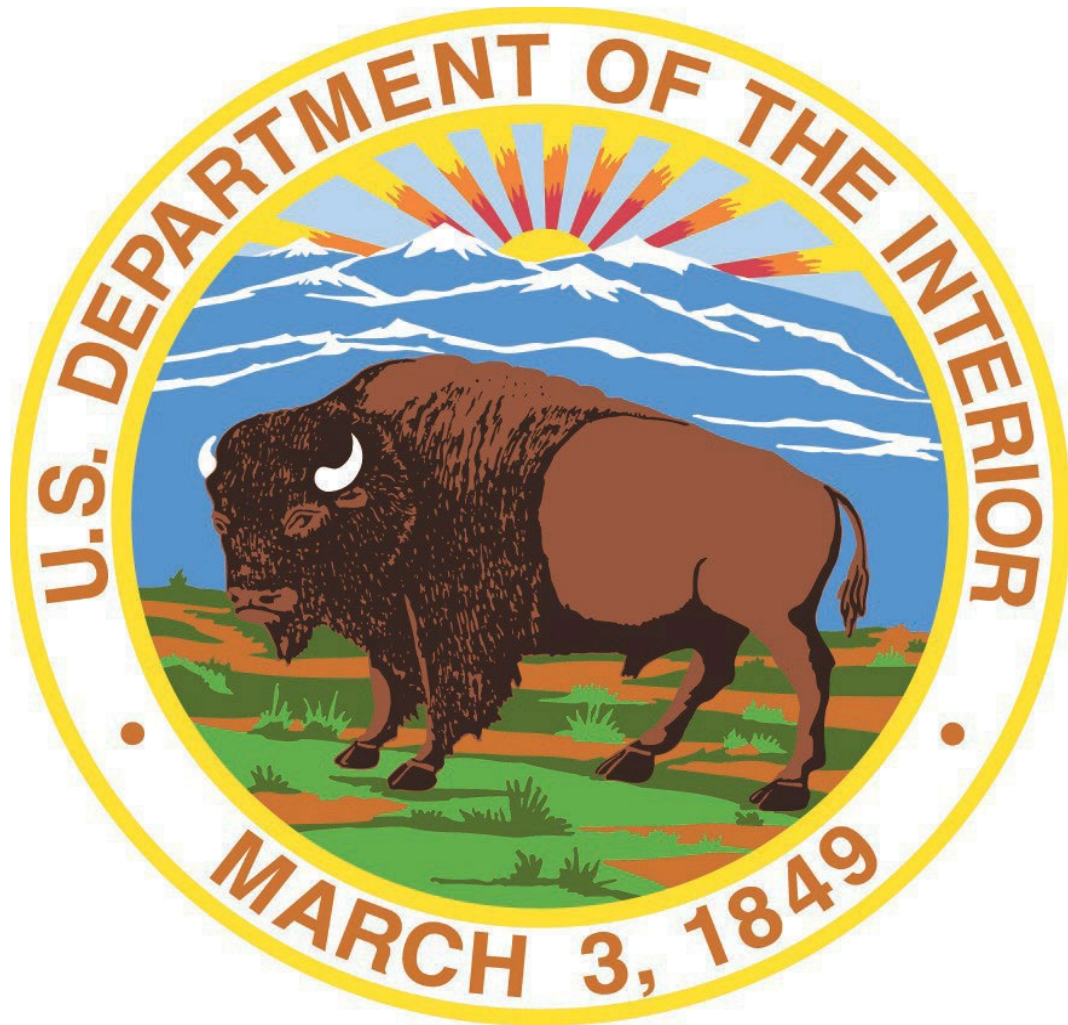


Notification and Federal Employee  
Antidiscrimination and Retaliation Act  
(No FEAR Act)  
Annual Report  
Fiscal Year 2024



U.S. Department of the Interior

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## Introduction

The U.S. Department of the Interior (Department or Interior) protects and manages the Nation's natural resources and cultural heritage; provides scientific and other information about those resources; and honors its trust and treaty responsibilities or special commitments to American Indians, Alaska Natives, Native Hawaiians, and affiliated Island Communities. The Department plays a central role in how the Nation stewards its public lands and waters and honors our nation-to-nation relationship with Tribes.

The Department is the steward of 20 percent of the Nation's lands, including national parks, national wildlife refuges, and other public lands. It manages resources providing approximately 20 percent of the Nation's energy, delivers and manages water in the 17 western states and supplies 15 percent of the Nation's hydro-power energy; and upholds federal trust responsibilities to federally recognized Indian Tribes, Alaska Native communities, and insular areas.

The Department also partners with states to manage wildlife; promote healthy forests and suppress fires; manage energy resource development (oil, gas, coal, hydro, geothermal, wind, and solar) on its lands and offshore areas; promote outdoor recreation (including fishing, bird watching, hunting, boating, hiking, and biking); and provide mapping, geological, hydrological, and biological scientific data and research for the Nation.

The Department's mission is carried out by approximately 70,000 dedicated and skilled employees in 2,400 locations throughout the country. Over 280,000 volunteers annually contribute their time in support of bureau and office missions, bringing unique local knowledge to park operations, assisting in recovery from natural disasters, and participating in environmental education, among other activities.

Achieving the Department's mission requires talented individuals who are invested in the organization's purpose and who can navigate the challenges of fulfilling the mission. The Department succeeds because of the talents of its employees and volunteers. Each of the eleven bureaus – as well as the Office of the Secretary, including the Assistant Secretary – Fish, Wildlife and Parks; Assistant Secretary – Land and Minerals Management; Assistant Secretary – Water and Science; Assistant Secretary – Indian Affairs; Assistant Secretary – Insular and International Affairs; Assistant Secretary – Policy, Management and Budget; Office of the Solicitor; and Office of the Inspector General – perform equally important work that is critical to accomplishing the Department's broader mission.

## Reporting Requirements and Background Information

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174, went into effect on October 1, 2003. The No FEAR Act requires that federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws and post quarterly on its public website certain statistical data relating to federal sector Equal Employment Opportunity (EEO) complaints filed with the agency, The No FEAR Act also requires federal agencies to report annually on the Department's efforts to improve compliance with employment discrimination and whistleblower protection laws and detail the status of complaints brought against the agencies under these laws. In Fiscal Year (FY) 2021, Congress passed the Elijah E. Cummings Federal Employee Antidiscrimination Act (ECA), which amended the No FEAR Act.

In relevant part, Section 203 of the No FEAR Act requires federal agencies to submit annual reports to:

- The Speaker of the House of Representatives;
- The President Pro Tempore of the Senate;
- The Committees on Homeland Security, Governmental Affairs of the Senate, and Oversight and Accountability of the House of Representatives;
- Each committee of Congress with jurisdiction relating to the agency;
- The U.S. Attorney General;
- The Chair of the U.S. Equal Employment Opportunity Commission (EEOC or Commission); and
- The Director of the U.S. Office of Personnel Management (OPM).

Federal agencies must report:

- The number of federal court cases arising under each of the respective areas of law specified in the No FEAR Act in which discrimination was alleged;
- The number, status, and disposition of pending or resolved federal court cases against the Department arising under EEO and whistleblower laws;
- The amount of money required to be reimbursed to the Judgment Fund;

- The number of employees disciplined for actions inconsistent with the laws governing the No FEAR Act, as well as the types of discipline administered for violations of EEO and whistleblower protection laws;
- Any policies implemented related to appropriate disciplinary actions against a federal employee who discriminated against any individual, or committed a prohibited personnel practice;
- An analysis of the data collected with respect to trends, causal analysis, and other forms for analysis; and
- Any action taken to improve complaint and civil rights programs with the goal of preventing and eliminating employment discrimination, harassment, and retaliation.<sup>1</sup>

The annual report for FY 2024 outlines the following information:

- The status of the 27 federal court cases filed against the Department under the laws governed by the No FEAR Act.
- The six matters requiring payment from the Judgment Fund for a total of \$286,756.83. These funds were related to FY 2024 judgments, awards, and settlements under the statutes addressed in the No FEAR Act.
- An overview of the disciplinary action taken against 61 employees stemming from actions that were prohibited by, or inconsistent with, federal antidiscrimination and anti-harassment laws.
- An analysis of the 282 formal EEO complaints filed against the Department in FY 2024. This analysis shows that retaliation was the most frequently alleged basis of discrimination, followed by sex, disability, age, and race. Harassment was by far the most frequently alleged issue, followed by terms/conditions of employment, promotion, disciplinary action, reasonable accommodation, and appointment/hiring actions.
- A trend and causal analysis of formal EEO complaints from FY 2020 – FY 2024.
- An explanation of the Department’s No FEAR Act Training.
- The Department’s relevant accomplishments and advances throughout FY 2024.

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<sup>1</sup> Additional information regarding the Department’s responsibilities under the No FEAR Act can be accessed at <https://www.eeoc.gov/eeoc/statistics/nofear/ganda.cfm>.

## Results and Data

Section 203(a)(1) of the No FEAR Act requires that agencies include in their annual report to Congress “the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of [S]ection 201(a) in which discrimination on the part of such agency was alleged.” Section 724.302(a)(1) of OPM’s regulations clarifies section 203(a)(1) of the No FEAR Act to require that the agencies report on the “number of cases in Federal court pending or resolved ... arising under each of the respective provisions of the Federal Antidiscrimination Laws and Whistleblower Protection Laws.” The No FEAR Act also requires agencies to report on the amount of money the Department was required to reimburse the Judgment Fund.

### A. Court Cases Arising Under Federal Antidiscrimination and/or Whistleblower Protection Laws

During FY 2024, the Department was a party to 27 federal court cases filed under laws covered by the No FEAR Act. The Department settled six federal court cases in FY 2024 and paid a total of \$286,756.83 from the Judgment Fund. Courts found for the Department in seven of the 27 matters. As of October 1, 2024, 14 matters were still pending.

### B. Summary of Federal Court Cases

The most frequent basis alleged in all FY 2024 federal court cases was race under Title VII of the Civil Rights Act of 1964 (Title VII). Complaints can be filed alleging multiple issues and bases of discrimination. Consequently, the sum of the bases and issues may not equal the total number of complaints filed.

Table 1 shows the protected bases alleged in all federal court cases filed in FY 2024.

**Table 1:  
Bases Alleged in Federal District Court Cases in FY 2024**

<b>Bases Alleged</b>	<b>Count</b>
Race	13
Disability	12
Reprisal/Retaliation	9
Age	9
Sex/Gender	8
National Origin	3
Color	1
Religion	1
<b>Total</b>	<b>56</b>

### C. Judgment Fund

During FY 2024, there were six cases requiring payment from the Judgment Fund for a total of \$286,756.83. These funds were related to FY 2024 settlements under the statutes addressed in the No FEAR Act. The Department had no adverse rulings during FY 2024.

### D. Employee Discipline

During FY 2024, the Department took disciplinary action against 61 employees stemming from actions that were inconsistent with, or prohibited by, federal antidiscrimination, anti-harassment, and anti-retaliation laws.<sup>2</sup> Table 2 provides a list of the specific types of disciplinary actions that were imposed during FY 2024.

**Table 2:  
Disciplinary Actions Imposed on Employees in FY 2024**

<b>Disciplinary Action</b>	<b>Number of Employees</b>
No Action Taken*	2
Oral Counseling/Warning	9
Written Counseling/Warning	9
Reprimand	15
Suspension (14 days or less)	18
Suspension (More than 14 days)	0
Indefinite Suspension	1
Reassignment	0
Reduction in Grade	2
Termination	2
Removal	5
<b>Total Actions</b>	<b>63</b>

\*In the cases where misconduct was found and no action was taken, the employees separated from the Department before action could be taken.

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<sup>2</sup> This number includes the data required under Section 203(a)(4) of the No FEAR Act, as well as the number of employees disciplined pursuant to the Department's anti-harassment policies through which the Department proactively addresses misconduct before it becomes unlawful harassment.

Section 203 of the No FEAR Act requires the annual report to include a detailed description of an agency's disciplinary policies related to laws addressed by the No FEAR Act. Agencies must specify disciplinary policies for federal employees who discriminate against any individual in violation of any of the laws covered by the No FEAR Act or who commit any other prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of the federal antidiscrimination and/or whistleblowing laws.

At the Department, the appropriate level supervisor consults with the servicing Human Resources Office and utilizes the Department Manual 370 DM 752 Discipline and Adverse Actions (370 DM 752) to recommend and take appropriate action. See Appendix C. Departmental Manual 370 DM 752 includes an appendix that is a guide to supervisors/managers for considering disciplinary actions. It should further be noted that pursuant to the EEOC's Management Directive 715 (MD-715), ODICR has a role in recommending remedial or disciplinary action concerning managers and supervisors who failed in their EEO responsibilities.

Pursuant to the ECA, the Department is required to provide a Disciplinary Action Report to the EEOC no later than 120 days from the date on which it takes final action or receives a final decision issued by the EEOC involving a finding of intentional discriminatory (including retaliatory) acts in violation of a provision of law covered by the No FEAR Act.

The following policies and procedures reinforce the Department's commitment to establishing a workplace free from discrimination, harassment, and/or retaliation. These policies hold all Interior employees accountable for their actions.

- Personnel Bulletin 18-01: Prevention and Elimination of Harassing Conduct – Interior's policy on providing a work environment free of harassment by defining unacceptable conduct that violates the policy; outlining the rights and responsibilities of employees, supervisors, and managers; and establishing reporting procedures and accountability measures. See Appendix A.
- 370 Departmental Manual 752: Discipline and Adverse Actions establishes the policy, procedures, and authority for administering employee discipline within Interior, and for taking appropriate corrective action for disciplinary and certain non-disciplinary reasons, when it is determined that such actions will promote the efficiency of the federal service. See Appendix B.



## Analysis and Trends

Section 203(7)(a) of the No FEAR Act requires that agencies undertake “an examination of trends, causal analysis, and practical knowledge gained through experience and any actions planned or taken to improve complaint or civil rights programs of the agency” (internal punctuation and subsection enumeration omitted).

### A. Formal EEO Complaints, Protected Bases, and Issues

There was a downward trend in the number of formal EEO complaints filed with the Department in the first two of the past five fiscal years. However, starting in FY 2022 the number of formal EEO complaints began to rise. FY 2024’s total of 282 formal EEO complaints filed is the highest number out of the previous five fiscal years. FY 2024’s total of 272 complainants is also the highest number out of the previous five fiscal years.

Table 3 provides a list of the number of formal EEO complaints filed between FY 2020 and FY 2024, as well as the number of complainants.

**Table 3:  
Formal Complaints Filed and Complainants Between FY 2020 and FY 2024**

<b>Fiscal Year</b>	<b>Number of Formal EEO Complaints Filed</b>	<b>Number of Complainants</b>
<b>2020</b>	274	267
<b>2021</b>	239	232
<b>2022</b>	257	249
<b>2023</b>	264	258
<b>2024</b>	282	272

The protected basis is the protected characteristic the complainant alleges formed the motivation for the discriminatory conduct. The protected bases covered by EEO statutes are race, color, religion, national origin, sex, disability (mental/physical), genetic information, age (40+ years), and retaliation.

In FY 2024, the three most frequently alleged bases in formal EEO complaints were: retaliation, sex, and disability. Retaliation continues to be the most frequently alleged protected basis based on data from the previous five fiscal years. Retaliation complaints dipped in FY 2022 to 125 total but rose again with 157 retaliation allegations filed in FY 2024. The number of formal EEO complaints based on sex rose to 116 in FY 2024 – the highest they have been during the previous five fiscal years. Complaints can be filed alleging multiple issues and bases of discrimination.

Consequently, the sum of the bases and issues may not equal the total number of formal EEO

complaints filed. Table 4 contains a list of the most frequently alleged bases in formal EEO complaints between FY 2020 and FY 2024.

**Table 4:  
EEO Bases Alleged in Formal Complaints Between FY 2020 and FY 2024**

<b>FY</b>	<b>Retaliation</b>	<b>Disability</b>	<b>Age</b>	<b>Race</b>	<b>Sex</b>	<b>National Origin</b>	<b>Religion</b>	<b>Color</b>
<b>2020</b>	148	100	100	71	104	12	9	27
<b>2021</b>	150	75	75	83	93	34	12	20
<b>2022</b>	125	84	76	60	79	25	32	27
<b>2023</b>	149	109	101	76	83	27	14	31
<b>2024</b>	157	108	96	84	116	36	14	39

The issue of a complaint is the alleged discriminatory incident for which the individual is seeking redress. Harassment is the most frequently alleged issue for each of the previous five fiscal years. There was a drop in harassment allegations from FY 2020 to FY 2021. FY 2022 saw an increase in harassment allegations, and they continued to rise throughout FY 2023 and FY 2024. Table 5 contains a list of the most frequently alleged issues in formal complaints between FY 2020 and FY 2024.

**Table 5:  
Alleged Issues in Formal Complaints Between FY 2020 and FY 2024**

<b>FY</b>	<b>Harassment</b>	<b>Reasonable Accommodation</b>	<b>Appointment/Hire</b>	<b>Terms/Conditions of Employment</b>	<b>Promotion</b>	<b>Disciplinary Action</b>
<b>2020</b>	128	34	35	40	39	47
<b>2021</b>	118	24	40	35	26	34
<b>2022</b>	127	32	30	32	36	25
<b>2023</b>	146	46	11	81	43	44
<b>2024</b>	174	34	18	83	49	39

## B. EEO Complaints Processing

Pre-complaints are informal complaints filed with the Department as part of the federal sector EEO process – the pre-complaint stage occurs before the formal complaint stage. In FY 2024, 255 informal complaints were filed with the Department. The Department offered Alternative Dispute Resolution (ADR) at the informal stage to 207 complainants.

The average time complaints were pending formal investigation increased from 181.59 days in FY 2023 to 222.13 days in FY 2024.

Table 6 shows the average number of days complaints were pending investigation and pending final agency actions between FY 2020 and FY 2024.

**Table 6:  
Average Days Complaints Were Pending Investigation and Pending Final Agency Action  
Between FY 2020 and FY 2024**

<b>FY</b>	<b>Pending Investigation</b>	<b>Pending Final Agency Action</b>
<b>2020</b>	183.81	112.45
<b>2021</b>	224.48	108.1
<b>2022</b>	179.68	46.31
<b>2023</b>	181.59	92.45
<b>2024</b>	222.13	40.2

### C. Findings of Discrimination

ODICR issues Final Agency Decisions (FADs) on the merits of a complaint after an investigation has been conducted. A merit FAD is a determination of whether discrimination has occurred on the bases and issues alleged in a formal complaint. Generally, a FAD may also determine whether to accept or dismiss a complaint for procedural reasons, which is outlined in EEO regulations at Title 29 Code of Federal Regulations (C.F.R.) Section 1614.107. These are known as procedural dismissal FADs. Final Orders, a third type of FAD, are issued following decisions from EEOC administrative judges and notify parties whether the Department intends to implement or appeal the administrative judge’s decision.

In FY 2024, the Department issued 50 FADs. Merit FADs accounted for 39 of ODICR’s FADs and eleven were procedural dismissal FADs. Of the 39 merit FADs, two found that discrimination had occurred. In FY 2024, the Department issued 55 Final Orders following an administrative judge’s decision. The Department fully implemented the 55 decisions that it received from EEOC administrative judges.

### D. Closures

During FY 2024, the Department closed 214 formal complaints. Of the 214 formal complaints, 20 were withdrawn, 89 were closed via settlement agreement, 50 were closed through a FAD, and 55 were closed through a Final Order after an EEOC administrative judge’s decision.

Table 7 shows the number of closures by type between FY 2020 and FY 2024.

**Table 7:  
Number of Closures by Type Between FY 2020 and FY 2024**

FY	Withdrawal	Settlement Agreement	FAD(s)	Final Orders	Total Closures
2020	21	95	99	104	319
2021	22	91	147	97	357
2022	13	114	99	73	298
2023	14	97	39	67	217
2024	20	89	50	55	214

#### E. Trends, Analysis, and Practical Experience

The Department has experienced a rebounding of the number of formal complaints filed. In FY 2020 complainants filed 274 formal complaints, and in FY 2021 that number dropped to 239. The number of formal complaints has risen steadily from 257 in FY 2022 to 282 in FY 2024.

Harassment continues to be the most frequently alleged issue in EEO complaints, and the Department experienced an uptick in harassment complaints from 146 in FY 2023 to 174 in FY 2024. One of the Department’s key initiatives has been the establishment of Personnel Bulletin 18-01: Prevention and Elimination of Harassing Conduct, which updated an amended Interior’s policy on providing a work environment free of harassment by defining unacceptable conduct that violates the policy, outlining the rights and responsibilities of employees, supervisors, and managers, and establishing reporting procedures and accountability measures. See Appendix B.

Retaliation continues to be the most frequently alleged basis in EEO complaints at the Department, as it is throughout the federal sector. The number of retaliation complaints decreased at the Department during the pandemic from 150 in FY 2021 to 125 in FY 2022. However, the number rebounded in FY 2024 to 157. The Department has actively taken steps in recent years to maintain a work environment free from discrimination and retaliation for all. All new supervisors and managers at the Department attend a training session on equal employment opportunity which, among other issues, discusses how to prevent retaliation in the workplace.

A review of EEO complaint trends show that the Department must continue to concentrate resources on training that focuses on preventing discrimination and harassment based on reprisal/retaliation, disability, age, race, and sex. The Department may need to look at relevant data metrics and Federal Employee Viewpoint Survey results to determine further measures it can take to reduce the number of EEO harassment complaints.

The Department will continue to conduct comprehensive trend analyses, identify EEO-related trends within the workplace, and develop data-driven measures at the Department and Bureau levels. Robust data analytics will assist the Department in implementing an enterprise-wide strategic approach.

## No FEAR Act Training

The Department's No FEAR Act Training is an award-winning, video-based interactive training produced and developed by ODICR that provides an overview of the rights and remedies available under the federal employment discrimination and whistleblower protection laws. The training provides Interior employees with an opportunity to practice decision-making in simulated situations with scenarios designed to teach them how to address antidiscrimination and whistleblowing issues in a practical, effective way. The training is administered online through DOI Talent, a talent management system that offers integrated learning and performance management to Interior employees. No FEAR Act Training is mandatory for all Interior employees. The training cycle is biennial.

## Accomplishments, Trainings, and Advances

- The U.S. Fish and Wildlife Service (FWS) conducted its bi-annual workplace assessment and achieved a 30% response rate. FWS then briefed regional directors on the national and individual results for their organization to show the national, regional, and programmatic challenges. The results informed FWS' five-year goals.
- To ensure employee awareness of EEO-related initiatives, the FWS' Office of Communications launched a weekly bulletin called The Wild Weekly which includes EEO program updates. FWS also posts EEO-related activities and updates to its SharePoint site to reach as many employees as possible.
- In FY 2024 the FWS EEO complaints team established a monthly office hours series, with each session dedicated to providing guidance on a specific EEO compliance-related topic. Included were multiple sessions on the Equal Employment Opportunity Commission's "Enforcement Guidance on Harassment in the Workplace" guidance (issued April 29, 2024) with a lot of new EEO scenarios/roleplays. The series was well attended by employees and supervisors and will continue into FY 2025.
- In FY 2024 the FWS EEO Complaints team published a wellness resource guide for EEO staff members. The guide provides resources to support EEO staff members' mental health and wellness.
- In FY 2024 the FWS added new programs called Supervisors CONNECT and Supervisor Solutions. It is an open forum for any supervisor to talk with a technical expert, including Human Resources/Employment and Labor Relations and EEO professionals. The program places considerable focus on the topic of workplace psychological safety. The program hosted a virtual session in FY 2024 attended by 75 managers at the FWS Headquarters. Similar virtual and in-person sessions were scheduled with managers in each FWS region in the fall of calendar year 2024.
- In FY 2024 the Bureau of Land Management's (BLM) EEO Office held monthly EEO Community meetings with BLM's State and Center EEO managers and specialists to provide EEO program updates and training across the EEO community.

- BLM's EEO Office continued to hold annual leadership meetings in FY 2024, for civil rights program managers to meet with State and Center Directors. Strategic planning was conducted at the meetings and a checklist of critical EEO performance measures was reviewed. BLM State and Center staff provided status updates on EEO complaints processing and investigation data metrics.
- In FY 2024 BLM provided multiple trainings on EEO topics to BLM managers and supervisors through both its Leadership Academy and Local Perspective meetings.
- Throughout FY 2024, all Bureaus and Offices in the Department continued to require new managers and supervisors to attend a 40-hour training which included briefings on EEO and the prevention of retaliation and harassment in the workplace.



## Appendices

Appendix A: Personnel Bulletin 18-01 – Prevention and Elimination of Harassing Conduct



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**MAR 23 2018**

## Memorandum

To: Assistant Secretaries  
Heads of Bureaus and Offices  
Solicitor  
Inspector General

From: Edward T. Keable   
Acting Deputy Assistant Secretary for Human Capital and Diversity

Subject: Implementation of the Department's Prevention and Elimination of Harassing Conduct Policy

Today, we are taking the next critical step in ensuring that the Department is fully prepared to address all forms of harassment. As part of the Secretary and Deputy Secretary's commitment to ensure that proper steps are taken to deal with problems as they arise and to hold people accountable where the facts warrant, please find attached the new Department of the Interior policy on the Prevention and Elimination of Harassing Conduct, Personnel Bulletin 18-01. This policy meets the Equal Employment Opportunity Commission's recommended elements for anti-harassment programs and enables the Department to best protect our employees from harassing conduct.

The policy's purpose is to provide a work environment free from harassment by ensuring that appropriate officials are notified of and have the opportunity to promptly correct harassing conduct; clearly communicating that the Department will not tolerate harassing behavior; and requiring that management address harassing conduct and hold employees accountable at the earliest possible stage, before the conduct rises to the level of harassment within the meaning of anti-discrimination law by becoming "severe or pervasive." In addition to providing a clear definition of unacceptable harassing conduct, the policy also establishes required reporting procedures and accountability measures.

The policy will become effective on April 23, 2018, and it will be announced to all employees at that time. The intervening thirty days serve to give Bureau and Office Heads the opportunity to determine what Bureau- or Office-specific procedures, guidance, employee and/or supervisor training, or resources may be necessary and appropriate for your organization, so that management is prepared to start organizational implementation and answer employee questions when the policy becomes effective. As stated in Section 4 of the policy, this policy supersedes any other Departmental or Bureau/Office policies or procedures that conflict with it. Bureaus and Offices may issue implementing procedures consistent with the policy, but all such procedures must be reviewed and approved prior to implementation by the Director of the Department's

Office of Human Resources. While it is not expected that all Bureau- or Office-specific implementation procedures will be fully in place by April 23, Bureau and Office Heads should have a firm idea as to whether your organization requires the development of more concrete guidance and is ready to respond to violations of the policy by the end of this thirty-day window.

In order for servicing human resources, equal employment opportunity, and other consultative staff to best advise senior leadership in this process, the Office of Human Resources is offering webinars to familiarize such staff with the content of the policy. Webinar schedule information has been distributed to Bureau/Office Human Capital Officers and Equal Employment Opportunity Directors.

Once the policy is effective on April 23, the Office of the Secretary will issue an email announcement to all DOI employees to launch the policy, with press coverage likely to follow. The policy will also be posted at that time on the Department's external and internal anti-harassment websites.

If you have any questions, please contact Raymond Limon, Director, Office of Human Resources at (202) 208-5310.

Attachment:  
Personnel Bulletin 18-01



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**MAR 23 2018**

## **PERSONNEL BULLETIN NO: 18-01**

**SUBJECT:** Prevention and Elimination of Harassing Conduct

**1. Purpose.** This Personnel Bulletin updates and amends the Department's policy on providing a work environment free from harassment by (1) defining unacceptable conduct that violates this policy; (2) outlining the rights and responsibilities of employees, supervisors, and managers; and (3) establishing reporting procedures and accountability measures. These procedures ensure that appropriate officials are notified of, and have the opportunity to promptly correct, harassing conduct that is, or has the potential to become, so severe or pervasive as to constitute a legal claim of harassment.

This policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

**2. Effective Date.** This policy is effective April 23, 2018.

### **3. Authorities.**

- A. Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended
- B. Title 42 of the United States Code, Section 2000e through 16
- C. Title 29 of the United States Code, Section 633a and 791(f)
- D. Title 29 of the Code of Federal Regulations, Section 1604.11 and 1614
- F. Title 5 of the United States Code, Section 2302(b)(1) and (10)
- E. Title 5 of the United States Code, Chapter 75 and substantially similar authorities covering employees in alternate personnel systems
- G. Executive Order 11478, as amended
- H. 370 DM 752
- I. Secretary of the Interior Harassment Policy Statement, issued April, 12, 2017

**4. Coverage.** This policy applies to all employees within all Bureaus and Offices of the Department and supersedes any other Departmental or Bureau/Office policies or procedures that conflict with this policy. Bureaus/Offices may issue implementing procedures consistent with this policy. Prior to implementation, all Bureau/Office implementing procedures must be reviewed and approved by the Director of the Department's Office of Human Resources.

### **5. Policy.**

The Department is committed to providing a work environment free of discrimination and harassment based on race, color, religion, sex (including pregnancy and gender identity), sexual orientation, national origin, age, disability, genetic information (including family medical

history), status as a parent, marital status, or political affiliation, and free from illegal retaliation. The Department will not tolerate offensive sexual or non-sexual harassing behavior against any Department employee, intern, volunteer, contractor or other non-Federal employee, visitor, or other member of the public. The Department also will not tolerate adverse treatment of employees because they report harassing conduct or provide information related to such complaints. The purpose of this policy is to ensure that the Department takes immediate and appropriate corrective action, including appropriate disciplinary action, to eliminate harassing conduct regardless of whether the conduct rises to the level of a violation of law. Therefore, the goal of this policy is to address harassing conduct at the earliest possible stage, before it becomes “severe or pervasive,” i.e., harassment within the meaning of anti-discrimination law.

**A. Prohibited Harassing Conduct.** The conduct prohibited by this policy includes, but is broader than, the legal definitions of harassment and sexual harassment. Harassing conduct prohibited by this policy is defined as unwelcome conduct, verbal or physical, including intimidation, ridicule, insult, comments, or physical conduct, that is based on an individual’s protected status or protected activities under this policy, when:

1. the behavior can reasonably be considered to adversely affect the work environment; or
2. an employment decision affecting the employee is based upon the employee’s acceptance or rejection of such conduct.

Protected status is defined as an individual’s race, color, religion, sex (including pregnancy and gender identity), sexual orientation, national origin, age, disability, family medical history (including genetic information), status as a parent, marital status, or political affiliation. Protected activities under this policy are defined in Section 5.B.

Although not every instance of inappropriate behavior may meet the legal definition of harassment, such behavior undermines morale and the Department's mission. Accordingly, the misconduct prohibited by this policy is broader than the definition of illegal harassment under Title VII of the Civil Rights Act to ensure that appropriate officials are notified of, and can promptly correct, harassing conduct. Harassment becomes illegal when enduring the offensive conduct becomes a condition of continued employment or the conduct is sufficiently severe or pervasive as to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. All harassing conduct, as defined above, is a violation of this policy.

Employees are subject to disciplinary action, up to and including removal, for engaging in harassing conduct while in the workplace or in any work-related situation, including while on official travel. Off-duty misconduct may subject the employee to potential discipline if the misconduct is likely to have an adverse effect on the Department (e.g., harassing a co-worker, visitor, contractor, or volunteer during off-duty hours). Harassing conduct can occur in person, through phone calls or in writing, or through the use of social media, or other forms of technology.

**B. Prohibited Retaliatory Conduct.** It is a violation of this policy to retaliate against employees who engage in protected activity under this policy. Protected activity includes reporting harassing conduct, discrimination or retaliation; filing a claim of harassment; providing evidence in any investigation; or intervening to protect others who may have suffered harassing

conduct, discrimination or retaliation. A manager may not fire, demote, harass, or otherwise take any personnel action against an individual for reporting an allegation of misconduct under this policy.

It is important that supervisors and managers protect employees who report alleged misconduct, and do not take any retaliatory personnel action against these individuals in order to deter reporting harassing conduct or filing a complaint. A supervisor/manager found to have engaged in retaliation is subject to disciplinary action.

The following examples are a non-exhaustive list of actions that would be prohibited retaliation if they were taken because of, or were motivated by, an employee's protected activity: transferring the complainant or witness against their will, ignoring or not communicating with the complainant or witness, engaging in verbal or physical abuse, or non-selection for an employment opportunity.

Engaging in protected activity under this policy does not shield an employee from all personnel actions. Supervisors/managers can take personnel actions, including discipline and removal, if they are motivated by *non-retaliatory and non-discriminatory* reasons that would otherwise result in such consequences (e.g., transferring an employee for legitimate business reasons or closely monitoring the performance of an employee on a Performance Improvement Plan).

**C. Employee Reporting Expectations.** The Department cannot correct harassing conduct if a supervisor, manager, or other Department official is not aware of it. Any employee who has been subjected to harassing conduct is encouraged to inform the person(s) responsible for the conduct that it is unwelcome and offensive, and request that it cease. If the conduct continues, is severe, or if the employee is uncomfortable addressing the responsible person(s) about the conduct, the employee ***is encouraged to*** report the matter to:

- the supervisor of the employee engaging in the misconduct;
- another supervisor or other management official;
- the servicing Human Resources office; or
- the Office of the Inspector General (OIG).

Employees who know of or witness possible harassing conduct directed at others ***are expected to*** report the matter to any of the officials or offices listed above.

Reports made pursuant to this policy do ***not*** replace, substitute, or otherwise satisfy the separate obligations of an Equal Employment Opportunity (EEO) complaint, negotiated or administrative grievance, or other complaint process. Unlike this policy, other complaint procedures typically provide for remedial relief to the victims. See Section 9 for more information about how an employee may pursue rights under one of these separate processes, in addition to reporting the misconduct under this policy.

Engaging in additional processes and services available to support employees who have experienced harassing conduct, such as consulting with a union representative to get advice, engaging in alternative dispute resolution procedures, consulting an ombuds/CORE PLUS

neutral<sup>1</sup>, or contacting the employee assistance program, do **not** constitute a report under this policy. See Section 10 for additional information.

**D. Management Duty to Act.** Supervisors/managers who observe or are informed of allegations of harassing conduct must comply with the following requirements:

- a) report the conduct/allegations to the appropriate officials, even if the employee raising the allegation requests confidentiality (see Section 8.A. for additional details);
- b) ensure that a prompt, objective, and thorough investigation is conducted; and
- c) take steps to ensure that the harassing conduct is appropriately addressed to deter further misconduct, including taking disciplinary action, if appropriate.

The fact that a potential victim of harassing conduct will or has filed an EEO complaint or grievance alleging harassment **does not** relieve a supervisor/manager of their duty to act pursuant to this policy. Therefore, it is possible that multiple inquiries into a given complaint may proceed in parallel.

Appropriate corrective action, disciplinary or otherwise, up to and including removal, will be taken against any supervisor or other management official who fails to perform their obligations as set forth in this policy, including any failure to report known violations of this policy.

**E. Distinction from EEO and Other Remedial Procedures.** This policy and its reporting procedures are separate and distinct from the EEO process, which focuses on making employees whole after they have experienced discrimination (including harassment) by issuing remedial relief, such as compensatory damages. This policy does not replace an employee's EEO or other rights. Corrective action taken under this policy does not provide the remedies available in the EEO process, administrative or negotiated grievance procedures, or any other processes. Reporting allegations of misconduct under this policy **does not** satisfy the requirements for filing an EEO complaint, administrative or negotiated grievance, or other procedure, **nor does it delay the time limits for initiating those procedures.** See Section 9 for additional information on remedial processes.

## **6. Responsibilities.**

As noted in Section 4, Bureaus may issue implementing procedures to add additional responsibilities to each of the below roles and/or identify additional roles within their organizational structures in order to implement this policy.

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<sup>1</sup> Ombuds and other CORE PLUS neutrals are available to discuss any workplace-related concern, including those related to harassing or inappropriate conduct. Ombuds, in particular, work independently from management's chain of command, are impartial, and help with both individual and systemic issues.



### **A. Deputy Assistant Secretary for Human Capital & Diversity**

The Deputy Assistant Secretary for Human Capital & Diversity, as the Department's Chief Human Capital Officer (CHCO), is responsible for:

1. Disseminating this policy to all employees on an annual basis and periodically reminding employees of their responsibilities under this policy.
2. Ensuring that performance plans of all supervisors/managers include a critical element that would rate their performance on taking appropriate action against employees for misconduct.
3. Fulfilling the role of Bureau Human Capital Officer, as defined in Section 6.C., for the Office of the Secretary.
4. Providing periodic reports to the Deputy Secretary of the Interior or their designee on information received from the Bureau Human Capital Officers pursuant to Section 6.C.5 of this policy on allegations of misconduct under this policy and the necessary corrective action taken, if any.

### **B. Bureau Directors and Equivalent Office Heads**

Bureau/Office Heads are responsible for:

1. Ensuring that supervisors/managers are appropriately rated on the critical element described in Section 6.A.2.
2. Ensuring that their organizations are in full compliance with requirements of this policy.
3. Monitoring the work environment following a report alleging a violation of this policy to ensure that there are no further violations or incidents of retaliation against any individual who has reported harassment or participated in the investigation.

### **C. Bureau and Equivalent Office Human Capital Officers (Bureau HCOs)**

Bureau HCOs are responsible for:

1. Developing and providing periodic communications to all Bureau/Office employees on this policy and any Bureau/Office-specific requirements, and incorporating this policy into the Bureau/Office's supervisory training curriculum.
2. Resolving any disagreements involving investigations between management officials and consulting staff from servicing Human Resources Offices or the Office of the Solicitor regarding whether and what type of investigation is necessary.
3. Providing oversight, technical assistance, and support to Bureau/Office staff to ensure compliance with this policy.
4. Ensuring that the procedures in this policy are properly executed by monitoring inquiries and investigations of reported or otherwise discovered harassing conduct; providing guidance concerning the information to be gathered and methods to be used during

inquiries and investigations; and otherwise ensuring that the investigations are swift, thorough, impartial, and appropriate to the allegation.

5. Reviewing on a monthly basis the information contained in the system used by servicing Human Resources Offices to track harassing conduct allegations, as described in Section 8.B., and providing information to the Bureau/Office Director and the CHCO as requested.
6. Providing the record of actions taken under this policy to any office handling a parallel statutory or grievance claim, as referenced in Section 7.F.

#### **D. Servicing Human Resources Offices (HROs)**

Servicing HROs (normally the Employee Relations function in particular) are responsible for:

1. Receiving reports alleging violations of this policy and, as described in Section 7 of this policy, notifying and assisting the relevant management officials in handling allegations of harassing conduct and taking corrective action, as appropriate and necessary.
2. Tracking all reports made and actions taken pursuant to this policy in line with the Department's Office of Human Resources case tracking procedures, and reporting on them to the Bureau HCO.

#### **E. Office of the Solicitor (SOL)**

The Office of the Solicitor is responsible for advising and assisting the relevant management officials and servicing HROs in handling allegations of harassing conduct and taking corrective action, as appropriate and necessary. Within SOL, the Employment and Labor Law Unit (ELLU) is the initial point of contact for issues related to harassing conduct, and is responsible for providing Harassment Duty Attorney coverage on weekdays, 8:00 am – 7:00 pm Eastern time.

#### **F. Supervisors and Management Officials**

Supervisors and management officials must:

1. Make every effort to provide a work environment free of illegal harassment.
2. Ensure that their subordinates are aware of this policy and its requirements.
3. Act promptly and effectively to stop harassing conduct of which they are aware, and hold employees who have engaged in harassing conduct accountable.
4. Receive reports alleging violations of this policy and, as described in Section 7 of this policy, make or direct further inquiries into such reports and take corrective action, as appropriate and necessary.
5. Follow any additional procedures, handbooks, or guidelines issued by the Department or the Bureau/Office as related to this policy.

6. Notify appropriate officials in their chain of command of reported or observed conduct under this policy and of their efforts to correct the conduct.
7. Appropriately evaluate and hold accountable subordinate supervisors/managers of their performance under this policy.
8. Protect employees who report misconduct from retaliation.

#### **G. All Employees**

All Department employees **must**:

1. Refrain from engaging in harassing conduct.
2. Participate in any training required under this policy.
3. Cooperate fully in any inquiry or investigation.

All Department employees **are expected to**:

1. Understand their rights and responsibilities under this policy.
2. Report harassing conduct of which they are aware or witness in the work environment, as described in Section 5.C. of this policy.

All Department employees who are victims of harassing conduct **are encouraged to** report the harassing conduct.

#### **7. Management Response to Reports of Harassing Conduct.**

**A. Documenting Report of Harassing Conduct.** A supervisor, manager, or HR official who receives a report of, or otherwise becomes aware of, harassing conduct, must **within one business day**:

1. Document the allegation in writing (see Appendix A, Sample Intake Form).
2. Acknowledge receipt of the report to the reporting party.

#### **B. Supervisor/Manager Immediate Actions**

1. Determinations to be made

The supervisor/manager who receives a report of, or otherwise becomes aware of, harassing conduct involving subordinates must promptly contact the servicing HRO. In consultation with the servicing HRO, the supervisor/manager must determine:

- a. What conduct is at issue, whether it arguably could be considered harassing conduct, and whether it is potentially criminal in nature;
- b. Who may be involved; and

- c. Whether the reported activity poses a security risk and whether it is necessary to alert law enforcement (e.g., in instances where there is a threat of immediate physical harm).

If the report is made outside of the regular business hours of the servicing HRO, supervisors/managers should take action based on their best judgment to minimize any perceived risk of immediate harm and contact the servicing HRO as soon as normal business hours resume.

2. Conflicts of interest of senior-level officials

If an Assistant Secretary, Deputy Assistant Secretary, Bureau or equivalent Office Head, or similar high ranking official is implicated in the potentially harassing conduct, the CHCO will designate an appropriate management official to be responsible for making the preliminary determinations and directing any further investigation that is warranted.

3. Interim measures to ensure harassing conduct does not continue

Before directing a thorough investigation into the allegations of misconduct, a supervisor/manager must take any necessary interim steps to ensure that the potentially harassing conduct does not continue. The interim measures taken will depend on the severity of the conduct alleged. The two interim measures listed below are required in cases of serious misconduct, including, but not limited to, harassing conduct of a sexual nature, depending on the circumstances.

Before implementing either of the measures below, the supervisor/manager must consult with the servicing HRO and the Harassment Duty Attorney of SOL/ELLU for advice and guidance. If the report is made outside of the regular business hours of the servicing HRO, supervisors/managers should take action based on their best judgment to minimize any perceived risk of immediate harm and contact the servicing HRO as soon as normal business hours resume.

- a. Separation of the Allegedly Harassing Employee from the Alleged Victim

If the conduct is severe or pervasive, including, but not limited to, threatening behavior, touching, punching, or other egregious harassing behavior, the supervisor/manager should separate the employee alleged with harassing conduct from the alleged victim, at least until the matter otherwise can be resolved. Management should ***not*** move the employee who reported or otherwise was the alleged victim of harassing conduct. If the alleged victim, without having been asked or prompted, specifically requests such a move or transfer, management should inform the employee that they need not leave, and that instead the employee alleged to be responsible for the harassing conduct may be moved. Nonetheless, to the extent possible, management should honor the alleged victim's request. Appropriate steps to separate the alleged victim from the alleged harasser include, but are not limited to:

- assigning the alleged harasser to a telework status or a temporary detail;
- moving them to another office space, desk or floor; or

- requesting approval to place the employee on administrative or investigative leave.

b. Issuing No Contact Instructions

Another interim measure that a supervisor/manager may take to help ensure that harassing conduct stops is to instruct the allegedly harassing employee to have no further contact or communications with the alleged victim.

**C. Notifying Appropriate Officials of Report.** In implementing this policy, Bureaus may identify additional roles or change which of the below roles accomplish the notifications required in this section.

Management officials must notify the following parties *within one business day*:

1. Supervisors/managers who become aware of harassing conduct involving their subordinates must notify their own first-line supervisor or, if the conduct implicates the first-line supervisor, notify the second-line supervisor.
2. Supervisors/managers who become aware of harassing conduct involving employees outside of their chain of command must:
  - a. Notify the allegedly harassing employee's supervisor; and
  - b. Notify the alleged victim's supervisor, or, if the conduct implicates the supervisor or another manager, the Bureau HCO.
3. When a supervisor/manager has consulted with the servicing HRO regarding a report of alleged harassing conduct, the HR officer or assigned Employee Relations supervisor/specialist will:
  - a. Notify the Harassment Duty Attorney of the SOL/ELLU at [SOL-Antiharass@sol.doi.gov](mailto:SOL-Antiharass@sol.doi.gov); and
  - b. If applicable, notify the servicing HRO of the allegedly harassing employee.
4. When a report of alleged harassing conduct is made directly to the servicing HRO, the HR officer or assigned Employee Relations supervisor/specialist will:
  - a. Notify the SOL/ELLU Harassment Duty Attorney at [SOL-Antiharass@sol.doi.gov](mailto:SOL-Antiharass@sol.doi.gov); and
  - b. Notify and assist the next appropriate level of management above the allegedly harassing employee implicated in the report with immediately making the determinations described in Section 7.B. and taking any other necessary and appropriate action.

**D. Conducting Further Investigation**

1. Deciding whether further investigation is necessary

Within ***three business days*** of the receipt of the allegation, the supervisor/manager of the allegedly harassing employee, or other designated management official, must consult with SOL and the servicing HRO to determine whether and what type of further investigation is required (as described in Section 7.D.2), or if the preliminary inquiry is sufficient to determine whether corrective action is necessary. These decisions are fact-specific, and must be made on a case-by-case basis. Any disagreement between the responsible management official and the consulting offices will be directed to the Bureau HCO.

If it is determined that an investigation is necessary, the servicing HRO specialist will ensure that the investigative process is initiated within ***two business days*** of the decision being made regarding the appropriate investigative entity (e.g., refer the case to the OIG, initiate the funding process and prepare a statement of work for a third-party investigator). The servicing HRO specialist will serve as the primary point of contact for logistics related to getting an internal or third-party investigator in place, as well as when the allegations have been referred for criminal investigation or to the OIG.

## 2. Deciding who will conduct the investigation

If it is determined that further investigation is necessary, the following general guidelines will apply for choosing the type of investigation:

- a. OIG: Allegations of criminal activity, allegations implicating a member of the Senior Executive Service, or other senior or prominent management official, senior law enforcement official, or any OIG employee, and allegations tied to waste, fraud, or abuse of Department funds/programs or violations of Federal ethics regulations must be referred to OIG, which has the right of first refusal in conducting the investigation;<sup>2</sup>
- b. Bureau law enforcement internal affairs unit: Allegations involving law enforcement personnel of a Bureau's law enforcement entity must be referred to the entity's Office of Professional Responsibility or equivalent internal affairs unit;
- c. Third-party investigator<sup>3</sup>: Allegations of harassing conduct of a sexual nature.

All other allegations under this policy may be handled by a third-party investigator, employee relations specialist(s), supervisor/manager, or another employee trained to conduct investigations. The supervisor/manager of the allegedly harassing employee, or other designated management official, in consultation with the servicing HRO and SOL, will make the final decision about the investigation method based on the complexity and scope of the allegation(s) and the availability of qualified investigators.

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<sup>2</sup> OIG may also undertake any criminal, civil or administrative investigations regarding allegations of any grade employee involved in a serious or notorious allegation or incident that may negatively impact the operations and efficiency of the Department.

<sup>3</sup> A third-party investigator can be a contract investigator, a DOI HR official from outside the servicing HRO, or a management official outside the Bureau/Office/Region chain of command.

### 3. Conducting the investigation

All investigations must be conducted swiftly, impartially, and in a manner appropriate to the allegation. All investigations handled by a Department supervisor/manager, servicing HRO, or third-party investigator must be conducted in accordance with the Department's Investigator Guide to Conducting Administrative Investigations.

**E. Taking Corrective Action.** If it is determined that misconduct occurred, corrective action is necessary.

1. To determine whether corrective action is necessary, the supervisor/manager of the employee alleged to have engaged in harassing conduct must consult with the servicing HRO and SOL to determine whether any disciplinary or other corrective action would be appropriate or if the allegation should be closed with no finding of misconduct.
2. If the decision is made that the allegation should be closed with no finding of misconduct, the supervisor/manager must write a memorandum detailing why no corrective action was warranted. This memorandum must be approved by the next higher level manager and be included in the case file maintained by the servicing HRO.
3. If facts uncovered during the investigation or inquiry demonstrate that misconduct occurred, the supervisor/manager ***must*** propose disciplinary or corrective action. If there is disagreement between the supervisor/manager and the consulting offices on whether corrective action is appropriate, the next higher level of management will make the decision.
4. The appropriate corrective action will depend on the severity and/or pervasiveness of the offense, the action that would be required to end such conduct, the offender's disciplinary/conduct history, and other surrounding circumstances. Corrective action may include counseling or any disciplinary action applicable to instances of misconduct, such as reprimand, suspension, demotion, or termination, in accordance with 370 DM 752, Discipline and Adverse Actions. Where evidence indicates that employees are not sure about what conduct is appropriate and permissible, appropriate training should be provided.
5. A supervisor/manager's failure to take appropriate disciplinary and/or corrective action will generally support a charge of negligent supervision and be an actionable charge. Appropriate corrective action, disciplinary or otherwise, up to and including removal will be taken against any supervisor or other management official who fails to perform their obligations as set forth in this policy, including any unreasonable failure to report known violations of this policy. In addition, managers will appropriately evaluate and hold accountable subordinate supervisors/managers for their performance under this policy using the required supervisory critical element.

### **F. Responding to Reports of Harassing Conduct Raised in a Statutory, Administrative, or Negotiated Grievance Process**

If an employee pursues a claim of harassment through the EEO process, an MSPB appeal, or a negotiated/administrative grievance, the Department official who receives notice of such claim will promptly notify the appropriate responsible management official. The management official

has a duty to act promptly upon learning that harassing conduct has been alleged, must treat the notice as a report under this policy, and must follow the steps outlined in this section, unless inconsistent with applicable regulatory or statutory requirements. It is possible that multiple inquiries into a given complaint may proceed in parallel.

## **8. Maintaining Confidentiality and Keeping Records.**

**A. Maintaining Confidentiality.** Supervisors/managers must take action to investigate all allegations of harassing conduct, even if the employee raising the allegation requests confidentiality. All reports of harassing conduct and related information will be maintained on a confidential basis to the greatest extent possible. The identity of the employee alleging violations of this policy will be kept confidential, except as necessary to conduct an appropriate investigation into the alleged violations, to take appropriate disciplinary or corrective action, to comply with the reporting requirements of this policy, or when otherwise required by law.

Upon inquiry from the alleged victim, the supervisor/manager must notify the alleged victim of the harassing conduct about the completion of the process to the extent permitted under the Privacy Act. The alleged victim may not be provided the outcome of any disciplinary action against the allegedly harassing employee and may not be provided a copy of the fact-finding report. The supervisor/manager must consult with servicing HRO specialist and SOL about this notification.

**B. Tracking Allegations of Harassing Conduct.** The servicing HRO will be responsible for tracking the information related to the allegations of harassing conduct in separate case files, in accordance with established records management policies. The servicing HRO must monitor and record the status of allegations, including final resolution, in the appropriate tracking system approved by the Department's Office of Human Resources. This information will help the Department monitor compliance with this policy, understand trends related to harassing conduct, and ensure swift resolution of complaints.

## **9. Distinction from Statutory and Grievance Claims.**

The purpose of this policy is to stop harassing conduct that has occurred and deter its occurrence in the future. However, corrective action under this policy does not provide the remedies available in the EEO, grievance, or other processes, such as compensatory damages. Filing a report under this policy does *not* satisfy the requirements for filing an EEO complaint, negotiated grievance, or other procedure and obtaining remedies pursuant to them, nor does it delay the time limits for initiating those procedures. Thus, an employee who chooses to pursue statutory, administrative, or collective bargaining remedies for unlawful harassment must select one of the available forums as follows:

**A. For an EEO complaint pursuant to 29 C.F.R. §1614** (available for all claims of illegal harassment other than those based on status as a parent, marital status and political affiliation), contact an EEO counselor in the Bureau's or Office's Equal Employment Opportunity/Civil Rights Office within 45 calendar days from the most recent incident of alleged harassment (or personnel action, if one is involved), as required in 29 C.F.R. §1614.105(a)(1); or



**B. For a negotiated grievance claim,** file a grievance in accordance with the provisions of the applicable Collective Bargaining Agreement; or

**C. For an administrative grievance claim,** file a written grievance in accordance with the provisions of 370 DM 771, Administrative Grievance Procedures; or

**D. For an appeal to the Office of Special Counsel (OSC)** regarding claims of harassment related to marital status and political affiliation, pursuant to 5 U.S.C. §2302(b)(1) and (b)(10), file a written appeal with the OSC as described in 5 C.F.R. §1800.1 and on [www.osc.gov](http://www.osc.gov); or

**E. For an appeal to the MSPB** pursuant to 5 C.F.R. § 1201.22, file a written appeal with the Board within 30 days of the effective date of an appealable adverse action as defined in 5 C.F.R. §1201.3, or within 30 days of the date of receipt of the agency's decision, whichever is later.

## **10. Additional Resources.**

**A. Consultation Options.** Employees who have experienced harassing conduct have multiple resources available that can provide assistance and advice. Engaging with the following resources ***does not*** constitute a report under this policy, as these entities do not have an obligation to inform management of allegations of harassing conduct:

- **Ombuds/CORE PLUS neutrals.** Office of Collaborative Action and Dispute Resolution (CADR) ombuds work independently from management's chain of command and are impartial. CORE PLUS neutrals are qualified, certified providers of conflict management and alternative dispute resolution services. Conversations with ombuds and other CORE PLUS neutrals are confidential and informal and provide managers and employees a safe place to explore options for addressing individual or organizational concerns. Ombuds and CORE PLUS neutrals are not obliged to report discussions (outside of imminent risk of harm). Information about CADR programs is available at <https://www.doi.gov/pmb/cadr/>;
- **Employee Assistance Program (EAP).** The DOI EAP is an employee benefit program that helps employees with personal and/or work-related problems that may impact their job performance, health, and mental and emotional well-being. Information about EAP services is available at <https://www.doi.gov/pmb/hr/eap>;
- **Victim Assistance Program.** The DOI Office of Law Enforcement and Security or Bureau law enforcement office's Victim Assistance Program provides general information about rights and services available for victims of crime; and
- **Union Representative.** Employees who are covered by a bargaining unit can consult with a union representative.

**B. Additional Information.** To learn more about the Department's anti-harassment resources and Bureau-specific policies, visit [www.doi.gov/employees/anti-harassment](http://www.doi.gov/employees/anti-harassment).

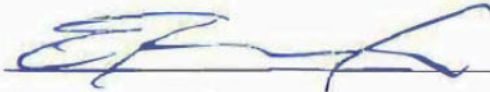
## **11. Inquiries.**

Any Department employee or employee representative seeking further information concerning this policy may contact the appropriate Bureau HCO. Servicing HROs may contact the

Department's Office of Human Resources, Workforce Relations Division concerning questions related to this policy.

**12. Distribution.**

This policy will be distributed to all employees upon issuance, and annually thereafter. It will also be distributed to all employees new to the Department as part of their orientation materials. This policy also will be made available to employees on the Equal Employment and Workplace Conduct website accessible at [www.doi.gov/employees/anti-harassment](http://www.doi.gov/employees/anti-harassment), which also provides additional anti-harassment resources.



Edward T. Keable  
Acting Deputy Assistant Secretary  
Human Capital and Diversity  
Chief Human Capital Officer

**Appendix A: Sample Harassing Conduct Allegation Intake Form**

This sample intake form can be used by any management official to record a report of harassing conduct. It can be used as a prompt during a conversation with an employee reporting harassing conduct, or as a way to document the conversation after the fact. Gathering as much information as possible immediately from the individual reporting the alleged harassing conduct will aid management in swiftly determining the best course of action. Bureaus/Offices may wish to develop and issue their own versions of this form.

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***Management Official Taking the Report***

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Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Date Information Reported: \_\_\_\_\_ Time: \_\_\_\_\_

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***Individual Reporting Harassing Conduct***

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Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Phone: \_\_\_\_\_ Job location: \_\_\_\_\_

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***Individuals Allegedly Engaging in Harassing Conduct (if known)***

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1. Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Phone: \_\_\_\_\_ Job location: \_\_\_\_\_

2. Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Phone: \_\_\_\_\_ Job location: \_\_\_\_\_

3. Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Phone: \_\_\_\_\_ Job location: \_\_\_\_\_

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***Questions to Ask the Individual Reporting the Harassing Conduct***

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1. Date(s) of alleged incident(s)/action(s):

2. Please describe specifically the alleged harassing conduct, including the protected status on which you believe it was based [i.e., race, color, religion, sex (including pregnancy and gender identity), sexual orientation, national origin, age, disability, family medical history (including genetic information), status as a parent, marital status, or political affiliation]:

3. Was this an isolated event or a pattern of similar events or behaviors?

4. Was the harassing conduct directed at you or someone else? If someone else, to whom was it directed?

5. What was your reaction?

6. How did this conduct or behavior affect you? How did it make you feel?

7. Did you speak to the person who engaged in harassing conduct to ask them to cease? If so, what was their response?

8. Can you identify other individuals with knowledge of the alleged conduct at issue or other actions/behaviors by the charged individual(s) in the past? (Include observations, what people heard, and who you told about the events in question.)

9. Are there any documents or physical evidence that may support the claim of alleged occurrences? If so, please identify them.

10. Do you feel that the alleged harasser(s) is a threat to your safety and well-being or that of others? If so, how?

11. Have you previously complained about this or related acts of harassing conduct by the same individual(s) to a supervisor or manager? If so, please identify the individual(s) to whom you complained, the date(s) of the complaint(s), and the resolution(s), if any.

12. Is there is any other information related to the incident(s)/action(s) or any other information related to the inquiry that you would like to provide?

Appendix B: 370 Departmental Manual 752 – Discipline and Adverse Actions

## Department of the Interior Departmental Manual

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**Effective Date:** 12/22/06  
**Series:** Personnel Management  
**Part 370:** Departmental Personnel Program  
**Chapter 752:** Discipline and Adverse Actions

**Originating Office:** Office of Human Resources

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### 370 DM 752

1.1 **Purpose.** This chapter establishes the policy, procedures and authority/responsibility for administering employee discipline within the Department of the Interior (Department), and for taking appropriate corrective action for disciplinary or certain non-disciplinary reasons, when it is determined that such actions will promote the efficiency of the service. Requirements stated in this chapter are consistent with law, regulations and other Department policy applicable at the time of its issuance. Actions taken through the application of this chapter must comply with the requirements of pertinent laws, rules and regulations, as well as the lawful provisions of applicable negotiated agreements for employees in exclusive bargaining units.

1.2 **Authority.** Chapter 75 of Title 5, United States Code and Part 752 of Title 5, Code of Federal Regulations.

#### 1.3 Coverage.

A. This chapter applies to all bureaus and offices of the Department. Bureaus/offices will not issue supplemental disciplinary policy, except where otherwise prescribed in this chapter. Employees covered by a collective bargaining agreement may be subject to additional procedures which may supersede/supplement those described in this chapter. Bureaus/offices may issue supplemental implementing guidance as needed.

B. The disciplinary/adverse action procedures described in this chapter do not apply to an Administrative Law Judge (ALJ), whose discipline is governed by separate statutory requirements. Additionally, only the adverse action procedures described in 1.7C of this chapter are applicable to Department appointees in the Senior Executive Service (SES), although SES employees (and ALJs) may be counseled/reprimanded for engaging in misconduct. Management must consult with the servicing Human Resources Office for guidance regarding employee/action coverage.

#### C. Employees

- (1) The following employees are covered by the provisions of this chapter:



(a) An employee in the competitive service who has completed a probationary or trial period, or who is serving in an appointment that requires no probationary or trial period and who has completed one year of current continuous employment in the same or similar positions under other than a temporary appointment limited to one year or less;

(b) A preference eligible employee in the excepted service who has completed one year of current continuous employment in the same or similar positions;

(c) A non-preference eligible employee in the excepted service who has completed two years of current continuous employment in the same or similar positions under other than a temporary appointment limited to two years or less;

(d) An employee with competitive status who occupies a Schedule B position; and

(e) An employee who was in the competitive service at the time his/her position was first listed as part of the excepted service and still occupies that position.

(2) The following employees are excluded from coverage:

(a) An individual appointed by the President;

(b) An employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by the President, the agency head, or the Office of Personnel Management (such that the position is excepted from the competitive service – “Schedule C”);

(c) A reemployed annuitant;

(d) An employee whose appointment is made with the advice and consent of the Senate;

(e) A non-preference eligible employee serving a probationary or trial period under an initial appointment in the excepted service pending conversion to the competitive service;

(f) Administrative Law Judges;

(g) An employee in the competitive service serving a probationary or trial period; and

(h) Individuals who are otherwise excluded by the statutory provisions of Title 5, United States Code.

#### D. Actions

(1) The following actions are covered by this chapter when taken with respect to a covered employee:

- (a) Written Reprimands;
- (b) Suspensions;
- (c) Removals;
- (d) Reductions in grade;
- (e) Reductions in pay; and
- (f) Furloughs without pay for 30 days or less.

(2) The following actions are not covered by this chapter:

- (a) A reduction-in-force action;
- (b) A suspension or removal in the interest of national security;
- (c) An action taken against an Administrative Law Judge;
- (d) The reduction in grade of a supervisor or manager who fails to successfully complete a new probationary period as a supervisor or manager, if such reduction is to the grade held immediately before becoming a supervisor or manager;
- (e) An action which entitles an employee to grade retention, and an action to terminate this entitlement;
- (f) A voluntary action initiated by the employee;
- (g) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;
- (h) An action which 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 Department informed the employee that it was to be of limited duration;
- (i) Cancellation of a promotion to a position not classified prior to the promotion;
- (j) Reduction of an employee's rate of pay from a rate which is contrary to a rate allowed or permitted by law or regulation;

(k) 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;

(l) An action imposed by the Merit Systems Protection Board;

(m) A reduction in grade or removal based solely on unacceptable performance and taken under 5 U.S.C. 4303; and

(n) An action taken or directed by the Office of Personnel Management based on a suitability determination.

(o) An action otherwise not covered by the statutory provisions of Title 5, United States Code, and the regulatory provisions of Title 5, Code of Federal Regulations.

#### 1.4 **Definitions.**

A. Administrative Leave. An excused absence from duty without charge to leave or loss of pay.

B. Adverse Action. For purposes of this chapter, a personnel action taken by management, appealable to the Merit Systems Protection Board (MSPB), to effect an employee's removal, suspension for more than 14 days, furlough without pay for 30 days or less, or reduction in grade or pay.

C. Day. A calendar day (except where otherwise specified).

D. Deciding Official. A Department supervisor or manager who makes a decision on a proposed adverse action or disciplinary action.

E. Disciplinary Action. For purposes of this chapter, an action taken by management, not appealable to the MSPB (i.e., written reprimand; suspension for 14 days or less) to address employee misconduct.

F. Furlough. The placement of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.

G. Grade. A level of classification under a position classification system.

H. Indefinite Suspension. The placement of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. 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 which may include the completion of any subsequent administrative action.

I. Pay. The rate of basic pay fixed by law or administrative action for the position held by an employee.

J. Preponderance of the Evidence. That degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as sufficient to find that a contested fact is more likely to be true than untrue.

K. Proposing Official. A Department supervisor or manager who proposes an adverse or disciplinary action.

L. Removal. The involuntary separation of an employee from employment with the Department and Federal service, except when effected due to a reduction-in-force or the expiration of an appointment.

M. Suspension. The involuntary placement of an employee in a temporary non-duty, non-pay status for disciplinary reasons.

## 1.5 **Responsibilities.**

### A. Heads of Bureaus and Offices are Responsible for:

- (1) Implementing, supporting and providing oversight for the effective management of employee conduct and discipline;
- (2) Communicating information to the workforce regarding conduct requirements and disciplinary parameters;
- (3) Delegating appropriate authority, establishing roles/responsibilities for policy implementation within the bureau/office, and ensuring that applicable training is provided for supervisors to properly exercise their disciplinary responsibilities;
- (4) Ensuring adherence to the policy and procedural requirements of this chapter, as well as the applicable provisions of established collective bargaining agreements; and
- (5) Providing and implementing bureau/office-wide guidance and instructions other than those outlined in this chapter, as appropriate.

### B. Director, Office of Human Resources is Responsible for:

- (1) Developing and issuing Departmental policy and guidance regarding employee conduct and discipline;
- (2) Monitoring and evaluating the administration of discipline throughout the Department, and revising the disciplinary policy and procedures as appropriate;

(3) Providing advice and assistance to bureaus/offices on the provisions of this chapter (as well as related laws, rules and regulations) and on managing employee conduct and discipline;

(4) Establishing and implementing reporting requirements for actions taken under this chapter, as well as complying with reporting requirements established by OPM; and

(5) Establishing overall parameters for Department-wide conduct/discipline training and coordinating the availability of related training opportunities.

C. Servicing Human Resources Offices (HRO) are Responsible for:

(1) Advising supervisors on employee conduct issues and disciplinary options (including procedural/regulatory parameters);

(2) Drafting or reviewing all disciplinary notices prior to issuance and applicable case files, to ensure reasonableness of penalty and statutory/regulatory compliance;

(3) Advising employees and supervisors of their procedural rights and responsibilities relative to this chapter (and applicable laws, regulations and negotiated agreements);

(4) Consulting for legal sufficiency with the Office of the Solicitor on adverse action proposals and decisions, and providing technical assistance to the Office of the Solicitor on actions taken under this chapter;

(5) Maintaining disciplinary and adverse action files and an information system for tracking and periodically reporting the actions effected; and

(6) Providing operational training support to ensure the workforce is sufficiently aware of the provisions of this chapter.

D. Office of the Solicitor is Responsible for:

(1) Providing reviews for legal sufficiency and overall appropriateness of adverse actions being considered, proposed, or taken under this chapter;

(2) Representing the Department during settlement negotiations, MSPB appeals, arbitrations and other activities related to the administrative and federal personnel litigation process; in accordance with established Departmental policy, coordinating settlements of actions taken under this chapter which impose a financial obligation on the Department; and

(3) Reviewing and providing input on conduct/discipline training and related instructional guidance for Department supervisors and employees.

E. Supervisors are Responsible for:

- (1) Establishing and maintaining a safe, productive, supportive and well-ordered work environment;
- (2) Providing a work environment free of illegal discrimination;
- (3) Advising employees regarding assigned duties and conduct expectations and observing employee performance and conduct to ensure compliance with the standards of ethical conduct and other established work requirements;
- (4) Promptly investigating and documenting circumstances related to incidents of employee misconduct;
- (5) Consulting with the servicing HRO regarding employee misconduct and initiating appropriate, timely and relatively consistent corrective action as warranted; and
- (6) Recognizing and complying with the requirements of this chapter and the applicable provisions of established collective bargaining agreements.

F. Employees are Responsible for:

- (1) Having a familiarity with Federal and Departmental standards of ethical conduct, complying with all established conduct and performance requirements, and requesting clarification if necessary;
- (2) Reporting incidents of waste, fraud, abuse, corruption and other misconduct to appropriate authorities; and
- (3) Cooperating in official investigations and furnishing testimony.

## 1.6 **Policy.**

A. General. Employees of the Department are expected to demonstrate high standards of integrity, both on and off the job, abiding by the Department's conduct regulations (43 CFR Part 20) and other Federal and Departmental laws, rules and regulations. When established standards of conduct are violated, or the rules of the workplace are disregarded, corrective action is warranted to motivate employees to conform to acceptable behavioral standards and prevent prohibited and/or unsafe activities. Such corrective actions, when taken under this chapter, should comport with applicable laws and regulations, should be administered with relative consistency and should be taken for such cause as will promote the efficiency of the service.

B. Standard for Taking Action. Management must be able to show that the actions taken under this chapter promote the efficiency of the service. To demonstrate this, the written notices of proposal and decision must clearly specify the charge(s) or reason(s) upon which the action is based, be able to prove the specific basis for its action by a preponderance of the evidence, be able to show the connection ("nexus") between the charge(s) and promotion of the

efficiency of the service, and be able to establish the reasonableness of the action taken under the circumstances. In taking a corrective action against an appointee in the SES, management's options are limited to a written reprimand or an adverse action covered by this chapter (i.e., suspension for more than 14 days; removal from the Federal service); management may take an adverse action against an SES employee only for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

C. Use and Choice of Discipline. Discipline should be imposed to correct improper employee conduct and to maintain order, morale and workplace safety throughout the workforce. After determining that misconduct occurred and that corrective action is warranted, discipline should be initiated as soon as practicable after the misconduct which prompted it and effected on a progressive and equitable basis as much as possible. Progressive discipline provides that in dealing with an instance of employee misconduct, the responsible management official (often the first-level supervisor) should select the minimum disciplinary/adverse action most likely to correct the specific behavioral problem, with penalties selected at an escalating level for subsequent (but not necessarily identical) offenses, when appropriate. Management officials must exercise reasonable judgment and consider all relevant factors, both mitigating and aggravating (as reflected in the guidance found at Appendix A), in determining the most appropriate corrective action for each situation. As a guide for considering disciplinary options, the Department's *Table of Offenses and Penalties* is included as Appendix B to this chapter. This *Table* does not mandate the use of specific penalties in most disciplinary situations. Supervisors/managers retain full authority, except in limited circumstances (i.e., discipline prescribed by statute or the MSPB), to set penalties as they deem appropriate, based on the particular circumstances and specifications of the offense. Consultation and close coordination with the servicing HRO should ensure that a particular penalty is proportional to the offense and employees who commit similar offenses are treated with relative consistency.

D. Delegations of Authority. Each bureau will determine the level of supervisory authority required for taking actions covered by this chapter. For actions that require the issuance of a proposal and a decision (e.g., suspensions; removals; reductions in grade/pay), ordinarily the same supervisory/management official should not serve as both the proposing and deciding official on the action. Generally, the decision on a proposed action should be made by a management official at a higher organizational level than the proposing official; if there is no higher-level official within the Bureau/Office or if it is not feasible to use the higher-level official, another management official within the Department may be delegated the decision-making authority (in such exceptional situations, determinations regarding the delegation of decision-making authority must be approved by the Bureau/Office head, with the concurrence of the Director, OHR). Bureau officials, managers and supervisors who are delegated authority for implementing the provisions of this chapter and managing the workforce are accountable for complying with and properly administering all controlling laws, rules, policies, regulations and negotiated agreements pertaining to employee conduct and discipline.

## 1.7 **Procedures.**

A. General. Taking a corrective action against an employee is appropriate only when the employee has engaged in identifiable misconduct adversely affecting the efficiency of the

service. Before initiating such action, management should conduct a thorough inquiry into any apparent offense (collecting information to the greatest extent practicable directly from the subject employee) to ensure the objective consideration of all relevant facts and aspects of the situation. Ordinarily, this inquiry will be conducted by the appropriate line supervisor, with guidance from the servicing HRO. However, certain situations (particularly those involving possible criminal activity) warrant an investigation by the Office of Inspector General and/or internal Bureau law enforcement/criminal investigation offices. Once it is established that an employee engaged in misconduct necessitating corrective action, a supervisor or other management official (using the guidance at Appendices A and B, and in consultation with the servicing HRO) must determine the action/penalty required to deter the recurrence of the unacceptable behavior.

Minor misconduct may be corrected if the supervisor informally counsels the employee about the problem promptly after the first instance. The supervisor also may rely on notices of warning/admonishment to convince the employee to change the undesirable behavior. These actions are less severe than the disciplinary and adverse actions described below, are less subject to review by third parties, and do not become part of the employee's permanent official employment record. Notices of warning/admonishment document the employee's misconduct, place the employee on notice regarding the behavior expected by management, and advise the employee that more serious corrective action (e.g., reprimand; suspension; removal) will result if the unacceptable behavior is not corrected. The use of such corrective actions does not constitute a "prior penalty" for disciplinary purposes, as alluded to in Appendix B, to enhance the severity of penalty for a subsequent offense; however, such corrective actions may be viewed as "prior notice" (in consideration of factor 9, Appendix A).

B. Disciplinary Action.

(1) Written Reprimand

(a) This is a written notice issued to an employee by an authorized management official (usually the immediate or higher-level supervisor) when the employee's conduct warrants a corrective action more serious than a counseling or warning but without involving a loss of pay. Unlike a notice of counseling, warning or admonishment, a written reprimand is a formal penalty for disciplinary purposes (under Appendix B).

(b) The servicing HRO will assist management in the preparation and issuance of the reprimand, which should specify: the reason(s) prompting the action; the period of time a copy of the reprimand will be maintained in the employee's Official Personnel Folder (OPF); for progressive disciplinary purposes, the possibility of taking more serious action for any subsequent offenses(s); and, the employee's right to file a grievance in accordance with the applicable administrative/negotiated grievance procedures.

(c) A copy of the reprimand will be filed on the temporary side of the employee's OPF for a period not-to-exceed two years or where applicable, the time specified by an established negotiated agreement; the time period will be appropriately recorded and tracked by the servicing HRO. The employee's supervisor may elect to withdraw the reprimand from the



OPF earlier than the period specified, in which case the supervisor will inform the employee, after consulting with the servicing HRO.

(2) Suspension (14 days or less)

(a) A disciplinary suspension is a management directed absence from work for an employee (excluding all SES appointees), with forfeiture of pay for the time specified. Since suspensions result in a loss of productivity and represent a financial loss to employees, they should be imposed only after lesser corrective actions have proven ineffective in improving employee behavior or when an employee has engaged in serious misconduct.

(b) An employee against whom a suspension of 14 days or less is initiated is entitled to receive a written proposal stating the specific reason(s) for the proposed action (including aggravating/mitigating factors referenced in Appendix A) in sufficient detail to enable the employee to answer the charge(s). The notice of proposed suspension (issued by the immediate supervisor or other management official, with the advice and assistance of the servicing HRO), shall state the proposed length of the suspension, as well as the employee's entitlement to: review the material relied upon by management in proposing the suspension (upon request); 7 days to answer orally and/or in writing the proposal (and furnish affidavits and other documentary evidence) before a decision is made; representation by an attorney or other representative; and a written decision (explaining the specific reasons for that decision) at the earliest practicable date. The notice also shall identify the name of the deciding official (generally, a higher-level manager) and, if different, the name of the official designated to receive the oral and/or written answer (if such an official is designated, that individual may provide a recommendation to the deciding official regarding the disposition of the proposed action). After issuing the notice of proposed suspension, management can amend the proposal notice (or cancel and reissue it at a later date) to allow for the consideration of any additional misconduct which becomes known to management prior to the issuance of a decision.

(c) The employee's representative must be designated, in writing, to the deciding official prior to any oral and/or written answer. Employees serving in a legal capacity within the Department (e.g., attorneys with the Office of the Solicitor and Office of Hearings and Appeals) may not represent another Department employee with regard to actions taken under this chapter. Additionally, Department management may disallow, as an employee's representative, an individual whose activities as a representative could cause a conflict of interest or of position, or an employee of the Department whose release from his/her official position would result in unreasonable costs or whose priority work assignments preclude his/her release for representational duties.

(d) The employee's answer(s) to the proposed suspension should be provided to the deciding official (or designee) within 7 days following the date the employee receives the proposal notice. The employee is entitled to a reasonable amount of official time (normally a matter of hours, not days) to prepare and present an oral and/or written answer. If the employee wishes additional time to answer, the employee (or designated representative) must submit an extension request, in writing, to the deciding official (or designee) before the expiration of the answer period, stating the reason for the request and the amount of additional

time needed. The deciding official shall respond to the employee, in writing, either granting or denying (fully or partially) the time extension request.

(e) The right to answer orally does not include the right to a formal hearing and the appearance of witnesses will not be permitted. Although oral replies are generally conducted in a face-to-face meeting, when this is impractical, audio or video conferencing may be used. When practicable, a representative from the servicing HRO should be present during the presentation of the oral answer, to assist and provide procedural guidance to the deciding official (or designee) and employee (or representative). If the employee makes an oral answer, the deciding official (or designee), shall prepare a written summary for the record (no verbatim transcript of the oral answer is required). A draft of the summary should be provided to the employee (or representative) for the opportunity to comment before it is made part of the record. The final summary of the oral answer and any comment made by the employee (or representative) regarding the summary shall become part of the official disciplinary case file maintained by the servicing HRO.

(f) The deciding official will obtain (from the servicing HRO) and review a copy of the entire case file, which should contain all the evidence relied upon by the proposing official (including the proposal notice and all supporting documents), before making a decision on the proposed suspension. Upon request, the employee also may review this file, which should contain only the material relied upon to support the action; information that cannot be disclosed to the employee shall not be used as a basis for taking any action.

(g) The deciding official shall issue a written decision at the earliest practicable date after receipt of the employee's answer(s), or following expiration of the answer period. The notice of decision must be delivered to the employee (or representative) at or before the time any action is to be effected (or in accordance with applicable provisions of any negotiated agreement). The servicing HRO will assist the deciding official in making the appropriate decision and preparing and issuing the decision notice. In arriving at a decision, the deciding official should consider only the information, evidence and communication available to the employee for comment or answer throughout the disciplinary process, as well as the employee's answer(s), and use only the reasons which were included in the proposal notice to support the decision. The deciding official may seek additional information to corroborate/refute any information previously obtained during the process; if considered, the deciding official should make such additional information available to the employee for comment prior to making a decision.

(h) The notice of decision should indicate: the specific action decided upon (and applicable effective dates); the charge(s) and specification(s) in the proposal notice which were/were not sustained; the consideration given to the employee's answer(s), if any, and to any mitigating and aggravating factors; for progressive disciplinary purposes, the possibility of taking more serious action for any subsequent offenses(s); and, the employee's right to file a grievance in accordance with the applicable administrative/negotiated grievance procedures.

C. Adverse Action.

(1) Most adverse actions taken under this chapter (i.e., removal for cause; suspension for indefinite period/more than 14 days; reduction in grade or pay) are based on instances of egregious and/or repeated employee misconduct (exceptions include furlough for 30 days or less and removal for medical inability to perform the duties of the position). Employees are entitled to receive advance written notice of at least 30 days before an action covered by this chapter may be effected, except for the following situations:

(a) *Emergency furlough.* The requirements for both an advance written notice and an employee opportunity to answer are waived for furloughs due to unforeseeable circumstances, such as sudden breakdowns in equipment, a lapse of appropriations, acts of God, or sudden emergencies requiring immediate curtailment of activities. Circumstances must be truly unforeseen, and of such a nature that they do not reasonably allow for time to prepare a proposal to take action or to receive an employee's answer.

(b) *Crime provision.* Management may shorten the advance notice period when there is reasonable cause to believe an employee has committed a crime (either on or off the job) for which a sentence of imprisonment may be imposed. The shortened notice period must still be at least 7 days. When circumstances require that the employee be kept away from the worksite during this shortened notice period, management may place the employee in an administrative leave status for such time as is necessary to decide and effect the adverse action. Generally, evidence that meets the requirements for a shortened notice period also will support an adverse action to *indefinitely* suspend an employee pending resolution of the criminal charges or completion of a subsequent administrative action. An employee who has been arrested with or without a warrant and held for further legal action by a magistrate court or indicted by a grand jury for a serious crime should be indefinitely suspended without pay pending the outcome of the judicial process. The consideration of any adverse action prompted by an employee's alleged criminal conduct must be closely coordinated with the Office of the Solicitor.

(2) An employee against whom an adverse action is initiated is entitled to receive a written proposal (normally with 30-days advance notice), stating the specific action proposed and the reason(s) for the proposed action (including any aggravating and/or mitigating factors referenced in Appendix A) in sufficient detail to enable the employee to answer the charge(s). The notice of proposed adverse action (issued by the immediate supervisor or other management official, with the advice and assistance of the servicing HRO, and after a legal sufficiency review by the Office of the Solicitor), additionally shall reference that the employee may: review the material relied upon by management in proposing the suspension; have 14 days (and a reasonable amount of official time) to answer orally and/or in writing the proposal (and furnish affidavits and other documentary evidence) for consideration before a decision is made; be represented by an attorney or other representative; and receive a written decision (explaining the specific reasons for that decision) at the earliest practicable date. The notice also shall identify the name of the deciding official (generally, a higher-level manager) and, if different, the name of the official designated to receive the oral and/or written answer (if such an official is designated, that individual may provide a recommendation to the deciding official regarding the disposition of the proposed action). After issuing the notice of proposed adverse action, management can amend the proposal notice (or cancel and reissue it at a later date) to allow for

the consideration of any additional misconduct which becomes known to management prior to the issuance of a decision.

(a) When some but not all employees in a given competitive level are being furloughed, the notice of proposal shall state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough.

(b) Ordinarily, the employee shall remain in an active duty status during the advance notice period, and the proposal notice should so state. However, in rare instances, the proposing official may determine that the employee's presence at the workplace may be injurious to the employee or to others, may result in loss of or damage to Government property, or may otherwise jeopardize legitimate Government interests. In such cases, management (in consultation with the servicing HRO and the Office of the Solicitor) may assign the employee to other duties, allow the employee to take leave (or place the employee in an appropriate leave status if the employee is absent from the workplace), curtail the notice period (using the crime provision), or place the employee in an administrative leave status for such time as is necessary to make a decision and effect an action. The placement of an employee on administrative leave does not constitute an adverse action, but should only be done in the most exceptional situations (i.e., cases involving proposed removals or indefinite suspensions), when all other options are considered imprudent. Only bureau/office heads, their deputies, or the Director, OHR, may authorize the placement of an employee on administrative leave for an extended period of time (i.e., beyond 45 days); this authority may not be re-delegated. Bureau/Office heads (or their deputies) must coordinate decisions regarding the placement/continuation of an employee in an administrative leave status for more than 45 days with the Director, OHR, who will review such decisions for the Department and may rescind them if considered inappropriate.

(c) Management must make a reasonable and diligent effort to ensure that the employee receives the notice of proposed adverse action in a timely basis. Personal delivery of the advance notice to the employee, allowing for the employee's signed acknowledgment of receipt, is the most desirable method of delivery. If the notice cannot be personally delivered to the employee, the servicing HRO will determine the appropriate alternative delivery method.

(3) The employee's representative must be designated, in writing, to the deciding official prior to any oral and/or written answer. Employees serving in a legal capacity within the Department (e.g., attorneys with the Office of the Solicitor and Office of Hearings and Appeals) may not represent another Department employee with regard to actions taken under this chapter. Additionally, Department management may disallow, as an employee's representative, an individual whose activities as a representative could cause a conflict of interest or of position, or an employee of the Department whose release from his/her official position would result in unreasonable costs or whose priority work assignments preclude his/her release.

(4) The employee's answer(s) to the proposed adverse action should be provided to the deciding official (or designee) within 14 days following the date the employee receives the proposal notice. An employee in an active duty status is entitled to a reasonable amount of official time (normally a matter of hours, not days) to review the material relied on to support the proposed action and to prepare and present an oral and/or written answer; the employee must

request and obtain supervisory approval for the use of official time, in advance. If the employee wishes additional time to answer, the employee (or designated representative) must submit an extension request, in writing, to the deciding official (or designee) before the expiration of the answer period, stating the reason for the request and the amount of additional time needed. The deciding official shall respond to the employee, in writing, either granting or denying (fully or partially) the time extension request.

(5) The right to answer orally does not include the right to a formal hearing and the appearance of witnesses will not be permitted. Although oral replies are generally conducted in a face-to-face meeting, when this is impractical, audio or video conferencing may be used. When practicable, a representative from the servicing HRO should be present during the presentation of the oral answer, to assist and provide procedural guidance to the deciding official (or designee) and employee (or representative). If the employee makes an oral answer, the deciding official (or designee), shall prepare a written summary for the record (no verbatim transcript of the oral answer meeting is required). A draft of the summary should be provided to the employee (or representative) for the opportunity to comment before it is made part of the record. The final summary of the oral answer and any comment made by the employee (or representative) regarding the summary shall become part of the official adverse action case file maintained by the servicing HRO.

(6) The deciding official will obtain (from the servicing HRO) and review a copy of the entire case file, which should contain all the evidence relied upon by the proposing official (including the proposal notice and all supporting documents) before making a decision on the proposed adverse action. Upon request, the employee also may review this file, which should contain only the material relied upon to support the action; information that cannot be disclosed to the employee shall not be used as a basis for taking any action.

(7) The deciding official shall issue a written decision at the earliest practicable date after receipt of the employee's answer(s), or following expiration of the 14-day answer period. The notice of decision must be delivered to the employee (or representative) at or before the time any action is to be effected (or in accordance with applicable provisions of any negotiated agreement). The servicing HRO will assist the deciding official in making the appropriate decision and preparing and issuing the decision notice. In arriving at a decision, the deciding official should consider only the information, evidence and communication available to the employee for comment or answer throughout the adverse action process, as well as the employee's answer(s), and use only the reasons which were included in the proposal notice to support the decision. The deciding official may seek additional information to corroborate/refute any information previously obtained during the process.

(8) The notice of decision should indicate: the specific action decided upon (and applicable effective dates); the charge(s) and specification(s) in the proposal notice which were/were not sustained; the consideration given to the employee's answer(s), if any, and to any mitigating and aggravating factors; for progressive disciplinary purposes, the possibility of taking more serious action for any subsequent offenses(s); and, the employee's right to either file an appeal to MSPB (include a copy of the Board's appeal form/regulations and the address of the

appropriate Board office) or file a grievance in accordance with any applicable negotiated agreement.

1.8 **Records.** The servicing HRO shall maintain confidential disciplinary/adverse action case files; each file shall contain copies of the notice of proposed action, any written answer, a summary of any oral answer, the notice of decision (including the reasons for it), any order effecting the action, and any supporting material (e.g., witness statements; affidavits; documents; investigative reports). Disciplinary/adverse action files must be provided to various parties (e.g., the MSPB; the affected employee and/or designated representative; a grievance examiner), but need only be furnished in response to a specific request.

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## APPENDIX A

### PENALTY DETERMINATION

After establishing a sufficient basis for taking action (i.e., a preponderance of the evidence to support the charge(s); a nexus between the offense(s) and the employee's job or the agency's mission), the supervisor/manager, in consultation with the servicing HRO, must determine the appropriate penalty for the employee's misconduct. At this point, whether proposing or deciding an action, it is prudent to consider all remedies (disciplinary or non-disciplinary; formal or informal) that may effectively resolve the identified problem.

In selecting an appropriate penalty for a specific offense, responsible judgment must be exercised so that an employee will not be penalized out of proportion to the offense. Management should take into account all of the specific circumstances of the case and should ensure, to the extent possible, that employees who commit similar offenses are treated consistently. However, while equitable and uniform treatment of employees who commit similar offenses (under "like" circumstances) is preferable when possible, mechanistic consistency is not recommended or required. In *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), the MSPB identified a number of factors -- generally referred to as the "Douglas Factors" -- which it specified were not exhaustive, but were generally recognized as relevant in determining the appropriateness of a penalty. A reasonable and conscientious application of these factors (listed below, with guidance based on MSPB case-law) could result in employees receiving different penalties, even though they may have committed similar offenses.

(1) *Nature and Seriousness of Offense* – 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.

- Mitigating factors and the employee's potential for rehabilitation must be balanced against the seriousness of the offense and its effect on the duties of the position and the mission of the organization.
- Serious misconduct can outweigh an employee's length of service and overall good work record.

- If the misconduct is serious enough, removal might be an appropriate penalty for a first offense, and on appeal, a third party might overlook a questionable application of other *Douglas* factors (e.g. failure to properly notify the employee of consideration of past record; disparate penalties).

(2) *Employee's Job* – the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.

- Persons in positions of trust can be held to higher standards; positions of trust include jobs with fiduciary, law enforcement and public safety or health responsibilities.
- Loss of confidence in an employee's ability to function as a supervisor supports removal from a supervisory position.
- If an employee has performed well in non-supervisory jobs, but fails as a supervisor, demotion is often viewed as more appropriate than removal from federal service.

(3) *Disciplinary Record* – the employee's past disciplinary record.

- The MSPB may review independently prior disciplinary actions pending in grievance proceedings when reviewing termination and other serious disciplinary actions.
- An employee's record of past discipline is used to enhance the penalty; it may not be used as proof of the current misconduct.
- Any past offense may form the basis for proposing a penalty from the next higher range of penalties for a subsequent offense; the offenses need not be identical or similar.
- Prior disciplinary actions may be cited even if they involved offenses unrelated to the current charges, although past discipline that occurred years before the current action and that involved unrelated offenses likely will be discounted on appeal.
- Management may not cite disciplinary actions that have expired in accordance with agency regulations or a collective bargaining agreement.
- An employee may not challenge the merits of prior disciplinary actions if the employee was informed of the actions in writing, the actions are a matter of record, and the employee had an opportunity to dispute the actions before a higher authority (if such actions were reviewed by a higher authority, they must have been upheld).
- Management's intent to consider the past disciplinary record must be stated in the proposal notice.

(4) *Work Record* – the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.

- When the offense involves supervisory misconduct, the length of service as a supervisor is more important than total service with the agency.
- When official records concerning an employee's performance (e.g. written performance appraisals) are contradicted by a manager's statements in the notice of decision or in testimony, the official records will be judged more reliable.
- Disciplinary actions or additional misconduct occurring after the issuance of the adverse action proposal may not be cited as a past disciplinary record, but may be used to show an overall poor work record.

- Positive actions by management after learning of an employee's misconduct (e.g. promoting the employee; allowing the employee to perform his/her duties for an extended period of time) may indicate that the employee's overall work record outweighs or diminishes the seriousness of the offense.

(5) *Effect on Future Performance* – 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.

- Loss of trust in the employee's ability to perform assigned duties in the future may be used to enhance the penalty.
- Offenses directly related to an employee's duties (e.g., falsification of the same documents the employee has responsibility to review) raise legitimate concerns about his/her ability to continue to perform those duties.
- Offenses inconsistent with an employee's supervisory responsibilities call into question his ability to function as a supervisor in the future.

(6) *Consistency with Other Penalties* – consistency of the penalty with those imposed upon other employees for the same or similar offenses.

- Management may not knowingly treat similarly situated employees differently when setting disciplinary penalties; to be similarly situated, the comparison employees must work in the same unit for the same supervisor. When an employee identifies a difference in penalties for the same offense, management may need to present evidence supporting the difference.
- There is no requirement for management to be absolutely consistent in its penalty determinations. The prior disciplinary and work records of the comparison employees may justify a difference, and the underlying facts in each case might warrant different penalties.
- When management has an established policy or practice to impose a particular penalty for an offense, it cannot begin to use a harsher penalty without giving prior notice to employees.

(7) *Consistency with Table of Penalties* – consistency of the penalty with any applicable agency table of penalties.

- Management's departure from the agency table of penalties may be permissible; it should not apply the table of penalties so rigidly as to ignore other *Douglas* factors.
- Management may take a more severe action than suggested in the table of penalties for a first offense if the employee has a record of prior, unrelated offenses.

(8) *Notoriety and Impact* – the notoriety of the offense or its impact upon the reputation of the Agency.

- Publicity or even the possibility of publicity that could have a negative impact on the reputation of the agency is a factor that may be considered to enhance a penalty.



(9) *Clarity of Notice* – 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.

- While lack of notice of the rules to be followed can be a mitigating factor, management is under no obligation to warn employees about behavior the employees should know is improper.
- Supervisors' ignoring or condoning certain behavior can indicate lack of notice.
- Training on agency policies constitutes notice of expected behavior.
- Prior misconduct for which the employee was counseled, even though the employee was not formally disciplined (or was formally reprimanded, but the reprimand is no longer in effect), can be cited to show an employee was on notice of the rules to be followed.

(10) *Potential for Rehabilitation* – potential for the employee's rehabilitation.

- An employee who admits misconduct and shows remorse displays potential for rehabilitation, while an employee who rationalizes his/her wrongdoing, fails to take responsibility or doesn't show an understanding of why his/her behavior was wrong is not a good candidate for rehabilitation.
- Lying during an investigation may be viewed as a lack of potential for rehabilitation.
- An employee who ceases misconduct after being warned may show potential for rehabilitation; however, an employee who shows improvement after receiving a notice of proposed adverse action is not particularly convincing.
- Attending meetings with an EAP counselor to discuss personal problems may indicate potential for rehabilitation.

(11) *Mitigating Circumstances* – 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.

- Emotional problems and stress may be mitigating factors, but there must be some evidence showing the problems contributed to the misconduct.
- Stress generally should not be viewed as a mitigating factor when the misconduct involves illegal drug use.
- Job tension, although not a medical problem, can be a mitigating factor.
- Bad faith on the part of agency management (e.g., evidence that management set out to "get rid of" the employee) can be a factor used to reduce the penalty.
- Evidence that the deciding official was predisposed against the employee is viewed as a mitigating factor by a third party.

(12) *Availability of Alternative Sanctions* – the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

- Prior warnings and reprimands indicate that a penalty less than removal will not deter the employee from similar misconduct in the future.
- A penalty designed primarily for its value as an example or warning to other employees likely will not be upheld upon review, as third parties generally do not accept this as a

valid basis for penalty selection. A penalty can be used to deter future misconduct by other employees, but this objective does not warrant overlooking other relevant *Douglas* factors.

- Management does not have to prove that the penalty was the least sanction necessary to promote the efficiency of the service or that it considered alternative penalties. However, such a showing provides essential evidence that the deciding official considered the relevant *Douglas* factors and that the penalty is reasonable.

Not all of these factors will be pertinent in every case. Frequently, some of the pertinent factors will weigh in the employee's favor while others may not (or even constitute aggravating factors). Selection of an appropriate penalty must involve a responsible balancing of the relevant factors in the specific case, and in reviewing penalty selection, a third party will determine whether management considered all the relevant factors and exercised its discretion within tolerable limits of reasonableness.

Management need not demonstrate that it considered all potential mitigating or aggravating factors before selecting a penalty, nor is it required to specifically show how each *Douglas* factor applies to each case. Even though there is no absolute requirement to do so, it is advisable for management to specifically state in proposal/decision notices what factors it considered in setting the penalty, to avoid concerns that relevant issues were not addressed. Therefore, both proposing and deciding officials should address the *Douglas* factors, as well as any mitigating factors, in terms of their particular relevance to penalty selection.

As a general rule, aggravating factors used by management in its penalty determination (e.g., an employee's poor work record), should be included in the proposal notice so that the employee has a chance to respond to them in the oral and/or written replies. In the notice of decision, the deciding official should reference his/her consideration of the proposing official's *Douglas* factor analysis and the employee's related response(s), before explaining his/her judgment regarding how the relevant factors serve to support or mitigate the proposed penalty.

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## APPENDIX B

### TABLE OF OFFENSES AND PENALTIES

This Table provides a list of common infractions, along with a suggested range of penalties for each; it does not presume to cover all possible offenses, nor does it mandate the use of specific penalties in most disciplinary situations. The range of penalties described in the Table is intended to serve as a guide to discipline, not a rigid standard, and deviations are allowable for a variety of reasons. Greater or lesser penalties than suggested may be imposed as circumstances warrant, and based on a consideration of mitigating and aggravating factors. Management officials must exercise reasonable judgment and consider all relevant factors (as reflected in the guidance found at Appendix A) in determining the most appropriate corrective action for each situation. Any penalty determination outside the suggested range should be based upon a reasonable consideration of the factors described in Appendix A, and the rationale documented in the decision notice.

The use of this Table as a guide will help to ensure appropriateness of penalty in relation to the charge(s), as well as relative consistency in discipline throughout the Department. The fact that a particular offense is not listed in the Table does not mean that the employee cannot be charged with that offense. In such instances, a reasonable penalty can be determined (with the assistance of the servicing HRO) by a comparison to those offenses listed in the Table.

The Table lists only disciplinary and adverse actions which become a matter of record in the employee's Official Personnel Folder; it does not mention oral warnings, counseling notices, and other corrective actions which may be more appropriate for correcting minor offenses. The *First Offense* column, therefore, refers to the first offense for which a disciplinary/adverse action is taken, although it may not be the first time the employee engaged in misconduct.

Progressively stronger corrective actions should be taken if an employee repeatedly engages in misconduct. When an employee receives corrective action for an offense which falls under one range of penalties, and later commits a different offense under the same or another category of offense, the latter is considered a second offense for progressive disciplinary purposes. For example, if an employee is charged with absence without leave (AWOL) and is issued an official reprimand (first offense), then is later charged with insubordination for subsequent misconduct, the appropriate penalty range for the insubordination charge is a 30-day suspension to removal (as a second offense).

In addition to a management-initiated corrective action, a Department employee also may be subject to criminal prosecution when there is evidence of a possible statutory violation; such evidence should be provided to the Office of Inspector General, which then may refer the matter to the Department of Justice for further consideration and possible prosecution. If the Department of Justice declines to prosecute, the employee involved in the alleged wrongdoing will then be subject to an appropriate administrative action consistent with the penalties contained in this Table. An employee who has been arrested and held for further legal action by a magistrate court, or indicted by a grand jury for an imprisonable offense, should be indefinitely suspended without pay pending the outcome of the judicial process so as not to prejudice the employee's right to due process in the criminal case. If the employee pleads guilty or is convicted, the Department may then proceed with a removal or other appropriate action; in the absence of a conviction, the indefinite suspension should end, although other administrative action may be taken.

The servicing HRO must be consulted regarding the procedural requirements to follow when taking corrective action. This consultation requirement includes securing advice on the merits of the charge(s) and the appropriateness and Departmental-consistency of the penalty being proposed. In situations involving possible violations of the Department's Standards of Ethical Conduct, supervisors/managers should also consult with a bureau Ethics Counselor and/or an ethics official from the Office of the Solicitor, Office of Ethics.

Nature of Offense (General Misconduct)	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense	Remarks
<p>1. Attendance-related offenses.</p> <p>a. Absence without leave (AWOL). This includes tardiness and unauthorized delay in returning from lunch and break periods, or in returning after leaving work station on official business; unauthorized departure or absence from duty station.</p> <p>b. Failure to follow established leave procedures; failure to provide administratively acceptable documentation to support absence(s).</p> <p>c. Excessive unauthorized absences (e.g., more than 5 consecutive workdays).</p>	<p>Written Reprimand to 5-day suspension</p> <p>Written Reprimand to 5-day suspension</p> <p>5-day suspension to removal</p>	<p>5- to 30-day suspension</p> <p>5- to 30-day suspension</p> <p>14-day suspension to removal</p>	<p>30-day suspension to removal</p> <p>30-day suspension to removal</p> <p>Removal</p>	<p>Refer to 370 DM 630 for leave requirements and guidance. Penalty depends primarily on length and frequency of unacceptable absences. Removal may be appropriate for a first or second offense if the absence is prolonged, the failure to adhere to leave procedures is flagrant, or the circumstances are otherwise particularly burdensome.</p>
<p>2. Improper or unauthorized release of sensitive and administratively-controlled information or employee records; failure to safeguard classified material.</p> <p>a. Information is not compromised and release is unintentional.</p> <p>b. Information is compromised and release is unintentional.</p> <p>c. Release of restricted information is deliberate.</p>	<p>Written Reprimand to 5-day suspension</p> <p>Written Reprimand to 30-day suspension</p> <p>30-day suspension to removal</p>	<p>5- to 30-day suspension</p> <p>30-day suspension to removal</p> <p>Removal</p>	<p>30-day suspension to removal</p> <p>Removal</p>	<p>Refer to 5 USC 552a and 43 CFR 2.52 for Privacy Act provisions regarding the misuse of personal information; also refer to 18 USC 798 and 18 USC 1905. Deliberate disclosures of Privacy Act information must be referred to OIG.</p>
<p>3. Offenses related to substance abuse.</p> <p>a. Alcohol-related</p>	<p>Written Reprimand to</p>	<p>5- to 30-day suspension</p>	<p>30-day suspension to removal</p>	<p>Refer to 43 CFR 20.505, 370 DM 792, Drug-Free Workplace (Zero Tolerance) Policy, DOI Handbook on the Department of</p>

<p>(1) Reporting to or being on duty while “under the influence” of alcohol.</p> <p>(2) Unauthorized use and/or possession of alcoholic beverages while on Government premises (or vehicle).</p> <p>(3) Operating a Government vehicle/aircraft while “under the influence” of alcohol.</p>	<p>5-day suspension</p> <p>Written Reprimand to 30-day suspension</p> <p>30-day suspension to removal</p>	<p>30-day suspension to removal</p> <p>Removal</p> <p>Removal</p>	<p>Removal</p>	<p>Transportation Alcohol and Drug Testing Program, and DOI Federal Railroad Administration Supplement for specific guidance.</p> <p>Actions involving these offenses must assure that counseling or rehabilitative assistance is offered; however, referral to an employee assistance program (EAP) does not preclude the initiation of corrective action.</p>
<p>b. Drug-related</p>	<p>Written Reprimand to removal</p>	<p>Removal</p>	<p>Removal</p>	<p>The illegal drugs currently tested for (as defined in 370 DM 792, Subchapters 9 &amp; 10) include: marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). However, the Department is authorized to test for any illegal drugs as deemed necessary.</p>
<p>(1) Administratively confirmed positive finding under the testing portion of the Drug-Free Workplace Program.</p> <p>(2) Unlawful use, being under the influence or unauthorized possession of drugs, drug paraphernalia or controlled substance while on Government premises or in a duty status.</p>	<p>Written Reprimand to removal</p> <p>Removal</p>	<p>30-day suspension to removal</p>	<p>Removal</p>	<p>However, the Department is authorized to test for any illegal drugs as deemed necessary.</p>
<p>(3) Sale or transfer of an illegal drug or controlled substance while on Government premises (or vehicle).</p> <p>(4) Refusal or failure to provide a required specimen for drug-testing; tampering with a drug-test specimen; refusal to obtain counseling or rehabilitation (after finding of illegal drug use).</p>	<p>14-day suspension to removal</p>	<p>30-day suspension to removal</p>	<p>Removal</p>	<p>When there is possession of illegal drugs - call law enforcement and notify OIG.</p> <p>When the substance is prescribed by an appropriate medical authority and used accordingly, it would not be an offense. 370 DM 792, 10.12 requires mandatory initiation of removal from service for a second offense of failing to refrain from illegal drug use.</p>

<p>4. Discourteous conduct (e.g., rude, insolent, disgraceful acts or remarks) toward supervisors, co-workers, or the public.</p>	<p>Written Reprimand to 5-day suspension</p>	<p>5- to 30-day suspension</p>	<p>30-day suspension to removal</p>	<p>5 USC 7503(a) permits suspension of 14 days or less of any employee with four documented instances of discourteous conduct toward the public within a one-year period as confirmed by an immediate supervisor, or any other pattern of discourteous conduct.</p>
<p>5. Boisterous or disruptive/disorderly conduct; use of insulting, intimidating, abusive or offensive language to or about another employee or supervisor.</p>	<p>Written Reprimand to 5-day suspension</p>	<p>5- to 30-day suspension</p>	<p>30-day suspension to removal</p>	
<p>6. Deliberately making known false, malicious, or unfounded statements against co-workers, supervisors, subordinates, or Government officials which could undermine the authority or damage the reputation of those concerned.</p>	<p>Written Reprimand to removal</p>	<p>14-day suspension to removal</p>	<p>30-day suspension to removal</p>	<p>Refer to 5 USC 2302(b)(8) and (9), prohibiting actions against employees for engaging in protected activities.</p>
<p>7. Threatening statements or behavior (of a physical nature).</p>	<p>14-day suspension to removal</p>	<p>Removal</p>		<p>Charge involving “threat” must consider the listener's reactions, the listener's apprehension of harm, the speaker's intent, any conditional nature of the statements, and the attendant circumstances – refer to <u>Metz v. Dept. of Treasury</u>, 780 F.2d 1001 (Fed. Cir. 1986).</p>
<p>8. Fighting and offenses related to fighting.  a. Engaging in potentially dangerous “horseplay.”</p>	<p>Written Reprimand to 14-day suspension  5- to 30-day suspension</p>	<p>14-day suspension to removal</p>	<p>30-day suspension to removal  Removal</p>	<p>Penalty depends on such factors as provocation, extent of injuries, and whether actions were defensive or offensive in nature.</p>

<p>b. Hitting, pushing, or other acts against another without causing injury.</p> <p>c. Hitting, pushing, or other acts against another causing injury.</p>	<p>30-day suspension to removal</p>	<p>30-day suspension to removal</p> <p>Removal</p>		
<p>9. Misconduct of a sexual nature that includes, but is not limited to, unwelcome sexual remarks, indecent banter, unwanted sexual advances, or unwelcome physical touching.</p>	<p>Written Reprimand to removal</p>	<p>14- day suspension to removal</p>	<p>Removal</p>	<p>Refer to the Department's Zero Tolerance Policy; penalty may include mandatory training. More severe discipline is appropriate for egregious misconduct.</p>
<p>10. Failure to provide equal opportunity regardless of race, color, religion, gender, national origin, age, marital status, political affiliation, sexual orientation or handicapping condition.</p>	<p>Written Reprimand to removal</p>	<p>14-day suspension to removal</p>	<p>Removal</p>	<p>Refer to 5 CFR 2635.101(13).</p>
<p>11. Unauthorized possession/sale (actual or attempted) of Government property or property of others; improper acceptance of Government funds/reimbursement.</p>	<p>Written Reprimand to removal</p>	<p>14-day suspension to removal</p>	<p>30-day suspension to removal</p>	<p>Referral to OIG may be appropriate.</p>
<p>12. Loss, misuse of, damage to or failure to safeguard Government property, records, or information (e.g., willful or negligent damage to Government resources; carelessness in performance of duty resulting in waste of public funds).</p>	<p>Written Reprimand to 14-day suspension</p>	<p>14- to 30-day suspension</p>	<p>30-day suspension to removal</p>	<p>Refer to 5 CFR 2635.101(9). For misuse of Government vehicles, see item 5 under Violations of Statute. Referral to OIG may be appropriate.</p>
<p>13. Failure to comply with safety regulations, instructions or prescribed safe practices; failure to use proper safety equipment; failure to report accident or injury.</p>	<p>Written Reprimand to 14-day suspension</p>	<p>14- to 30-day suspension</p>	<p>30-day suspension to removal</p>	
<p>14. Sleeping or loafing while on duty; inattention to duty; willful idleness while on duty.</p>	<p>Written Reprimand to 5-day suspension</p>	<p>5- to 14-day suspension</p>	<p>14-day suspension to removal</p>	<p>Seriousness of offense is greater if persons/property endangered.</p>
<p>15. Failure or delay in carrying out instructions; failure or carelessness in performing assigned work; failure to</p>	<p>Written Reprimand to</p>	<p>14- to 30-day suspension</p>	<p>30-day suspension to removal</p>	<p>Refer to 370 DM 430 to deal with unacceptable</p>

take/complete officially-directed training.	14-day suspension			performance and performance-based actions.
16. Insubordination; disregard of directive; refusal to comply with a proper order.	5-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.502. An “insubordination” charge requires a showing that the employee <u>deliberately</u> disregarded supervisory directives. In some instances (e.g., refusal to report for an ordered reassignment) removal may be appropriate.
17. Falsification/misrepresentation of official Government records or documents including, but not limited to, time and attendance records, travel vouchers, job applications, performance appraisals, claims for benefits, and other employment-related documents.	Written Reprimand to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.510.  Referral to OIG may be appropriate.
18. Misrepresentation, falsification, exaggeration, concealment or withholding of material fact in connection with an official Government investigation, inquiry or other administrative proceeding.	14-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.510.  Referral to OIG may be appropriate.
19. Refusal to testify or cooperate in connection with any administrative investigation, inquiry, or other proper proceeding (when criminal charges are not anticipated).	5-day suspension to removal	14-day suspension to removal	30-day suspension to removal	
20. Prohibited/improper use of Government property (e.g., office equipment; supplies; facilities; credentials; records; communication resources; cellular phones; official time); misuse of the Internet/electronic mail; using the Internet/electronic mail for unauthorized purposes.	Written Reprimand to 14-day suspension  More severe discipline (including removal) may be appropriate for first/second	14- to 30-day suspension  More severe discipline (including removal) may be appropriate for first/second offense if misconduct	30-day suspension to removal	Refer to 5 CFR 2635.704 and 705(a); 410 DM 2 (Limited Personal Use of Government Personal Property). Consider issue of employee notice regarding agency policy.



	offense if misconduct involves using the Department's Internet/electronic mail system for prohibited reasons, including gambling, accessing/sending prohibited sexually-related material, or other egregious acts of misuse.	involves using the Department's Internet/electronic mail system for prohibited reasons, including gambling, accessing/sending prohibited sexually-related material, or other egregious acts of misuse.		
21. Offenses related to gambling.				Refer to 5 CFR 735.201.
a. Participating in a gambling activity while on Government premises or in a duty status (e.g., office pools).	Written Reprimand to 14-day suspension	14- to 30-day suspension	30-day suspension to removal	
b. Operating, assisting, or promoting a gambling activity while on Government premises or in a duty status or while others involved are in a duty status.	5- to 30-day suspension	30-day suspension to removal	Removal	
22. Indebtedness; failure to meet financial obligations in a proper and timely manner.	Written Reprimand to 5-day suspension	5- to 14-day suspension	14-day suspension to removal	Refer to 5 CFR 2635.809. Actionable if there is a nexus between the failure to pay and the efficiency of the service. Since a suspension may reduce an employee's ability to pay overdue financial obligations, a reprimand may be more appropriate for a first offense (more severe discipline may be appropriate for subsequent offenses). Special care is called for in dealing with

				this type of offense, as it may involve mitigating circumstances.
<p>23. Offenses related to Government travel charge card and/or purchase card.</p> <p>a. Misuse of travel card (i.e., personal/unauthorized purchases) or delinquent in payment.</p> <p>b. Misuse of travel card (i.e., personal/unauthorized purchases) <b>and</b> delinquent in payment.</p> <p>c. Unauthorized use of or failure to appropriately monitor use of Government purchase card; “micro-purchasing” violations.</p>	<p>Written Reprimand to 30-day suspension</p> <p>5- to 30-day suspension</p> <p>Written Reprimand to 30-day suspension</p>	<p>5-day suspension to removal</p> <p>14-day suspension to removal</p> <p>14-day suspension to removal</p>	<p>30-day suspension to removal</p> <p>Removal</p> <p>Removal</p>	<p>Refer to Financial Administration Memorandum (FAM) 2000-010 for further information and instructions on Resolving Delinquencies on Individually-billed Travel Card Accounts, and the Department’s Integrated Charge Card Program Guide (revised 4/2004).</p>
24. Carrying a firearm or other weapon on Government property (or in Government vehicle) unless specifically authorized/required in the performance of duties.	30-day suspension to removal	Removal		Refer to 43 CFR 20.511.
25. Using public office for private gain.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.702.
26. Engaging in unauthorized/prohibited selling, soliciting or fundraising activities.	Written Reprimand to 5-day suspension	5- to 14-day suspension	14-day suspension to removal	Refer to 5 CFR 2635.808.
27. Engaging in prohibited outside employment or private business activities.	Written Reprimand to removal	Removal		Refer to 5 CFR 3501.105.
28. Participating in particular matters while having a conflicting financial interest.	5-day suspension to removal	Removal		<p>Refer to 5 CFR 2635.401.</p> <p>Consult Ethics Office and may require referral to OIG. See 18 USC 208.</p>
29. Participating in matters affecting financial interests of an entity where employment is being sought.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.601.

				Consult Ethics Office and may require referral to OIG. See 18 USC 208.
30. Violating the Department’s Code of Scientific Conduct (or other professional code of conduct that applies to employees required to maintain a professional license or membership).	Written Reprimand to 30-day suspension	30-day suspension to removal	Removal	Refer to 305 DM 3.
31. Violating the Standards of Ethical Conduct not covered elsewhere in this Table.	Written Reprimand to removal	14-day suspension to removal	Removal	Refer to 5 CFR 2635.
32. Unauthorized use of nonpublic information.	Written Reprimand to removal	Removal		Refer to 5 CFR 2635.703.
33. Engaging (on-duty or off-duty) in criminal, infamous, dishonest, or notoriously disgraceful conduct prejudicial to the Government.	5-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.501.
<b>Nature of Offense (Supervisory Misconduct)</b>	<b>Penalty for First Offense</b>	<b>Penalty for Second Offense</b>	<b>Penalty for Third Offense</b>	<b>Remarks</b>
1. Taking, directing others to take, recommending or approving any action which may be considered a “prohibited personnel practice” (e.g., reprisal against an employee for engaging in protected activities; discrimination based on race, color, gender, age, religion, national origin, marital status, political affiliation, sexual orientation or handicapping condition).	5-day suspension to removal	14-day suspension to removal	Removal	Refer to 5 USC 2302, 5 CFR 2635.101(13), and related Department policies. Action may be taken regardless of whether there was an official “finding” of discrimination (or other prohibited personnel practice).
2. Taking reprisal action against an employee for exercising rights provided by the Federal Service Labor-Management Relations Statute.	5- to 30-day suspension	14-day suspension to removal	Removal	Refer to 5 USC, Chapter 71.
3. Neglecting to recommend/take corrective action upon receipt of information regarding the job-related misconduct of a subordinate employee.	Written Reprimand to 30-day suspension	14-day suspension to removal	Removal	

4. Failure to appropriately monitor employee use of Government purchase/travel charge card.	Written Reprimand to 14-day suspension	14-day suspension to removal	Removal	
5. Misconduct of a sexual nature that includes, but is not limited to, unwelcome sexual remarks, indecent comments/jokes, offensive sexual banter, unwanted sexual advances, or unwelcome physical touching.	5-day suspension to removal	14-day suspension to removal	Removal	Refer to the Department's Zero Tolerance Policy; penalty may include mandatory training. More severe discipline is appropriate for egregious misconduct.
6. Influencing or attempting to influence the DOI employment of a relative.	5- to 30-day suspension	14-day suspension to removal	Removal	Refer to 5 USC 3110.
7. Violating, or inducing a subordinate to violate, the Department's Code of Scientific Conduct (or other profession's Code of Ethical Conduct).	5-day suspension to removal	Removal	Removal	Refer to 305 DM 3.
8. Using Government employees in duty status for other than official purposes.	Written Reprimand to removal	14-day suspension to removal	30-day suspension to removal	Refer to 5 CFR 2635.705(b).
<b>Nature of Offense (Violations of Statute)</b>	<b>Penalty for First Offense</b>	<b>Penalty for Second Offense</b>	<b>Penalty for Third Offense</b>	<b>Remarks</b>
1. Engaging in prohibited partisan political activity (e.g., partisan campaigning; soliciting/receiving political contributions).	30-day suspension to removal	Removal		Refer to 5 USC, Sections 7321-7326.
2. Participating in a strike, work stoppage, work slowdown, sick-out, or other similar job action.	30-day suspension to removal	Removal		Refer to 5 USC 7311.
3. Misappropriating/misapplying Government funds; directing, expecting, or rendering services not covered by appropriations.	1- to 30-day suspension	30-day suspension to removal	Removal	Refer to 31 USC 1301, 1341 and 1349.
4. Willfully mutilating or destroying a public record.	Removal			Refer to 18 USC 2071.
5. Willfully using or authorizing the use of a Government vehicle/aircraft for other than official purposes.	30-day suspension to removal	Removal		Refer to 31 USC 1344 and 1349.

6. Engaging in actions against national security.	30-day suspension to removal	Removal		Refer to 5 USC 7532.
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12/22/06 #3738  
Replaces 3/29/06 #3705

Appendix C: No FEAR Act Report – FY 2024 Data

Equal Employment Opportunity Data Posted  
Pursuant to the No FEAR Act:

Department of the Interior (Includes Sub-Level Offices)

For 4th Quarter 2024 for period ending September 30, 2024

Part 1 Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2024 Thru 09-30
	2019	2020	2021	2022	2023	
Number of Complaints Filed	297	278	240	257	264	282
Number of Complainants	293	269	232	249	260	272
Repeat Filers	4	9	8	8	4	10

Part 2 Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2024 Thru 09-30
	2019	2020	2021	2022	2023	
<small>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</small>						
Race	76	72	83	60	76	84
Color	29	28	20	27	31	39
Religion	8	9	12	32	14	14
Reprisal	157	151	152	125	148	157
Sex	103	107	94	79	84	116
PDA	2	3	2	1	1	4
National Origin	32	12	34	25	27	36
Equal Pay Act	1	1	2	4	3	0
Age	113	101	76	77	102	96
Disability	87	103	76	84	108	108
Genetics	2	1	0	3	5	1
Non-EEO	16	16	8	6	5	10

Part 3 Complaints By Issue	Comparative Data					
<p>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</p> <p>Starting in FY2022, issues marked with: * are reported under Other Terms / Conditions of Employment. ** are reported under Other Disciplinary Actions.</p> <p>The reporting of Reassignment Claims has been changed from two separate Denied and Directed rows to one combined row: the first row now accommodates both "Reassignment: Denied/Directed" and the second row has been deprecated for the current FY starting in FY2023.</p>	Previous Fiscal Year Data					2024 Thru 09-30
	2019	2020	2021	2022	2023	
Appointment/Hire	35	37	40	30	11	18
Assignment of Duties*	38	21	26	18	0	0
Awards	7	3	5	2	2	2
Conversion to Full Time/Perm Status*	0	0	0	0	0	0
Disciplinary Action						
Demotion	1	0	1	1	1	0
Reprimand**	7	12	9	6	0	0
Suspension	8	16	15	14	10	9
Removal	10	22	5	3	4	2
Other Disciplinary Actions**	2	3	9	7	29	28
Other 2**	0	0	0	0	0	0
Duty Hours*	5	5	5	4	0	0
Perf. Eval./ Appraisal	33	32	31	28	25	22
Examination/Test	0	0	5	1	1	1
Harassment						
Non-Sexual	151	126	114	125	142	165
Sexual	8	8	4	2	2	9
Medical Examination	1	2	0	3	3	0
Pay including overtime	6	4	11	10	11	11
Promotion/Non-Selection	23	39	27	35	43	49
Reassignment						
Reassignment: Denied/Directed	3	7	2	3	9	7
Directed	14	6	7	1	0	0
Reasonable Accommodation Disability	22	40	25	28	46	34
Reinstatement*	0	0	0	0	0	0
Religious Accommodation	0	0	0	16	1	0
Retirement*	1	2	2	4	0	0
Sex-Stereotyping	0	0	1	0	1	2
Telework	3	4	3	11	5	5
Termination	22	25	23	23	20	21
Terms/Conditions of Employment*	35	35	26	23	0	0
Time and Attendance	14	21	12	7	18	16
Training	13	13	6	9	12	6
Other Terms/Conditions of Employment*	11	12	12	17	81	83
User Defined - Other 1*	0	0	0	0	0	0
User Defined - Other 2*	0	0	0	0	0	0
User Defined - Other 3*	0	0	0	0	0	0
User Defined - Other 4*	0	0	0	0	0	0











Findings Without Hearing	0		4		21		1		3		2	
Appointment/Hire	0	0	3	75	3	10	0	0	2	67	0	0
Assignment of Duties*	0	0	0	0	4	19	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status*	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand**	0	0	0	0	1	5	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	1	50
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other Disciplinary Actions**	0	0	0	0	0	0	0	0	0	0	0	0
Other 2**	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours*	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval. / Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Sexual	0	0	0	0	2	10	0	0	0	0	0	0
Non-Sexual	0	0	0	0	11	52	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	1	25	1	5	0	0	0	0	0	0
Reassignment												
Reassignment: Denied/Directed	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	5	24	1	100	0	0	1	50
Reinstatement*	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement*	0	0	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	2	10	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment*	0	0	0	0	6	33	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	1	5	0	0	0	0	0	0
Other Terms/Conditions of Employment*	0	0	0	0	1	5	0	0	0	0	0	0
User Defined - Other 1*	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 2*	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3*	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4*	0	0	0	0	0	0	0	0	0	0	0	0

Part 9 Complaints Pending from Previous Fiscal Years By Status	Comparative Data					
	Previous Fiscal Year Data					2024 Thru 09-30
	2019	2020	2021	2022	2023	
Total complaints from previous Fiscal Years	280	272	199	136	156	194
Total Complainants	267	264	191	127	143	182
Number complaints pending						
Investigation	8	3	1	0	0	0
ROI issued, pending Complainant's action	2	1	0	1	15	2
Hearing	256	219	183	112	75	74
Final Agency Action	16	47	14	19	73	117
Appeal with EEOC Office of Federal Operations	44	58	78	65	59	71

Part 10 Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2024 Thru 09-30
	2019	2020	2021	2022	2023	
Pending Complaints Where Investigations Exceed Required Time Frames	9	2	9	2	3	4