

DISCIPLINE AND ADVERSE ACTIONS PROGRAM

I. Purpose

This Directive and associated Instruction establish the Department of Homeland Security (Department or DHS) policy and guidance for administering the employee Discipline and Adverse Actions Program. Actions taken under the provisions of this Directive and associated Instruction comply with the requirements of all pertinent laws, rules, regulations, and Office of Personnel Management guidance, and ensure due process for DHS employees.

II. Scope

A. The actions covered by the DHS Disciplinary and Adverse Actions Program include:

1. Disciplinary Actions:
 - a. Reprimands
 - b. Suspensions for 14 days or less
2. Adverse Actions:
 - a. Suspensions for more than 14 days, including indefinite suspensions
 - b. Reductions in grade and/or pay
 - c. Furloughs of 30 days or less
 - d. Removals

B. Actions excluded by statute and the Code of Federal Regulations such as those listed below are not covered by this policy. This list is not exhaustive.

1. Actions taken under title 5, United States Code (U.S.C.) § 1215 (a)(3)(B); 5 U.S.C. § 7532; or 5 U.S.C. § 3502 (a).

2. Actions taken under the provision of a statute that is not codified in 5 U.S.C. that exempts the action from the provisions of title 5 U.S.C.
3. Voluntary actions by an employee.
4. Actions taken under 5 U.S.C. § 7543 (a).
5. Actions taken under title 5, Code of Federal Regulations (CFR) Part 831, Retirement.
6. Termination of an appointment in accordance with a term specified as a condition of employment.
7. Reduction of an employee's rate of pay from a rate contrary to law or regulation to a rate required or permitted by law or regulation.
8. Actions against a reemployed annuitant.
9. Furloughs of more than 30 days processed under the reduction-in-force procedures in 5 CFR Part 351.
10. Actions involving an employee, serving a probationary or trial period, who does not meet the definition of employee under 5 U.S. C. Chapter 75 or in certain circumstances excepted service employees.

C. All Department employees are covered by this policy, except for those who do not meet the definition of employee under 5 U.S.C. Chapter 75, and those employees specifically excluded by law or Executive Order. Employees covered by collective bargaining agreements may be subject to additional procedures.

III. Authorities

- A. Title 5, U.S.C., Chapter 75, Adverse Actions
- B. Title 5, CFR, Part 752, Adverse Actions

IV. Responsibilities

- A. **DHS Chief Human Capital Officer (CHCO):**
 1. Develops and administers the policy and process directive(s) and guidance that govern the administration of disciplinary and adverse actions;

2. Establishes procedures for keeping records of all relevant documents in accordance with the General Records Schedule and the Guide to Personnel Recordkeeping; and
3. Ensures that the administration of disciplinary and adverse actions is evaluated on a regular basis.

B. **Component Heads:**

1. Ensure the policies and procedures governing disciplinary and adverse actions within the Component are effectively applied and administered;
2. Ensure timely notification and coordination of third-party proceedings with the Office of the Chief Human Capital Officer (OCHCO), the Office of the General Counsel (OGC) and other appropriate Department-level officials in cases with the potential for impact beyond their Component; that may establish precedent; or involves other significant issues;
3. For cases or categories of cases in which OGC, or servicing Chief Counsel office, decides not to represent the agency, ensure that their Component complies with the requirements of this directive and associated instruction by designating directly, or through subordinate officials, qualified individuals to represent DHS in appeals before the Merit Systems Protection Board, at arbitration, or before other forums; and
4. Ensure that their Component complies with reporting requirements established by OCHCO.

C. **Executive Director, Headquarters Human Resources Management and Services (HRMS):** Assume the responsibilities listed under section IV.B. for all Support Components with the exception of the National Protection and Programs Directorate (NPPD), the Office of Inspector General (OIG), and the Federal Law Enforcement Training Center (FLETC). The Executive Director assumes the responsibilities listed under section IV.B. and IV.E. as to disciplinary or adverse actions of OGC within the HRMS serviced population.

D. **Heads of NPPD, OIG and FLETC:** Assume the responsibilities listed under Section IV.B. for their respective Support Component.

E. **Component Human Resources Directors or other Designee through the servicing office responsible for discipline:**

1. Provide personnel administration guidance and advice to all managers and supervisors on the rights and responsibilities covered in this Directive;
2. Ensure appropriate technical support is available to supervisors; providing them assistance regarding substantive and procedural issues arising from the management of disciplinary and adverse actions;
3. Ensure disciplinary and adverse action case files and other documentation, as appropriate, are maintained; and
4. Ensure appropriate training is available to managers and supervisors regarding discipline and adverse actions.

F. **Managers, Supervisors, and Designees:**

1. Assess the conduct and performance of subordinate employees and provide appropriate assistance, feedback, and/or corrective action, when warranted, in response to deficiencies; and
2. Administer discipline and adverse actions in accordance with this Directive and accompanying Instruction, and other applicable laws, regulations, and relevant internal procedures.

G. **Employees:** Are responsible for comporting themselves in a manner that promotes the efficiency of the service.

V. **Policy and Requirements**

A. Disciplinary action is to be effected in accordance with procedures set forth here, in the associated instruction, and in applicable laws and regulations.

B. Discipline is not taken for reasons such as political affiliation or marital status.

C. Discipline is not based on discrimination because of race, color, religion, sex, age, national origin, physical or mental disability, sexual orientation, gender identity, veteran's status, parental status, pregnancy, protected genetic information, or other category protected by law.

D. Discipline is not taken in retaliation for prior EEO protected activity, or for disclosures protected by the Whistleblower Protection Act, as amended. Discipline is not imposed in retaliation for an employee's exercise of rights guaranteed by 5 U.S.C. 7102 or other laws.

VI. Questions

Please address questions or concerns regarding this Directive and associated Instruction to OCHCO.



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Chief Financial Officer

18/11/16
Date