

EMPLOYEE RELATIONS HANDBOOK

FOR SUPERVISORS



**U.S. Fish and Wildlife Service
Department of Interior**

November 2001

*Thanks to Region 1 for allowing NCTC to adopt their
Employee Relations Handbook for NCTC students.*

TABLE OF CONTENTS

Preface		4
Chapter 1	Employee Problems	5
Chapter 2	Analyzing, Documenting, and Correcting Employee Problems	6
Chapter 3	Dealing with Employee Conduct Problems through Disciplinary Action	10
Chapter 4	Dealing with Poor Performance	18
Chapter 5	Grievances and Appeals	23
Chapter 6	Termination During Probationary Period or from Temporary Appointment	24
Chapter 7	Dealing with Cases of Suspected Leave Abuse and Leave Approval Problems	27
Chapter 8	Employee Assistance Program	30
Chapter 9	Substance Abuse Program	32
Chapter 10	Obtaining Medical Documentation	36
Exhibits	Document Examples	39
	Exhibit 2A. Guidelines for Documenting an Incident	40
	Exhibit 3A. Conduct Standards Letter	45
	Exhibit 3B. Letter of Counseling	50
	Exhibit 3C. Letter of Warning	51
	Exhibit 3D. Letter of Reprimand	53
	Exhibit 3E. Notice of Proposed Suspension of 14 Days or Less	55
	Exhibit 3F. Decision Notice of Suspension of 14 Days or Less	59
	Exhibit 3G. Notice of Proposed Adverse Action	62
	Exhibit 3H. Reasons and Specifications	66
	Exhibit 3I. Oral Reply Procedures	70
	Exhibit 3J. Adverse Action Decision Notice	71
	Exhibit 4A. Performance Counseling Memorandum	74
	Exhibit 4B. Letter to Inform Employee of Opportunity to Improve Performance	75
	Exhibit 4C. Memorandum Indicating Acceptable Performance	81
	Exhibit 4D. Withholding of Within Grade Increase Letter	82
	Exhibit 5A. Informal Grievance Decision	83
	Exhibit 5B. Formal Grievance Decision	84

Exhibit 6A.	Probationary Termination Letter	85
Exhibit 6B.	Notice of Termination from Temporary Appointment	88
Exhibit 7A.	Leave Restriction Letter	89
Exhibit 10A.	Letter Requesting Medical Documentation from an Employee	91
Exhibit 10B.	Letter Offering a Medical Examination	93
Exhibit 10C.	Letter Requiring a Medical Examination	95

Preface

This handbook describes the processes that the Office of Personnel Management (OPM) requires all Federal Agencies to follow in resolving employee problems. The processes are not difficult to understand. If you, as a supervisor, treat your employees fairly (i.e., the way you, yourself, would like to be treated if you were in a similar situation), and if you exercise good judgment in dealing with employee problems, you already have an understanding of the basic concepts and processes for correcting employee problems.

The best way to describe "fair treatment" is to give you a few examples of situations in which you can see yourself as the employee:

- before your supervisor appraises your job performance, you would want to know what your job expectations are;
- before you are demoted or fired for unacceptable performance, you would want to know precisely what is wrong with your performance and to be given a chance to correct it;
- before you are disciplined for breaking a rule, you would want first to be told of the rule, then to be warned that the rule will be enforced, and finally to perceive that the rule is applied consistently to everyone in the office.

As a supervisor, you apply "good judgment" by ensuring that all performance and conduct expectations and deficiencies, and subsequent counseling are sufficiently documented (e.g., when you speak to an employee about a problem, you cannot be effective if you operate on the basis that you have a "vague feeling" his/her work is slipping). Good judgment is also applied by knowing when to call the experts in the Personnel Office to obtain advice and assistance in handling an employee problem.

In this handbook, you will see that the processes OPM requires agencies to apply in dealing with an employee's job deficiencies simply provide a specific structure for providing fair treatment and for exercising good judgment.

Chapter 1

Employee Problems

Especially in these times of tight resources, supervisors and managers must get the best work possible from employees. Most employees are self-disciplined and motivated to work on their own and for the Service's best interest. A major percentage of a supervisor's time can best be spent rewarding work well done and thereby improving already good performance. However, conduct and performance problems *do* occur on occasion, so it's also important that supervisors know how to deal with the more negative employee relations situations.

As a supervisor, you know that taking disciplinary or performance action against an employee is not an easy or pleasant task. For that reason, many supervisors try to avoid using discipline if at all possible. But there are several other very important things that you need to recognize and consider when deciding how to deal with an employee problem in the workplace:

- Disciplinary and performance actions are important tools designed to help supervisors maintain an efficient and orderly work environment. If these processes are used properly, they will assist employees in correcting unacceptable behavior and performance that may ultimately threaten their jobs.
- Failing to use disciplinary and performance actions to correct inappropriate conduct and performance may lead to more serious problems for the supervisor, and may harm the morale of those employees who are working according to the rules and requirements of the workplace, and who are meeting their performance standards.
- The time and effort you spend to correct problems early is a good investment. In dealing with problems early you can avoid additional problems later, such as decreasing morale and productivity, loss of employees' respect for the supervisor, loss of supervisory authority, etc

Chapter 2

Analyzing, Documenting, and Correcting Employee Problems

- **Types of Employee Problems**

There are 2 general types of employee problems:

Conduct - A conduct problem occurs when there is a "won't do" situation. If the employee has attitude problems, lacks motivation to perform or to arrive at work on time or at all, the employee may have a conduct problem. Typically, if the employee has broken a rule, regulation, or a conduct standard, the problem is considered a conduct deficiency. If failure to meet a performance element is willful or intentional, this would also be considered a conduct issue rather than a performance issue.

Performance - A performance problem occurs if the employee "can't do" what it takes to perform acceptably in his/her job, i.e., he/she lacks the skill, specific knowledge or the ability to meet the performance standard of an element or elements in the performance plan.

- **Analyzing the Problem**

With help from an Employee Relations Specialist, the first thing you must do when you identify an employee problem, is to analyze the problem to determine whether it involves the employee's poor performance or an act of misconduct; i.e., you must determine if the problem is a "can't do" or "won't do" situation before counseling the employee.

Analyzing the problem is important because **conduct or behavior problems are dealt with differently than performance problems**. Disciplinary action is used to correct *conduct problems*, while the performance management system is used to deal with *performance problems*. Procedures for dealing with conduct problems are in Chapter 3 of this handbook; procedures for performance problems are in Chapter 4.

As a supervisor, you must focus only on the performance or the conduct problem. In many cases, an employee may be dealing with a personal problem that is causing the job-related shortfalls. As a supervisor, you are not "licensed" to address an employee's underlying personal problems. The employee can, however, voluntarily obtain help for any personal problem. The employee can also provide medical information for your consideration prior to taking action. Refer to Chapter 8 for information about the Employee Assistance Program, and Chapter 10 for information about medical documentation.

- **Documentation**

Communicating with employees is one of the most important things you do in your job as a supervisor. Your written communication must be clear, accurate and timely. When an employee has a performance or conduct problem, your documentation may be the tool that helps the employee see the mistake and convinces him/her to change behavior. A secondary benefit of documentation is that it protects the Service from losing complaints, appeals and grievances.

Objectivity is the first step of effective communication. You must handle employee problems as business issues. Effective business decisions and effective documentation are based on an objective analysis of factual information. Your analysis must consider all available information and be free of emotion and bias.

When an employee's performance is not successful, you must be able to demonstrate through your efforts and your documentation that you made reasonable efforts to assist the employee. Your documentation must allow the reader to conclude that (1) the employee has violated a rule or failed to perform his/her job successfully; and (2) you have been a supportive supervisor who made a sincere effort to help the employee succeed.

In documenting employee performance and conduct problems, it is important to (1) get the FACTS; and (2) attempt to CORRECT the conduct/performance problem.

Getting the Facts

Facts are the key to effective documentation. You must describe an employee's conduct and/or performance objectively. Effective documentation is factual and specific, so that the employee, your manager and any third party will get a clear picture of why you are concerned. You must conduct a reasonable full and fair investigation before deciding on or carrying out corrective action. Such facts might include:

- infractions of conduct regulations;
- physical impairment resulting from drug or alcohol use;
- performance problems, and
- harassment or discrimination allegations

Documenting the facts is important because it (1) defines the situation (replacing rumors and hearsay with facts); (2) records action taken by the supervisor; and (3) records events close to the time they occurred (contemporaneous evidence carries more weight in a proceeding or court than in reconstruction of events from memory after time has passed).

Exhibit 2A provides guidelines for documenting conduct and performance incidents.

D. Correcting the Problem

Once the facts are known, it is your responsibility to explain to the employee what he/she did wrong. In addition, you should explain how you want his/her behavior to change by clarifying:

1. the performance and/or conduct expectations that are in place:
 - in performance cases, it is important that the employee understands his/her critical results and performance standards, and that he/she is given a full and fair opportunity to improve performance.
 - in conduct cases, it is important that conduct-related rules are communicated to the employee. If the employee is later disciplined for committing the same or similar offense, we will be able to prove that he/she was aware of the rules;
 1. the assistance you will give the employee in correcting the problem, and
 2. the action you will take if the employee does not meet your expectations.

In most cases, you should counsel the employee regarding his/her misconduct and/or performance soon after you collect and record the facts (i.e., unless misconduct is unusually serious. An Employee Relations Specialist will advise what to do if that is the case). It is a good idea to first meet with the employee to counsel him/her orally. Hold the counseling meeting in a private setting that will be free from interruptions and distractions and allow adequate time. During the meeting, stick to the facts of the performance or conduct issue, be specific, avoiding any general or judgmental statements.

After the meeting, document the discussion in writing, ensuring that the employee receives a copy. It can be documented in a memo to the employee, memo to the file of which the employee receives a copy, and email message to the employee, a handwritten note to the employee, etc. To the extent possible, address any explanation provided by the employee regarding the performance or conduct issue. Refer to Exhibit 3B (letter of counsel) and 4A (performance counseling) sample letters.

You should maintain documentation in a secure file.

E. Maintaining and Assessing Information

Releasing Information

Most supervisors and managers are aware that the government has obligations relating to custody and release of information under the Freedom of Information Act and the Privacy Act of 1974, but it is sometimes difficult to determine which applies in certain situations and what the supervisor's responsibility is. The Freedom of Information Act is a mandatory disclosure statute. It applies to all Federal records, and guarantees access to these records to all interested parties. The Privacy Act is a mandatory withholding statute, concerned only with information maintained in a "system of records." It guarantees access to the individual who is the subject of the information, but restricts access for others. Generally, most supervisors will find that the Freedom of Information Act will be encountered on formal request situations and the Privacy Act has a greater daily impact on their actions relating to the supervision of employees.

The Privacy Act gives employees the right to access information that is maintained about them in an agency "system of records." These system of records are generally files where information on employees is retrievable by name or social security number. The

Official Personnel Folder (OPF) and Employee Medical Folder (EMF) qualify as system of records. Personnel information files that a supervisor maintains by employee name are also considered a system of records. The employee has a right to access information about themselves maintained in systems of records, but access to others is limited to those with a legitimate need to know.

A supervisor's personal notes, typically a daily log of observations intended as a memory jogger instead of a definitive record would probably not be considered a system of record. Neither would an appointment calendar. If personal notes that are not in a system of records are used to support a formal disciplinary or performance-based action against an employee, however, the employee has a right to access that information.

Managers and supervisors that have questions about what kind of information is releasable can check with an Employee Relations Specialist for guidance.

Formal Freedom of Information Act (FOIA) and Privacy Act information requests and questions are handled by the Freedom of Information Officer and Privacy Act Officer.

Supervisor-Maintained Personnel Records

Supervisors may retain records on their employees. They are included in a system of records. These files must be retrievable by the employee's name. They must be kept under sufficient safeguards and privacy is protected. Information in the files is releasable to the employees on whom the file is maintained, and to other individuals who have legitimate need to know. Supervisor-maintained personnel records may contain all or some of the following:

- Copies and summaries of employment history, job descriptions, education, address, next of kin, telephone number, date of birth, awards and commendations received, participation in professional or community activities, training earnings and leave data, travel actions, certification or qualification examinations, injury reports, performance appraisals and documentation, copies of SF-50, Notification of Personnel Action, assignment record, records of manager-employee discussions, copies of reprimands, letters of warnings, adverse actions, and Government property in employee's possession.

NOTE: Medical records must be filed in the EMF and should not be filed in the supervisor-maintained personnel records file.

Chapter 3

Dealing with Employee Conduct Problems through Disciplinary Action

- **Setting Conduct and Behavior Expectations**

As a supervisor, you have the authority to establish standard operating procedures (SOPs), office and work policies and procedures, and conduct expectations. These procedures, policies, and expectations should not be included in your employee's performance plans. Instead, employees should be made aware of conduct expectations through (1) counseling and orientation, (2) written standards for conduct (which individual supervisors have the authority to develop), and (3) supervisors and managers serving as role models for their subordinates, etc.

To give you an idea of the types of items that are appropriately addressed as conduct expectations (as opposed to performance expectations), and to assist you in developing standards of conduct for your office see Exhibit 3A.

All Fish and Wildlife Service employees are also subject to the provisions of Standards of Ethical Conduct for Employees of the Executive Branch (i.e., Executive Order 12674, and 5 CFR Part 2635), and any supplemental conduct standards that are issued by the Department of the Interior. All employees should be provided access to a copy of these conduct standards, and they should have been provided a minimum of one hour of official duty time for the purpose of reviewing the standards. Some USFWS Regions require that their employees complete a certification form indicating that they have received and reviewed the standards. (See Section E. #4., on page 3.4, for a more in-depth discussion regarding violations of the "Standards of Ethical Conduct").

- **Definition of Disciplinary Action**

For the purposes of the following discussion, the term "disciplinary action" refers to any formal action taken to correct behavior or conduct, from the less severe actions -- such as letters of warning, reprimands and short suspensions (14 days or less) -- through the major adverse actions, such as long suspensions (over 14 days), demotions, and removal from Federal employment.

- **Purpose of Disciplinary Action**

Disciplinary action is a tool that supervisors and managers can use to enforce the rules, regulations, and work requirements that allow the Service to accomplish its mission in an effective and efficient manner.

Disciplinary action is used to *correct* inappropriate behavior *not to punish employees*. The goal is to administer the lowest level of discipline possible in order to correct the problem, so that the same conduct will not be repeated. In administering disciplinary action, there must be a specific connection between the employee's conduct and the "efficiency of the Service."

- **Progressive Discipline**

All Federal agencies follow an approach called "progressive discipline." Progressive discipline means that if an employee continues to engage in unacceptable conduct, the actions taken by management to correct the problem will become more severe after each instance.

For example, if an employee continually arrives late for work, the first step that you might take is counseling to ensure that the employee is aware of the requirement to arrive at work on time. If the employee continues to be late for work, you would usually impose formal disciplinary action, such as a letter of warning or a reprimand. And if the problem still does not improve, the employee ultimately may be fired. Any disciplinary action taken would be based on a reason such as "failure to follow supervisory instructions for arriving to work on time," or unauthorized "absences without leave (AWOL)," or "misuse of government telephones or property," etc., **and applied in the context of how the problem behavior adversely affects the work of the unit.**

- **Deciding Whether to Take Disciplinary Action**

1. **Analyze the Problem** - Based on the initial information you know about the problem and with consultation with the Employee Relations Specialist in the Personnel Office, determine the nature of the problem, i.e., if the problem is conduct or performance-related (see Chapter 2 for specific instructions on analyzing the employee problem). If the problem is a performance problem, see Chapter 4. If the problem is conduct-related, continue with the instructions, below.
2. **Investigate to Get the Facts** - You are first required to conduct a reasonably full and fair investigation of the situation before deciding upon, or carrying out, disciplinary action. In most cases, the employee's first or second level supervisor will conduct the administrative investigation. However, in cases where there are allegations of waste, fraud, and abuse; a serious conflict-of-interest; or serious misconduct, you should speak to the Employee Relations Specialist in the Personnel Office to arrange for the case to be referred through appropriate channels to the Office of the Inspector General (IG) for formal investigation.

In conducting a "reasonably full and fair investigation," you should determine the answers to the following questions, at a minimum, in order to learn the facts of the case:

What actually happened?

- a. When did it happen?
- b. Where did it happen?
- c. Who witnessed the event?
- d. How did the event or situation occur?
- e. Why did it happen?
- f. Who was accountable for the incident?

In most cases, written documentation will be required. You, as supervisor or the witnesses to the event, at a minimum can write up the events that occurred, sign, and date them. This should be done as soon after the event as possible while the facts are fresh in witnesses' minds. In some cases, for serious instances of misconduct or where possible criminal conduct has occurred, a formal investigation may need to be conducted where questions are asked of witnesses, and affidavits taken. Chapter 2 provides guidance concerning documentation.

You should get the employee's side of the story. A third party reviewing the case will want to know whether the employee was given a chance to present his/her version of the events leading to the disciplinary action.

3. **Representational Rights** - With regard to unions, a bargaining unit employee is entitled to be represented by a **union** representative during an examination of the employee by an agency representative in connection with an investigation if
 - a. the employee reasonably believes that the examination may result in disciplinary action against himself/herself, and
 - b. the employee requests representation. (Weingarten Rights).

If you are unsure whether the employees in your organization are in a bargaining unit call the Employee Relations Specialist in the Personnel Office. If so, you must be mindful to observe "representational rights" for these employees; for example, if you are interviewing an employee about his/her misconduct **and the employee asks for *union* representation**, stop the meeting for a reasonable period of time until he/she can obtain a **union** representative.

4. **Know the Rules, Regulations, and Policies** - Generally if there is no rule, regulation, policy, work procedure, office practice, or conduct standard that prohibits whatever the employee has done, discipline is not justified. The reason is that discipline is used to correct behavior that violates Government-wide conduct standards, DOIs, Service's or management's rules and requirements. If there is no rule or requirement, there is no basis to discipline an employee.

This does not mean that every possible violation by an employee must be covered by a *written* rule or regulation. Some actions are so obviously wrong that no written policy is necessary. For example, the Service does not have a rule against dumping garbage on a supervisor's desk. But such action by an employee could result in disciplinary action, even without a written policy against it, because it is so obviously wrong.

When employees first report to work, they are provided a minimum of one hour of official duty time to review the Standards of Ethical Conduct for Employees of the Executive Branch. Employees are expected to abide by these rules and regulations. If they do not, they can be disciplined.

Employees are also expected to carry out the announced policies and programs of the Department and to obey proper requests and directions of their supervisors. As indicated in Section A of this chapter, as the supervisor, you have the authority to establish standard operating procedures, office and work policies, and other conduct expectations. If your employee fails to follow your oral or written directions or requests, you can decide to discipline the employee for insubordination or for failure to follow supervisory directions or policies.

5. **Check to See if the Rules have Been Communicated and Enforced Consistently**

There are 2 other questions that you must consider when contemplating discipline:

- Did the employee know about the rule or regulation or, if not, is the offense so obvious that he/she could be expected to know about it without being told?
- Has this rule been consistently enforced in the past and, if not, were employees warned that it would be enforced before this incident?

One of the most frequent reasons disciplinary actions are overturned is because employees are able to show that they were never told of the rules, regulations, or office policies. In most cases, there has to be some evidence employees were told of a rule, or knew about it before discipline can be taken.

A rule can be communicated in any of several different ways including posting on bulletin boards, issuing all employee memoranda, explaining it during orientation sessions or staff meetings, discussing it in a one-on-one counseling session, etc.

If the employee can show that the rule has not been consistently enforced, regardless of whether it was communicated to employees, disciplinary action can be overturned. If the rule has **NOT** been enforced, the employee can reasonably

claim that he/she did not think it was in effect any longer, or he/she would not have acted in the same way.

This does not mean a rule can never be applied if management has not been consistently enforcing it. But it does mean employees must be clearly warned that it will be enforced before imposing discipline on anyone for breaking it.

6. **Making the Decision to Discipline or Not to Discipline** - After you answer all the questions discussed above (i.e., Is there evidence that the employee did something? Is there a rule, policy, or regulation against doing what the employee did? Did the employee know about the rule? When other employees have broken the rule, has discipline been consistently applied?), you should be in a good position to make a decision on whether to administer discipline.

- **Factors to Consider in Selecting a Penalty**

The Merit Systems Protection Board (MSPB) requires that deciding officials consider a series of factors in deciding on the penalty to impose for misconduct. These (Douglas) factors are listed in 227 FW 2, Appendix 1, Part B.. They include:

1. the nature and seriousness of the offense,
2. the nature of the employee's position,
3. the employee's past disciplinary record and past work record,
4. consistency of the penalty,
5. notoriety of the offense,
6. mitigating circumstances surrounding the offense,
7. the clarity of understanding which the employee had of the notice of the rules.

If the employee claims his/her misconduct is the result of drug or alcohol abuse, or if you have other reasons to suspect this is the case, several other considerations must be made before you enact disciplinary action. These considerations are addressed in Chapter 9, regarding reasonable accommodations for employees with substance abuse problems.

- **Selecting a Penalty**

There are several sources that will help you determine what the appropriate penalty is for specific offenses. First, the Employee Relations Specialist will be able to advise you whether similar actions have occurred in the past and, if they have, what actions were taken to correct the problem.

The Service also has a "Table of Penalties" (see 227 FW 2, Appendix 1, Part A) that is designed to provide guidance on the range of penalties appropriate for various offenses. As you will see in reviewing the table, there is normally a wide range of possible actions you can take to correct a problem, from a letter of reprimand through removal from the Federal service. Keep in mind that this Table is only a guide that provides a general

framework within which supervisors may exercise sound judgment in dealing with particular circumstances. **It is important to consult with an Employee Relations Specialist to see how the Table has been applied in the past to ensure the employee is not receiving disparate treatment.** Lesser actions, such as counseling and letters of warning, should also be considered when they will generate the desired action (to stop the inappropriate conduct). Also, decisions of third parties (such as the Merit Systems Protection Board (MSPB)) will often provide guidance on how other organizations have handled similar offenses. Again, the Employee Relations Specialist will be able to assist you in finding the information you need to make a decision. Possible disciplinary/corrective actions or penalties for misconduct are listed below:

1. **Letter of Counseling (oral or written)** - In many cases, providing oral or written counseling is the first step you might want to take in correcting a conduct problem. Counseling is not considered to be a disciplinary action. In providing oral or written counseling to an employee you tell him/her that a particular conduct or behavior is unacceptable, and if it happens again, discipline may result. It is important to document that you counseled the employee (i.e., make a note that you gave the employee oral counseling, or keep a copy of the written counseling), so if the employee commits the same infraction again, you will have proof that he/she knew about the rule and that a warning was given.

Oral or written counseling is the mildest form of corrective action and, in most cases involving minor infractions or a first offense, it is enough to solve the problem. Under the concept of progressive discipline, counseling is often the first step you should take to deal with a problem. A sample letter of counsel is contained in Exhibit 3B.

2. **Letter of Warning** - A letter of warning is the first level and least severe form of formal discipline, usually issued by the first level supervisor. It is a written statement of admonishment given to an employee for an act of misconduct. The letter outlines the specific unacceptable conduct, states such conduct will not be tolerated in the future, and further misconduct will result in more severe disciplinary action. For more information about letters of warning refer to 227 FW 2.7 or call an Employee Relations Specialist. A sample letter of warning is contained in Exhibit 3C.
3. **Letter of Reprimand** - A letter of reprimand is a written statement normally issued by the immediate supervisor for significant misconduct, or repeated lesser infractions. A reprimand is very similar in content to the letter of warning, i.e., it outlines the unacceptable conduct, states that the misconduct must stop and, if it does not, more severe discipline will occur. However, the reprimand is considered to be a higher level of disciplinary action than a warning, and it is filed temporarily in the employee's OPF in the Personnel Office for not more than two (2) years (the issuing official can decide to file it in the OPF for less than two (2) years). For more information about letters of reprimand, you should call the Employee Relations Specialist in the Personnel Office. A sample letter of reprimand is contained in Exhibit 3D.

4. **Suspension of 14 days or Less** - A suspension from duty involves an employee being formally directed to remain away from work for a specified period of time, without pay. Because the employee loses the pay that would have been earned on such days, suspensions are obviously more severe than letters of warning or reprimand. In addition, suspensions are permanently recorded in an employee's OPF utilizing the SF-50, Personnel Action.

Procedures for initiating a suspension of 14 days or less are more complex than those for affecting a reprimand or warning. A proposal to suspend is issued typically by the first level supervisor. The employee has the right to answer the charges in the proposal letter, and the decision to suspend or not to suspend is made by a higher official than the proposing official. Call the Employee Relations Specialist for more information about suspensions of 14 days or less. A sample notice of proposed suspension of 14 days or less and a sample decision letter on the suspension are contained in Exhibits 3E and 3F.

5. **Suspensions for More than 14 days** - By the fact that suspensions for more than 14 days last longer than suspensions of 14 days or less, they are obviously more severe. Additionally, there are other important differences between the two kinds of suspensions:

- Longer suspensions require the use of the more extensive *adverse action* procedures, which are somewhat different than procedural requirements for the shorter suspensions.
- Long suspensions (and reductions-in-grade/demotions and removals, described below) are appealable outside of the DOI to the MSPB, while the shorter suspensions are grievable only within the DOI.

As with the procedures for shorter suspensions, the more extensive adverse action procedures require that you issue a notice proposing to suspend the employee, which specifies the charges. The employee has a period of time to answer the charges, and the decision is made by a higher level than the proposing official. Call the Employee Relations Specialist for more information. A sample adverse action proposal letter, which would be used for a suspension of more than 14 days, and sample reasons for proposing adverse actions are contained in Exhibits 3G and 3H. A sample adverse action decision letter is included as Exhibit 3I. The Employee Relations Specialist will work very closely with you in preparing the proposal notice, and with the deciding official in preparing the decision letter.

6. **Reduction-in-Grade/Demotion** - This penalty is exactly what it sounds like -- moving an employee into a lower grade. Although it is not generally used in disciplinary situations, it is sometimes appropriate, such as in situations involving negligence that may endanger other employees. (Reductions-in-grade/demotions are more commonly used to solve performance problems where the employee is simply unable to perform the duties of a higher level job.) Use of adverse action

procedures are required in grade reductions taken for conduct reasons. For more information on reductions-in-grade, call the Employee Relations Specialist in the Personnel Office to assist you in this process. (Exhibits 3G, 3H, and 3I contain sample adverse action proposal and decision letters, and sample reasons for proposing adverse actions.)

7. **Removal from Federal Service** - This is the most severe form of disciplinary action. It is only used when:

- steadily more severe disciplinary penalties have not succeeded in correcting an employee's conduct, and the Service concludes that further corrective action is unlikely to be effective
- a first offense is so serious that the Service has no interest in correcting an employee, such as in an unauthorized sale, transfer, or distribution of a controlled substance on-duty
- it is indicated in the Department's Table of Penalties.

Adverse action procedures requiring a 30-day advanced written notice of the proposed action are used for removals. For information about removals from the Service call the Employee Relations Specialist in the Personnel Office. (Sample adverse action proposal and decision letters, and sample reasons for proposing adverse action are contained in Exhibits 3G, 3H and 3I.)

- **Effecting the Discipline**

All letters effecting or proposing disciplinary action must be reviewed by the Employee Relations Specialist prior to issuance.

Chapter 4

Dealing with Poor Performance

- **Developing and Applying Performance Standards**

It is essential that your employees have official performance plans (i.e., written and signed) before you take any action based on performance. The Department of Interior (DOI) five-level performance system instituted in January 2005 has replaced the requirements for lengthy written performance standards with more succinct critical elements and performance standards. Nonetheless, it still remains the supervisor's responsibility to ensure that performance expectations are clearly understood by the employee. Supervisors need to provide feedback (verbal, written, or both) to employees throughout the appraisal cycle so employees know what is expected, know when they are doing a good job, and know when performance is dropping below an acceptable level. The regulatory requirements in dealing with unacceptable performers did not change. You will still need to meet your responsibilities under the regulations before any action against an unacceptable performer will be sustained. In some cases, especially if there are apparent problems in performance, supervisors may need to supplement the performance plan through memoranda, or other documentation clarifying the supervisor's expectations and how the employee's performance compares to expected performance.

You can tie the performance plan to a work plan, to a special assignment you want the employee to do, or to the position description. However, before taking performance action against an employee, the supervisor must show that there is a clear relationship between critical elements the employee is not meeting and the duties outlined in the position description, i.e., the job the employee was hired for.

The DOI's performance appraisal process requires you to have at least 3 performance appraisal discussions with your employees each year -- one discussion at the beginning of the rating year, one progress review and a discussion at the end of the rating year. Supervisors can meet more frequently to discuss the employee's progress on accomplishing the expectations of his/her performance plan; this is especially important if your employee has a performance problem.

- **What is Unacceptable Performance?**

According to the Department of Interior's current Performance Management System (370 DM 430), an employee's overall performance is "Unacceptable" when he/she is rated "Results Not Achieved" (i.e., fails to meet) on any CRITICAL ELEMENT. A critical element is "a work assignment or responsibility that is critical to the accomplishment of organizational goals and objectives and critical to overall success in the employee's position."

When an employee's performance is unacceptable, as the employee's supervisor you are required by regulation to take action to correct the performance problem. Informal and

formal procedures for correcting performance problems are described below. You do not have to take formal action at first -- you can (and should) attempt to informally correct the employee's performance problem.

When you identify that one of your employees has unacceptable performance, you should coordinate with an Employee Relations Specialist in the Personnel Office.

- **Resolving Performance Problems Informally**

Most performance problems are corrected informally during regular performance discussions with the employee. In these discussions, you should discuss the requirements of the performance plan, any specific deficiencies in the employee's performance, and what the employee will have to do to perform at an acceptable level. During this process, you should be able to detect if the employee needs additional training. Do not hesitate to be very clear with the employee about his/her failure to meet a critical element. Waiting until the end of the year and surprising an employee with the news that performance is unacceptable is not a good idea. It is your responsibility (and a requirement) to begin dealing with any performance, or potential performance problem, as soon as you identify the problem. A sample performance counseling memorandum is provided as Exhibit 4A.

- **Corrective Action That Can Be Taken Before or During Formal Performance Procedures**

If performance isn't corrected by dealing with it informally, there are various alternatives that can be considered prior to or during the formal performance procedures:

1. **Voluntary Reduction in Grade or Reassignment** - If the employee acknowledges an inability to fulfill the responsibilities of the position occupied, you can consider placing him/her in a position he/she VOLUNTARILY requests if such a position is available, if he/she is qualified and suitable for the position, and if you reasonably anticipate the employee will be able to satisfactorily perform in the position. You should let the employee be the one to pursue this option to avoid the appearance of coercion on your part. Once the employee has requested this option, you can be part of the review process in looking for other types of positions.
2. **Retirement or Resignation** - If the employee is eligible to retire, you may want to raise the possibility of retirement. If the employee is not eligible for retirement, the possibility of the employee resigning may be discussed. However, you must make it clear it is *only* the *employee's choice* whether or not to pursue retirement or resignation. Also the possibility of discontinued service retirement should be taken into consideration. If the employee shows any interest in retirement, you should refer them to the retirement specialist in the personnel office for further information. You should avoid any actions that may appear as coercion.
3. **Disability Retirement** - When it is determined that an employee's unacceptable

performance may be the result of a mental or physical disability and reasonable accommodation has been made, and the employee meets the length of service requirements for disability retirement, the possibility of disability retirement may be explored. An employee who shows an interest in this type of retirement should also be referred to the retirement specialist in the personnel office for further information.

4. **Involuntary Reassignment to Another Position** - In most cases, you can reassign the employee to another position at the same grade without going through formal unacceptable performance procedures and without the employee's consent or approval *if you have provided the employee an informal opportunity to improve his/her performance*. Reassignments are not adverse actions, and thus not subject to review by the MSPB; however, employees can grieve these actions by management. You should be able to articulate a solid management reason for the reassignment.

- **Formal Procedures for Resolving Unacceptable Performance**

1. **Opportunity to Improve Performance** - If the employee continues to produce unacceptable work in at least one critical result of the job, you must inform the employee *in a letter* of the critical result(s) in which performance is unacceptable, and give the employee a reasonable period of time to show that he/she can do the work at an acceptable level. This letter is called an "Opportunity to Improve" letter, or a "Performance Improvement Plan." The letter can be issued at any time during the appraisal period, or at the time an employee receives a summary rating of "Results Not Achieved." You must also take the steps necessary to deny the employee's within-grade increase, if applicable (See Section F, below). **Consult with the Personnel Office before issuing an "opportunity to improve" letter.**

The length of time given for the employee to improve performance to an acceptable level will vary depending upon the nature of the work assignments. The opportunity period is normally at least 30 days. It is most often 90 days; however, the period can be shortened or extended depending upon the type of duties in the position.

The "Opportunity to Improve" letter

- a. identifies the critical results and performance indicators in which the employee's performance is unacceptable and *specific* examples of the deficiencies;
- b. identifies the specific period of time the employee is being given the opportunity to demonstrate acceptable performance;
- c. states the improvements that are expected;

- d. states what you, as the supervisor, will do and what special training (if appropriate) will be given to assist the employee to improve, and
- e. states that if the employee's performance does not improve to an acceptable level (i.e., "Results Achieved"), a proposal may be issued to separate the employee from his/her position.

An example of an opportunity letter is provided in Exhibit 4B.

2. **Supervisory Assistance and Documentation During the Opportunity Period -**
As the supervisor, you are the person primarily responsible for ensuring that the employee is given a reasonable and fair opportunity to improve. You must assist the employee in reaching an acceptable level of performance by providing classroom or informal training, counseling, intensive coaching, etc. You can utilize other employees (if you do not have the expertise) to work with the employee on specific work assignments and have them provide feedback back to you. You should give the employee specific direction on what you expect on each assignment, orally and/or in writing, and make a note for your files of what that direction was, or keep a copy of written instructions. You should provide frequent oral feedback on work products. You should also make notes for the record on each assignment, with a copy for the employee. An alternative is to set up regular meetings (weekly, every other week) to sit down with the employee, discuss progress, continued unacceptable performance, etc. Shortly after the meeting you should provide a written summary of that meeting to the employee to make sure he/she heard what you were saying. Positive feedback is good if warranted; however, if the employee is not meeting the standards, do not hide your concerns behind nice words. Be clear that continued unacceptable performance could result in loss of his/her job. You should have copies for your files of examples of the employee's performance during the opportunity period. Records should be kept and shared with the employee at reasonable intervals.

By providing this level of supervision, you will be making sure that the employee has been given all the assistance necessary for improvement during the opportunity period. And, in many cases, an employee's performance will improve to an acceptable level. However, in cases where performance has not improved, the documentation you have created during this process will be the Service's basis for the performance action, and proof to a third party, who will decide a potential appeal, that the employee received a full and fair opportunity to improve.

3. **Improvement to an Acceptable Level -** During the opportunity period, if the employee's performance improves to a fully successful level ("Results Achieved") in the critical results cited in the "Opportunity-to-Improve" letter, you should issue a letter informing the employee of this. You should also inform the employee that if his/her performance deteriorates to an unacceptable level within one year from being put under this opportunity period, you may recommend his/her removal without affording an additional opportunity to improve. (A sample letter is included in Exhibit 4C.)

4. **Deciding What to do About Unacceptable Performance** - If the employee's performance does not improve during the opportunity period, you must take some action. One option is to reassign the employee out of the job in which he/she cannot perform. If there are no vacant jobs at the same grade for which the employee is qualified and can perform acceptably, then you must propose to reduce the employee in grade to a job he/she can do, or propose to remove the employee from the Service.
5. **Proposal to Demote/Reduce in Grade or Remove** - You must give the employee 30 days advance notice in writing notifying the employee of the proposed action, explaining specific instances of unacceptable performance and the critical result involved. The employee has the right to be represented by an attorney or other person, and to have a reasonable time to reply to the proposal. The Personnel Office will work very closely with you, examining the performance documentation, advising on which examples will support the reasons for the proposal, and in assisting to prepare the proposal notice itself.
6. **Decision to Demote/Reduce in Grade or Remove** - The deciding official makes a decision on the proposal after reviewing all of the facts of the case, including the proposal notice, all of the supervisor's performance documentation, and any oral and written reply provided by the employee.

The decision must be in writing and it must notify the employee of the reasons for the decision, the effective date of the decision, and the appeal rights of the employee. If the decision is not to take the action, the employee will be notified of that decision. The decision should be made within 30 days after the advance notice period expires. The Personnel Office will work closely with the deciding official in reviewing and analyzing the documentation and in assisting to prepare the decision letter.

- **Within Grade Increase Denials**

While documenting an employee's unacceptable performance, an acceptable level of competence determination for within-grade increase (WGI) may occur. Obviously, you cannot certify an employee's performance as acceptable and, shortly thereafter, initiate action for unacceptable performance. Therefore, if an action based on unacceptable performance is contemplated, action should be taken to deny any WGI that would become effective during this period of unacceptable performance.

5 CFR 531 and 370 DM 531,4 have specific requirements for issuing notice prior to denying a WGI. A sample letter is attached in Exhibit 4D.

Chapter 5

Grievances and Appeals

No matter how good your reasons are for taking disciplinary/adverse action or an action based on unacceptable performance, *the employee has the right to challenge it by filing a grievance or an appeal.*

Employees have the right to file grievances regarding letters of warning, letters of reprimand, suspensions of 14 days or less, and involuntary reassignments. They have the right to file an appeal with the MSPB regarding reductions-in-grade (demotions), removals, and suspensions of more than 14 days based on misconduct or unacceptable performance. They also have the right to file an Equal Employment Opportunity (EEO) complaint for any conduct or performance-based action (or for any other action taken by a management official), if they feel that the action was taken against them based in whole or in part on discrimination because of race, color, religion, sex, age, national origin, or physical or mental disability.

The Personnel Office is responsible for processing grievances and MSPB appeals. The Division of Diversity and Civil Rights (EEO-Office) is responsible for processing EEO complaints. Your primary responsibility will be to answer a grievance filed at the informal and formal steps of the grievance procedure, if applicable, and to appear as a witness in any hearing or investigation held on the grievance, appeal or EEO complaint, if necessary. Your testimony in a hearing will usually be to give your reasons for taking or recommending disciplinary or performance-based action.

You should not take such grievances, appeals, or complaints personally. Try not to view them as personal challenges to your authority, fairness or ability, although that may hard to do if the employee says harsh things about our judgement, fairness, or abilities as a supervisor. Look at the entire process as a part of doing business as a Federal supervisor, and not as a personal matter.

When an employee files a grievance you should call the Employee Relations Specialist for assistance in preparing a response. At the informal stage you must reply in writing within seven (7) calendar days and advise the employee of his/her right to file a formal grievance if dissatisfied with your decision. The employee will also be referred to the Personnel Office for information concerning formal grievance procedures. A sample informal grievance decision can be found at Exhibit 5A.

If the grievance proceeds to the formal stage, the deciding official must issue a written decision within 20 days and advise the grievant of the right to request a personnel appeals examiner. A sample Formal Grievance decision can be found at Exhibit 5B.

Chapter 6

Termination during Probationary Period or from Temporary Appointment

- **Termination during Probationary Period**

There are 2 types of probationary periods: (1) probationary periods for employees who are new to the Federal government, and (2) probationary periods for new supervisors or managers.

Both probationary periods begin on the date of an employee's entry into the position and last for 12 months. The probationary period provides an opportunity to measure the new employee's actual performance on the job against your assessment of his/her potential made at the time the employee was hired. It also provides you with the opportunity to remove the employee from a position (generally without a right to appeal the removal to the MSPB) should the employee's performance and/or conduct fall short of expectations and job performance requirements.

If, at any time during a probationary period you determine that your employee's performance does not warrant retention in the position, contact your Servicing Employee Relations Specialist.

1. **Probationary Period for New Employees** - The probationary period for new employees is considered an extension of the examining process. It allows you, as the supervisor, the opportunity to observe an employee's performance and conduct so you can make a final determination whether the employee can meet job requirements and, therefore, should continue in the job.

A new employee serves a one-year probationary period when he/she has been selected from a certificate of eligibles and given a career-conditional or career appointment. Most reinstatement and transfer eligibles have already completed their probationary periods, so they are not subjected to probationary terminations.

Personnel will notify you at the time of the appointment if your employee must serve a probationary period and when the probationary period will end. (You should check the comments section in the SF-50 sent to you to see if the probationary period is applicable.)

If, during your employee's probationary period, you identify that he/she has performance or conduct problems, contact your Servicing Personnel Management or Employee Relations Specialist immediately to discuss what should be done to correct the problem or to separate the employee during the probationary period.

If you are having concerns about the performance/conduct of your employee you should seek assistance now and not wait until the end of the probationary period to act.

The Employee Relations Specialist will help you decide whether (1) to informally assist the employee in improving his/her performance and/or conduct, or (2) to separate the employee from the Service. If the decision is to separate the employee, the Employee Relations Specialist will assist you in preparing an advance written notice to the employee, which will state the reasons for and the effective date of the termination (See Exhibit 6A for a sample probationary termination letter.).

The reasons for probationary terminations do not need to be long and involved. You simply must state a nonarbitrary, noncapricious, nondiscriminatory, legitimate reason why the employee is not suitable for retention, identifying general types of complaints and deficiencies (e.g., general failure to grasp and retain information, absenteeism, general inability to get along well with coworkers, etc.). In addition, it is important that you be able to demonstrate that you have treated the employee fairly during his/her probationary period.

Removing an employee during the probationary period is a relatively simple procedure. Unacceptable performance and adverse action procedures (as described in Chapters 3 and 4, above) do not apply, and there is a very limited right of appeal to the MSPB. (However, an employee may file an EEO complaint if he/she believes that the termination was based in whole or in part on illegal discrimination.) If your employee has a performance or conduct problem, taking care of it during the probationary period can save you hundreds of hours in trying to rectify the problem after the probationary period has expired.

2. **Probationary Period for New Supervisors and Managers** - Each new supervisor and manager in the competitive civil service is required to complete a one-year probationary period. At the time of the appointment, the Personnel Office will notify you if the employee must serve a supervisory or managerial probationary period and when the probationary period will expire.

During the probationary period, the new manager's or supervisor's performance is carefully monitored, with emphasis on helping the individual succeed with appropriate training being provided as needed. If, during the one-year probationary period, the employee is found to be unsuited to the demands of the position, he/she must be placed in a nonsupervisory (or nonmanagerial) position of no lower grade and pay than the one he/she left when accepting the supervisory (or managerial) position.

Adverse action or unacceptable performance procedures do not apply in these cases. Employees terminated during their supervisory or managerial probationary periods do not have the right to appeal the action to the MSPB. However, EEO complaint rights **DO** apply.

- **Termination from Temporary Appointment**

You can terminate an employee from a temporary appointment at any time for any **legitimate management reason**. Normally, temporary employees are terminated for reasons such as "expiration of temporary appointment," "lack of work," or "lack of funds." However, if you determine that a temporary employee is unsuited for continued employment, e.g., if the employee's conduct or performance is unsatisfactory, you may terminate him/her.

While not required, it is good practice to provide the employee with advance notice of termination. Although a SF-50 (personnel action) is considered an acceptable notice for employees not separated for cause, a written notice should be provided to employees being terminated for cause. That written notice should explain the nonarbitrary, noncapricious, nondiscriminatory, legitimate reason(s) why the employee is not suitable for retention, e.g., normally the types of complaints and deficiencies are general failure to grasp and retain information, absenteeism, general inability to get along well with coworkers, etc. (Exhibit 6B contains an example of a written notice of termination from a temporary appointment.)

An employee terminated from a temporary appointment does not have the right to appeal the action to the MSPB. However, the employee may file an EEO complaint if he/she believes that the termination was based in whole or in part on illegal discrimination.

Chapter 7

Dealing with Cases of Suspected Leave Abuse and Leave Approval Problems

As with any employee relations problem, supervisors can and should act to correct sick leave abuse problems, tardiness and attendance problems.. If these situations are not dealt, with much larger problems may result (such as a morale problem throughout your entire staff).

- **Potential Sick Leave Abuse**

If you have reasonable grounds to question whether one of your employees is properly using sick leave (e.g., when sick leave is used frequently, in unusual patterns or circumstances, or when it is used as soon as it is earned), you should inquire further about the matter by asking the employee to explain. Absent a reasonable explanation, you should notify the employee that, for a stated period, no request for sick leave (regardless of duration) will be approved unless supported by a doctor's certificate. A sample leave restriction letter, which also addresses a tardiness issue, is included as Exhibit 7A.

- **Tardiness and Attendance Problems**

Problems of late arrival at work (tardiness), long lunch hours, early departure, or outright failure to show up for work at all will occur at times.

It is, of course, within your authority to excuse occasional short absences where you feel it is justified to do so under the circumstances. The problem occurs when an employee shows a consistent pattern (i.e., frequently arrives late for work, takes long lunch hours/breaks, etc.). Regardless of whether the employee has an excuse for every late arrival or long lunch/break, these situations can become a serious problem (e.g., cause morale problems among other employees, encourage others to drift in late as well, reduce the group's work productivity, etc.). In deciding how to deal with employees who arrive late frequently, you will need to keep in mind two points:

- Regardless of how many excuses an employee may have or how valid they may sound, it is the employee's responsibility to report for work as agreed. It may be necessary to modify agreed upon work schedules to assure that the employee is able to report to work timely. It is up to the employee – not you – to solve transportation, alarm clock, or lunch/break problems which may result in their inability to report to work as agreed.
- You have the authority to insist that employees report for work on time, and if they fail to do so, to take corrective action.

- **Leave Approval Problems**

Employees must also use proper leave approval procedures. These procedures are established by individual supervisors and can cover the following types of issues: how far in advance employees must request annual leave; your policy regarding verbal and/or written approval requests (SF-71) for leave; to whom your employees must speak for approval of unanticipated sick/annual leave; that your employees must call you, or your acting, by a certain time on the morning that they intend to use unanticipated sick/annual leave, etc. See Chapter 3, Section A., regarding supervisor's authority to set standards of conduct; also see Exhibit 3A for an example of leave approval procedures. You must assure that all employee's you supervise are aware of what the proper procedures are before you take action against an employee for improper use of procedures. Sending out an annual memo of the procedures to your employees or periodically discussing them in group meets are good ways of making sure employees have this information.

- **Consequences for Unexcused Absence from Work**

Absence without leave (AWOL) can and, in most cases, should be charged when an employee does not provide acceptable documentation of illness or injury when requested, is tardy or not in attendance when he/she should be, and/or does not follow leave approval procedures. AWOL is an absence that is NOT approved nor authorized. Obviously, technical or minor violations, unless repeated, would not normally lead to charges of AWOL. What is probably more important than any other factor is consistency, i.e., taking into account how things have been done in the past or how you are handling similar situations with other employees. Changing AWOL to Leave Without Pay (LWOP) or another approved leave category, can be done retroactively if an employee offers a reasonable explanation for an absence or brings in proper documentation. Please note that AWOL should generally be used only after the employee has been placed on notice that his/her current practices are unacceptable. However, a significant absence without a reasonable explanation or an absence in violation of a specific leave denial may warrant an AWOL charge. Charging an employee's absence as AWOL is not a disciplinary action but may serve as a basis for disciplinary action.

- **Supervisory Leave Authorities**

To help you understand your supervisory authority in approving leave, and to inform you of the options that are available when you decide not to approve leave, various leave categories and other absences from work are described below:

- **Sick Leave** - Employees have the right to use their sick leave when they are incapacitated for the performance of their duties by such reasons as sickness, injury, or pregnancy. Employees can also use sick leave for medical, dental or optical appointments or examinations. In general supervisors must grant employees sick leave when they have accrued sick leave, follow proper leave approval procedures and provide administratively acceptable evidence that they are entitled to use sick leave. In addition, leave regulations allow a limited amount of

sick leave to care for ill family members or attend the funeral of a family member under the Family Friendly Leave Act (FFLA). Specific information can be obtained from the Payroll Branch of the Personnel Office concerning FFLA guidelines.

Documenting Sick Leave - Supervisors have an obligation and right to ensure that sick leave is being used correctly and determine what kind of administratively acceptable evidence is sufficient to approve sick leave, including an employee's statement that they were ill. When an employee is absent from work in excess of three days on sick leave, the supervisor is to require the employee to submit a medical statement. If you receive a medical statement that you feel is inadequate to determine whether sick leave is appropriate, you may require that the employee produce additional information.

- **Annual Leave** - Employees have the right to take their accrued annual leave, which generally will be approved as requested by employees; **however, management has the authority to fix the time during which the annual leave may be taken subject to the work needs of the Service.**
- **Leave Without Pay (LWOP)** - You may refuse an employee's request for LWOP, even though his/her reason for requesting the leave might be legitimate. Supervisors are not required but have the authority to grant requests for Leave Without Pay (LWOP). There are, however, four instances where supervisors must approve LWOP at an employee's request: (1) for disabled veterans for medical treatment; (2) for reservists to perform military training; (3) for the first year an employee receives injury compensation for an on-the-job injury; and (4) as required by the Family Leave Act. LWOP is approved leave and should not be used when there is a conduct issue involving attendance. **In most instances disciplinary action cannot be based on LWOP or any other approved leave.**
- **Absence Without Leave (AWOL)** - AWOL is absence from duty, which is not authorized or approved, including leave that is not approved until required documentation is submitted or for which a leave request has been denied. AWOL, itself, is not a disciplinary action, but AWOL can be the basis for disciplinary action. (Refer to Chapter 3 for instructions on disciplinary actions).
- **Tardiness** - An employee is tardy when not present at the specific work station when his/her tour-of-duty is scheduled to begin. The time during which an employee is tardy may be (1) administratively excused by management (when absence is less than one hour); (2) charged to annual leave or LWOP with the employee's consent and with supervisory approval; or (3) charged to AWOL at management's discretion.

Chapter 8

Employee Assistance Program

- **What is the Employee Assistance Program?**

The Employee Assistance Program (EAP) provides a confidential counseling and referral service to employees, employees' families, and supervisors for dealing with personal problems. These problems may include alcohol and drug abuse, marital and family difficulties, financial or legal problems, emotional and stress difficulties, etc. The EAP represents a constructive third party alternative that will help both the employee and the supervisor in addressing complex personal problems, which often affect job performance. Other services available under the EAP contract are critical incident stress debriefings, and relocation assistance for spouses/significant others who transfer into BLM OR/WA with their job.

- **Employee Assistance Services**

Most regions have contracted with an outside provider to provide EAP services to employees. The employee assistance providers maintain toll free telephone numbers that can be utilized by employees 24 hours a day to seek help for personal problems.

The Personnel Office can provide you with details about the Employee Assistance Program, and about EAP orientation materials and services that are available for employees and supervisors.

- **Supervisor Referrals to the EAP**

You may refer an employee to the EAP when the employee's job performance or conduct seriously deteriorates. This deterioration may or may not be related to a drug or alcohol abuse problem. In a supervisory referral, you discuss with the employee that there has been a decline in his/her conduct/performance, and you give specific examples of the job-related problems. You then make sure that the employee knows that he/she may seek assistance from the EAP without speculating what the potential personal problem might be.

The employee is not required to utilize the EAP, i.e., you cannot discipline him/her for refusal to utilize the program (except in cases of illegal drug usage -- see Chapter 9). However, after making the referral, you can continue to take disciplinary or performance action based on the employee's work and conduct on the job. Improvements in work and/or conduct should be considered prior to taking any action.

You are strongly encouraged to call the EAP for a supervisory consultation prior to actual confrontation with the problem employee. You will be able to discuss with an EAP therapist the appropriateness and/or methodology of utilizing the EAP, recommended methods of confronting an employee with a performance deficiency, and how to increase

the likelihood that the employee will be receptive to counseling if he/she identifies that the performance or conduct problem might be caused by a personal or medical problem.

- **Self Referrals**

Any employee may voluntarily contact the EAP for assistance at any time to obtain assistance for any personal problem. These contacts are strictly confidential.

- **Mandatory Referrals**

Any employee who is tested positive for using illegal drugs will *mandatorily* be referred to the EAP (see Chapter 9, Section C.). Certain types of information must be released back to an appropriate management/supervisory official to make determinations about returning to safety-sensitive types of work and about continued employment with the agency.

Chapter 9

Substance Abuse Program

- **Obligations to Accommodate Alcohol and Drug Abusers**

Federal agencies are required by EEO law to "make reasonable accommodation to the known physical or mental limitations of a qualified handicapped ... employee unless the agency can demonstrate that the accommodation would impose an undue hardship on the operation of the program." This is the law that requires agencies to provide physical accommodation (e.g., accessibility of facilities, readers for the blind, etc.) for "qualified handicapped" individuals.

Two recent decisions, one from the Merit Systems Protection Board (MSPB) and the other from the Equal Employment Opportunity Commission (EEOC), have changed the obligations of management with respect to mandating a "firm choice" as a reasonable accommodation to the handicapping conditions of alcoholism or drug abuse. That firm choice was previously a choice between embarking on a rehabilitation program or the agency proceeding with an adverse action. According to the MSPB, the "firm choice" requirement of the Rehabilitation Act of 1973 does not exist under the Americans with Disabilities Act, whose standards were incorporated into the Rehabilitation Act by amendments enacted in 1992.

According to the EEOC decision in *Johnson v. Babbitt* (3/28/96), agencies are no longer required to offer firm choice to employees with alcohol and/or substance abuse problems prior to taking performance and/or conduct actions against employees. MSPB adopted EEOC's decision in the case *Kimble v. Dept. of Navy* (6/11/96). More specifically, employees with alcohol/substance related problems will be held to the same standards as other employees. You would follow the same progressive discipline and/or performance-based actions that we would use with employees whose problems are not related to alcohol and/or substance abuse.

In the course of following either performance and/or progressive discipline procedures, if the employee advises the agency that he/she has alcohol and/or drug addictions, and provides proper documentation to that fact, then the agency must continue to provide other types of reasonable accommodation, such as flexible schedules or leave for treatment, to addicted employees. The EEOC reaffirmed that disparate application of supposedly uniformly applied rules would continue to constitute discrimination. If assistance of this nature does not correct the problem, then the supervisor would continue with whatever action he/she is taking. Also, it may still make good sense for agencies to utilize firm choice agreements depending on the circumstances regarding an individual employee. MSPB has removed the technical requirements for such agreements.

If the supervisor so chooses, he/she could still offer a firm choice to their employee, but it is no longer mandatory. In fact, according to EEOC, the offer of firm choice is consistent with the goals of the Alcohol Abuse Act. Consistency in application of this option should be considered. Progressive discipline for an act of misconduct, short of removal, can be used as a part of a rehabilitation effort for substance abusers. This is in acknowledgement of a "medically-recognized principle that one of the ways to help alcohol and drug abusers overcome their problem is to make them take responsibility for the consequences of their own actions."

- The burden is on the employee to submit evidence to establish that a handicapping condition exists (i.e., that he/she is a drug addict or an alcoholic).
- Casual users (as opposed to addicts) of alcohol and drugs are not considered handicapped, so accommodation is not necessary in these cases.

E. Practical Application of Substance Abuse Accommodation

If you notice that the job performance/conduct of one of your employees is deteriorating (e.g., tardiness, absenteeism, high mistake rate, difficulties in concentration, etc.), you should take steps to correct the problem through conduct and/or performance procedures, as described in Chapters 3 and 4 of this handbook. If you suspect that the performance/conduct problems are being caused or contributed to by drugs or alcohol, **CALL YOUR PERSONNEL OFFICE**. Personnel will provide advice in taking the following steps:

1. Inform the employee of the Employee Assistance Program (EAP), and offer to help him/her make contact with it.

You should not tell the employee you suspect drug or alcohol abuse, or attempt to have the employee admit to using drugs or alcohol. You cannot force them to accept assistance - the employee is not obligated to follow your advice.

2. If the employee *does* follow your advice and seeks assistance, "reasonable accommodation" usually will mean that you are required to hold off on carrying out discipline if the employee becomes involved in a rehabilitation program and attempts to overcome the problem. In accommodating the employee, it would probably be reasonable for you to approve the employee's request for sick leave, annual leave, or leave without pay for participating in a rehabilitation program.
3. If the employee *does not* admit the problem, and fails or refuses to accept your referral to EAP, you may go ahead with discipline or performance procedures.
4. If the employee admits the problem, enrolls in an assistance program, and continues to have a conduct/performance problem (whether or not you suspect that he/she is continuing to abuse alcohol or drugs), you should proceed with the conduct or performance procedures.

You do not have to wait for a disciplinary or performance situation to try to help an employee. If you suspect one of your employees has a personal problem that is just beginning to affect performance or conduct on the job, you should make sure that the employee is aware that the EAP is available to assist him/her in dealing with any personal problems. You might also want to talk to an EAP counselor first regarding recommended methods of confronting an employee with a performance discrepancy, and how to increase the likelihood that the employee will be receptive to counseling, if the employee identifies that the problem on the job might be caused by a personal problem.

Denial is a symptom of alcoholism and drug addiction. Employees who abuse substances will often deny that they have a problem until confronted with major consequences - such as a proposal of discipline or removal. Before that point, despite your best efforts, they will probably deny the problem. Until they admit it, and are willing to do something about it, your only recourse is to proceed with disciplinary or unacceptable performance action.

F. Achieving a Drug Free Workplace

On September 15, 1986 President Reagan signed Executive Order 12564, establishing the goal of a drug-free Federal workplace. This order made it a condition of employment for all Federal employees to refrain from using *illegal* drugs on or off-duty.

As required by the Executive Order, DOI set up a drug testing program whereby employees occupying designated positions (and applicants applying for those positions) are tested for use of *illegal* drugs under certain conditions. If the testing reveals that one of your employees has used illegal drugs, you are required (1) to refer the employee to the Employee Assistance Program (EAP) for assessment, counseling, and referral for treatment or rehabilitation, and to remove all sensitive duties from the employee's position, (2) to initiate disciplinary action against the employee, except in some cases where the employee voluntarily admits drug use, and (3) to initiate removal of an employee from Federal Service for failing to obtain counseling or rehabilitation after the first finding of illegal drug use, or for a second determination of illegal drug use. Disciplinary actions are discussed in Chapter 3.

Department of Interior's (DOI) Drug Free Workplace plan requires that all supervisors receive training on Achieving a Drug Free Workplace. If you have not yet received this training or if you do not currently have the Supervisor's guide to Achieving a Drug Free

Workplace, please call your Personnel Office. DOI also has information on this program on the Internet on the DOI homepage at <http://www.ios.doi.gov/sees>.

A. What to do When an Employee is Not Ready, Willing and Able to Work?

If you are ever in a situation where one of your employees does not appear to be in full

control of his or her faculties, and/or is exhibiting bizarre or strange behavior, you should first call the Personnel Office when these situations arise. Generally, you should do the following:

- a. Inquire immediately of the employee about his or her physical condition, being aware that the appearance of symptoms that are usually related to alcohol or illegal drug use can apply to other health problems as well (e.g., allergic reactions to food or prescription drugs, diabetic insulin reactions, etc.).
- b. Relay information regarding symptoms to the medical staff of the health unit, if there is a health unit in your facility, and refer the employee to the health unit for emergency treatment. If there is no health unit and/or if symptoms persist, refer the employee to a private physician or community health services. Arrange for someone to drive the employee home or to the doctor, if the employee is incapable of safely driving. If deemed appropriate for return to the workplace request follow-up medical documentation from the employee on their ability to return to work.
- c. Encourage the employee to voluntarily take sick or annual leave. If the employee refuses to use his/her sick or annual leave, or if he/she is incapable of responding, you should place the employee in a nonduty pay status for a brief period of time (i.e., administrative leave for not longer than 4 hours).

If you suspect that the employee is using illegal drugs, you should do the following:

- a. If you determine that the employee is not "ready, willing, and able to work", follow the instructions in Section D.1., above, as applicable.
- b. If you have completed the required training in section C. above, consider requesting a reasonable suspicion drug test through the DOI drug testing program. To request a test, promptly write in detail the facts and circumstances that give you reason to suspect drug usage. You should immediately notify your supervisor and the Personnel Officer, who will seek advice, through channels, to see if a "reasonable suspicion" drug test can be approved for the employee. Time is of the essence in this process. Approval for the test must be obtained in sufficient time so that the employee can be tested within 48 hours of time drug usage occurred. Reasonable suspicion drug tests still require DOI approval.
- c. If you have good reason to believe that the employee is involved in criminal conduct - such as selling drugs or stealing to support a drug habit - you should consult with your supervisor and/or the Personnel Officer, and then report the facts to appropriate law enforcement authorities. Subsequently, you should take the action indicated in Section D.2.a. and b., above.

Chapter 10

Obtaining Medical Documentation

- **Why Obtain Medical Information?**

Medical information regarding an employee's medical or physical condition can assist you, as the supervisor, in determining the following:

- if the employee raises an issue that he/she is physically unable to perform some or all of the duties of the job;
- if there is a disabling condition;
- what can be done to accommodate an employee's disabling condition;
- if there is light duty work an employee is physically capable of performing while recovering from an injury;
- whether a job can be offered to a worker's compensation claimant after he/she has partially recovered from an on-the-job injury;
- when an employee fully recovers from an on-the-job injury and can be directed to return to work;
- whether an employee meets the physical requirements or physical qualifications for a position;
- whether disability retirement counseling should be provided to an employee if the medical documentation indicates that he/she will no longer be able to perform the duties of his/her position;
- whether to proceed with conduct or performance action, knowing there is nothing more you can reasonably do to accommodate an employee's disabling condition, etc.

- **Obtaining Medical Information in the Absence of an Examination Requirement**

You may ask an employee to submit his/her own medical documentation when you suspect the employee may not be capable of performing safely or efficiently, or when the employee has requested, for medical reasons, that you provide special consideration. Examples of these types of situations are:

1. You are in the process of dealing with an employee's conduct or performance problem, when the employee tells you, or you otherwise suspect, there is a physical or medical problem causing the deficiency;
2. The employee tells you that he/she is no longer physically able to perform all of the duties of his/her position;
3. The employee alleges working conditions interfere with his or her ability to perform duties of the position (e.g., irritants, dust, toxins, etc.);

4. The employee requests, for medical reasons, special consideration such as assignment to another position or to another duty station, to be excused from night shift work, to be assigned light duty work, to be excused from travel, etc.

If the employee refuses or is unable to provide medical documentation you should act on the basis of the information available. For instance, you may take action based on the employee's performance or conduct in light of your current knowledge of the employee's medical condition, or you can deny the employee's request for special consideration, etc. Exhibit 10A contains a sample letter requesting medical documentation from the employee.

If the employee has submitted medical documentation that needs further explanation, you may ask for additional clarification or offer a medical examination utilizing a physician of management's choice per 5 CFR 339.

- **When an Examination May Be Required**

You may *require* an employee to submit to a "fitness-for-duty" examination under the following circumstances:

1. The employee cannot meet the established physical requirements for his/her job documented in the position description (physical requirements are set by OPM or an agency when they are considered essential for successful job performance);
2. The employee has applied for, or is receiving, continuation of pay or compensation as a result of an on-the-job injury or disease to determine medical limitations that may affect placement decisions;
3. The employee occupies a position with OPM-approved medical qualification standards, and you suspect he/she can no longer meet the physical qualifications for the position;
4. The employee is in a job that is under an established medical evaluation (surveillance) program.

If an employee refuses to submit to a *required* examination, he/she may be disciplined.

- **Medical Examination Procedures**

1. **Notice to the Employee** - When you order or offer a medical examination, or request medical documentation, you must inform the employee of
 - a. the reasons for the exam,
 - b. consequences of failure to report for the examination or failure to provide medical documentation, and
 - c. the individual's right to submit medical information from his or her own physician, and the agency's obligation to consider this information.

Exhibit 10B contains a sample letter offering a medical examination and Exhibit 10C contains a sample letter requiring an examination.

2. **Designating and Informing the Physician** - When you order or offer an exam, you have the authority to designate the examining physician (with your Personnel Office's assistance). You must ensure the physician knows exactly what medical information is being requested, the duties and requirements of the position, and any other pertinent factors directly relevant to determining the individual's ability to perform safely and efficiently without hazard to him/herself or others. See Exhibit 10D for a sample letter to a physician.
3. **Paying for the examination** - Costs for any examination that is "ordered" or "offered" must be paid from project funds. Before authorizing payment for a medical examination, make sure the employee has signed a release of information so that the results of the medical examination can be shared with you.

- **Use of Employee Assistance Program**

When a performance, conduct, or attendance problem arises that you suspect may be health-related, you are encouraged to discuss the problem with an Employee Assistance Program (EAP) counselor after discussing the problem with the Employee Relations Specialist. Subsequently, you may suggest that the employee contact the Employee Assistance Program. An EAP counselor can assist the employee in identifying the information and documentation that should be provided and in locating a competent physician. See Chapter 8 for more information on the Employee Assistance Program

EXHIBITS

GUIDELINES FOR DOCUMENTING AN INCIDENT

In documenting the facts surrounding an incident:

1. Be factual and specific, recording what people actually did, saw or heard. Answer the questions:
 - ± What happened?
 - ± When did it happen?
 - ± Who was involved?
 - ± How did it happen?
2. Be sure the dates, times and places your list are accurate.
3. Do not use subjective thoughts, assumptions, opinions, judgments, or conclusions. They will not stand up to scrutiny by a third party unless objective facts are provided to support them. Instead, describe your direct observations of the employee's behavior or record the direct observation of others. An excellent way to do this is to use words that describe your five senses:
 - I saw...
 - I heard...
 - I touched...
 - I smelled...
 - I tasted...
4. If there was another observer to an incident, you should attempt to get a signed statement from that person. A sample witness statement is provided in Exhibit 2A. When another person describes an employee's behavior, you should ask questions to help the person use objective observations to describe what they saw, heard, felt, tasted, and touched.
5. Always write for the benefit of a third party. Don't assume the person reading the documentation knows anything about the Service or the duties performed in your work group or crew.
6. In addition to witness statements, you should also collect any other reports or records that exist (e.g., accident reports, police reports, time cards, computer records, etc.) that can help you explain what happened. Also, you should take photographs, videotape, etc. if they will help document the incident.
7. In the case of a performance problem, you will want to keep work samples with your notes to the employee detailing errors, problems, suggestions, resources, etc. A sample performance counseling memo is provided in Exhibit 4A.

8. Once you have gathered the appropriate information and before you make any decisions on what corrective measures to take, you should talk to employee to get his/her side of the story. If the employee is confronted with behavior known to you, he/she either has to admit it and explain it, deny it, or say nothing. This is important to do whether it is a conduct or performance issue; oftentimes, these discussions will shed light on why performance problems are occurring. When you meet with the employee, you should:
 - ± Tell the employee the general facts related to the case and that you are looking into it. Ask him/her if he/she knows anything about it.
 - ± Avoid being accusatory or confrontational, but do try to get at the facts.
 - ± If the employee asks if he/she is being accused, tell him/her that you are looking into the matter right now and a decision will not be made until all available facts have been reviewed.
 - ± When you close the meeting, ask the employee if there is anything else that you need to know that he/she has not shared with you.
 - ± Make sure you take notes and record the employee's responses.
 - ± If the employee does not give you his/her version, ask him/her to put it in writing to you.
 - ± Tell the employee that they are obligated to respond truthfully to your questions.

Once the facts concerning the performance or conduct problem are known, you need to correct the situation. You do this by explaining expectations, offering assistance, and following through with action if the employee does not meet your expectations.

9. When documenting a threatening incident, focus on:
 - ± The reaction of the individual being threatened (e.g., their apprehension of harm);
 - ± The conditional nature of any statements (e.g., "If you don't give me this., I'll..").
 - ± The attendant circumstances (e.g., Was it a joke? How was victim involved?)
10. You must document that you have told the employee what is expected on the job. Once the facts of misconduct or a performance problem are known, it is your responsibility to explain to the employee how you want his/her behavior to change by clarifying the conduct and/or performance expectations that are in place. In misconduct cases, it is important that conduct related rules are communicated to the employee. In performance cases, it is important that the employee understands his/her critical results and performance indicators and that he/she is given a full and fair opportunity to improve performance. You must be specific when you relate your performance expectations.
11. You must document the assistance you have given to the employee, i.e., resources, techniques, etc. When documenting an employee problem you want to offer solutions to the problem.
12. You should clarify and document the action you are taking now and what action you will take if the employee does not meet your expectations. For example, if you are counseling an employee, tell him/her that you are meeting with him/her to provide counseling and

that you will meet with him/her again in two weeks to revisit the issue. If in two weeks the problem is resolved, tell him/her so and let him/her know that you appreciate his/her cooperation. In the area of misconduct, if you take formal disciplinary action, be sure to explain to the employee that further instances of misconduct will result in more severe disciplinary action, up to and including removal. Sample conduct and performance letters are included in the Exhibits in Chapter 3 (conduct) and 4 (performance).

13. Always have an Employee Relations Specialist review your documentation before you sign, date, and release it.

SAMPLE DOCUMENTATION

A. Documenting in an Objective, Factual Manner

The following are some examples that will help you understand the value of documenting employee behavior in an objective, factual manner:

Subjective Evaluation	Objective Observation
“You were late.”	“I saw you report to your desk at 8:35 a.m.”
“You are a thief.”	“I heard you tell Fred that you took the money.”
“You did not adequately clean up the spilt oil.”	“When I ran my hands over the floor, I could feel the oil.”
“You are drinking on the job.”	“I saw you drink from the glass on your desk and smelled the liquid in it. It smelled like gin.”
“You are hostile.”	“On November 22, November 24, and December 4, you said, ‘I hate you, you pig’ and ‘kiss off’ to other employees in front of customers. When I discussed this with you on December 5, you told me that it was none of my business and that I had no right to tell you what words to use. Your hostility toward customers and management is not acceptable behavior.” [The last sentence is a subjective evaluation, however, it has been defined by the previous objective observations.]
“You were drunk.”	“You had slurred speech, your eyes were bloodshot, and your breath smelled strongly of alcohol. You were unsteady and disoriented.”
“Your performance is unacceptable.”	“You are not performing at the successful level in Critical Result 2, Quality of Expertise. During the month of August, 2000, you were given a brand new relay rack to wire. When the rack arrived in Morgantown in September, it was found to have 20 butt splices. It took two weeks to rewire the relay rack, at a staff cost of approximately \$3,700.” [The first sentence is a subjective evaluation that has been defined by the subsequent objective observations.]

B. Sample Daily Calendar Kept by a Supervisor

The following are examples of documentation which may eventually be used to take corrective action. NOTE: Be sure to keep copies of all documentation.

Supervisor's Calendar for Week of June 5, 2000

Monday - June 5	Tuesday - June 6	Wednesday - June 7	Thursday - June 8	Friday - June 9
Counseled Jim about requirement to use safety goggles at all times in lab. Told him I would discipline him next time.	Told Alice that Grizzly NWR called to compliment her work on their problem. Passed that on to Alice and thanked her.	Discussed training needs for Jim. I will get back to him on approval by 6/21.	Discussed CR#2-Workload Mgmt. w/Amy. Told her I would meet w/her for 4-weeks so she will understand priorities.	Provided copy of 5 CFR 2635 to Joe.

(Note that some supervisors prefer to record these type of events in the personal file that they keep on each of their employees or in a daily log on their computer. The point is to be sure to record the events somewhere.

C. Sample Witness Statement

April 3, 2000
Memorandum
To: Joe Friday
From: Lucy Linus
Subject: Incident on April 2, 2000
<p>On Thursday, April 2, 2000, I went to get Rick Racoon's time and attendance sheet (T&A) from his supervisor, Joe Friday. Joe said he hadn't seen it yet so I went to see Rick. When I got to Rick's office I found the T&A on his desk. I took it and left him a note saying that I had to get these (T&A's) input and I noted that Joe had already signed it. A few minutes later Rick came to my desk. He wanted to know what happened to his T&A. I told him I had left him a note and that input it just a minute ago. He asked if there was any way to make a change and I said we could do a correction if there was a problem. He interrupted me and said, "I made a terrible mistake. I'm gonna be in so much trouble with Joe." Then he ran out the door. I went into Joe's office and asked him what was going on. I told him that I found Rick's T&A and he had in fact signed it and now Rick was trying to track it down. Joe asked if I had a copy of it. I told him I did and he asked me to get it for him which I did.</p>

D. Documentation of Interview with an Observer

February 5, 2000

Memorandum

To: File
From: Joe Friday, Supervisor, Grizzly Bear NWR
Subject: Documentation of Interview on February 5, 2000

On Monday, February 5, 2000, at about 10:00 a.m., I asked Lucy Linus if I could talk to her in my office. We went to my office and I shut the door.

I told Lucy that I understood that she was present during an incident that occurred on Friday, February 2, 2000, in the lunchroom. I told her that I would like her to tell me what she knew about it. She was reluctant. I explained to her that while supervisors have the responsibility for ensuring that every employee conducts him/herself in an appropriate manner in the workplace, every employee has a responsibility to report inappropriate workplace conduct to their supervisors. Supervisors cannot do their jobs if employees do not fulfill this responsibility.

Lucy told me that she went into the lunchroom to turn off the coffee pot since it was time to go home for the day. While in the lunchroom she saw Mike and Sally facing each other. Suddenly, Sally struck Mike in the face. Mike just looked at Sally in disbelief for a second and then walked away. Sally stood there for a minute and then she left the lunchroom, too.

I asked Lucy some clarifying questions:

Q: You said it was time to go home, what time was it then?

A: About 4:00 p.m.

Q: Did you hear either of them say anything?

A: No, they didn't say anything.

Q: How did the two of them look?

A: Mike looked like he was angry. His hands were clenched in fists and the veins were popping out of his forehead. Sally looked normal, straight faced, and she had a relaxed stance. Her arms were folded in front of her.

Q: Can you elaborate on Sally's striking Mike?

A: It just came out of the blue. Mike was just standing there with his fists clenched and she just hauled off and hit him with an open hand across the face.

Q: Where was Mike holding his hands?

A: At his side the whole time.

[Note: Answers do not have to be verbatim, but must be accurate.]

I told Lucy that I might have to ask her some more questions later. She did not want to provide a statement, but agreed to review this memo and sign to show that it is accurate.

Sample Conduct of Standards Letter

To: Staff
Office X

From: Supervisor
Office X

Subject: Office X Work Policies and Standards of Conduct

The Office X supervisors and I have recently examined our office's work policies and standards. We have reached the conclusion that there is a need to restate and, in some instances, "tighten up" our policies regarding hours of work and leave.

ARRIVAL AND DEPARTURE TIMES

As you know, we have the (Flexitour option) here in Office X. Under this option, employees are to negotiate predetermined reporting times with their supervisor. Generally, these reporting times will remain "fixed" for minimum periods of (3 months). At the end of each (3 month) interval, arrival times can be renegotiated. (Arrival times can be renegotiated at shorter time intervals if extenuating work and/or personal situations so warrant.)

You are expected to be at your desk, ready to work, ON TIME, at the beginning of your tour. If there are unforeseen circumstances that will cause you to arrive late, you must contact your supervisor as early as practicable to explain the circumstances and to provide an estimated time of arrival at work. If you arrive late at work without an acceptable excuse, you may be considered "absent without leave" (AWOL). AWOL can be the basis for disciplinary action.

Departure times are based on arrival times. Employees' departure times are computed by adding their scheduled daily work hours plus their scheduled lunch period (see below) to their scheduled arrival times.

WORK BREAKS

Each Office X employee is extended the privilege of daily breaks from work totaling (___ minutes) per day. The purpose of break time is to afford the employee some respite from the stress and arduousness of daily work demands.

How the daily break privilege is utilized (length and intervals of breaks) is to be worked out on an individual basis between the supervisor and the employee. "Smoke" breaks are included in, and accrue against, the employee's total available break time per day.

An employee may NOT forego all or any of his/her break privilege for the purpose of shortening his/her workday (this is prohibited by regulation).

LUNCH PERIODS

Each full-time employee and each part-time employee who works at least 6 hours per day will be scheduled for a lunch period of at least one-half hour and not more than one and one-half hours.

At his/her supervisor's discretion, a part-time employee who works less than a 6-hour day may be accorded the privilege of foregoing a lunch period.

LEAVE APPROVAL PROCEDURES AND REQUIREMENTS

Sick leave is to be used by employees only when they are incapacitated for the performance of their duties by such reasons as sickness, injury, pregnancy, or doctor's appointments or having been exposed to a communicable disease. In addition, employees are allowed limited use of sick leave when caring for an ill family member, to make arrangements following the death of a family member, or attend a funeral of a family member. Any other use of sick leave is prohibited by law. Normally a doctor's certificate is required for sick leave absences in excess of three days. If your supervisor has reasonable grounds to question whether you are properly using sick leave (e.g., when sick leave is used frequently or in unusual patterns or circumstances), a doctor's certificate may be required for each sick leave absence, regardless of duration.

For absences that would otherwise be charged to sick leave, your supervisor may allow you to substitute annual leave or leave-without-pay.

If you are unable to come to work because of illness, you must notify your supervisor or your acting supervisor within (one-half hour) of your normal arrival time. Leaving a message with a coworker is [or is not] acceptable.

You must obtain your supervisor's approval for annual leave, at least (one day) in advance of your absence. Except in emergencies, annual leave will not be approved on short notice.

[Supervisors may establish expectations in other areas such as procedures for submission of SF-71s for leave approval; when and how absences for inclement weather will be excused (based on Regional policy); when absences will be excused for donating blood or for visiting the health unit; when and how leave-without-pay will be approved; procedures for approval of sick leave for nonemergency purposes (e.g., doctor's appointments); time limits for producing doctors certificates for use of sick leave, etc.]

UNIFORMS AND WORK ATTIRE

All employees are expected to dress appropriately for the position they hold. The appropriateness of work attire will be established through discussion between the employee and his/her supervisor.

The following applies only to employees who are required to wear uniforms as a condition of their employment:

- Employees must wear their uniforms during work, unless they have received supervisory approval to wear different clothing. Employees will not mix uniform and non-uniform components.
- Employees must ensure that uniforms are cleaned and pressed, if necessary. Any damage in the uniform fabric should be repaired before arriving at work.

ACCOUNTABLE PROPERTY

All employees must sign a Receipt for Property for all pieces of accountable property, which are in their possession on a continuing basis.

Employees who use accountable property for a specific project, where property will be returned and locked up upon completion of the project, must sign a check-out sheet, listing the property number, date checked out, and projected date of return. Property will be locked in and _____ will retain a set of keys. (Revise according to your local practices.)

USE OF GOVERNMENT TELEPHONES

Employees are authorized to use government telephones to conduct official business and for personal calls that are determined to be necessary and in the interest of the government.

Allowable personal phone calls include:

- emergency calls to family members or doctors;
- brief calls to notify your family if you are required to work overtime without advance notice;
- brief daily calls within the local commuting area to speak to spouses or minor children;
- brief calls to locations within the local commuting area that can be reached only during working hours, such as local government agencies or physicians;
- brief calls to locations within the local commuting area to arrange emergency repairs to your residence or automobile.

All personal phone calls made should be of a type that is included in the list, above, and should

be made during your break or lunch time, except for emergency phone calls. Personal phone calls should not adversely affect your performance of official duties; they should be brief and of reasonable frequency; and they should be calls that reasonably cannot be made at another time. If you have questions as to whether a personal call is allowable, please ask your supervisor.

Please feel free to come and see me if you have any questions about the above procedures.

Exhibit 3B

**SAMPLE
LETTER OF COUNSELING**

[NOTE: Employee counseling should be the first step to correct conduct problems unless the severity of the conduct necessitates formal disciplinary action. Counseling is not considered to be a disciplinary action. See instructions in Chapter 2 regarding supervisory-maintained personnel records.]]

To: Employee Name, Title

From: Supervisor,

Subject: Letter of Counseling

This is an employee counseling letter for your unauthorized absence from duty.

Your scheduled lunch period is from 11:30 a.m. to 12:00 p.m. On June 6, 199__, you did not return from lunch until 1:00 p.m. You did not request approval for your absence. When I asked you, you could not give me a legitimate reason for returning late, or for failing to request leave. Subsequently, you were charged one hour of absence without official leave (AWOL), which is unpaid, unapproved leave.

In deciding to issue this letter I have considered that during your new employee orientation in October 199__ and later during an office staff meeting on January 1, 199__ you were informed of the requirement to take no more than your authorized official lunch, and to request advanced approval for leave if you wish to be away from work longer than your official lunch period.

(Include any action to be taken by the employee to prevent a recurrence of the infraction and disciplinary action, and action to be taken by the supervisor to assist the employee.)

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

If you believe that personal, medical, or other problems are reasons for your actions, you may provide documentation of the medical condition or raise these problems. You may also contact the Employee Assistance Program at [telephone number], or me for assistance. You can contact the Personnel Office at [telephone number], if you need further information concerning medical documentation requirements.

**SAMPLE
LETTER OF WARNING**

[NOTE: All Letters affecting Disciplinary Actions are to be reviewed by an Employee Relations Specialist in the Personnel Office prior to issuance. See instructions in Chapter 2 regarding supervisory-maintained personnel records.]

To: Employee Name, Title

From: Supervisor,

Subject: Letter of Warning

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

Your scheduled lunch period is from 11:30 a.m. to 12:00 p.m. On June 6, 199__, you did not return from lunch until 1:00 p.m. You did not request approval for your absence. When I asked you, you could not give me a legitimate reason for returning late, or for failing to request leave. Subsequently, you were charged one hour of absence without official leave (AWOL), which is unpaid, unapproved leave.

In deciding to issue this warning I have considered that during your new employee orientation in October 199__ and later during an office staff meeting on January 1, 199__ you were informed of the requirement to take no more than your authorized official lunch, and to request advanced approval for leave if you wish to be away from work longer than your official lunch period.

(Include any action to be taken by the employee to prevent a recurrence of the infraction and further disciplinary action, and action to be taken by the supervisor to assist the employee.) You are cautioned that any future misconduct of this nature or other misconduct could result in more severe disciplinary action, up to and including removal. If you have any questions about leave approval policies or procedures, I will be happy to answer them.

If you believe that personal, medical, or other problems are reasons for your actions, you may provide documentation of the medical condition or raise these problems. You may also contact the Employee Assistance Program at [telephone number], or me for assistance. You can contact the Personnel Office at [telephone number], if you need further information concerning medical documentation requirements.

You may make a written explanation to be retained with the letter of warning. A copy of this letter of warning, along with any written explanation made by you, will be retained by me in my supervisory employee files for not more than one year after the date you acknowledge receipt. The letter will be removed and destroyed from my supervisory employee files if you separate from the Service prior to the end of the one year period. The letter may be withdrawn for destruction earlier than the expiration of the one year period if your conduct is considered to warrant such. I will inform you in writing if such becomes the case.

You may contest this letter by filing an informal grievance in accordance with Service grievance procedures contained in 227 FW 3. Such a grievance may be filed either orally or in writing with me within 15 calendar days after your receipt of this letter. If you have questions about your grievance rights please contact the Employee Relations Specialist in the Personnel Office at [telephone number].

[NOTE: On a copy of the letter the following type for the employee to sign:]

I acknowledge receiving this document.

Signature

Date

**SAMPLE
LETTER OF REPRIMAND**

[NOTE: All Letters affecting Disciplinary Actions are to be reviewed by an Employee Relations Specialist in the Personnel Office prior to issuance. See instructions in Chapter 2 regarding supervisory-maintained personnel records.]

To: Employee Name, Title

From: Supervisor Name, Title

Subject: Letter of Reprimand

This is an official letter of reprimand for failing to follow refuge policy concerning the requirement to control dogs and other pets on refuge grounds.

On July 3, 199__, at approximately 5:00 p.m., you were observed by Refuge Manager Mary Miller, and Volunteer Steve Smith on refuge grounds, in the south area of the shop with your 2 dogs, neither one of which was on a leash. On July 4, when I asked you about this incident, you responded that you did not think you would get caught.

Refuge Manual, 5 RM 4.5 specifies that dogs and cats will not be kept on refuges if permitted to roam uncontrolled. Dogs must be confined to a yard or trained to stay in the immediate vicinity of the residence. General refuge regulations, which apply to the public as well as to employees, state that dogs and other pets must be on a leash, except when directly involved in authorized hunting activities.

In deciding to issue this reprimand, I have considered the fact that (1) I reminded you during the first week of June 199__ of the regulatory restrictions concerning the control of dogs and other pets on the refuge (This was in response to a previous report that your dog had been seen in an unauthorized area of the refuge without a leash), and (2) you are a refuge law enforcement officer and are expected to be aware of all refuge regulations, and to enforce and to comply with those regulations.

(Include any action to be taken by the employee to prevent a recurrence of the infraction and further disciplinary action, and action to be taken by the supervisor to assist the employee). You are cautioned that any future misconduct of this nature or other misconduct, may result in more severe disciplinary action, or removal from your position.

If you believe that personal, medical, or other problems are reasons for your misconduct, you may provide documentation of the medical condition or raise these problems. You may also contact the Employee Assistance Program at [telephone number] for assistance. If you wish to provide medical documentation the Employee Relations Specialist in the Regional Personnel Office at [telephone number] will provide you with information concerning medical documentation requirements.

A copy of this reprimand and any written explanation you may furnish will be placed in your Official Personnel Folder (OPF) for a period of 2 years. This reprimand will be removed from your OPF if you separate from the Service prior to the end of the two year period. The reprimand may be removed (as appropriate) earlier than the expiration of the two year period if your conduct is considered to warrant such.

You may file a formal grievance concerning this action in accordance with the procedures cited in 227 FW3. The grievance should be filed with the Regional Personnel Officer, U.S. Fish & Wildlife Service, 911 NE 11th Ave., Portland, OR 97232-4181. To be considered, the grievance shall (1) be in writing, (2) set forth specifically the reasons for your grievance, (3) state the specific corrective action desired, and (4) be submitted within fifteen (15) calendar days of your receipt of this letter.

An allegation that the action taken against you was based in whole or in part on discrimination because of race, color, religion, sex, age, national origin, physical or mental handicap, sexual orientation, status as a parent or protected genetic information may be taken up with the Service under the provisions of Part 1614 of the Equal Employment Opportunity Commission Regulations provided such allegation is brought to the attention of an EEO Counselor within forty-five (45) calendar days of the effective date of this action. Information about the Equal Employment Opportunity (EEO) complaint procedure may be obtained from your EEO Counselor.

Please sign below to acknowledge receipt. Your signature does not represent agreement or disagreement with the contents, and by signing you will not forfeit any of your rights. However, your failure to sign will not void the contents of this letter.

[NOTE: On a copy of the letter, type the following for the employee to sign:]

I acknowledge receiving this document.

Signature

Date

SAMPLE
NOTICE OF PROPOSED SUSPENSION OF 14 DAYS OR LESS

[NOTE: All Footnotes and Brackets below contain supervisory instructions and should not be included in the final letter. All letters affecting or proposing disciplinary action should be reviewed by an Employee Relations Specialist prior to issuance. See instructions in Chapter 2 regarding supervisory-maintained personnel records.]

To: Employee Name, Title
From: Supervisor Name, Title
Subject: Notice of Proposed Suspension for _____ Calendar Days

This is a notice of proposed disciplinary suspension issued to you for your failure to follow instructions and for your unauthorized absence (AWOL). This action is being proposed in accordance with 5 CFR 752. In order to promote the efficiency of the service, I am proposing to suspend you from duty and pay for a period of _____ calendar days at any time after seven (7) calendar days^a from the date you received this notice.

Specifically, this proposed suspension is based on the following reason(s):

REASON 1 [State a specific identifiable offense that refers to personal conduct on the part of the employee, i.e., what the employee actually did that was wrong, and, where appropriate, cite the specific conduct standard or office policy or supervisory instruction that was violated. For example:]
You failed to follow my instructions. Employees are required to carry out the announced policies and programs of the Department and to obey proper requests and directions of supervisors.

[In the following specifications, specifically describe the offense, with reference to times and dates, locations, persons directly involved, and specific acts and actions. It should be evident from reading the specification why the reason has been cited. Examples are:]

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

Specification 2 - In a memo dated December 28, 20__, I instructed the office staff regarding proper leave approval procedures, specifically that if anyone needs to take unscheduled leave (e.g., sick leave for illness), that I expect them to call the office to speak

¹ Advance written notice period for a suspension of 14 days or less must be a reasonable period of time that will allow the employee the opportunity to respond orally and/or in writing. The advance notice period may not be less than 24 hours.

to me or my acting within 15 minutes of the beginning of their tour-of-duty. On January 7, 20__, you did not call the office to request sick leave until 9:00 a.m., one hour after the beginning of your tour-of-duty, and you did not ask to speak to me. Instead you left a message with the secretary.

Specification 3 - On January 8, 20__, I reminded you of the requirement to call regarding unscheduled leave. On February 21 you did not call the office until 10:00 a.m., 2 hours after the beginning of your tour-of-duty, and again you left a message with secretary instead of asking to speak to me.

Specification 4 - [State as many specifications as are necessary. Normally, each individual specification should detail a separate instance of misconduct.]

REASON 2 [Use as many reasons as there are clearly distinct offenses. Example:] You were absent from duty without authorization.

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

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

Specification . . . [Continue format.]

[See Exhibit 3G for additional examples of reasons and specifications to include in a proposal letter for misconduct.]

[In cases of off-duty misconduct, the nexus must be stated. Nexus is a description of why and how there is a connection between the specific off-duty misconduct and the efficiency of the Service. As applicable, the connection might be established in terms of publicity or notoriety, the effect on the image of the Service or ability to accomplish the mission of the Service, the effect on the Service's ability to rely on the integrity, honesty or good judgment of the employee, the effect on co-workers (safety concerns, morale, job performance, etc.), and direct applicability to the job.]

This proposed action is being taken to promote the efficiency of the service, specifically, [state nexus] use of unplanned and unapproved leave affects the accomplishment of targets.
Part A.

[If prior discipline or other aggravating circumstances are present, state:] In proposing this action, I am also taking into account the fact that you were counseled about AWOL and insubordination on October 16, 20__, and received a letter of reprimand for insubordination on November 16, 20__.

You have the right to review the material relied on to support the reasons in this notice and/or receive a copy of the evidence file, and may request it from _____. If you do not fully understand the reasons for the proposed action, I will give you further explanation.

You have a right to answer both personally and in writing and to furnish affidavits and evidence in support of your answer. Concerning your written and/or oral replies, you will not be restricted to matters relating solely to the reasons for proposing this action, but you may plead extenuating circumstances or make any other representations which you consider appropriate. You may also submit such affidavits or other evidence that you wish to have considered in support of your reply. You also have the right to be represented by an attorney or other representative. A representative may be disallowed if the individual's activities as a representative could cause a conflict of interest or position, would give rise to unreasonable costs to the Government, or would conflict with priority work assignments.

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

Any oral conference that you request will be conducted by Ms. Minnie Jerr^b, Division Manager for Resources, at the Regional Office. Ms. Jerr^c will also be the deciding official on this matter. Your written and/or oral reply must be received by Ms. Jerr within five (5) calendar days from the date you receive this letter. If you wish to be heard in person, you must request an oral conference within three (3) calendar days from the date you receive this letter. Any written reply or written request for an oral conference as well as designation of a representative should be addressed to Ms. Jerr, U.S. Fish and Wildlife Service Regional Office, Resources Division, 911 N.E. 11th Ave., Portland, OR 97232-4181. A request for an oral conference can also be directed to Ms. Jerr by telephone on (503) 555-2555.

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

If you do not reply within the seven calendar day period allowed for your reply, a decision will be made based on the evidence now available and a letter of decision will be given to you. If you do reply to this notice, a decision will not be made until careful consideration is given to your complete answer, including any timely written and/or oral statements that you may submit. You will be notified in writing of the final decision.

You will be retained in a work status during the advance notice period specified in this letter [for intermittent employees add, if appropriate:] unless workload requirements necessitate placing you in a

^bThe answer to the proposed action must be presented to a higher than the official proposing the action, and the official receiving the answer must have the authority to either make the final decision or effectively recommend actions to the deciding officials.

^cThe deciding official can also serve as the official receiving the oral and/or written reply. See footnote 2.

non-duty status. [For those in non-work status, state:] You will remain in a non-work status during the advance notice period unless workload requirements necessitate recalling you to duty.

If you should have questions regarding your rights or other procedures contained in this notice, please contact the Employee Relations Specialist in the Personnel Office at [telephone number].

Please acknowledge receipt of this letter by signing the attached copy and returning it to me.

Sincerely,

Mr. Soupy R. Visor

[NOTE: On a copy of the letter, type the following for the employee to sign:]

I acknowledge receiving this document.

Signature

Date

SAMPLE
DECISION NOTICE OF SUSPENSION OF 14 DAYS OR LESS

[NOTE: All Footnotes and Brackets below contain supervisory instructions and should not be included in the final letter. All letters affecting or proposing disciplinary action should be reviewed by an Employee Relations Specialist prior to issuance. See instructions in Chapter 2 regarding supervisory-maintained personnel records.]

To: Employee Name, Title
From: Deciding Official (higher level than proposing official)
Subject: Decision in Notice of Proposed Suspension for ____ Days

In a letter dated March 20, 20__ it was proposed that you be suspended from duty and pay for a period of _____ calendar days for your failure to follow your supervisor's instructions and for your unauthorized absence (AWOL) based on the reasons and specifications therein.

I have carefully considered [include as applicable, replies and their dates, including any medical documentation provided, for example] your written reply of April 15, 20__, your oral reply on April 23, 20__, and the evidence in support of each. My decision regarding the reasons stated in the letter of March 20, 20__, is as follows:

REASON 1	Sustained
Specification 1	Sustained
Specification 2	Sustained
Specification 3	Sustained
Specification 4	Not sustained
 REASON 2	 Sustained
Specification 1	Sustained
Specification 2	Sustained

[NOTE: If all reasons and specifications are sustained, a statement to that effect will suffice.]

[The deciding official should demonstrate that relevant factors have been considered in arriving at the decision. This can be done by means of a statement to that effect, such as:] In determining what penalty is adequate and appropriate in this case, I have considered all relevant factors, including those listed in 227 FW2 Appendix 1, Part B, and those raised by you (and your representative) in your replies.] **[The deciding official should discuss specific factors brought forth by the employee and representative, indicating that they were taken into consideration but that an action is necessary because, for example:]** In your response to Specification 1, I considered your statement that your phone was out of order, and you were unable to call to request leave; however, there is no indication in your response that you were prevented from using a neighbor's phone or a pay phone. The Service must be able to rely on employees reporting to work as scheduled.

[In all cases where aggravating circumstances, such a prior discipline, were mentioned in the proposal letter, they should also be referenced here, for example:] I have also taken into consideration the fact that you received a letter of reprimand on November 16, 20__, for failure to follow instructions.

[Aggravating factors not mentioned in the proposal letter should not be considered or discussed. Any nexus statement ,i.e., for off-duty misconduct, should also be referenced.] I have also considered that you are a work leader and relied upon to model appropriate behavior for other employees.

Your misconduct resulted in 2 work projects not being completed in time. It is my decision that your misconduct warrants disciplinary action. In order to promote the efficiency of the Service, you will be suspended from duty or pay for a period of ____ calendar days commencing on April 25, 20__. You will return to duty at 8:00 a.m. on _____. You are advised that any repetition of this misconduct or other misconduct may result in more severe disciplinary action, up to and including removal.

You may file a formal grievance concerning this action in accordance with the procedures cited in 227 FW3. The grievance should be filed with the Regional Personnel Officer, U.S. Fish & Wildlife Service, 911 NE 11th Ave., Portland, OR 97232-4181. To be considered, the grievance shall (1) be in writing, (2) set forth specifically the reasons for your grievance, (3) state the specific corrective action desired, and (4) be submitted within fifteen (15) calendar days of your receipt of this letter.

An allegation that the action taken against you was based in whole or in part on discrimination because of race, color, religion, sex, age, national origin, physical or mental handicap, sexual orientation, status as a parent or protected genetic information may be taken up with the Service under the provisions of Part 1614 of the Equal Employment Opportunity Commission Regulations provided such allegation is brought to the attention of an EEO Counselor within forty-five (45) calendar days of the effective date of this action. Information about the Equal Employment Opportunity (EEO) complaint procedure may be obtained from your EEO Counselor.

The Standard Form 50 effecting your suspension will be forwarded to you when available.

Please sign below to acknowledge receipt. Your signature does not represent agreement or disagreement with the contents, and by signing you will not forfeit any of your rights. However, your failure to sign will not void the contents of this letter.

Sincerely,

Mr. Soupy R. Visor

[NOTE: On a copy of the letter type the following for the employee to sign:]

“I acknowledge receiving this document.

Signature

Date

SAMPLE
NOTICE OF PROPOSED ADVERSE ACTION^d

[NOTE: All Footnotes and Brackets below contain supervisory instructions and should not be included in the final letter. All letters affecting or proposing disciplinary action should be reviewed by an Employee Relations Specialist prior to issuance. See instructions in Chapter 2 regarding supervisory-maintained personnel records.]

Mr. Les Werk
Fish and Wildlife Biologist, GS-401-11
Fish and Wildlife Service
Big Mac National Fish Hatchery
Mac, Idaho

Dear Mr. Werk:

This is a notice of proposed adverse action issued in accordance with 5 CFR 752. In order to promote the efficiency of the Federal Service (Service), it is proposed to [include as appropriate:]

- "remove you from the Federal Service";
- "reduce you in grade from GS-__ to GS-__", or
- "suspend you from duty and pay for a period of ____ calendar days",

or otherwise discipline you, at any time after thirty (30) full calendar days from the date you receive this notice.

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

Reason I. [State a specific identifiable offense which refers to personal conduct on the part of the employee, i.e., what the employee actually did that was wrong. For example:] **You failed to follow the instructions of your official supervisor** [Where appropriate, cite a specific Rule of Conduct or other instructions, e.g.:] **... in violation of** [Example reasons and specifications are contained in Exhibit 3G.]

Specification 1: [Specifically describe the offense, with reference to times and dates, locations, persons directly involved, and specific acts and actions. It should be evident from reading the specification why the reason has been cited. The specification is not the evidence, although elements of the evidence may make up the specification. Example specifications are contained in Exhibit 3H.]

^d For removals, demotions or suspensions for more than 14 days taken for reasons other than unacceptable performance.

Specification 2: [State as many specifications as are necessary. Normally, each individual specification should detail a separate instance of misconduct.]

Reason II. [Use as many reasons as there are clearly distinct offenses.]

Specification ... [Continue with format.]

[In cases of off-duty misconduct, the nexus must be stated. This is a description of why and how there is a connection between the specific off-duty misconduct and the efficiency of the service. As applicable, the connection might be established in terms of publicity or notoriety, the effect on the image of the Fish and Wildlife Service or ability to accomplish the mission of the Service, the effect on the Service's ability to rely on the integrity, honesty or good judgment of the employee (especially for responsible jobs), the effect on co-workers (safety concerns, morale, job performance, etc.), and direct applicability to the job (an obvious nexus, such as violation of fish and game laws and regulations). Begin with a phrase such as the following: "Such conduct seriously impairs the efficiency of the Service...." See examples of reasons and specifications for off-duty misconduct in XI and X of Exhibit 3H.]

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

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

You have a right to review the material relied on to support the reasons in this notice and/or receive a copy of the evidence file, and may request it from _____. If you do not fully understand the reasons for the proposed action, I will give you further explanation.

You have the right to answer both personally and in writing and to furnish affidavits and evidence in support of your answer. Concerning your written and/or oral replies, you will not be restricted to matters relating solely to the reasons for proposing this action, but you may plead extenuating circumstances or make any other representations which you consider appropriate. You may also submit such affidavits or other evidence that you wish to have considered in support of your reply. You also have the right to be represented by an attorney or other representative. A representative may be disallowed if the individual's activities as a representative could cause a conflict of interest or position, would give rise to unreasonable costs to the Government, or would conflict with priority work assignments.

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

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

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

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

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

^e The deciding official can also serve as the official receiving the oral and/or written reply. See footnote 1.

If you should have questions regarding your rights or other procedures contained in this notice, please contact the Employee Relations Specialist at [telephone number].

Please acknowledge receipt of this letter by signing the attached copy and returning it to me.

Sincerely,

Mr. Soupy R. Visor

[NOTE: On a copy of the letter type the following for the employee to sign:]

I acknowledge receiving this document.

Signature

Date

**SAMPLE
REASONS AND SPECIFICATIONS**

[NOTE: Please discuss reasons and specifications with an Employee Relations Specialist in the Personnel Office. All letters affecting or proposing disciplinary/adverse action should be reviewed in the Personnel Office prior to issuance.]

REASON 1 You failed to obey the instructions of your official supervisor. Employees are required to carry out the announced policies and programs of the Department and to obey proper requests and directions of supervisors.

Specification 1 - On December 11, 20__, you were instructed verbally and in writing by your supervisor, _____, to report to the Anytown Field Station on December 14, 20__, to perform a files review. You did not report to the Anytown Field Station and instead reported to your regular place of work. When you came in on December 14 and were asked by your supervisor why you failed to report to the Anytown Field Station, you indicated that it was not in your job description to do files reviews and that you would never perform such a task.

REASON 2 You made false statements in matters of official interest.

Specification 1 - From May 12 to May 17, 20__, you traveled to Los Angeles, California, to attend a water rights conference.

On May 23, 20__, you submitted your travel voucher form (Standard Form 1012) to claim reimbursement for the expenses that you incurred during this trip. You signed and dated the voucher certifying that it was true and correct to the best of your knowledge and belief.

You claimed \$65 lodging expenses for each of the following days: May 12, 13, 14, 15, and 16, 20__. To document these expenses, you submitted a handwritten receipt for \$325 signed by Ms. N. Keeper. On the back of the receipt was written, "Stayed at Keeper Rooming House."

In your statement to your supervisor (or other person investigating incident) on July 25, 20__ you stated that there is no such establishment as the Keeper Rooming House in Los Angeles. You stated that you stayed with friends in Los Angeles, incurred no lodging expenses, and had written the receipt to yourself.

REASON 3 You misused government property in violation of the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635.704, which reads, "An employee has the duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes."

Specification 1 - On January 15, 20__, you took your assigned computer home with you. On January 16, I questioned you regarding the whereabouts of your computer, and you replied that you took it home so that your children could use it in completing their homework.

REASON 4 You showed a lack of respect for a fellow employee and for your acting supervisor, and you used abusive and offensive language. You failed to obey the instructions of your official supervisor.

Specification 1 - On or about October 15, 20__, you were called to the acting supervisor's office to talk about the due dates for 2 of your assignments. During the conversation, you disagreed that you should be required to turn in your assignments by the due dates. When the acting supervisor said that the assignments would have to be completed by the original due dates, you stood up and stated in a very loud and hostile manner that you were not going to argue about it and that you had other things to do and would not complete the assignments in time. You walked away from his office despite repeated direct orders to stay. When your supervisor asked you about the incident, you responded that you did not have to take orders from your acting supervisor.

Specification 2 - On September 15, 20__, you approached Mr. Sal Mann on the grounds of the visitor center. You asked Mr. Mann if he had a problem. When Mr. Mann answered you, you responded with a loud verbal attack, and continued by taking part in an argument with Mr. Mann for several minutes. During the argument you used abusive and offensive language. Among other things, you said, "You're a gosh darn a-hole," and "Your mother wears army boots," and "I bet when you blow your nose, your entire brain ends up on your hanky," etc. When Mr. Mann placed his cap on his head, you made a slapping motion at Mr. Mann's cap, which knocked the cap from his head. You continued to argue with Mr. Mann until he left the work area. When your supervisor asked you about your confrontation with Mr. Mann, you said that Mann really ticked you off, and you would do the same thing again, or more, if you had the opportunity.

REASON 5 You willfully misused a Government vehicle, in violation of the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635.704, and in violation of 31 U.S.C. 1344. [NOTE: Willful misuse of Government vehicles requires a suspension from duty without compensation for not less than 30 days.]

Specification 1 At approximately 5:00 p.m. on Friday, August 16, 20__, you drove Fleet Vehicle 007, a green Ford Pick up, to your residence. You did not have official authorization to take this vehicle home with you.

Testimony from coworker Holly Hill indicated that you used the Government vehicle on Saturday, August 17, 20__, to move your personal furniture to a mountain cabin you own near Government Camp, Oregon. When you were asked about your use of the vehicle, you did not deny that you used the vehicle as Ms. Hill had indicated.

REASON 6 You failed to follow proper leave approval procedures, which violated the written office policy regarding leave approval, dated June 30, 20__.

Specification 1 - In a memo dated 12/28/2__, your supervisor, Ms. Maple, instructed the office staff regarding proper leave approval procedures, specifically that if anyone needs to take unscheduled leave (i.e., sick leave for illness) she expected everyone to call the office to speak to her or her acting within 15 minutes of the beginning of their tour-of-duty. On January 7, 20__, you did not call the office until 9:00 a.m., 1 hour after the beginning of your tour of duty, to request sick leave, and you did not ask to speak to Ms. Maple. Instead you left a message with the secretary. When Ms. Maple asked you about this incident, you had no response.

REASON 7 You were absent from duty without authorization.

Specification 1 - On December 18, 20__, an official workday, you did not come to your place of work in the Regional Office. You had not previously requested nor had you been granted leave for that day. When you returned to work on December 19, 20__, you told Mr. Peters, your supervisor, that you drove your mother out of town on December 18, 20__, and it was inconvenient for you to call the office. You then requested annual leave or LWOP for December 18, 20__. Mr. Peters denied your request. You were placed in an absence without leave status (AWOL) for 8 hours.

Specification 2 On November 30, 20__, an official workday, you were absent from duty for the entire day. When you came to work on December 1, 20__, you told Mr. Peters that you had been ill on November 30. Because of your frequent absences for illness in the past, you had been advised by memorandum on November 1, 20__, that a doctor's medical certification would be required for use of future sick leave. When Mr. Peters asked you, you said you did not have such a certificate for your November 30, absence, so sick leave was not granted. You were placed in an absence without leave status (AWOL) for 8 hours.

REASON 8 You used your Government American Express charge card for other than official business, which violated Regional instructions regarding proper use of your Government American Express card and the provisions on the American Express Government Card Application/written procedures.

Specification 1 - During a 2-week period on which you were on annual leave, you used the Government American Express card as follows:

February 1, 20__	Texaco, Miami, FL	\$ 17.25
February 4, 20__	Texaco, Orlando, FL	\$ 9.50
February 5, 20__	Texaco, Atlanta, GA	\$ 15.25
February 6, 20__	Firestone Tires, Atlanta, GA	\$125.00
February 8, 20__	Chevron, Dallas, TX	\$ 18.25
February 9, 20__	Texaco, Denver, CO	\$ 19.00
February 14, 20__	Nordstrom, Portland, OR	\$915.25

The amount you owe American Express is \$1119.50, the total of which is over 90 days delinquent. When you were questioned about your use of the card, you said that your other credit cards had been canceled because of delinquency in making your payments and, if you had not used the American Express card, you would not have been able to take a vacation or buy a new wardrobe.

Exhibit 3I

ORAL REPLY PROCEDURES

[These procedures may be incorporated in, or a copy attached to the letter notifying the employee and/or representative(s) of the time and place of the Oral Reply proceedings.]

- The oral reply proceeding will be opened at the time specified.
- The oral reply is not a “hearing.” The right to reply orally is in addition to the right employees have to reply “in writing” to a letter of proposed adverse action.
- The right of personal reply does not entitle employees to adversary type hearings, nor does it contemplate confrontation of witnesses.
- No witnesses will be permitted at the proceedings since this is not a “hearing.”
- No cross-examination of the employee or the Oral Reply Officer will be permitted.
- Judicial procedures and rules of evidence will not be applied.
- In a proceeding of this type, the Service does not argue or present its case.
- Only those persons who have a connection with the case as determined by the Oral Reply Officer will be admitted to the proceedings.
- The employee and/or representative will be permitted to present the oral reply freely, and to present any additional affidavits in support of the case. The reply will not be restricted to matters relating solely to reasons for proposing adverse or performance action against him/her but may also include any other representations or mitigating circumstances which are considered appropriate for consideration by the deciding official.
- To ensure an orderly presentation, if more than one employee representative is to be present, only one should be the spokesperson. This, of course, is not intended to restrict comments and responses by the employee and/or other representative wherever appropriate.
- One copy of the oral report record (if available) will be furnished to the employee/representative.
- The Oral Reply Officer will as presiding officer and control the proceedings. He/she is authorized to take whatever action is necessary to ensure an orderly, expedient, and equitable presentation by the employee and/or representative. All parties will be expected to abide by his/her decision in these matters.

**SAMPLE
ADVERSE ACTION DECISION NOTICE¹**

[NOTE: All Footnotes and Brackets below contain supervisory instructions and should not be included in the final letter. All letters affecting or proposing disciplinary action should be reviewed in the Personnel Office prior to issuance.]

To: Employee Name, Title
From: Assistant Regional Director _____
Subject: Decision in Notice of Proposed (Suspension for __ Days/Demotion/Removal)

In a letter dated April 8, 20__ proposed to [state, as appropriate:]

- "remove you from the Fish and Wildlife Service",
 - "reduce you in grade from GS-__ to GS-__", or
 - "suspend you from duty and pay for a period of _____ calendar days,"
- for **(state reason given in proposal)** and based on the reason(s) and specifications(s) therein.

I have carefully considered [include, as applicable, replies and their dates, including any medical documentation provided] your written reply of April 15, 20__ and your oral reply on April 23, 20__, and the evidence in support of each.

My decision regarding the reasons stated in the letter of April 8, 20__, is as follows:

REASON 1	Sustained
Specification 1	Sustained
Specification 2	Sustained
Specification 3	Sustained
Specification 4	Not sustained
 REASON 2	 Sustained
Specification 1	Sustained
Specification 2	Sustained

[NOTE: If all reasons and specifications are sustained, a statement to that effect will suffice.]
[In all cases where aggravating circumstances, such as prior discipline, are mentioned in the proposal letter, they should also be referenced here, for example:] I have also taken into consideration the fact that you received a 13-day suspension for making false statements on October 6, 20__. [Aggravating factors not mentioned in the proposal letter should not be considered or discussed.]

[The deciding official should demonstrate all relevant factors have been considered in arriving at the decision. This can be done by means of a statement to that effect, such as:] In determining what penalty is adequate and appropriate in this case, I have considered all relevant factors, including those listed in 227 FW 2, Appendix 1, Part B, and those raised by you (and your representative) in your replies. **[The deciding official should discuss specific factors brought forth by the employee and representative, indicating that they were taken into consideration]**. I have considered your statement that you have been under severe personal and work stress the past few months and your statement that you are sorry for what you have done. **[The factors listed in 227 FW 2, Appendix 1, Part B should be discussed as appropriate]** I have also considered that your position requires that you be accountable for safeguarding money, that you have been in this position for more than 10 years, that you have received annual training in proper procedures for safeguarding funds entrusted to you since being assigned to this position, and that you have also received annual ethics training for the past 5 years. I have also considered that the publicity surrounding the mishandling of monies entrusted to you and your making false statements has resulted in a loss of confidence by others in your honesty. Not only must the Service be able to rely on the honesty of its employees, your misconduct has seriously impaired your ability to perform the duties of your position. Your misconduct is a very serious violation that warrants severe disciplinary action.

[For a removal, state:] I have concluded that a removal will promote the efficiency of the Federal Service and that a lesser penalty would be inadequate. It is my decision to remove you from the U.S. Fish and Wildlife Service effective May 16, 20__.

[For a demotion, state:] I have concluded that a reduction in grade will promote the efficiency of the Service. It is my decision to reduce you in grade from GS-__ to GS-__ effective May 16, 20__. You are advised that any repetition of this misconduct or other misconduct may result in more severe disciplinary action.

[For a suspension, state:] I have concluded that a suspension will promote the efficiency of the Service. It is my decision that you be suspended from duty and pay for a period of 18 calendar days commencing May 16, 20__. You will return to duty at 8:00 a.m. on June 3, 20__. You are advised that any repetition of this misconduct or other misconduct may result in more severe disciplinary action.

You have the right to appeal this action to the Regional Director, Merit Systems Protection Board (MSPB), [address]. Your appeal must be received by the office of the MSPB no later than thirty (30) calendar days after the effective date of this (suspension) (removal) (demotion). Personal delivery during normal business hours, delivery by regular mail, by facsimile (FAX: [telephone]), or delivery by commercial overnight delivery service is required by the Board. A copy of the Board's regulations and Appeal Form is attached. Petitions of appeal may be in any format including letter form, but must contain the information specified on the Appeal Form.

Should you allege that the action taken against you was based in whole or in part on discrimination because of race, color, religion, sex, age, national origin, physical or mental handicap, sexual orientation, status as a parent or protected genetic information, you have the following options available to you: (1) You may appeal the discrimination allegation to the Merit Systems Protection Board, or (2) you may appeal the discrimination allegation through the FWS discrimination complaint system under Part 1614 of the Equal Employment Opportunity

Commission regulations. To appeal under Part 1614, the allegation must be brought to the attention of an EEO counselor within forty-five (45) calendar days of the effective date of this action. A description of subsequent appeal rights available under a Part 1614 appeal may be found in Subpart E of the enclosed Merit Systems Protection Board regulations.

Information about MSPB appeal rights and procedures may be obtained from the Employee Relations Specialist in the Personnel Office at [telephone]. For information concerning the discrimination complaint process call the Equal Employment Opportunity Counselor at [telephone].

[If the employee meets the service requirements for disability retirement and there are indications that a medical condition may be the cause of the reasons for the action, add:] If you believe that a medical condition is the cause of the reasons for this action, you may file an application for disability retirement. Please contact the Personnel Office for additional information.

The Standard Form 50 effecting your **[removal, demotion, or suspension]** will be forwarded to you when available.

Please acknowledge receipt of this letter by signing the attached copy and returning it to me. Your signature does not represent agreement or disagreement with this proposal and, by signing, you will not forfeit any of the rights mentioned. However, your failure to sign will not void the contents of the letter.

Sincerely,

Assistant Regional Director

Attachments

- 1 - MSPB Regulations (5 CFR Part 1201)
- 2 - MSPB Form (OF 283, Rev 10/94)

[NOTE: On a copy of the letter type the following for the employee to sign:]

“I acknowledge receiving this document.

Signature

Date .”]

**SAMPLE
PERFORMANCE COUNSELING MEMORANDUM**

[NOTE: All letters affecting or proposing disciplinary action should be reviewed by an Employee Relations Specialist prior to issuance. See instructions in Chapter 2 regarding supervisory-maintained personnel records.]

To: Employee X
From : Supervisor
Subject: Performance Counseling

[employee], We have had several discussions during this past appraisal cycle concerning your performance in Critical Result #1 - Computer Support. I have offered several suggestions to you about how to improve your performance in this area, such as using spellcheck, proofreading your work, and using the correspondence manual. To date, you continue to turn in assignments with errors.

As we discussed yesterday, I have scheduled you to attend the “Proofreading for Secretaries” course that is going to be held in Spokane on June 17. If you have other suggestions that will help improve your performance, please do not hesitate to let me know.

To date I have used informal methods to address your performance deficiencies. Unless your performance improved, I will have to rate you as “Results Not Achieved” on Critical Result #1. This will result in the use of a formal performance improvement plan which will provide you with an opportunity and a specific period of time to show that you can perform at the “Results Achieved” level and remain at that level for one year. If you are still not rated as “Results Achieved” at the end of the plan or you do not hold that performance for one year, I would have to take action to reassign you, change you to a lower grade, or remove you.

I am informing you of this so that you realize just how serious this situation is. I am hopeful that you will give some serious thought as to what is preventing you from performing at the “Results Achieved” level and then redouble your efforts to improve your performance. Again, if you have suggestions, I am happy to hear them.

If you have any questions, please feel free to talk to me.

SAMPLE
LETTER TO INFORM EMPLOYEE OF
OPPORTUNITY TO IMPROVE PERFORMANCE

[NOTE: All Footnotes and Brackets below contain supervisory instructions and should not be included in the final letter. All letters affecting or proposing disciplinary action should be reviewed by an Employee Relations Specialist prior to issuance. See instructions in Chapter 2 regarding supervisory-maintained personnel records.]

To: Employee Name, Title

From: Supervisor, Title

Subject: Performance Improvement Plan

The purpose of this memorandum is to afford you a formal, structured opportunity to demonstrate acceptable performance in all the critical elements of your position. This memorandum confirms our discussion of August 10, 20__, during which I informed you that you are failing to meet the standard for certain critical results of your position. **[If applicable, you can summarize any informal counseling you provided to the employee in assisting him/her in improving performance.]**

Because your current performance is unacceptable, you will now be provided a formal opportunity to demonstrate that you can perform at the "Results Achieved" level with respect to the critical results and performance indicators, listed below. This formal opportunity period will begin on August 12, 20__ and end on November 30, 20__. If at the end of this period your performance has not improved to the "Results Achieved" level, or if your performance does improve to the "Results Achieved" level but you do not sustain that level for at least one year, then you may be reassigned or a proposal may be issued to remove you from the Service or reduce you in grade. **[If applicable, you may postpone the annual rating until after the completion of the opportunity to improve period.]** Your annual rating for the period from October 1, 20__ through September 30, 20__ will be postponed until after you have completed this opportunity period.^f

[If the employee is due to receive his/her within-grade increase (WGI), the acceptable level of competence determination (or "satisfactory performance determination" for Federal Wage System employees) for granting the WGI can be postponed until the end of the opportunity to improve period.] You will complete your waiting period for a within-grade increase on October 5, 20__ (i.e., during your opportunity to improve period). Because I must certify that you are performing at an acceptable level of competence **[or "satisfactory level" for wage system employees]** in order for you to receive your step increase, I have decided to postpone my decision regarding whether or not your performance is at an acceptable level of competence **[or "satisfactory level" for wage system employees]** until you complete your opportunity to improve period. At that time I will inform you in writing of my decision with

¹ When the annual rating is postponed until after the completion of the opportunity period, the appraisal completed at that time will cover the period ending on the date the new rating is assigned (e.g., if an employee's opportunity period ends on 11/30/97, the appraisal period for his/her annual rating will be from 10/1/96 to 11/30/97.)

respect to your within-grade increase. If you have demonstrated performance at an acceptable level of competence [or at a "satisfactory level" for wage system employees] you will receive your within-grade step increase retroactive to October 5, 20__.^g

The critical result(s) and performance indicator(s) that you are failing and examples of your unacceptable performance follow:

[State the critical result and performance indicators for each failed critical result followed by representative examples of performance for each critical result the employee is failing to meet. Examples should be concise, direct, and easy to understand with enough specificity so that the employee has sufficient information to know what the performance deficiencies are. As applicable, this could include information on what the employee did (or did not do) with reference to specific dates, places, cases, etc., and what the employee should have done. Examples should not be broad, vague, or imprecise. As appropriate, examples should include reference to required procedures, counseling, or instructions given previously concerning the matter, and any harm caused by or resulting from the deficiency. Each example listed should have supporting documentation (i.e., if a draft letter is mentioned as an example in the opportunity letter, a copy of the draft letter should be kept as supporting documentation for the example.) The following are examples of how the elements should be listed and how the examples of "fails to meet" performance should be written.]

(The following are examples of notices of unacceptable performance for several different occupations. You must adjust to the standards for your employee.)

CRITICAL RESULT 1 (*Technical Competence in Fishery Biology*) - Employee's work products and activities consistently reflect a full and up-to-date command of the methods, approaches, techniques, and technologies involved in fish biology and impact assessments. Employee also displays a working knowledge of the theories, concepts, laws, regulations, and policies associated with fish habitat protection. Employee demonstrates consistent factual reliability and good technical judgment.

You are failing to meet the Results Achieved level in this critical result of your position.

Example 1 - Mary Douglas Park Project - Your draft letter was very critical of the project, yet it did not present a good case for your recommendation that the project be dropped. It did not discuss the potential loss of habitat as a result of the project construction, and a significant probable impact, the threat of fish stranding, was not mentioned in the first draft. The National Environmental Policy Act (NEPA) and the Coordination Act were improperly referred to as our authority for providing comments. Actually, neither Act comes into play at this point because no Federal action is involved. Your letter also contained a harsh condemnation of structural fish mitigation measures that was not appropriate to the project.

Example 2 - Russell Street Project - Your initial mitigation recommendations were inappropriate in that they were excessive. While the Department of Transportation (DOT) had proposed full mitigation, you suggested that they create 3 times the amount of wetlands lost. Enhancement was not indicated in this case and, as you found out from further conversations with DOT, was not physically possible. Furthermore, the justification you used was based on resources (breeding waterfowl) that were not affected by the project. Despite meeting with the

² Call the Personnel Office regarding the procedures to follow in denying a within-grade increase.

applicant and inspecting the site, you were unsure of specifics of the project design and had to make subsequent contacts with the applicant after you had completed the first draft.

Example 3 - Gold Hill Mine (GHM) Application - You were assigned to review the GHM application on June 30, 20___. After spending a considerable amount of time working on the assignment, meeting with the applicant representatives, touring the site, and consulting with representatives of other agencies, you prepared a draft comment letter. During my review and subsequent discussions with you, I found that you have very little understanding of the proposed project plans, the type and extent of habitat modifications, or the mine permit process. You could not describe to me, even in general terms, the size and configuration of the proposed dam and coal slurry pond, which was the subject of the permit. A great deal of additional coordination was necessary over the next week before you could answer my questions. I received telephone complaints from the mine operator and GHM representatives regarding your inability to understand the project or focus on the issues, and the amount of time they had spent trying to help you.

The application requested 6 modifications; your letter made no mention of 3 of them. While your draft made a number of recommendations concerning alternative analysis, mitigation, water quality, restoration, and erosion control, you were uninformed about the applicant's existing plans to address these issues. Several of the environmental concerns you raised were poorly developed and not substantiated. You were required to prepare 2 drafts. As a result of these problems, the due date of this product was missed.

CRITICAL RESULT 4 - (*Written Communication*) - Employee's reports, letters, memos, and other written communications are consistently clear, concise, well-constructed, delivered in accepted formats, targeted to the needs and expectations of intended audiences, and submitted timely.

You are failing to meet the Results Achieved level in this critical result of your position.

Example 1 - Russell Street Project - On June 17, 20__ I assigned you to review the Environmental Impact Statement (EIS) for the Russell Street project. At that time you were informed that the final, completed comments on the EIS had to be received in the Office on July 27, 20__, which gave you 5 weeks to complete the project. You did not submit your first draft to me until the morning of July 28. Your first and second draft reports required major revision and an extensive amount of supervisory involvement to arrive at the final version. The report was not completed and in final type until July 31, 4 days after it was due. My previous instruction to you has been to provide me with draft documents at least one week before they are due out of the office.

As I stated in my counseling memo of August 2, 20__ and as I discussed with you in meetings on July 29 and 30, 20__, your style of writing in the report was unacceptable. The manner in which the fourth paragraph was written implied that the DOT was in the process of developing storm water detention ponds and calling them "wetland mitigation." Because of the problems with the composition of this paragraph, and the fact that you lacked the information to make it say what it needed to, you had to make several additional phone calls and rewrite the paragraph. Even after the second draft, I had to totally rewrite the paragraph before it clearly and accurately conveyed

the information (i.e., FWS was concerned with how the highway contaminants might affect the habitat value of the wetlands).

Other editing and rewriting was required in the document. The opening sentence had to be rewritten to accurately identify the requester of the comments; there were several unnecessary paragraphs; some sentences had to be rewritten because they were unclear; there were grammatical errors; and you used the wrong name for our office in the document.

Example 2 - Sherwood National Forest Proposed Resource Management Plan -You were given this assignment on March 15, 20___. While your first draft was completed in adequate time, the extensive editing and redrafting that was required to complete the job caused it to leave our office late. This was inexcusable, considering that you had 2 months to work on it and very few other assignments during this time.

Your initial draft was poorly written. Much of the material was unnecessary and had to be removed. The organization was poor and difficult to comprehend. For example, one of the main points, i.e., which of the 15 alternative best favored fish and wildlife resources, did not occur until the middle of page 5. You did not use standard format (as specified in *give policy directive if applicable*), and the format for the specific comments varied throughout the document. The summary paragraph was an unorganized collection of topic sentences from previous reports. The report gave inconsistent signals, criticizing the lack of information yet complementing the Forest Service for their informative document.

I met with you on several occasions to discuss your work on this project, and gave you a written critique on April 24.

These examples are not comprehensive, but they illustrate a general pattern of performance that is less than acceptable.

[Include advice or guidance as to what must be done to bring the performance up to an acceptable level. This could include such things as how time would be best spent (prioritizing and planning), suggested sources of assistance or information, ways or techniques of performing work, formal or informal training planned, etc. In conjunction with the performance standards and counseling sessions or memoranda, this paragraph should make clear exactly what is expected of the employee. An example follows.]

During your opportunity period, you will need to do the following in order to meet the Results Achieved level in the critical results listed above:

1. You must take particular care in preparing reports and correspondence. Your written products must be concise and to the point, clearly written, well organized, and complete. The content must be appropriate to the matter at hand. You must avoid redundancy. You must pay particular attention to grammatical correctness. Your work products must be submitted in a timely manner (generally one week before the official due date; specific deadlines will be noted in my written assignment to you). They should be complete so as not to require extensive editing. The adequacy of your written product will be judged based on the first draft you turn in to me; it should be as complete as you intend to make it at that point. Any need on your part to further investigate, coordinate or redraft after the initial draft may be considered the result of incomplete staff work.

2. You must improve your ability to quickly and independently consider the range of possible impacts, both positive and negative attributable to a project; prioritize your concerns with regard to the resources involved and the significance of those resources, the degree of impact, and our legislative abilities to influence change; AND prepare the documentation needed to adequately support your conclusions. You should read through the project plans when they are assigned to you and plan and prioritize your work effectively so that you will be able to complete it on time.
3. If you identify that there is training that might help you improve your performance, you should bring it to my attention, and we will discuss whether it would be helpful for you to attend the training.
4. Etc.

[Describe the supervisory assistance and support that will be provided to the employee. This could include any specific work reviews and/or counseling sessions planned, or other active assistance/training planned on work techniques, time management, or technical issues. An example follows.]

You may expect the following from me in helping you improve to an acceptable level:

1. I will make assignments (other than routine assignments) to you in writing. I will also discuss the assignment with you before you begin, if necessary.
2. As you work on the assignment, I will be available to discuss your progress, questions, and problems. Feel free to approach me at any time to discuss your work.
3. I will meet with you every (week/two weeks), or as needed, to give you on-going feedback on your progress on each performance element. As you complete each assignment, I will personally review it and meet with you, if necessary, in order to provide you with feedback. At the conclusion of each assignment, I will provide you with a memo that conveys my appraisal of your work on that assignment. Throughout this process, I will strive to provide constructive criticism to help you improve your performance.
4. I have arranged for you to attend a training session on (time management) on August 30.

Your work is critical to the achievement of the (Field Office, Refuge etc) objectives. If you do not raise your performance to an acceptable level during this period you may be reassigned, demoted or removed from your position with the Service.

A copy of your (FY __) performance plan is attached. Please review it and make sure that you understand what is required of you to be fully satisfactory. If you have any questions, please ask. I will consider adjusting the performance plan if there are changes in the nature of your work. If you believe this is so, please discuss this with me immediately.

If you believe that personal, medical, or other problems are reasons for your performance difficulties, you may provide documentation of the medical condition or raise these problems. You may also contact the Employee Assistance Program at **[telephone number]** for assistance.

Any medical documentation that you wish to provide will be fully considered during this process.

During your opportunity period I will be monitoring your performance closely and, at the end of the period, I will evaluate your work and make a determination whether your performance during the period has reached the level required for retention in your position. You will be informed soon thereafter of whatever further action is to be taken.

If you have any questions on this matter, feel free to contact me. I am available to answer your questions and to assist you in improving your performance during this period.

Sincerely,

Mr. Soupy R. Visor

[NOTE: On a copy of the letter type the following for the employee to sign:]

I acknowledge receiving this document.

Signature

Date

SAMPLE
MEMORANDUM INDICATING ACCEPTABLE PERFORMANCE

[NOTE: All Letters affecting Disciplinary Actions are to be reviewed by an Employee Relations Specialist in the Personnel Office prior to issuance. See instructions in Chapter 2 regarding supervisory-maintained personnel records.]

Memorandum

To: Employee Name, Title
From: Supervisor Name, Title
Subject: Improvement of Performance to an Acceptable Level

In a letter to you dated August 12, 20__ I informed you that your performance was unacceptable in the following critical result(s):

CRITICAL RESULT 1 - Competence in Fishery Biology

CRITICAL RESULT 4 - Written Communication

You were also informed that you would be given an opportunity to demonstrate improved performance with respect to the above specified critical results, and that I would be evaluating your performance during that period. Based on my evaluation of your performance in those critical results, I am pleased to inform you that your performance has reached the level required for retention in your position. Accordingly, no further action will be taken to remove you or to reduce you in grade for your unacceptable performance.

Your performance, of course, must continue to be acceptable. In accordance with Office of Personnel Management Regulations, if your performance again becomes unacceptable before August 12, 20__ [calendar date that is one year after the date on which the initial opportunity period began], I may recommend your removal or reduction-in-grade without affording you an additional opportunity to improve your performance. Therefore, I encourage you to continue your efforts.

Please let me know if you have any questions concerning this matter.

SAMPLE
WITHHOLDING OF WITHIN GRADE INCREASE LETTER

[NOTE: All letters affecting or proposing disciplinary action should be reviewed by an Employee Relations Specialist prior to issuance. See instructions in Chapter 2 regarding supervisory-maintained personnel records.]

To: Employee X
From : Supervisor
Subject: Withholding of Within Grade Increase (WIGI)

Office of Personnel Management regulations authorize a within-grade increase only when an employee's work performance is an acceptable level of competence. On December 10, 20__ I informed you that your performance was failing to achieve results in three critical elements.

On July 1, 20__ I informed you that your current performance was unacceptable and as a result you would be provided a formal opportunity to demonstrate that you could achieve the results identified in your performance plan. The opportunity to improve period ended on November 12, 20__.

You are hereby notified that your performance is not at an acceptable level of competence therefore, your within-grade increase which was due July 7, 20__ is being withheld. The reasons for this negative determination and the areas needing improvement were discussed and noted in my December 10, 20__ letter to you.

You have the right to request a reconsideration of the decision to withhold your within-grade increase. A request for reconsideration must be in writing indicating reasons why this decision should be considered, and be submitted to **supervisor above reviewing official** within 15 days of the receipt of this notice.

If you desire to contest this decision in person, your written request should so indicate. You have a right to be represented by a representative of your choice in presenting your request, and you will be given a reasonable amount of official time to prepare your request. If you choose to request a reconsideration, your written request should state whether you will have a representative and who that representative will be.

If you have any questions regarding your work performance or this notice, please let me know. I am available to assist you.

Exhibit 5A

**SAMPLE
INFORMAL GRIEVANCE DECISION**

Memorandum

To: Grievant
From: Supervisor
Subject: Informal Grievance Decision

This is in response to your memorandum dated August 30, 20__.(or your oral discussion with me on ___) in which you presented an informal grievance concerning your workload, your request for a new computer, and the denial of your request for two weeks annual leave in October. My decision on these issues follows:

- Workload: In your grievance you stated that your workload has grown so heavy that you are unable to complete all your assignments. You fear that because of this you will get a poor performance rating. I have decided that to address this problem we should have you identify the specific assignments you have been unable to complete. Since I do not know at this point which ones are problematic this will enable us to better prioritize your work. After you do so we will meet and decide which work can be postponed or dropped entirely. We will also consider the possibility of hiring temporary help if that is necessary.
- New computer: At present we do not have money in our budget for this. However, the Administrative Assistant located an excess system that we can obtain at no cost which has several features which your current system lacks. While not “state of the art” it constitutes a considerable upgrade of your present system.
- Annual leave: I cannot approve your leave for October. As Senior Biologist at [location] you have lead responsibility within the Region for the ___ Project. During the period you requested leave the ___ Project Conference will be held in [location]. The purpose of the conference will be to develop a Service-wide policy on the ___ Project. You are the only employee familiar enough with the Project to represent Region 1's interests at this conference.

If you are dissatisfied with this decision you may present your grievance under the formal procedures to the Regional Personnel Office within five (5) days from the date of this decision (or 15 days in the case of a reprimand or suspension). You may call the Employee Relations Specialist at [telephone number] for assistance concerning formal grievance procedures.

**SAMPLE
FORMAL GRIEVANCE DECISION**

Memorandum

To: Grievant

From: Supervisor

Subject: Formal Grievance Decision

This is in response to your memorandum dated September 13, 20__ in which you presented a formal grievance concerning your workload, your request for a new computer, and the denial of your request for two weeks annual leave in October. I have reviewed your formal grievance, your informal grievance dated August 30, 1997 and [immediate supervisor's] response dated September 6, 20___. My decision and reasons for each are presented below.

- Workload: On September, 20__ you met with [immediate supervisor] to discuss specific assignments and workload priorities. You reached agreement on all issues except the cancellation of the ABC Report. I agree with [immediate supervisor] at the report cannot be cancelled and must be completed by October 1. The report is a crucial component of the overall Habitat Protection Plan for _____.
- New computer: The excess system obtained from _____ has been installed and according to your discussion with [immediate supervisor] meets your needs. Issue resolved.
- Annual leave: As a result of further discussions between you and [immediate supervisor] (supervisor) he agreed to approve one week annual leave in October. I concur with that decision. The second week you requested cannot be approved since the ___ Project Conference will be held that week and as Senior Biologist with lead responsibility for that project your attendance is mandatory.

If you are dissatisfied with this decision you have the right to have the grievance reviewed by a personnel appeals examiner in the Office of Hearings and Appeals (OHA). To do so you must request this in writing to me within seven (7) days after receipt of this decision. Failure to make such a request with the 7 day time limit will result in termination of the grievance for failure to prosecute unless you show good cause.

You may call the Employee Relations Specialist at [telephone number] for assistance concerning grievance procedures.

**SAMPLE
PROBATIONARY TERMINATION LETTER**

[NOTE: All Footnotes and Brackets below contain supervisory instructions and should not be included in the Final Letter. All Letters affecting Probationary Termination Letters are to be reviewed by an Employee Relations Specialist in the Personnel Office prior to issuance. See instructions in Chapter 2 regarding supervisory-maintained personnel records.]

Memorandum

To: Employee Name, Title

From: Supervisor Name, Title (check local delegations of authority)

Subject: Notice of Termination during Probationary Period

This is a notice of my decision to terminate your employment with the U.S. Fish and Wildlife Service, effective [date]^h, in accordance with 5 CFR 315. This termination during your probationary period is based on the following reason(s):

[Although the strict specificity requirements for conduct and performance actions need not be met (as described in Chapters 3 and 4), the reason(s) for the probationary termination must be sufficiently detailed so that the employee clearly understands why the action is being taken. One or two paragraphs should normally be adequate. The reason(s) should be nonarbitrary, and non discriminatory. Reference should be made, as appropriate, to counseling and instruction received, regulations violated, impact of the deficiencies or misconduct, etc. See attachment for sample paragraphs.]

If you allege that this action was based in whole or in part on your marital status or political affiliation, you have the right to appeal this action to the Merit Systems Protection Board (MSPB) under 5 CFR 315. Otherwise, this action is not appealable to the MSPB.

If you file, your appeal should be filed with the Regional Director, Merit Systems Protection Board (MSPB),[location]. Your appeal must be received by the office of the MSPB no later than thirty (30) calendar days after the effective date of this action. Personal delivery during normal business hours, delivery by regular mail, by facsimile, or delivery by commercial overnight delivery service is required by the Board. A copy of the Board's regulations and Appeal Form is attached. Petitions of appeal may be in any format including letter form, but must contain the information specified on the Appeal Form.

^h A probationary termination must be effective no later than the DAY BEFORE THE PROBATIONARY PERIOD IS OVER. If an employee began his/her appointment on December 1, his/her probationary period would be over on November 30. In this example, the probationary termination should be effective no later than November 29.

An allegation that the action taken against you was based in whole or in part on discrimination because of race, color, religion, sex, age, national origin, physical or mental handicap, sexual orientation, status as a parent or protected genetic information may be taken up with the Service under the provisions of Part 1614 of the Equal Employment Opportunity Commission Regulations provided such allegation is brought to the attention of an EEO Counselor within forty-five (45) calendar days of the effective date of this action. Information about the Equal Employment Opportunity (EEO) complaint procedure may be obtained from your EEO Counselor.

You may not appeal an allegation of discrimination because of race, color, religion, sex, age, national origin, or physical or mental disability to the MSPB unless you also allege that the action was based in whole or in part on your marital status or political affiliation. In that event, you may appeal all allegations of discrimination to the MSPB.

You may also request reconsideration of this decision by written and/or personal presentation to the next higher administrative level which, in your case is _____. A request for reconsideration may be filed at any time after you receive this notice, but no later than fifteen (15) calendar days after the effective date of your termination.

If you have any questions concerning how to pursue an appeal, you may contact Employee Relations Specialist at [telephone].

A Standard Form 50ⁱ, Notification of Personnel Action, affecting your termination will be forwarded to you when available.

Sincerely,

Supervisor

Attachments

- 1 - MSPB Regulations (5 CFR Part 1201)
- 2 - MSPB Form (OF 283, Rev 10/94)

[NOTE: On a copy of the letter the following type for the employee to sign:]

I acknowledge receiving this document.

Signature

Date

ⁱ Because an employee terminated during his/her probationary period does not have the right to appeal the merits of the action, his/her official record will not indicate the reason(s) for the termination. Instead, the SF-50 will simply state, "Discharge During Probationary Period."

EXAMPLES

Reasons for Probationary Termination Based on Conduct

Example 1 - You were abusive, disrespectful, and insubordinate to your supervisor in a meeting you had with her on April 2, 199__. In the meeting, you stood up and stated in a very loud and hostile manner that you did not want to talk to her. You walked away from her office despite repeated direct orders to stay. In addition, on 2 occasions (March 15, and April 3, 199__), you used abusive language and gestures in conversations you had with the secretary. After each of these instances, your supervisor told you that your behavior was inappropriate.

Example 2 - You have continually failed to follow supervisory instructions regarding the office leave procedures and, as a result, you have been placed on absence without leave (AWOL) on one occasion. You were notified on November 12, 199__ in writing by your supervisor of the office procedures that you were to follow for requesting sick leave and annual leave. On November 30 you failed to call your supervisor to request sick leave until 11:00 a.m. At that time, you were informed again that you must call your supervisor within one hour of the beginning of your tour-of-duty to request sick leave. On December 15 you again failed to follow instructions when you called your supervisor at 9:00 a.m. and requested to be placed on annual leave for the day. Your supervisor informed you again that annual leave must be approved at least (one week) in advance. On January 15 you called your supervisor at 10:00 a.m. and requested annual leave. On that day, you were placed on AWOL.

EXAMPLES

Reasons for Probationary Termination Based on Performance

Example 1 - You have failed to perform at an acceptable level in your critical result 1, Word Processing and Correspondence. There are typographical and/or grammatical errors in over 45 percent of the documents you have typed over the past 3 months. You have also failed to type correspondence in the proper format, even though you have received formal training in correspondence formats, and you have a copy of the correspondence manual that has been discussed with you by your supervisor on several occasions.

Example 2 - You have demonstrated a general failure to grasp and retain information that is necessary for the successful performance of your job. You have received on-the-job training in the preparation of project reports from your supervisor and the senior biologist, yet you consistently fail to produce a report that is acceptable. On the J.S. Barnum project report, you failed to include a description of topography, and your description of the river characteristics was inadequate. Your work on the Portland Manor report was disorganized and it contained 3repetitive and simplistic statements. These reports had to be redone by other employees.

Exhibit 6B

SAMPLE
NOTICE OF TERMINATION FROM TEMPORARY APPOINTMENT

[NOTE: All letters affecting termination from temporary appointment are to be reviewed by an Employee Relations Specialist in the Personnel Office prior to issuance. See instructions in Chapter 2 regarding supervisory-maintained personnel records.]

To: Employee Name, Title
From: Supervisor Name (check local delegation of authority)
Subject: Discharge from Temporary Appointment

This is notice of my decision to discharge you from your temporary appointment with the U.S. Fish and Wildlife Service, _____ effective _____.^j This discharge is based on the following reason(s):

[In a short paragraph, explain the nonarbitrary, nondiscriminatory reason for the discharge. Also, briefly describe any previous counseling that may have been given to the employee on this issue. Temporary employees have no appeal rights allowing them to challenge the merits of the action; however, they can file an EEO complaint if they believe the discharge resulted from discrimination because of race, color, religion, sex, age, national origin, physical or mental handicap, sexual orientation, status as a parent or genetic information. To be able to defend the action in case there is an EEO complaint, you should keep some documentation illustrating the legitimate management reason for discharging the employee.]

A Standard Form 50, Notification of Personnel Action, affecting your discharge will be forwarded to you when available^k.

^j There is no requirement to provide temporary employees with an advance written notice of termination; however, it is good practice to provide advance notice if possible.

^k Because an employee discharged from a temporary appointment does not have the right to appeal the merits of the action, his/her official record will not indicate the reason for the discharge. Instead, the SF-50 will simply state, "Discharged".

**SAMPLE
LEAVE RESTRICTION LETTER**

[NOTE: The brackets below contain supervisory instructions and should not be included in the letter. The following memorandum covers a variety of issues: tardiness and attendance problems, abuse of leave, etc; documentation requirements for leave used for health-related reasons, etc. In constructing this memo, select only aspects that are applicable to your employee's situation. Leave restriction letters must be prepared on official letterhead. See instructions in Chapter 2 regarding supervisory-maintained personnel records. It is recommended that leave restriction letters be reviewed by an Employee Relations Specialist prior to issuance.]

To: Employee Name, Title
From: Supervisor Name, Title
Subject: Leave Approval and Documentation (Leave Restriction)

I have previously counseled you regarding your tardiness, your use of sick leave, and your failure to follow proper leave approval procedures. Your duties continue to suffer due to your many absences and your tardiness. It is disruptive to many staff members when they have to fill in for you. You need to significantly decrease your rate of absenteeism and tardiness, and you need to consistently follow leave approval procedures or you may be subject to disciplinary action, up to and including removal from your position.

[State a legitimate, work-related reason for issuing this letter. The following examples are provided to illustrate several types of work-related problems that you have the authority to address. The example(s) you list do not have to be as extensive and obvious as those listed below.]

With regard to your absenteeism, you have used 144 hours of annual leave and 222.5 hours of sick leave since May of 20___. Most of the annual leave was unanticipated, i.e., used primarily for illness and not requested in advance. Your current annual leave and sick leave balances are zero (0). In addition, I approved leave-without-pay (LWOP) for 7 hours on June 2, 20___, and 8 hours on June 15, 20___ because you did not have sufficient leave to cover your recent absences due to illness. Your unanticipated absences from work on annual leave, sick leave, and LWOP typically occur on Mondays or Fridays, at two-week intervals.

With regard to your tardiness, you arrived at work between 20 and 25 minutes late on the following dates: May 14, 15, 17, 20, and June 7, 8, 10, 11, 14, and 17, 20___. On May 25, 20___ you called in at 8:00 a.m. to request 2 hours of annual leave. On June 1, 9, 16, and 18, 20___, you called in after 8:00 a.m. to request annual leave so that you could arrive late to work.

It is essential that you meet the standards of attendance necessary to do your job. This office maintains a small staff relative to its work load, and I must be able to depend on you to be present to carry out your duties. Your absenteeism and tardiness limits your ability to effectively carry out your assignments and is negatively impacting the efficiency of this office.

Effective immediately, you will adhere to the following instructions regarding time and attendance, and leave approval procedures:

1. Except in cases of illness or unavoidable emergency, you must obtain approval from me (or my designated Acting if I am absent) IN ADVANCE for any absence from work or for late arrival to work. If I am not available (or my designated Acting), leave a message and your call will be returned. No other employee has the authority to approve your leave (i.e., sick leave, annual leave, or LWOP) or authorize late arrival to work. An unapproved absence will result in a charge of absence without leave (AWOL). AWOL can be the basis for disciplinary action.
2. You must observe your designated duty hours, which are from _____ to _____, unless you obtain official approval to change your hours. If you arrive late to work, you will be charged with AWOL in 15-minute increments for the time you are not at work.
3. If you are unable to come to work because of illness and are using annual leave or sick leave, or requesting permission for leave without pay, you must notify me by a.m. If I am unavailable, you must speak to my acting. If you are absent due to personal illness or medical appointment, you must provide a doctor's certification on a SF-71, Application for Leave, or on the physician's letterhead stationery, regardless of the duration of the illness or length or type of medical appointment. If you do not provide a doctor's statement for your sick leave absences, you will be considered absent without leave. AWOL can be the basis for disciplinary action.

If you believe that personal, medical, or other problems are reasons for the problems addressed in this memo, you may provide documentation of a medical condition or discuss these problems with me. You may contact the Employee Assistance Program at [telephone] for assistance.

If you would like to discuss this further, please see me.

**SAMPLE
LETTER REQUESTING MEDICAL DOCUMENTATION
FROM AN EMPLOYEE**

[NOTE: All footnotes and Brackets below contain supervisory instructions and should not be included in the final letter. All letters medical documentation are to be reviewed by an Employee Relations Specialist in the Personnel Office prior to issuance. See instructions in Chapter 2 regarding supervisory-maintained personnel records.]

To: Employee Name, Title
From: Supervisor,
Subject: Request for Medical Documentation

[Describe the reason you are requesting additional medical documentation from the employee, as in the following examples:]

- You have submitted a brief statement from your doctor indicating that you cannot operate a drag line because of your foot injury, or
- You have requested to use extended sick leave, or
- You have requested that your tour-of-duty to be changed to a part-time because of a medical condition, etc.

In order to properly consider your request, I need [more detailed, or additional] medical documentation from your physician concerning your medical condition. Specifically, I need documentation that addresses the items listed below. [Of the following items, include only those that are necessary and relevant.] A new medical examination is not necessary if your doctor can provide current information from his/her records. It is preferable that the documentation be recorded on his/her letterhead stationery and that each item be responded to by the item number. Your doctor should be sure to sign the report. If an item is not applicable, he/she should so indicate.

- (a) The history of the specific medical condition(s), including references to findings from previous examinations, treatment, and responses to treatment.
- (b) Clinical findings from the most recent medical evaluation, including any of the following which have been obtained: findings of physical examination, results of laboratory tests, X-rays, EKGs and other special evaluations or diagnostic procedures.
- (c) Diagnosis, including the current clinical status.
- (d) Prognosis, including plans or recommendations for future treatment and an estimate of the expected date of full or partial recovery, if applicable.

(e) An explanation of the impact of the medical condition on overall health and activities, including the basis for any conclusion that restrictions or accommodations are or are not warranted, and where they are warranted, an explanation of their therapeutic risk avoiding value.

(f) An explanation of the medical basis for any conclusion which indicates the likelihood that you are or are not expected to suffer sudden or subtle incapacitation by carrying out, with or without accommodation, the tasks or duties of your position.

(g) Narrative explanation of the medical basis for any conclusion that the medical condition has or has not become static or well stabilized and the likelihood that you may experience sudden or subtle incapacitation as a result of the medical condition.

You are responsible for any costs incurred in connection with obtaining this documentation. So that your physician has sufficient information to respond to the items concerning your ability to perform in your job and accommodations that might be recommended, it is important that you provide him/her with your position description. If your physician has any question about the information being requested, or if he/she needs any additional information regarding the requirements of your job, he/she can telephone me at [telephone number].

If you are unable to provide the medical documentation, I will decide on your request based on the limited information you have previously provided to me.

Sincerely,

Mr. Soupy R. Visor

[NOTE: On a copy of the letter the following type for the employee to sign:]

I acknowledge receiving this document.

Signature

Date

SAMPLE
LETTER OFFERING A MEDICAL EXAMINATION

[NOTE: All footnotes and brackets below contain supervisory instructions and should not be included in the final letter. All letters medical documentation are to be reviewed by an Employee Relations Specialist in the Personnel Office prior to issuance. See instructions in Chapter 2 regarding supervisory-maintained personnel records.]

Mr. M. Ploy
1234 SW 5th Street
Burbank, OR 97223

Dear M.,

You have provided medical documentation from three medical specialists regarding several of your medical problems, e.g., stiffness and pain in the neck and back, periodic loss of vision, sudden and uncontrollable falling asleep at work, inability to sleep at night, some loss of hearing, reactions to medications, etc. You have requested, and your doctors agree, that you should not operate a motor vehicle and should not work around equipment and fish ponds. As you know, these duties constitute a very large portion of your job.

I would like to offer you the opportunity to be examined by a physician who can review and consolidate your previous medical documentation. The physician will also prepare a report addressing (a) if and when you will be able to perform the full range of your duties, and/or (b) if there are accommodations that can be made so that you will be able to perform the full range of your duties¹.

If you accept this offer of examination, you will be entitled to use official time to travel to and from the doctor's office and for the examination, and to reimbursement of travel expenses for your trip to and from the doctor's office. The Fish and Wildlife Service will pay for the examination. We will also forward to the doctor a copy of your signed consent for release of information^m, a summary of your duties and all medical documentation you have submitted thus far.

¹ 5 CFR 339 requires that the employee be notified of the reason(s) the medical examination is being offered.

^m A Consent for Release of Information Form (Form 3-2047) is located in Exhibit 1 of 227 FW 4. You can also obtain Form 3-2047 by calling the Employee Relations Specialist in the Personnel Office. In the event of a job-related injury, a Consent form may be used, but is not required. Representatives of the Service are authorized by 20 CFR 10.207(c) to obtain from the employee or his/her physician any and all information related to a claim for and/or receipt of compensation for any job-related injury or disease.

If you decide not to accept this offer of medical examination, I will have no choice but to make any necessary decisions regarding your employment based on the information I currently have, i.e., that you are no longer able to perform the majority of the duties in your job, and that there is no end in sightⁿ. As an option to or in addition to accepting this offer of examination, you may submit additional medical documentation from your own physicians and I will consider it^o.

Please feel free to contact the Employee Relations Specialist in the Regional Personnel Office at **[telephone number]** for information concerning medical documentation requirements.

Sincerely,

Mr. Soupy R. Visor
Hatchery Manager

ⁿ The CFR also requires that the employee be notified of the consequences of failure to report for the medical examination.

^o The CFR also requires that the employee be informed of his/her right to submit medical documentation from his/her own physician, and of the Service's obligation to consider the information.

**SAMPLE
LETTER REQUIRING A MEDICAL EXAMINATION**

[NOTE: All footnotes and brackets below contain supervisory instructions and should not be included in the final letter. All letters medical documentation are to be reviewed by an Employee Relations Specialist in the Personnel Office prior to issuance. See instructions in Chapter 2 regarding supervisory-maintained personnel records.]

Mr. M. Ploy
1234 SW 5th Street
Burbank, OR 97223

Dear M.,

As I informed you on September 16, 20__, you are scheduled to report for a medical examination with Dr. P. Achdee on October 10, 20__, at 1:00 p.m. Her office is located at **[address]**. Her telephone number is **[telephone number]**.

This examination is required in order to obtain specific medical documentation that will assist us in determining your physical/medical limitations **[state the reason that the examination is being required^p, as in the following examples:]**

- in light of the many injuries you have sustained on the job over the past few years, and the fact that you have applied for **[and/or have received]** compensation for your injuries.
- with regard to the physical requirements of your fire fighter **[or law enforcement, etc.]** job duties.

You must submit to this examination or face disciplinary action.^q

You are entitled to use official time to travel to and from the doctor's office and for the examination. You are also entitled to reimbursement of travel expenses for your trip to Portland. The Fish and Wildlife Service will pay for the examination. Billing instructions have been/will be sent to **[physician]**. We will also forward **[physician]** a copy of your signed consent for release of information^r, a summary of your duties and all medical documentation you have submitted thus far **[if applicable]**.

^p 5 CFR 339 requires that the employee be notified of the reasons the medical examination is necessary.

^q The CFR also requires that the employee be notified of the consequences of failure to report for the medical examination.

^r A Consent for Release of Information Form (Form 3-2047) is located in Exhibit 1 of 227 FW 4. You can also obtain Form 3-2047 by calling the Employee Relations Specialist in the Personnel Office. In the case of a job-related injury, a Consent form may be used, but is not required. Representatives of the Service are authorized by 20 CFR 10.207(c) to

You may submit to me additional medical documentation from your own physician at any time, and I will consider it^s. If you have additional medical documentation you wish **[physician]** to see, please provide it to me by Thursday of this week, so I can forward it before your appointment on **[date]**.

Sincerely,

Mr. Soupy R. Visor

obtain from the employee or his/her physician any and all information related to a claim for and/or receipt of compensation for any job-related injury or disease.

^s The CFR also requires that the employee be informed of his/her right to submit medical documentation from his/her own physician, and of the Service's obligation to consider the information.