

# **Dealing with Misconduct and Progressive Discipline**

Participant Guide



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# Table of Contents

<b>Welcome</b> .....	<b>1</b>
<b>Course Overview</b> .....	<b>2</b>
<i>Why a Dealing with Misconduct and Progressive Discipline program?</i> .....	2
Target Audience .....	2
Program Timing .....	2
Learning Objectives .....	2
Site Point-of-Contact Responsibilities .....	2
<i>Dealing with Misconduct and Progressive Discipline Course Map</i> .....	3
<b>Is It a Conduct Issue?</b> .....	<b>4</b>
<i>Brainstorming Exercise: "Top 10" Employee Conduct Problems</i> .....	4
Performance vs. Conduct .....	4
<i>Exercise: Performance vs. Conduct</i> .....	5
Regulatory Basis for Dealing with Misconduct .....	6
<i>Case Study: The Cell Phone Caper</i> .....	6
<b>Dealing with Misconduct</b> .....	<b>7</b>
7 Prerequisites for Dealing with Misconduct .....	7
<i>Exercise: The Cell Phone Caper, Part I</i> .....	9
Progressive Discipline .....	9
Actions for Dealing with Misconduct .....	10
<i>Quiz: Actions for Dealing with Misconduct</i> .....	11
The "Douglas Factors" .....	12
Table of Penalties .....	13
Drafting the Charge .....	13
Notifying the Employee .....	14
<i>Exercise: The Cell Phone Caper, Part II</i> .....	14
<i>Exercise: The Cell Phone Caper, Part III: "The Final Answer"</i> .....	14
<b>Supervisor's Role and Responsibilities</b> .....	<b>15</b>
Want More Information About This Topic? .....	15

To Receive Credit for this Course.....	15
<b>Appendix A: Interview Worksheet-Conduct.....</b>	<b>16</b>
<b>Appendix B: Excerpt from the Table of Penalties .....</b>	<b>17</b>
<b>Appendix C: Sample Letter of Warning.....</b>	<b>19</b>
<b>Appendix D: Sample Letter of Reprimand .....</b>	<b>21</b>
<b>Appendix E: Sample Notice of Proposed Suspension of 14 Days or Less .....</b>	<b>23</b>
<b>Appendix F: Sample Notice of Proposed Adverse Action .....</b>	<b>26</b>



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# Welcome

Welcome to this TEL (Technology Enhanced Learning) training event. We are excited that you will be joining us today for *Dealing with Misconduct and Progressive Discipline*, and we look forward to helping you to get as much out of this time as possible.

Your classroom today is not very large, 125 or fewer students from as many as 40 different locations across the NPS. We purposely keep the class size small to assure that if you have a question, there is time to get it answered. Don't hesitate to ask – if you have a question, there are probably several others in the class who have the same question – you might as well be the one to ask! It is our goal that you leave class today with no unanswered questions.

## How To Interact with the Instructor

We encourage you to ask questions and share your comments with the instructors throughout this TELNPS course.

If you were physically in the classroom with the instructor, you would raise your hand to let her/him know you had a question or comment. Then you would wait for the instructor to recognize you and ask for your question. We are all familiar with that “protocol” for asking questions or making comments.

With TELNPS courses there is also a “protocol” to follow to ensure that you can easily ask questions and others can participate as well. It may seem a little strange at first asking a question of a TV monitor. Remember, it is the instructor you are interacting with and not the monitor. As you ask more questions and participate in more TELNPS courses, you will soon be focusing only on the content of your question and not the equipment you are using to ask it.

As part of the TEL station equipment at your location, there are several push-to-talk microphones. Depending on the number of students at your location, you may have one directly in front of you or you may be sharing one with other students at your table.

**When you have a question, press and hold down the push-to-talk button, maintaining a distance of 12-18 inches, and say,**

*“Excuse me [instructor’s first name], this is [your first name]*

*at [your location]. I have a question (or I have a comment).”*

Then release the push-to-talk button. This is important.

Until you release the button, you will not be able to hear the instructor.

The instructor will acknowledge you and then ask for your question or comment. Stating your name and location not only helps the instructor, but also helps other students who are participating at different locations to get to know their classmates.



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# Course Overview

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## ***Why a Dealing with Misconduct and Progressive Discipline program?***

Although conduct issues may seem unpredictable, dealing with them doesn't have to be. Today's course will provide you with an overview of the Progressive Discipline system to help you to ensure that employees are treated fairly and consistently, with an emphasis on correcting misconduct, not punishing individuals.

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### **Target Audience**

Any NPS employee with supervisory responsibilities, or who serves as an advisor to supervisors, such as an HR Specialist. This course has been approved to count towards the mandated NPS annual 40-hour supervisory training requirement.

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### **Program Timing**

*Dealing with Misconduct and Progressive Discipline* is a 2-hour TELNPS course.

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### **Learning Objectives**

After completing this course, you will be able to:

- Recognize the difference between an employee performance issue and an employee conduct issue.
- Analyze a scenario to determine if all prerequisites for resolving

employee conduct issues are present.

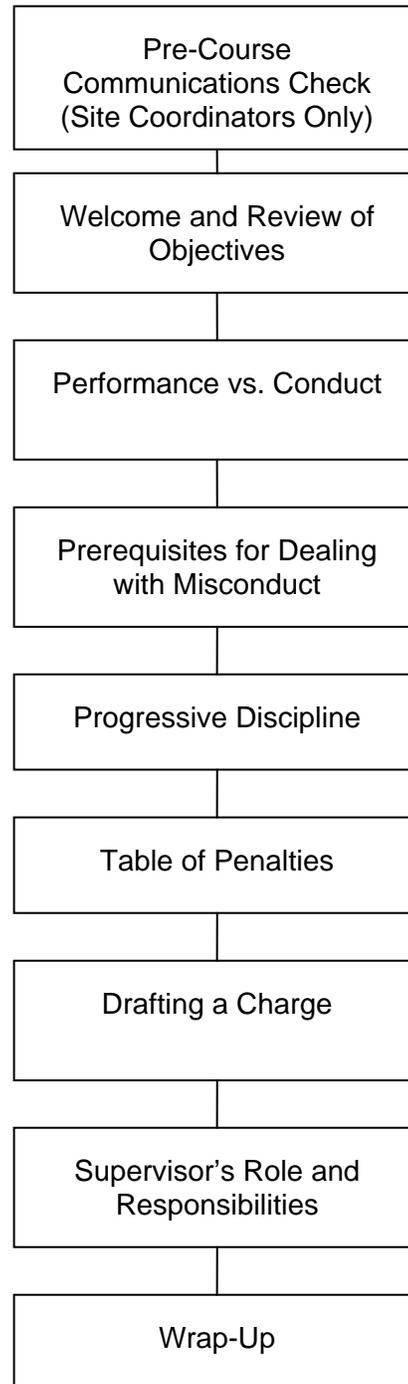
- Given a case study, apply progressive discipline principles, the Douglas Factors, and the Table of Penalties to draft a charge and select appropriate disciplinary action.
- Describe the supervisor's role and responsibilities in resolving employee conduct issues.

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### **Site Point-of-Contact Responsibilities**

The TEL Station Site Point-of-Contact must reserve the training room, notify employees that the park will be participating in this TEL training event, make sure the Participant Guide is available to students, set up the TEL Station on the day of the training, make sure students sign in on the Student Roster form, and finalize the roster in My Learning Manager.

# ***Dealing with Misconduct and Progressive Discipline Course Map***



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# Is It a Conduct Issue?

## ***Brainstorming Exercise: "Top 10" Employee Conduct Problems***

Take a few moments at your site, in groups or as individuals, to brainstorm examples of employee misconduct.



1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_

## **Performance vs. Conduct**

How do you know which course of action to take? The first thing you must do is to determine whether the issue is one of performance or conduct.

*A performance* problem is....CAN'T DO

<p><b>Poor Performance</b></p> <p>Occurs if the employee "can't do" what it takes to perform acceptably in his/her job. Lacks the skill, specific knowledge or the ability to met the performance standard.</p>
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*A conduct* problem is...WON'T DO

<p><b>Misconduct</b></p> <p>Occurs when there is a "won't do" situation. Willful or intentional failure to meet a performance standard. Breaking a rule, regulation or conduct standard. Behavior problems or lack of motivation.</p>
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## Is It a Conduct Issue? cont'd.

### ***Exercise:* Performance vs. Conduct**

Take a few moments to consider each of the scenarios below. Does each describe a performance or a conduct problem?



1. Your uniformed employee has been showing up at work for the last couple of days in his Class A shirt with his Class B trousers.

Performance

Conduct

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2. You personally observed one of your employees dropping his child off at the day care center in a Government vehicle.

Performance

Conduct

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3. Your employee has been coming back late from lunch over the last 2 weeks. The length of time has been 5-10 minutes. Today, she was 20 minutes late.

Performance

Conduct

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4. Your employee is not meeting the deadlines you have established for completing her report. You have extended the deadline a couple of times, because she always has a plausible reason why the report is not completed.

Performance

Conduct

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# Is It a Conduct Issue? cont'd.

## Regulatory Basis for Dealing with Misconduct

The authority for supervisors to take disciplinary action and adverse action against an employee for misconduct is found in **5 CFR part 752**.

This regulation applies to **permanent, career, and career-conditional** employees. It does NOT apply to seasonal, temporary, or handicapped employees, or employees hired under the VRA.

### **5 CFR 752 Who Does It Apply To?**

- Permanent employees
  - Career
  - Career conditional
- TERM
- Does NOT cover
  - Probationary employees
  - Seasonal employees
  - Excepted service employees

## ***Case Study: The Cell Phone Caper***

Throughout today's course, we will be looking at a scenario that was based on an actual employee misconduct case. We will provide you with facts that you will be able to examine in the context of the progressive discipline system. You will use the information provided to analyze the case and determine what, if any, disciplinary action should be taken.

### The "Cell Phone Caper"

An NPS employee used her Government issued cell phone to place 186 minutes of personal calls that cost the Government approximately \$50.

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# Dealing with Misconduct

## 7 Prerequisites for Dealing with Misconduct

To ensure that you have thoroughly addressed an alleged conduct issue, and to assist you in determining the most appropriate course of action, there are a number of prerequisites that must be met.

1. Analyze the problem
2. Investigate to get the facts

### Investigate to Get the Facts

- What actually happened?
- When did it happen?
- Where did it happen?
- Who witnessed the event?
- How did the event or situation occur?
- Why did it happen?
- Who was accountable for the incident?

3. Determine if the employee is entitled to union representation
4. Know the rules, regulations, and policies
5. Check to see if rules have been communicated/enforced consistently
6. Determine connection between misconduct and efficiency of the service (nexus)
7. Decide whether to discipline or not

Appendix A contains a sample interview worksheet that you can use when investigating and documenting alleged conduct problems.

## Exercise: The Cell Phone Caper, Part I



Your employee has allegedly misused her Government cell phone. Below are the results of your initial investigation. Analyze this information in the context of the 7 prerequisites – have all been addressed? Be sure to jot down your notes and any additional questions below.

### “Cell Phone Caper”

- She placed 108 personal calls.
- The calls were placed between Dec. 22, 2002 and Sept. 21, 2003.
- The calls were billed at \$ .29 per minute.
- She admits that the calls were completely personal in nature and had nothing to do with her official duties.

### “Cell Phone Caper”

The park had a written policy distributed to all employees regarding the misuse of Gov't. equipment. Personal use of Gov't.- issued cell phones was specifically prohibited.

1. Analyze \_\_\_\_\_
2. Investigate \_\_\_\_\_
3. Union \_\_\_\_\_
4. Knew the Rules? \_\_\_\_\_
5. Rules Communicated/Enforced Consistently? \_\_\_\_\_
6. Connection (Nexus) to Service \_\_\_\_\_
7. Discipline \_\_\_\_\_

## Progressive Discipline

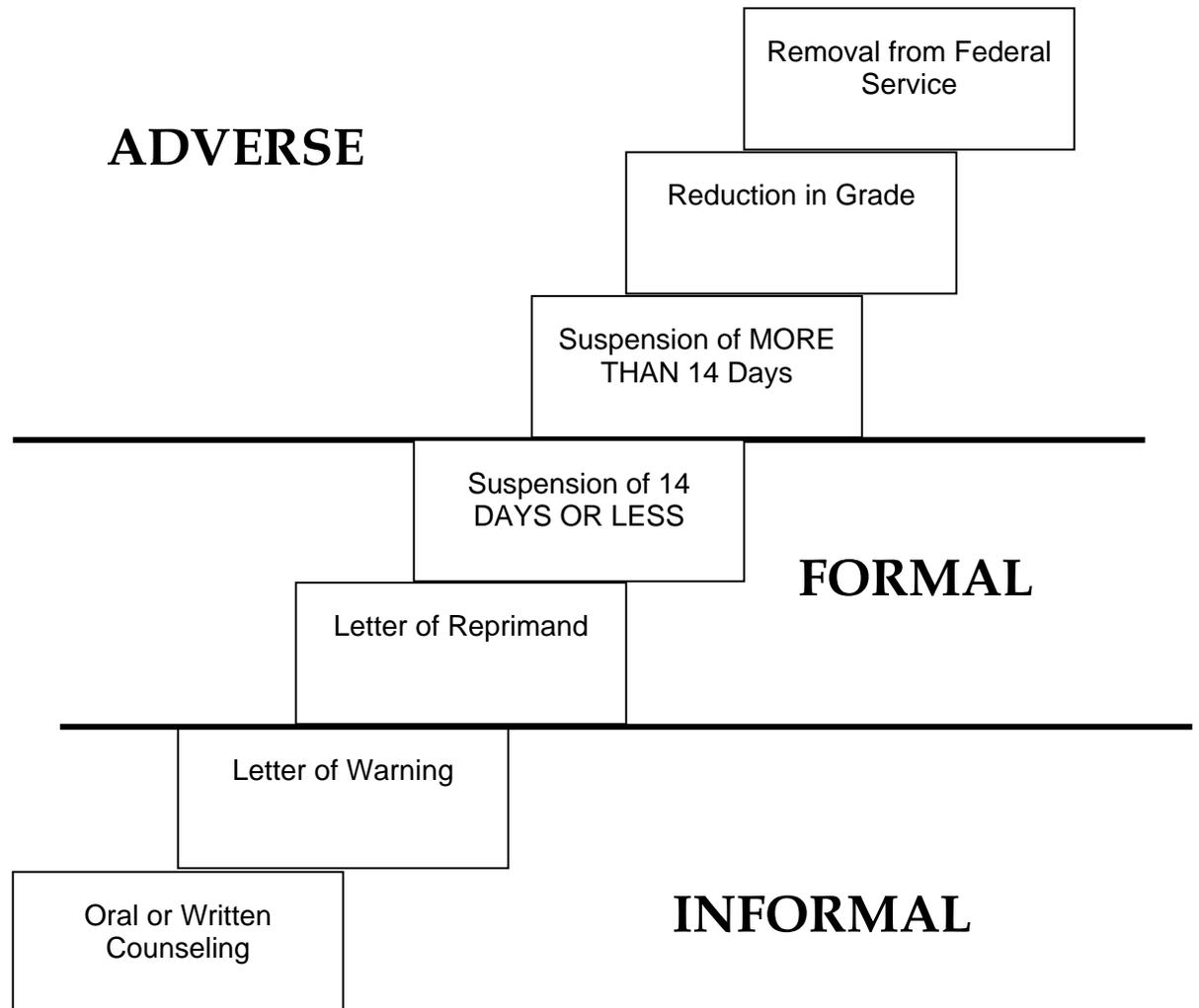
### Progressive Discipline

Progressive discipline means that if an employee continues to engage in unacceptable conduct, the actions taken by management to correct the problem will become more severe after each instance.

### Progressive Discipline

Disciplinary action is used to correct misconduct, not to punish employees.

# Actions for Dealing with Misconduct



## **Quiz: Actions for Dealing with Misconduct**

*Circle the correct answer(s) for each question below.*

1. Which of the following actions may be appealed to the Merit Systems Protection Board (MSPB)?
  - a. Letter of Warning
  - b. Letter of Reprimand
  - c. Suspension for Less than 14 days
  - d. Suspension for More than 14 days
2. Which of the following actions are considered informal actions for dealing with misconduct?
  - a. Letter of Warning
  - b. Letter of Reprimand
  - c. Suspension for Less than 14 days
  - d. Suspension for More than 14 days
3. Which of the following actions becomes a permanent part of the employee's Official Personnel File (OPF)?
  - a. Letter of Warning
  - b. Letter of Reprimand
  - c. Suspension for Less than 14 days
  - d. Suspension for More than 14 days
4. For which of the following is the supervisor required to propose the action prior to implementing it?
  - a. Letter of Warning
  - b. Letter of Reprimand
  - c. Suspension for Less than 14 days
  - d. Suspension for More than 14 days
5. For which of the following actions should you consult your servicing personnel office first?
  - a. Letter of Warning
  - b. Letter of Reprimand
  - c. Suspension for Less than 14 days

d. Suspension for More than 14 days

## The “Douglas Factors”

The “Douglas Factors” are derived from a court case in which an employee successfully argued that there was no basis or standard in determining to take an action against him. As a result of this case, employers must now apply these “Douglas Factors” in determining whether and how to apply discipline to an employee in a situation of misconduct.

The factors listed below are contained in the Department of the Interior’s Handbook on Charges and Penalty Selection for Disciplinary and Adverse Actions, Parts 1 and 2.

1. The nature and seriousness of the offense, and its relation to the employee’s duties, position, and responsibilities, including whether the offense was intentional or technical, or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The nature of the employee’s position, including the employee’s job level and type of employment, whether the employee is in a supervisory or fiduciary role, whether the employee has contacts with the public, and the prominence of the position;
3. The employee’s past disciplinary record;
4. The employee’s past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee’s ability to perform at a satisfactory level and its effect upon the supervisor’s confidence in the employee’s ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
7. Consistency of the penalty with any applicable agency table of penalties;
8. Notoriety of the offense or its impact upon the reputation of the agency;
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or has been warned about the conduct in question;
10. Potential for the employee’s rehabilitation;
11. Mitigating circumstances surrounding the offense, such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

# Table of Penalties

The Department of the Interior, like many Federal agencies, has developed a Table of Penalties to guide supervisors and HR specialists in selecting appropriate disciplinary action and developing a charge to describe the misconduct, for a variety of offenses. Actions chosen should become increasingly severe if the conduct continues.

The Table of Penalties should be used as guidance, and while it recommends a range of penalties depending on the mitigating (Douglas) factors, it does not prescribe a particular penalty as such.

<p>Table of Penalties</p> <ul style="list-style-type: none"><li>• Guidelines</li><li>• Recommends a range of penalties</li><li>• Actual penalty will depend on facts of the case (Douglas Factors)</li><li>• Even though you are applying "Progressive Discipline" you don't have to start with lowest level of discipline</li></ul>
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Appendix B contains excerpts from the Department of the Interior's Table of Penalties.

## Drafting the Charge

Let's look at our Table of Penalties again. You'll notice in the far right column that, in addition to suggesting a range of disciplinary actions for various offenses, the table also suggests charges that can be used to describe the nature of the misconduct. Choosing the appropriate language to specify the charge can be critical to a successful disciplinary action, especially if the employee decides to contest the allegations.

<p>Drafting the Charge</p> <ul style="list-style-type: none"><li>• The specific charge will depend on the evidence and facts of each case.</li><li>• Avoid trouble charges:<ul style="list-style-type: none"><li>• Threat</li><li>• Theft</li><li>• Insubordination</li></ul></li></ul>
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<p><b>Drafting the Charge—DOI Handbook</b></p> <ul style="list-style-type: none"><li>• Conduct a thorough investigation</li><li>• Make sure the facts support the charge<ul style="list-style-type: none"><li>– Avoid duplicative charges</li><li>– Omit charges that refer to regulations or laws</li><li>– Avoid hiding the charge in the specification</li><li>– Limit to facts necessary to support charge</li><li>– Clearly delineate between charge and specification</li><li>– Avoid the word "intentional"</li></ul></li></ul>
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# Notifying the Employee

Finally, it is important to notify the employee in writing of the allegations and proposed disciplinary action. In certain cases, this notification becomes part of the employee's permanent record, in their Official Personnel File (OPF).

## Notifying the Employee

- Notify in writing
- In some cases, becomes part of the OPF
- Appendixes C-F contain sample letters
- Consult with your SPO before you issue letter

Appendixes C-F contain a sample letters proposing and effecting disciplinary actions. Be sure to consult with your Servicing Personnel Office when preparing these and other disciplinary actions.

## ***Exercise: The Cell Phone Caper, Part II***

Let's take another look at the Cell Phone Caper case study. Be sure to refer to the results of your initial investigation (see page 8 of this guide), consider the Douglas Factors (page 11), and refer to the Table of Penalties in Appendix B. What additional questions do you have about this case?

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## ***Exercise: The Cell Phone Caper, Part III: "The Final Answer"***

You will now have an opportunity to ask questions to apply the information we have covered today. At the conclusion of this exercise, you will be asked to determine what (if any) discipline you would choose. Remember, there could be more than one "correct" answer. Remember to refer to the prerequisites, interview worksheet (Appendix A), the Douglas Factors, the Table of Penalties,

What's your "Final Answer"? \_\_\_\_\_

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## Supervisor's Role and Responsibilities

As a supervisor, it is your responsibility and in fact a major emphasis in your own critical results that you address and resolve conduct issues within your unit. It is YOUR responsibility to identify unacceptable conduct and take the necessary steps to address the issue.

As a supervisor, you should:

- Provide specific expectations to your employees for their conduct
- Provide frequent, informal feedback
- Identify unacceptable conduct
- Describe it in specific terms, with examples, to the employee
- Investigate reasons for misconduct and ensure that it is in fact a conduct issue (see Appendix A for a sample worksheet to guide you)
- Provide progressive discipline to correct employee misconduct
- Maintain documentation of employee misconduct and progressive discipline
- Ensure fairness, equity, and consistency in administering disciplinary actions for employee misconduct

## Want More Information About This Topic?

DOI Personnel Manager web page [www.doi.gov/hrm/pmanager](http://www.doi.gov/hrm/pmanager)

DOI HR Policy web page [www.doi.gov/hrm/guidance/curronly.htm](http://www.doi.gov/hrm/guidance/curronly.htm)

OPM Publications – Poor Performers <http://apps.opm.gov/publications>

## To Receive Credit for this Course

1. PRINT your name on the attendance roster.
2. UPON RECEIPT OF E-MAIL NOTIFICATION, complete the online course evaluation.

## Appendix A: Interview Worksheet-Conduct

Use this form to help you document and communicate your observations to your employee, investigate the basis for the alleged misconduct, and determine an appropriate course of action to correct the employee's conduct.

Employee: \_\_\_\_\_ Date: \_\_\_\_\_

Supervisor: \_\_\_\_\_ Time: \_\_\_\_\_

<b>What did you observe?</b>	
<b>When and where did it occur?</b>	
<b>Who was involved?</b>	
<b>Has it happened before? How often?</b>	
<b>What was the impact on the workplace?</b>	
<b>ASK: Were there witnesses?</b>	
<b>ASK: What were the circumstances?</b>	
<b>ANALYZE: Should the employee have known the conduct was unacceptable? Was it a "won't do" (conduct) vs. "can't do" (performance)?</b>	
<b>Notes/Follow-Up</b>	

## Appendix B: Excerpt from the Table of Penalties

NATURE OF OFFENSE	1 <sup>st</sup> OFFENSE	SUBSEQUENT OFFENSES	POSSIBLE CHARGES
1. An unauthorized absence from duty resulting in AWOL; excessive tardiness; leaving work before the end of duty; taking excessively long coffee or lunch breaks.	Written Reprimand to 5-Day Suspension	Written Reprimand to Removal	Unauthorized absence from duty; Tardiness; AWOL; Excessive tardiness; Failure to work a full tour of duty
2. Misuse of leave; failure to adhere to leave usage requirements; failing to request leave in accordance with regulations; failing to provide administratively acceptable medical certification to justify sick leave requests; excessive unscheduled absences.	Written Reprimand to 5-Day Suspension	Written Reprimand to Removal	Misuse of leave; Failure to adhere to proper procedures when requesting leave; Unsatisfactory attendance; Failure to supply proper medical certification
3. Unprofessional or discourteous conduct toward supervisors, co-workers, or the public; use of foul language; angry outbursts; disrespectful comments; provoking quarrels; inappropriate remarks; use of abusive language or offensive language; quarreling or inciting to quarrel.	Written Reprimand to 5-Day Suspension	5-Day Suspension to Removal	Discourteous conduct; Disrespectful conduct; Disruptive conduct; Use of foul (also vulgar, obscene, profane, or abusive) language; Abusive conduct
4. Insubordination; refusal to comply with proper orders, or disregard of directives or regulations; refusing to do assigned work; failure to do assigned work; carelessness in performing assigned work.	Written Reprimand to 14-Day Suspension	5-Day Suspension to Removal	Unprofessional or disrespectful conduct toward a supervisor; Failure to follow a supervisor's instructions; Failure or refusal to perform assigned duties as directed; Failure to meet set deadlines
5. Physical fighting; threatening bodily harm to another; physical resistance to responsible authority; creating a disturbance.	Written Reprimand to Removal	5-Day Suspension to Removal	Creating a disturbance; Engaging in disruptive conduct; Engaging in abusive conduct; Striking a co-worker; Striking a supervisor; Pushing another individual

## Appendix B, Excerpt from the Table of Penalties, cont'd.

NATURE OF OFFENSE	1 <sup>st</sup> OFFENSE	SUBSEQUENT OFFENSES	POSSIBLE CHARGES
6. Reporting for duty or being on duty while under the influence of alcohol or drugs; inappropriate consumption of alcohol while on duty.	Written Reprimand to Removal	14-Day Suspension to Removal	Drinking alcoholic beverages while on duty; Performing while under the influence of intoxicants or drugs; On duty while under the influence of intoxicants or drugs
7. Sale or transfer of controlled substances on Government premises or during duty hours.	Written Reprimand to Removal	14-Day Suspension to Removal	Unauthorized use or possession of a controlled substance on Government premises; Transferring or selling controlled substances on Government property
8. Violation of the Departmental Drug Free Workplace Policy, including possession or use of illegal drugs; positive drug test results; declining to provide, falsifying, or tampering with specimen for drug testing; or other finding of illegal drug use as defined in 370 DM 792, 10.12.	Written Reprimand to Removal	Removal	Consumption of illegal drugs; Performing while under the influence of an illegal drug; On duty while under the influence of an illegal drug; Attempting to change a urine specimen; Testing positive for illegal drugs
9. Damaging or destroying Government property including, but not limited to, computers, facsimile machines, telephones, copying machines, tools, desks, office furniture, lights, vehicles; misusing such Government property.	Written Reprimand to 5-Day Suspension	5-Day Suspension to Removal	Misuse of abuse of Government property; Damaging Government property; Unauthorized use of Government property; Failure to follow proper procedures in handling Government property; Carelessness in handling Government property
10. Using a Government vehicle, including automobiles, boats, snow machines, etc., for personal business or unauthorized purposes.	Written Reprimand to 14-Day Suspension*	5-Day Suspension to Removal	Misuse of a Government vehicle; Use of a Government vehicle for unauthorized purpose

\*NOTE: 31 U.S.C. 1349(b) provides that any officer or employee who "willfully" uses or authorizes use of a Government passenger motor vehicle or aircraft for other than official purposes will be suspended for not less than 30 days and will be suspended for a longer period or removed if circumstances warrant.

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## Appendix C: Sample Letter of Warning

[NOTE: All letters effecting disciplinary actions should be reviewed by the servicing personnel office prior to issuance.]

### MEMORANDUM

TO: [Employee name], [Position title]  
FROM: [Supervisor's name], [Position title]  
SUBJECT: Letter of Warning

This is a letter of warning for your unauthorized absence from duty.

Your scheduled lunch period is from 11:30 a.m. to 12:00 p.m. On June 6, 2004, you did not return from lunch until 1:00 p.m. You did not request approval for your absence. When I asked you, you could not give me a legitimate reason for returning late, or for failing to request leave. Subsequently, you were charged 1 hour of absence without official leave (AWOL), which is unpaid, unapproved leave and which constitutes misconduct.

In deciding to issue this warning, I have considered that you were informed during your new employee orientation in October of 2002, and later during an office staff meeting on January 11, 2003, of the requirement to take no more than your authorized official lunch break, and to request advanced approval for leave if you wish to be away from work longer than your official lunch period.

You are cautioned that any future misconduct of this nature, or other misconduct, could result in more severe disciplinary action, up to and including removal from Federal service. If you have any questions about leave approval policies or procedures, I will be happy to answer them.

If you believe that personal, medical, or other problems are reasons for your actions, you may provide documentation of a medical condition or raise these issues. You may also contact the free and confidential Employee Assistance Program (EAP) at [telephone number], or contact me for assistance. If you wish to provide medical documentation, the Employee Relations Specialist in the Servicing Personnel Office at [telephone number], will provide you with information concerning medical documentation requirements.

A copy of this letter, along with any written explanation made by you, will be placed in my supervisory file which will be secured in my office. The letter of warning will remain in my file for no more than 1 year and may be removed earlier if your conduct is considered to warrant such. You may examine your file

contents at any time, upon request, within my direct supervision and within my office.

You may contest this letter by filing a grievance in accordance with the Department's Administrative Grievance Procedure [or the Negotiated Grievance Procedure if the employee is covered by a union]. Such a grievance may be filed either orally or in writing with me within 15 calendar days after your receipt of this letter. If you have questions about your grievance rights, please contact the Employee Relations Specialist in the Servicing Personnel Office at [telephone number].

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## Appendix D: Sample Letter of Reprimand

[NOTE: All letters effecting disciplinary actions should be reviewed by the servicing personnel office prior to issuance.]

### MEMORANDUM

TO: [Employee name], [Position title]  
FROM: [Supervisor's name], [Position title]  
SUBJECT: Letter of Reprimand

This is a letter of reprimand for failing to follow park regulations concerning the requirement to control dogs and other pets on parklands.

On July 3, 2004, at approximately 5:00 p.m., you were observed by Assistant Superintendent Mary Miller and Volunteer Steve Smith on parklands in the south area of the shop with your two dogs, neither one of which was on a leash. On July 4, when I asked you about this incident, you responded that you didn't think that it would be an issue, as you and your dogs were in a fairly remote area of the park, away from the general public.

Park Policy dated May 1, 1996, specifies that "dogs and cats will not be kept on parklands if permitted to roam uncontrolled. Dogs must be confined to a yard or trained to stay in the immediate vicinity of the residence." General park regulations, which apply to the public as well as to employees, state that dogs and other pets must be kept on a leash when outside the vicinity of the residence, except when directly involved in hunting activities.

In deciding to issue this reprimand, I have considered the fact that (1) During the week of June 2004, in response to a previous report that your dog had been seen in an unauthorized area of the park without a leash, I reminded you of the regulatory restrictions concerning the control of dogs and other pets in the park, and (2) You are a park law enforcement officer and are expected to be aware of all park regulations, and to enforce and comply with those regulations.

You are cautioned that any future misconduct of this nature, or other misconduct, may result in more severe disciplinary action, up to and including removal from Federal service.

If you believe that personal, medical, or other problems are reasons for your actions, you may provide documentation of a medical condition or raise these issues. You may also contact the free and confidential Employee Assistance Program (EAP) at [telephone number], or contact me for assistance. If you wish

to provide medical documentation, the Employee Relations Specialist in the Servicing Personnel Office at [telephone number], will provide you with information concerning medical documentation requirements.

A copy of this reprimand, along with any written explanation made by you, will be placed in your Official Personnel Folder (OPF) for 2 years. After 2 years, or if you should leave the Department (except in transfer of function), which ever comes first, this reprimand will be removed from your Official Personnel Folder and destroyed. If a determination is made that your conduct so warrants, the reprimand may be withdrawn prior to 2 years, in which case you will be notified in writing.

If you consider this reprimand to be improper, you may ask for a review under the Department's Administrative Grievance Procedure [or the Negotiated Grievance Procedure if the employee is covered by a union] within 15 calendar days of receipt of this memorandum. To be considered, the grievance shall (1) be in writing, (2) set forth specifically the reasons for your grievance, (3) state the specific corrective action desired, and (4) be submitted within fifteen (15) calendar days of your receipt of this letter. Your grievance should be addressed to [\_\_\_\_\_].

If you have questions about the grievance procedures, please contact the Employee Relations Specialist in the Servicing Personnel Office at [telephone number].

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## Appendix E: Sample Notice of Proposed Suspension of 14 Days or Less

[NOTE: All footnotes and brackets below contain supervisory instructions and should not be included in the final letter. All letters effecting or proposing disciplinary action should be reviewed in the personnel office prior to issuance.]

### MEMORANDUM

TO: [Employee name], [Position title]  
FROM: [Supervisor's name], [Position title]  
SUBJECT: Proposed Suspension

This is a notice that I am proposing to suspend you without pay for three (3) calendar days from your position of [employee's position title] for: (1) failure to follow supervisory instructions, (2) failure to follow proper procedures in requesting leave, and (3) absence without approved leave (AWOL). Specific details are as follows:

*[In this example, three charges are being used as the basis for the proposed suspension, "failure to follow supervisory instructions," "failure to follow proper procedures in requesting leave," and "absence without approved leave." Once the charges are identified, the details or factual information (specifications) supporting each charge is described. This is where you can provide information that describes the relevant incidents (including times, dates, locations, persons directly involved, and specific acts and actions), explains their impact, or gives any other details you think are relevant to your reasons for action. Examples are:]*

1. Failure to follow supervisory instructions

Specification 1: On March 4, 20\_\_, I instructed you to attend the staff meeting on March 6, 20\_\_. I was aware that you did not want to attend. In a memorandum dated March 5, I reiterated that I expected you to attend the meeting. On March 7, when I asked you about the meeting, you informed me that you did not attend the meeting after all, because you decided that your attendance was not necessary.

2. Failure to follow proper procedures in requesting leave

Specification 1: In a memo dated December 28, 20\_\_, I instructed the office staff regarding proper leave approval procedures, specifically that if anyone needs to take unscheduled leave (e.g., sick leave for illness), that I expected them to call the office to speak to me or my acting within 15 minutes of the beginning of their tour of duty. On January 7, 20\_\_, you did not call the office until 9:00 a.m., 1 hour after the beginning of your scheduled tour of duty, to request sick leave, and you did not ask to speak to me. Instead you left a message with the secretary.

Specification 2: On January 8, 20\_\_, I reminded you of the requirement to call regarding unscheduled leave. On February 21, you did not call the office until 10:15 a.m., more than 2 hours after the beginning of your tour of duty, and again you left a message with another employee instead of asking to speak to me.

3. Absence from duty without approved leave

Specification 1: On February 13, 20\_\_, you arrived at work at 9:00 a.m., although your official tour of duty begins at 8:00 a.m. Because you were absent from duty without authorization, you were charged with 1 hour of absence without leave (AWOL).

Specification 2: Your scheduled lunch period is from 11:30 a.m. to 12:00 noon. On February 20, 20\_\_, you did not return from lunch until 1:00 p.m. You did not request approval for your absence. Subsequently, you were charged 1 hour of AWOL.

Specification ... [*continue format*]

*[In cases of off-duty misconduct, the nexus must be stated. This is a description of the connection between the specific off-duty misconduct and the efficiency of the Service. As applicable, the connection might be established in terms of publicity or notoriety, the effect on the image of the Service, or the ability to accomplish the mission of the Service, the effect on the Service's ability to rely on the integrity, honest or good judgment of the employee (especially for law enforcement, fiduciary, supervisory, or other jobs), the effect on co-workers (safety concerns, morale, job performance, etc.), and direct applicability to the job (an obvious nexus, such as with violations of specific regulations). Begin with a phrase such as the following: "Such conduct seriously impairs the efficiency of the Service..."]*

*[If prior discipline or other aggravating circumstances are present, state:]* In proposing this action, I am also taking into account the fact that you were counseled about AWOL and failing to follow supervisory instructions and procedures on October 16, 20\_\_, and you received a letter of reprimand for similar charges on November 16, 20\_\_.

You have the right to review the material relied on to support the reasons in this notice and may request it from \_\_\_\_\_.

You have the right to respond to this notice of proposed suspension. Any response you make may be made to [name, title], who will be the deciding official. Your response may be oral or written, or both. You may furnish affidavits and other evidence in support of your response. You may contact [name] at [telephone number] to set up an appointment to speak with [name of deciding official] if you would like to respond orally. Any written response may be submitted to [name and address]. You will be allowed ten (10) calendar days from the date you receive this notice to make and/or submit your response. As soon as practicable after your response is received or after the expiration of the 10-calendar-day period if you do not respond, you will be issued a written decision. Full consideration will be given to any response you make. You will remain in a duty status during this notice period.

If you believe that personal, medical, or other problems are reasons for your actions, you may provide documentation of a medical condition or raise these issues in your written and/or oral reply. You may also call the Employee Assistance Program (EAP) at [telephone number], or contact me for assistance. If you wish to provide medical documentation, the Employee Relations Specialist in the Regional Personnel Office at [telephone number] will provide you with information concerning medical documentation requirements.

You have the right to represent yourself or to be represented by an attorney or other representative of your choice [including representation by the union if the employee is covered in the bargaining unit]. The National Park Service retains the right to disallow as your representative an individual whose activities as representative would cause a conflict of interest or position; whose priority work assignments preclude his/her release; or whose release would give rise to unreasonable costs to the Government. For information about the [name of union], you may contact [name] at [telephone number].

You and/or your representative will be allowed a reasonable amount of official time to review the material relied upon to support the reasons for this proposed action, to secure affidavits or other written statements, and to prepare and present a response to this proposal notice. Requests for official time must be submitted in advance to me for approval. Requests for official time by your representative, if a Federal employee, must be submitted in advance to his/her immediate supervisor for approval.

*[If the employee is covered by a union, include any other language or provisions granted them under the contract.]*

If you have questions or do not understand the reason this suspension is being proposed, you may contact me for additional information.

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## Appendix F: Sample Notice of Proposed Adverse Action

[NOTE: All footnotes and brackets below contain supervisory instructions and should not be included in the final letter. All letters effecting or proposing disciplinary action should be reviewed in the personnel office prior to issuance.]

### MEMORANDUM

TO: [Employee name], [Position title]

FROM: [Proposing Official's name], [Position title]

SUBJECT: Proposed Adverse Action

This is a notice of proposed adverse action issued in accordance with Part 752 of the Office of Personnel Management regulations. In order to promote the efficiency of the service, it is proposed to *[include as appropriate]*:

“remove you from the National Park Service”

“reduce you in grade from GS-\_\_ to GS-\_\_”; or

“suspend you from duty and pay for a period of \_\_ calendar days”, or otherwise discipline you, at any time after thirty (30) full calendar days from the date you receive this notice.

This proposed adverse action is based on the following reason(s):

1. *[State a specific identifiable offense which refers to personal conduct on the part of the employee, e.g., what the employee actually did that was wrong. For example, “You failed to follow the instructions of your official supervisor...[where appropriate, cite a specific Rule of Conduct or other instructions, e.g., “in violation of...[example reasons and specifications are contained in the following text].]*

Specification 1: *[Specifically describe the offense, with reference to times and dates, locations, persons directly involved, and specific acts and actions. It should be evident from reading the specification why the reason has been cited. The specification is not the evidence, although elements of the evidence may make up the specification.]*

2. *[Use as many reasons as there are clearly distinct offenses.]*

Specification 1: *[continue format]*

*[In cases of off-duty misconduct, the nexus must be stated. This is a description of the connection between the specific off-duty misconduct and the efficiency of the Service. As applicable, the connection might be established in terms of publicity or notoriety, the effect on the image of the Service, or the ability to accomplish the mission of the Service, the effect on the Service's ability to rely on the integrity, honest or good judgment of the employee (especially for law enforcement, fiduciary, supervisory, or other jobs), the effect on co-workers (safety concerns, morale, job performance, etc.), and direct applicability to the job (an obvious nexus, such as with violations of specific regulations). Begin with a phrase such as the following: "Such conduct seriously impairs the efficiency of the Service..."]*

*[If prior discipline or other aggravating circumstances are present, state] I am also taking into account the fact that [e.g.]:*

- You have been previously disciplined for misconduct: you received a letter of warning on October 10, 20\_\_, and a letter of reprimand on December 12, 20\_\_; and you were suspended for 5 days from January 2-7, 20\_\_.
- On May 6, 20\_\_, I counseled you orally regarding arriving at work on time, and I gave you a copy of the office policy regarding duty hours.
- You were given a copy of the "Standards of Ethical Conduct" 5 CFR part 2635, when you first came to work at the park, and you were provided another copy on June 7, 20\_\_. In both instances, you were provided 1 hour of official time to read the regulations and were told that you would be held responsible for conducting yourself in a manner consistent with them.

You have the right to answer both personally and in writing and to furnish affidavits and evidence in support of your answer. Concerning your written and/or oral replies, you will not be restricted to matters relating solely to the reasons for proposing this action, but you may plead extenuating circumstances or make any other representations which you consider appropriate. You may also submit such affidavits or other evidence that you wish to have considered in support of your reply. You also have the right to be represented by an attorney or other representative.

If otherwise in active duty status, you have a right to a reasonable amount of official time to review the material relied on in this matter, to secure affidavits, to prepare an answer and to present the reply. For these purposes, you will be allowed \_\_\_\_ hours of official time. In addition, you will be allowed official time to make an oral reply, if you choose to do so. You should arrange with your immediate supervisor for any use of official time.

Any oral conference that you request will be conducted by Ms. Minnow Jerr, Chief of Natural Resources, at the Regional Office [official at higher level than proposing official – this official must also have the authority to make the final

decision or recommendations to the deciding official]. Ms. Jerr will also be the deciding official on this matter. Your written and/or oral reply must be received by Ms. Jerr within fifteen (15) calendar days from the date you receive this letter. If you wish to be heard in person, you must request an oral conference within seven (7) calendar days from the date you receive this letter. Consideration will be given to extending these time periods if you submit a request to Ms. Jerr within the time frames specified above, stating your reasons for desiring more time. Any written reply or written request for an oral conference as well as designation of representative should be addressed to Ms. Jerr, [address]. A request for an oral conference can also be directed to Ms. Jerr by telephone at [telephone number].

If you believe that personal, medical, or other problems are reasons for your actions, you may provide documentation of a medical condition or raise these issues in your written and/or oral reply. You may also call the Employee Assistance Program (EAP) at [telephone number], or contact me for assistance. If you wish to provide medical documentation, the Employee Relations Specialist in the Regional Personnel Office at [telephone number] will provide you with information concerning medical documentation requirements.

A final decision will not be made in this matter until your reply or replies have been received and considered, or, if no reply is received, until after the time specified for the replies has passed. Any replies, affidavits, or other evidence submitted by you will be given full consideration. You will be notified in writing of the final decision.

You will be retained in a work status during the advance notice period specified in this letter [for intermittent employees add, if appropriate:] unless workload requirements necessitate placing you in a non-duty status. [For those in non-duty status, state:] You will remain in a non-duty status during the advance notice period unless workload requirements necessitate recalling you to duty.

[If the employee is covered by a union, include any other language or provisions granted them under the contract.]

If you have questions regarding your rights or other procedures contained in this notice, please contact the Employee Relations Specialist at [telephone number]. Please acknowledge receipt of this letter by signing the attached copy and returning it to me.