



TODAY'S FEDERAL LANDSCAPE: HOW TO EFFECTIVELY DEAL WITH CONDUCT ISSUES

By Rose Gwin

Discipline allows you to maintain an effective and efficient workplace, maintain the morale of employees who obey the rules, and maintain fairness in the workplace.

The goal of disciplinary actions is to correct conduct and modify behavior, not to punish an employee. Although supervisors have the right and the responsibility to discipline employees, we also must ensure that we do so in a fair and reasonable manner. Our primary goal is to avoid conduct problems. We can help assure that by following these three steps to prevent problems.

Step 1: Set the Rules.

- Hours of work and punctuality
- Use of leave
- Use of office property (computers, phones, etc.)
- Use of cars
- Use of government time
- Rules of ethics
- Violence and threats of violence
- Sexual harassment
- Any special rules that apply to the situation (e.g., wearing of uniforms)

Step 2: Monitor Behavior.

Step 3: Take Immediate Low-Level Steps to Address Issues.

- Anticipate problems by recognizing when employees might "get into trouble," and caution them.
- Immediately correct low-level issues with gentle reminders, indirect or direct warnings.



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Our goal is to select the least severe penalty that will achieve the results we're after — a change to the employee's behavior.

It's a good idea to document instances when you have pointed out discrepancies to an employee by giving the employee a record of the conversation and keeping the original document for yourself. Also, keep an informal written record of notes about the incident. (Remember, that these supervisory notes can be subpoenaed or discovered in legal proceedings.) I have always kept a folder for each employee who reported to me with information about performance and, if appropriate, conduct; I told employees I kept such a file and that they were welcome to look at it at any time.

Disciplinary Actions

Disciplinary measures range from informal to formal measures. Our goal is to select the least severe penalty that will achieve the results we're after — a change to the employee's behavior. Progressive discipline means that the least severe penalty to correct the misconduct will be imposed for a first offense, and more serious penalties will be imposed for further offenses. Remember, however, that for serious misconduct, a more severe disciplinary action could be imposed for a first offense. Your agency Table of Offenses and Penalties provides excellent guidance about the seriousness the agency places on specific acts of misconduct and provides guidance about appropriate penalties to address these acts.

To take a formal disciplinary action, you will have to prove four separate, sequential elements:

- 1. Is there a cause for action?**

Management must show that conduct was misconduct. You may discipline employees "for such cause as will promote the efficiency of the service."

- 2. Is formal action appropriate?**

Ask yourself if the employee should have known that the conduct was wrong. If you feel that employee did not know it was wrong or should be given the benefit of the doubt, you take an informal action. If, on the other hand, you feel the employee should have known that the conduct was misconduct, take a formal disciplinary action.

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It is essential that you not single out an employee for discipline that is not consistently enforced. If a rule has not been enforced across the board, start from scratch.

3. Is the penalty justified?

Especially, in cases of serious action, you have to show why you could not have taken a less serious action. Take the least severe penalty that you believe will correct the misconduct.

4. Is there proof that what you're alleging actually happened?

You will probably have to defend your actions at some level — whether to your supervisors, against an administrative grievance or a grievance under a collective bargaining agreement, or before an outside body, such as the Merit Systems Protection Board (MSPB). Be sure you can prove the basis for your disciplinary actions and document both your and your employee's actions.

5. Have you, your colleagues, and your predecessors enforced the rule?

It is essential that you not single out an employee for discipline that is not consistently enforced. If a rule has not been enforced across the board, start from scratch. Reiterate to all employees the rule or policy, preferably in writing; begin consistent enforcement; and take action accordingly. (Ensure that you have your boss's support before taking this step.)

6. Have you talked with your human resources staff about the situation?

It is essential that you not only seek support from your boss, but also seek advice from your employee relations (ER) advisor before proceeding. Make sure that you thoroughly describe the situation and your planned actions.

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Assessment Flowchart

This flowchart will help you assess whether conduct requires disciplinary action.



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Range of Penalties

Oral or written admonishment

- Consult with ER advisor
- Considered informal discipline
- Indicates to employee that change in behavior must occur
- Often the first step in dealing with misconduct
- Consider referring to Employee Assistance Program
- In the case of oral admonishment, complete a memo of record, with copy to employee
- Written admonishment in effect for one year; not filed in official personnel folder

Letter or reprimand

- Prepare letter in consultation with ER advisor
- Considered formal discipline
- Includes instances of misconduct, description of appropriate conduct, and why excuses given by employee were not acceptable
- Warns employee that more severe disciplinary action may follow unless change in behavior
- Copy of letter kept in official personnel file for one to two years
- Advises employee of grievance rights

Suspension of 14 calendar days or less

- Carry out in coordination with ER advisor
- Places employee involuntarily in non-pay, non-duty status
- Includes a notice of proposed action, a reasonable time to reply, and a written decision

Suspension of more than 14 calendar days

- Carry out in coordination with ER advisor
- Appealable to MSPB for competitive service employees

Reduction in grade

- Carry out in coordination with ER advisor
- Rarely used for misconduct; more often for performance
- Appealable to MSPB for competitive service employees

Removal from federal service

- Carry out in coordination with ER advisor
- Workplace equivalent of capital punishment
- Only used after other less serious penalties have failed or after very serious first offenses
- Appealable to MSPB for competitive service employees

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...it is not sufficient to simply use the money Congress appropriates to the agency to do the agency's business. The agency must also follow EVERY restriction contained in the Appropriations Act (and any other law applicable to the agency).

Assessment Flowchart

The Douglas Factors are criteria developed by the MSPB to use in their review of the appropriateness of agency penalties in appeal decisions. You and your ER advisor will always consider these factors in determining the penalty to impose in an employee misconduct case.

1. Consider the nature and seriousness of the act or offense. Was the misconduct related to the employee's duties, position, and responsibilities? Was it deliberate and planned? Was the employee acting out of malice? Was the act frequently repeated?
2. Consider the employee's job level and type of employment. Is it a supervisory role? What is the importance of the position? Management can usually discipline supervisors and higher-graded employees more severely than non-supervisory or lower-level employees.
3. Consider the employee's past disciplinary record. Only consider past formal discipline. If an employee received several oral reprimands but no other disciplinary action, the misconduct is considered a first offense.
4. Consider the employee's past work record. If an employee is a reliable employee with a dependable attendance record, you need to take this into account. For example, you might want to give a long suspension instead of firing for a serious offense.
5. Determine the misconduct's effect on the employee's ability to perform at a satisfactory level. Look at the effect it has on your confidence in the employee's ability to perform his or her assigned duties.
6. The penalty must be consistent with those imposed on other employees. Look at penalties imposed for comparable types of misconduct and with employees who occupy similar types

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It is the agency's (meaning the head of the agency) responsibility to inform its officers and employees of restrictions on the use of federal money. Failure to do so is a clear indication of lack of internal controls, and may lead to violations of law!

of positions. If this factor is not adhered to, employees are likely to claim disparate treatment.

7. The penalty must be consistent with the agency's table of penalties. Use it when choosing appropriate penalties. If your penalty is not consistent with the table of penalties, be prepared to explain why not.
8. Consider the impact on the reputation of the agency. If the act results in public embarrassment for the agency or damage to its reputation, you can impose a harsher penalty.
9. Consider whether the employee had knowledge that s/he was violating rules. Generally, you can impose a more severe penalty if you can show that the employee knew s/he was violating a rule, regulation, or requirement. This is particularly true if the employee had received a previous warning.
10. An employee's remorse and potential for rehabilitation need to be taken into account. Employees who accept responsibility, do not blame others for their misconduct, and offer assurances that their conduct will improve, should receive different penalties than those who do not.
11. Miscellaneous other mitigating circumstances might come into play. For example, an agency's removal of an employee was reduced to a 3-month suspension because the supervisor had taunted and dared the employee to strike him.
12. Consider the potential effectiveness of alternative penalties. Could a lesser penalty have deterred the action in the future?

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Nothing more seriously impacts "the efficiency of the service" than not having employees on the job as planned.

Attendance and Leave Issues

Absenteeism is the most common cause for disciplinary actions.

The basic strategy for dealing with this issue:

- You must learn and apply the rules for annual leave, sick leave, and leave without pay.
- Deny the leave request when it does not conform to the rules.

The most common absenteeism situations you will encounter these:

- Employee does not come to work and does not call
- Employee walks off the job
- Employee abuses sick leave
- Employee abuses annual leave

When an employee does not come to work and does not call, or when someone walks off the job, immediately charge the employee as AWOL. If you later find that the employee was unable to call for some legitimate reason, change the AWOL to the appropriate category. Remember: AWOL is NOT a disciplinary action; it is only a time-keeping charge. However, it now becomes the basis for a disciplinary action. Nothing requires you to discipline for AWOL, but you should follow with some formal discipline. Nothing more seriously impacts "the efficiency of the service" than not having employees on the job as planned. Consult your agency table of penalties, apply the mitigating factors, and take appropriate action.

When you suspect an employee is abusing sick leave,

- Monitor unplanned short absences for pattern.
- Put the person on restricted sick leave.

Your human resources advisors can prepare a letter for you. Require documentation for every single hour of sick leave use. (Supervisors do not have to accept "conclusive" medical documentations; you can require "evidence administratively acceptable.")

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Remember, when we talk about sick leave abuse, it is not the amount of leave, but rather the frequency and increments.

- Deny leave and charge AWOL if documentation is not acceptable.
- Progressively discipline for absences.

Remember, when we talk about sick leave abuse, it is not the amount of leave, but rather the frequency and increments. In looking for patterns of sick leave use, you are looking for a pattern of unplanned sick leave around weekends and holidays in short increments. There is no formula. However, many agencies look for six absences in one year, or four in conjunction with days off as a “signal” of sick leave abuse, and as a result, put employees on leave restriction.

There is really no such thing as misuse of annual leave, since we want employees to take it. However, you should know the basic rules.

- Annual leave is an absolute right.
- Agencies may determine when it is used.
- If denied, the denial must be for legitimate reasons.
- Management has the right to determine whether last-minute requests meet agency standards.

About the Author

Rose Gwin’s experiences include the full range of human resources management issues. She is a sought-after presenter for conferences and executive development events, and has extensive experience as a human resources practitioner and as a management development trainer and facilitator. Most recently, Ms. Gwin has worked as an adjunct instructor at Graduate School USA, where she has won an Outstanding Faculty Award. She provides training to federal agencies around the country a spectrum of human resources topics, working both with managers and human resources professionals.

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About the Author (continued)

Ms. Gwin has also served as Director of the U. S. Office of Personnel Management's Office of Human Resources and Equal Employment Opportunity. While in that role, she increased management satisfaction with the quality of personnel services by 89 percent. She implemented a career transition assistance plan, instituted paperless publicity of job openings nationwide, reduced the cost of the workers' compensation program, and improved the operation of the EEO program.

Before retiring from the federal service after 27 years, she served in a variety of executive positions in Washington, DC and in Philadelphia, Pennsylvania. As Regional Director of the Philadelphia Region of the U.S. Office of Personnel Management, she presided over the closure of the regional operation. During the downsizing, she assured that program goals were met or exceeded while employees received needed outplacement assistance. She also served as Director of the Oversight Division of OPM's Philadelphia operation.

Ms. Gwin has a Bachelor of Arts degree in Social Science from Hendrix College and a Master of Arts in Management and Supervision (Human Resources) from Central Michigan University.



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