **the bargaining unit employee involved, and a clause indicating the employee will**

70 receive a written report of the findings. Any travel expenses involved in the
71 course of the investigation will be paid by the Agency.

72

73 **Section 5. Alternative Discipline**

74 **A. Alternative forms of discipline are often of benefit to both the employe and the**
75 **Agency. The objectives of alternative discipline include:**

76 **1. Improving communications and interpersonal working relationships**
77 **between supervisors and employees;**

78 **2. Correcting behavioral problems;**

79 **3. Reducing the costs and delays inherent in traditional disciplinary**
80 **actions; and**

81 **4. Decreasing the contentiousness between the parties.**

82 **B. The Agreement does not require that alternative discipline be used. However,**
83 **if it is used, all the provisions of the Agreement must be met.**

84 **C. Alternative discipline is an option only when the disciplinary action would**
85 **otherwise involve an official reprimand or a suspension of 14 days or less.**

86 **D. Prior to proposing a traditional form of discipline, the Agency will notify the**
87 **employee that such discipline is being contemplated and that the employee may**
88 **request consideration of an alternative form of discipline.**

89 **E. The employee will have five (5) workdays to request consideration of the**
90 **alternative discipline option. Should the employee request consideration of**
91 **alternative discipline, a meeting(s) will be held and concluded within five (5)**
92 **workdays of the request.**

93

94 **Section 6. Reprimand**

95

96 An official reprimand is a written disciplinary action which specifies the reasons for the
97 action. The reprimand will specify that the employee may be subject to more severe
98 disciplinary action upon any further offense and that a copy of the reprimand will be
99 made a part of both the SF-7B Extension File and the Official Personnel Folder for up to
100 1 year.

101

102 If a discussion is to be held when a reprimand is given, the supervisor will advise the
103 employee of his/her right to Union representation prior to the start of the discussion.

104 The letter of reprimand will inform the employee that he/she has the right to file a
105 grievance on the reprimand under the negotiated grievance procedure, and the right to
106 Union representation.

107

108 Upon request, the employee and/or his designated representative will be provided, in a
109 timely manner, ~~copy(s) of the material relied upon to support the reprimand.~~ **copies of**
110 **all materials that will not interfere with a pending investigation involving any**
111 **disinterested party in the action at hand, which was gathered in any investigation**
112 **into the matter that led to the proposed action.**

113

114 **Section 7. Short-Term Suspensions**

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116 A. An employee against whom a suspension for 14 days or less is proposed is entitled
117 to:

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119 1. An advance written notice of fifteen (15) calendar days stating the specific
120 reasons for the proposed action;

121

122 2. The right to review **and receive copies of all** the materials ~~which is relied on~~
123 ~~to support the reason(s) for~~ **that will not interfere with a pending**
124 **investigation involving any disinterested party in the action at hand,**
125 **which was gathered in any investigation into the matter that led to the**
126 proposed action;

127 3. Ten (10) calendar days to respond orally and in writing and to furnish
128 affidavits and other documentary evidence in support of the response. **This**
129 **timeframe will begin the date the employee/representative receives any**
130 **requested materials as discussed in A.2 of this section. Oral responses**
131 **will allow for face-to-face meetings with the deciding official. The**
132 **Agency will pay travel and per diem for the employee to have a face-to-**
133 **face oral presentation with the deciding official; and**

134 4. Be represented; **and**

135 5. **May request the disciplinary action be held in abeyance pending the**
136 **outcome of a grievance/arbitration for one year.**

137

138 B. The employee will be given a reasonable amount of duty time to prepare and
139 present a response to the proposal.

140

141 C. After considering the employee's response, the Administration will issue a written
142 decision. If the decision is unfavorable to the employee, the decision may be
143 grieved, beginning with the last (pre arbitration) step of the grievance procedure.

144

145 **Section 8. Removal, Suspension for More Than 14 Days, Reduction-in-Grade,**
146 **Reduction-in-Pay, and Furlough of 30 Days or Less**

147

148 A. An employee against whom such an action is proposed is entitled to:

149

150 1. Advance written notice of thirty (30) calendar days stating the specific
151 reasons for the proposed action;

152

153 2. The right to review **and receive copies of all** the materials ~~which is relied on~~
154 ~~to support the reason(s) for~~ **that will not interfere with a pending**
155 **investigation involving any disinterested party in the action at hand,**
156 **which was gathered in any investigation into the matter that led to the**
157 proposed action;

158

159 3. Twenty-five (25) calendar days to respond orally and in writing, and to furnish
160 affidavits and other documentary evidence in support of the response. **This**

161 **timeframe will begin the date the employee/representative receives any**
162 **requested materials as discussed in A.2 of this section. Oral responses**
163 **will allow for face-to-face meetings with the deciding official. The**
164 **Agency will pay travel and per diem for the employee to have a face-to-**
165 **face oral presentation with the deciding official; and**

166

167 4. Be represented, **and**

168

169 **5. May request the disciplinary action be held in abeyance pending the**
170 **outcome of a grievance/arbitration for one year.**

171

172 B. The employee will be given a reasonable amount of duty time to prepare and
173 present a response to the proposal.

174

175 C. After receiving the employee's response, the Administration will issue a written
176 decision. If the decision is to effect an action specified in this section, it will specify
177 the reason therefore, the effective date, the action to be taken, and the decision
178 appeal rights.

179

180 The employee may appeal the decision to the Merit Systems Protection Board or,
181 the employee may file a written grievance under the terms of this agreement. Any
182 such grievance will be initiated at the last (pre-arbitration) step.

183

184 The choice of the appeal forum is irrevocable. An employee shall be deemed to
185 have exercised his/her option at such time as the employee timely initiates an action
186 under the statutory procedures, or timely files a written grievance at the last (pre-
187 arbitration) step, whichever occurs first. Any grievance must be initiated no later
188 than 20 days after the effective date of the action.

189

190 D. Employees shall be entitled to representation in all phases of these procedures.

191

192 **E. When the circumstances require that the employee be kept away from the**
193 **worksite, the Agency may place the employee in a non-duty status with pay for**
194 **such time as is necessary to effect the proposed action.**

195

196 **F. If the Agency wishes to add additional charges between the time it proposes**
197 **disciplinary action and when a decision is issued, the Agency will rescind the**
198 **original proposal and issue a new one, including the new changes, thus**
199 **starting the process all over.**

200

201 **G. Indefinite suspensions should be invoked only when there is reasonable**
202 **cause to believe that the employee committed a crime for which a sentence of**
203 **imprisonment may be imposed, when the suspension has an ascertainable**
204 **end, there is a nexus between the criminal charge and the efficiency of the**
205 **service, and the penalty is reasonable. Normally, indefinite suspensions**
206 **should not be longer than one (1) year duration.**

207

208 **Section 9. Request for Information**

209

210 If requested by the employee or his/her representative, the Agency, in a timely manner,
211 will provide copies of all material including written statements by witnesses **that will not**
212 **interfere with a pending investigation involving any disinterested party in the**
213 **action at hand, which was gathered in any investigation into the matter that led to**
214 **the proposed action** ~~relied upon to support the proposal notice.~~

215

216 **Section 10. Requests for Time Extensions on Proposals**

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218 The Administration will not unreasonably deny a request for extension of the time to
219 respond to proposals.

220

221 **Section 11. Notice to Union**

222

223 The Agency will provide the Union, **weekly** ~~in a timely manner~~, a sanitized copy of all
224 reprimands, and proposals **and final decisions** of ~~more serious~~ disciplinary/adverse
225 actions **for both conduct and performance issues.**

226