HR ORDER DOJ1200.1: PART 3. LABOR/EMPLOYEE RELATIONS: CHAPTER 3-1, DISCIPLINE AND ADVERSE ACTIONS (AUG. 25, 1998)

[Human Resources Order DOJ 1200.1](https://www.justice.gov/jmd/hr-order-doj-12001)

**A.   References**.

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| **Statute** | [5 U.S.C. 7501 - 7504](http://www.gpo.gov/fdsys/granule/USCODE-2010-title5/USCODE-2010-title5-partIII-subpartF-chap75-subchapI-sec7501/content-detail.html)  [5 U.S.C. 7511 - 7514](http://www.gpo.gov/fdsys/granule/USCODE-2009-title5/USCODE-2009-title5-partIII-subpartF-chap75-subchapII-sec7511/content-detail.html) |
| **Code of Federal Regulations** | [5 CFR Part 752](https://www.ecfr.gov/current/title-5/chapter-I/subchapter-B/part-752) |
| **Guidance** | DOJ Adverse Action Manual (to be published) |
| **Key terms** | [Day](https://www.justice.gov/jmd/hr/hrorder/appendix1.htm)  [Discipline](https://www.justice.gov/jmd/hr/hrorder/appendix1.htm)  [Adverse Action](https://www.justice.gov/jmd/hr/hrorder/appendix1.htm)  [Merit Systems Protection Board (MSPB)](https://www.justice.gov/jmd/hr/hrorder/appendix1.htm) |

**B.  Policy.**

1. Disciplinary action is to be effected in accordance with the policies and procedures set forth here and in applicable laws and regulations.  
   1. Discipline may not be taken against an employee for reasons such as political affiliation or marital status.
   2. Discipline may not be based on discrimination because of age, sex, race, religion, color, national origin, handicapping condition, veterans status, or sexual orientation.
   3. Discipline may not be imposed in retaliation for an employee's exercise of rights guaranteed by 5 U.S.C. 7102 or other laws.
2. **Actions covered**.   Actions covered by this chapter include ONLY:  
   1. Written reprimands;
   2. Suspensions;
   3. Reductions in grade or pay;
   4. Removals; and
   5. Furloughs for 30 days or less.
3. **Employees Covered**.   All Department employees are covered by this policy, except for those employees specifically excluded by law or Executive Order, such as employees excluded from procedural protections under 5 U.S.C. 7511. Employees covered by collective bargaining agreements may be subject to additional procedures which supplement those described in this policy.
4. **Actions Excluded**. Actions excluded by statute and regulation such as those listed below are not covered by this policy. This list is not exhaustive.  
   1. Actions taken under 5 U.S.C. 1215 (Special Counsel actions), 7521 (Actions against ALJs), 7532 (Actions in the interest of National security), or 3502 (RIFs).
   2. Actions taken under provision of a statute, other than one codified in 5 U.S.C., which excepts the action from the provisions of 5 U.S.C.
   3. Voluntary actions initiated by the employee.
   4. Actions taken under 5 U.S.C. 7543 (Actions involving SES employees).
   5. Actions taken under 5 CFR Part 831 (Retirement).
   6. Termination of an appointment in accordance with a term specified as a condition of employment.
   7. Reduction of an employee's rate of pay from a rate contrary to law or regulation to a rate required or permitted by law or regulation.
   8. Actions against a reemployed annuitant.
   9. Furloughs of more than 30 days processed under the reduction-in-force procedures in 5 CFR Part 351.
   10. Actions involving probationary employees or in certain circumstances excepted service employees.
5. **Responsibilities**.  
   1. **The Assistant Attorney General for Administration (AAG/A)**.  
      1. Is responsible for the administration of this policy;
      2. Will provide operational guidance and policy on adverse actions to all Department components;
      3. Has the authority to intervene in any third party administrative proceeding where a significant question of law or general personnel administration is raised, or when it is determined that such intervention is in the best interest of the Department;
      4. Has the authority to correct any adverse action taken in the Department that does not conform to statute, regulation or this policy; and
      5. Will determine, upon request, whether to allow a proposing official to act as the deciding official.
   2. **The Workforce Relations Group, Human Resources Staff, Justice Management Division (WRG)**.  
      1. Prepares and submits petitions for review of initial decisions of administrative judges of the MSPB, or reviews petitions prior to their submission by a Bureau; submits requests to OPM to seek review of final MSPB decisions or arbitration awards involving actions appealable to MSPB; and determines whether to file exceptions with the Federal Labor Relations Authority (FLRA) to arbitration awards involving disciplinary actions over which MSPB has no jurisdiction;
      2. May represent any Bureau (at the request of the Bureau or the direction of the AAG/A) or the Department on matters that fall within the jurisdiction of MSPB, its administrative judges, or the Office of Special Counsel;
      3. Provides advice and assistance to managers and personnel officers (or equivalent) on the coverage and application of this policy;
      4. Monitors and coordinates the Department's third-party, training, and mentoring programs;
      5. Provides oversight for the development and administration of proficiency and qualification standards for employees who are assigned to represent Department components in third party proceedings; and
      6. Subject to the general supervision of the Director, Human Resources Staff, provides staff advice and assistance and formulates policy for the Assistant Attorney General for Administration on matters relating to this policy.
   3. **Bureau Heads**.  
      1. Are responsible for ensuring that employees who are assigned to represent the component in third party proceedings are appropriately trained and qualified in accordance with this policy;
      2. May issue implementing instructions or a Bureau Supplemental policy in conformance with the provisions of this policy. Existing instructions and Supplemental Orders (for example: the current instructions involving discipline of attorneys) are not superseded by the cancellation of DOJ Order 1752.1A and the issuance of this policy, except to the extent that they are inconsistent with this policy; and
      3. May provide for review of proposed actions and final decisions.
   4. **Supervisors and Managers** are primarily responsible for administering work force discipline by taking or proposing disciplinary actions when appropriate and when they have the authority.
   5. **Employees** are responsible for complying with written standards of conduct and for refraining from any activity which a reasonable person could determine would warrant discipline.
6. **Procedures and Requirements for Taking Adverse Actions**.  
   1. **Consultation with Servicing Personnel Office**.   Before taking formal discipline, supervisors and managers must consult with the servicing personnel office, or, where appropriate, the legal or general counsel office. In the case of the OBDs, supervisors and managers must consult with their Executive Office.
   2. **Pre-decision Inquiries**.   As part of the consultation described above, management may seek assistance in determining whether to discipline an employee and in determining the most appropriate penalty by an inquiry. The scope of, procedures followed in, and necessity for, any such inquiry is determined solely by management on the facts and circumstances of a particular case.
   3. **Timing of Discipline**.  There is no limitation with respect to when discipline must be effected after the commission of misconduct. However, managers are encouraged to act in a timely manner.
   4. **Schedules of Disciplinary Offenses and Penalties**.   Managers, when selecting penalties, shall consider what penalties have been imposed for like offenses within individual work units within each Bureau. However, there is no requirement above the work-unit level. Further, since each Bureau has different management requirements that must be addressed in determining the appropriate penalty to be imposed for an offense, each Bureau has the authority (but not the requirement) to establish its own Schedule of Disciplinary Offenses and Penalties. There is no required format for such a Schedule. However, any new schedule must be submitted to the WRG for review before it is implemented.
   5. **Employee Representatives**.  
      1. An employee may be represented in all matters covered by this policy. The employee must designate his or her representative in writing. If an employee changes representatives, he/she must notify management in writing. Information will only be released to the employee and/or his/her designated representative.
      2. Except as otherwise required by law, the payment of expenses is not required for the travel or **per** **diem** of anyone designated to represent employees in the presentation of replies to proposed adverse actions, grievances under the agency grievance procedure, appeals to the MSPB, or, unless required by the collective bargaining agreement, grievances under a negotiated procedure.
      3. While an employee may choose anyone to be his or her representative, so long as that individual is willing to be the representative, management may disallow the choice of representative for the following reasons:  
         1. **Priority Needs of the Service**. If the employee selected as a representative is an employee of the Department of Justice, management may disallow the selection if the representative cannot be spared from his or her official duties.
         2. **Conflict of Interest**. This refers to an incompatibility between the representation functions and an employee's official duties.
   6. **Status of Employees During Investigations and Notice Periods (Including the Use of Indefinite Suspensions)**.   During such time as an employee is being investigated for alleged misconduct or during the notice period preceding formal discipline, the employee's status will depend upon the nature of the misconduct and the employee's position.  
      1. **Managers must decide whether the continued presence of the employee in the work place is likely to create a danger to personnel or office operations or otherwise be disruptive, detrimental to morale or good order, or an embarrassment to the employer.**
      2. Where such a risk does not exist, the employee should remain in the work place. Where the risk does exist but can reasonably be avoided by temporarily reassigning the employee to an available position, managers should make the effort to do so.
      3. Where the risk is present and cannot be avoided by reassignment or where an appropriate position is not available, an indefinite suspension or enforced leave should be used, where possible, until resolution of the matter.
      4. Where appropriate and allowed by statute or regulation, components should consider the use of a shortened notice period.
      5. Employees should not be placed on administrative leave during the pendency of disciplinary actions for more than 10 work days unless component managers determine that such placement is required for the orderly operation of the component.
   7. **Official Reprimands**. A reprimand is the most minor form of formal discipline in the Department. Normally, it is issued to the employee by the immediate supervisor although, on occasion, circumstances or delegations of authority may dictate a reprimand by a higher level official.  
      1. A reprimand must:  
         1. Be in writing and signed by the official imposing it;
         2. Cite the reasons for the reprimand in enough detail so that a reasonable person would understand the basis for the action;
         3. Contain a statement that a copy of the reprimand will be placed in the employee's OPF for a period not to exceed three years (or less, if the Bureau has established a shorter maximum duration either unilaterally or through collective bargaining);
         4. Advise the employee that the reprimand may be grieved and indicate which grievance procedure must be used;
         5. State the name and telephone number of the person in the servicing personnel office who may be contacted for information on how to proceed; and
         6. Be placed in the employee's OPF.
      2. Bureaus may adopt a procedure wherein the employee is advised in writing of a proposed reprimand and given the opportunity to comment on such a proposal in writing.
   8. **Removals, Suspensions, Reductions in Grade or Pay, or Furloughs for 30 Days or Less**.   All adverse actions shall be carried out in accordance with appropriate law and regulations.
7. **Third Party Administrative Proceedings**. The unique goals and missions of the Department's Bureaus require that they be given a great deal of autonomy in pursuing personnel actions. However, the Department has an interest in ensuring that it has a consistent personnel policy and that it makes consistent arguments before third parties. In accordance with the provisions of paragraph 5.a., these interests are balanced in the following manner:  
   1. **Hearings Before Merit Systems Protection Board Administrative Judges**.  
      1. Each Bureau will have the authority to pursue any action before an Administrative Judge of MSPB. However, the Bureaus shall notify the WRG of any case that presents a significant legal (as opposed to factual) issue that may be of interest to the Department.
      2. Bureaus may request that the WRG provide representation at any proceeding before an MSPB Administrative Judge.
   2. **Procedures in the Event of an Adverse Ruling from a Merit Systems Protection Board Administrative Judge**.  
      1. Bureaus shall notify the WRG of any adverse decision by an MSPB Administrative Judge, within three (3) business days of the receipt of the decision. Such notification must include a copy of the decision; a statement by the Bureau as to whether or not an MSPB appeal is anticipated; and the rationale for why an MSPB appeal may be warranted.
      2. A Bureau may request that the WRG assume responsibility for the petition for review; provided, however, such requests must be made at the time that the notice of receipt of an adverse initial decision is provided.
      3. A copy of any petition for review prepared by a Bureau shall be provided to the WRG for review at least five (5) business days prior to the MSPB filing deadline. The petition must be accompanied by appropriate supporting documentation.
   3. **Procedures for Responses to Petitions for Review**.  
      1. If a component receives a petition for review, the WRG shall be notified within three (3) business days of the receipt. Such notification must include copies of the petition for review and the initial decision of the Administrative Judge.
      2. A Bureau may request that the WRG assume responsibility for responding to the petition for review. Such requests must be made at the time that the notice of receipt of a petition for review is provided.
      3. A copy of any response to a petition for review prepared by a Bureau shall be provided to the WRG for review at least five (5) business days prior to the MSPB filing deadline. The response must be accompanied by appropriate supporting documentation.
   4. **Exceptions to Arbitration Awards Filed with the Federal Labor Relations Authority**.  
      1. Grievances of actions taken under this policy which are filed under a negotiated procedure may result in a binding arbitration award. Under 5 U.S.C. 7122, the FLRA may review exceptions to such an award filed by either the union or the agency if the action grieved was a reprimand or a suspension of 14 days or less.
      2. The authority to file, or oppose the filing of, exceptions lies with the AAG/A, who has redelegated such authority to the WRG. Therefore, all adverse arbitration awards or exceptions to favorable arbitration awards shall be submitted to the WRG within three (3) business days of receipt.
      3. The WRG will be responsible for filing any exceptions, or opposition to exceptions, with the FLRA. All such exceptions or replies will be fully coordinated with the Bureau. The WRG may grant a Bureau request that the Bureau assume responsibility for filing an exception or an opposition to an exception.
   5. **Requests for Federal Circuit Review**.  
      1. Federal agencies have no unilateral right to appeal an adverse decision of the MSPB. Instead, OPM must first request that the MSPB reconsider its decision, and the request must be denied. If, at that point, OPM determines that further review is appropriate, it may seek review of the decision by the U.S. Court of Appeals for the Federal Circuit.
      2. The FLRA has no jurisdiction to entertain exceptions to an arbitration award in a case where the employee could have appealed to the MSPB. Instead, OPM must first request that the arbitrator reconsider his award, and the request must be denied. If, at that point, OPM determines that further review is appropriate, it may seek review of the award by the U.S. Court of Appeals for the Federal Circuit.
      3. The WRG has sole responsibility for requesting that OPM seek such reconsideration and review. Bureaus shall notify the WRG of any adverse decision by the MSPB within three (3) business days of the receipt of the decision. Such notification must include a copy of the decision and a statement by the Bureau as to whether or not an appeal is requested.
   6. **Training and Certification for Employees Representing DOJ at Third-Party Proceedings**.  
      1. Bureaus are responsible for ensuring that employees who represent the Department in third party proceedings are fully trained and qualified.
      2. The WRG, in cooperation with the Bureaus, will establish proficiency and qualification standards for employees who represent the Department before the MSPB. Bureaus are responsible for ensuring that employees representing the Department before the MSPB meet these standards.
      3. The WRG will provide guidance regarding training programs that offer classes and seminars in MSPB practice and procedure.
      4. The WRG will also maintain a list of experienced MSPB practitioners within the Department who are willing to act as mentors for less experienced practitioners.

**C. Documentation and Reporting.**

1. **Official Records**.  
   1. **Reprimands**.  
      1. A reprimand will be placed in the OPF for a period not to exceed three years (or less, if the Bureau has established a shorter maximum duration either unilaterally or through collective bargaining), at which time it must be removed.
      2. The retention period begins the day the reprimand is delivered to the employee, even if it is not actually filed in the OPF until later.
      3. A reprimand may be removed prior to expiration if it is determined by management that it should be removed. A decision whether to remove a reprimand sooner is not a grievable matter, and may be made only by the official issuing the reprimand, his or her successor, or someone organizationally superior to that official.
      4. Reprimands must be removed from the OPF when the employee leaves government service or transfers to another agency.
      5. Copies of removed reprimands may be maintained for statistical purposes by the personnel office, and can be used in certain circumstances to support more serious discipline for later offenses.
   2. **Adverse Actions**.   SF-5Os concerning adverse actions are permanent records which must remain in the OPF unless cancellation is ordered by a third party or is required by a valid settlement agreement.
2. **Annual Report**.   At the close of each fiscal year, but no later than November 15, each Bureau must submit a report to the WRG. Such report shall contain the following:  
   1. The number of MSPB cases that were won, lost, and settled;
   2. A description of the training provided to employees appearing before the MSPB;
   3. A brief description of major program area accomplishments; and
   4. An assessment of any program area problems or deficiencies along with plans to correct any such deficiencies; and
   5. The number of instances, the length of the leave period, and the reason for the placement of any employee on administrative leave during the pendency of disciplinary action.