



Langley Research Center

LPR 3752.1

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DISCIPLINE AND ADVERSE ACTIONS

National Aeronautics and Space Administration

RESPONSIBLE OFFICE: Office of Human Capital Management

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PREFACE

P.1 PURPOSE

- a. This Langley Procedural Requirement (LPR) sets forth procedures and requirements, advice and guidance, and definitions for the administration of employee corrective, disciplinary, and adverse actions. Procedures for taking disciplinary and adverse actions for cause and for performance-based actions are set forth in 5 CFR Parts 752 and 432.
- b. Discipline is a managerial tool intended to correct deficiencies in employee behavior and attitude, correct situations which interfere with efficient operations, maintain high standards of government service and maintain confidence in NASA LaRC.
- c. An employee whose behavior is not acceptable to management, but whose behavior is not corrected is quite likely to persist in that unacceptable behavior in the erroneous belief that it is correct, or at least condoned.
- d. Supervisors and managers have an obligation to such employees to correct behavioral deficiencies while they are still minor before the behavior becomes a habit and a bad example to others. It is easier to correct a first instance of deficient behavior than to ignore the situation and later try to correct the third, fourth, or fifth instance or to correct minor instances of misconduct before it becomes a more serious matter.

P.2 APPLICABILITY

- a. This LPR is applicable to Langley Research Center Civil Service employees.
- b. There are certain personnel actions that are excluded from coverage under this LPR. Some of the more commonly excluded actions are:
 - (1) A Reduction in Force (RIF) action.
 - (2) The separation of an employee serving a probationary period following initial appointment to a competitive position (See LPR 3430.2).
 - (3) A voluntary action initiated by the employee.
 - (4) Termination of a term or time-limited appointment on the expiration date specified as a condition of employment at the time the appointment was made.
 - (5) Reassignment from a position with known promotion potential to a position with no known promotion potential.

P.3 AUTHORITY

- a. 5 USC, Chapter 75 – Adverse Actions.
- b. 5 CFR, Part 752 - Adverse Actions.
- c. NPR 3752.1, Disciplinary and Adverse Actions.
- d. LAPD 1200.5, Delegation of Authority to Take Disciplinary and Adverse Actions and Performance Based Actions.

P.4 APPLICABLE DOCUMENTS

- a. 5 CFR, Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch.
- b. 5 CFR, Part 6091, Supplemental Standards of Ethical Conduct for Employees of the National Aeronautics and Space Administration.
- c. NPR 3432.1, Performance Based Reduction in Grade or Removal Actions.
- d. NPR 3771.1, Grievance System.
- e. NPR 3792.1B, Plan for Drug-Free Workplace.
- f. LPR 3430.2, Probationary Period.
- g. LPR 3432.1, Performance-Based Actions.

P.5 MEASUREMENT/VERIFICATION

None.

P.6 CANCELLATION

LPR 3752.1, Discipline and Adverse Action, dated August 6, 2005.

Original signed on file
Cynthia C. Lee
Associate Director

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CHAPTER 1. Responsibilities

1.1 Office of Human Capital Management (OHCM) is responsible to provide advice and guidance on the rights and responsibilities to employees and managers. Advice and guidance will be consistent with this LPR. OHCM will maintain official disciplinary action records.

1.2 Managers and supervisors are responsible for:

- a. Communicating requirements and expectations regarding standards of conduct and performance to employees.
- b. Setting a good example by one's own personal conduct.
- c. Monitoring employee conduct and taking or initiating appropriate corrective action as required.
- d. Referring employees to the Employee Assistance Program (EAP) as determined appropriate or required.
- e. Consulting with OHCM as appropriate.
- f. Complying with provisions of the Collective Bargaining Agreement (CBA) as it applies to bargaining unit employees.

1.3 Employees who fail to comply with (a) through (d) below may be subject to discipline under this LPR. They are responsible for:

- a. Conducting themselves, both on and off duty, in a manner that will ensure their conduct does not reflect adversely on NASA LaRC.
- b. Complying with the Standards of Ethical Conduct (5 CFR, Part 2635) and the Supplemental Standards of Ethical Conduct for Employees of NASA (5 CFR, Part 6901).
- c. Following on-the-job work rules, including reporting for work as scheduled and in a condition that will permit safe and reliable performance of assigned duties.
- d. Performing their job duties at an acceptable level and in a safe and reliable manner.

CHAPTER 2. Representation

2.1 Bargaining unit employees may seek representation as prescribed through the applicable CBA.

2.2 There may be occasions when the activities of an individual acting as an employee's personal representative could cause a conflict of interest or position, conflict with priority needs of the Center, or would give rise to unreasonable cost to the government or create an undue hardship on the Center. In such cases, the Center Director or the designated official may disallow the person to act as an employee's representative. If the employee wishes to contest the decision to disallow a representative of choice, the employee shall address the request in writing to the next higher level in his/her supervisory chain over the person who made the decision to disallow the representative.

CHAPTER 3. Types of Actions and Procedures

3.1 The use of Alternate Dispute Resolution (ADR) is encouraged for resolution of any workplace dispute or concern. ADR services, such as mediation, are available to management whenever employee conduct or performance raises concerns and the employee agrees to participate in the process. For assistance in scheduling ADR, contact your servicing Employee Relations Specialist, OHCM.

3.2 Informal (non-disciplinary) Actions. Informal action to correct inappropriate or unacceptable conduct. These actions may include oral or written admonishments or cautions.

- a. Oral Admonishment or verbal counseling. Supervisors should retain a record of informal discipline to document previous action in the event of future infractions. That documentation, however, is not part of an employee's Official Personnel File (OPF).
- b. Letter of Caution or Warning. Contact your servicing Employee Relations Specialist, OHCM, for assistance in preparing letter.

3.3 Formal Disciplinary Actions.

Any formal action taken to discipline an employee becomes a matter of written record in the employee's OPF. Types of disciplinary actions include:

- a. Written Reprimand. The written reprimand must include:
 - (1) The reason(s) for issuance.
 - (2) The employee's right to file a grievance under a CBA or the NASA Grievance System, as appropriate.
 - (3) The length of time that it will be retained in the employee's Official Personnel File (OPF), and during which time it may be counted as a prior offense for determining a range of remedies under the NASA Desk Guide for Table of Disciplinary Offenses and Penalties. The letter may continue to be considered after two years when determining appropriate remedy for a subsequent offense.
- b. Suspension for 14 calendar days or less. A suspension of 14 days or less entitles the employee to:
 - (1) An advance written notice (issued at least 15 days prior to effecting the proposed action) that includes:

- (a) The specific reason(s) for the proposed action and any aggravating or mitigating factors considered in proposing the corrective action.
 - (b) The name and title of the official designated to hear an oral reply and/or receive a written reply. The official so designated must have authority to either make or recommend a final decision on the proposed suspension.
 - (c) The right to be represented by an attorney or other representative.
 - (d) The right to review, or have a representative review, the material relied on to support the reason(s) for action given in the notice of proposed suspension.
 - (e) Five calendar days to answer orally and/or in writing, and to obtain affidavits and other documentary evidence in support of the answer.
- (2) A written decision at the earliest practicable date that:
- (a) Considers only the reason(s) for the action specified in the advance written notice.
 - (b) Considers any answer the employee and/or the employee's representative made to the designated official.
 - (c) Specifies the reason(s) for the decision.
 - (d) Is signed by an official in a higher position than the official who proposed the action, unless the Center Director issued the advance notice, in which case the Center Director may issue the decision.
 - (e) Specifies the employee's right to file a grievance.
 - (f) Is delivered to the employee on or before the effective date of the suspension.

3.4 Adverse Actions.

3.4.1 Adverse actions are appealable actions taken to discipline an employee and are matters of a written record in the employee's OPF. Types of adverse actions include:

- a. Removal.

- b. Suspension of more than 14 days.
- c. Indefinite suspension.
- d. Reduction in grade.
- e. Furlough of 30 days or less (a furlough of more than 30 days is handled through Reduction in Force (RIF) procedures).

3.4.2 Actions appealable to the Merit Systems Protection Board (MSPB) entitle the affected employee to:

- a. Notice of a proposed adverse action. At least 30 days advance written notice, unless there is a reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed or for furlough without pay due to unforeseeable circumstances. When the employee's whereabouts are unknown, the Center must show that it took reasonable steps to serve the notice. In such instances, the supervisor should send the notice via both certified and regular mail to the last known address that the employee provided to the Center.
- b. The specific reason(s) for the proposed action. Material may not be used that cannot be disclosed to the employee and his or her designated representative. If the action is furlough, the notice must state the reason(s) for the furlough, and the basis for selecting the employee if all individuals in the employee's competitive level are not being furloughed.
- c. All factors, including prior discipline used in determining the appropriate penalty to propose any aggravating factors relied upon for proposal of corrective action. In relying on past misconduct to enhance a penalty, the misconduct must be referenced in enough detail to permit an informed reply.
- d. The name and title of the official designated to hear an oral reply and/or receive a written reply. The official so designated must have authority to either make or recommend a final decision on the proposed action.
- e. The right to be represented by an attorney or other representative.
- f. The right to a reasonable amount of official time to review, or have a representative review, the material relied upon to support the reason(s) given in the notice and to prepare an answer and to secure affidavits, if the employee is otherwise in an active duty status.
- g. Fifteen calendar days to answer orally and/or in writing, and to secure and/or furnish affidavits and other documentary evidence in support of the answer.

3.4.3 A written decision is required for all actions appealable to the Merit Systems Protection Board (MSPB). At the earliest practicable date an employee must be provided a written decision that:

- a. Considers only the reason(s) specified in the advance written notice.
- b. Considers any answer the employee and/or the employee's representative made to the designated official.
- c. Specifies the reason(s) for the decision, considering appropriate "Douglas Factors" provided in the NASA Desk Guide for Table of Disciplinary Offenses and Penalties.
- d. Is signed by an official in a higher position than the official who proposed the action, unless the Center Director issued the advance notice, in which case the Center Director may issue the written decision.
- e. Specifies the employee's right to appeal to the Merit Systems Protection Board (MSPB), provides the time limits and address for filing an appeal, access to MSPB regulations, and the MSPB appeal form.
- f. Is delivered to the employee on or before the effective date of the action.

3.5 Alternative Courses of Action.

Supervisors should always address instances of employee misconduct in some manner. Instances of employee misconduct should never go unattended. All misconduct, however, does not necessarily warrant formal disciplinary action. Other forms of correction include:

- a. **Explanation or Training.** If the employee is unaware of the proper performance or conduct, it may be that training, or perhaps a sound explanation will be sufficient to correct the problem. This alternative is particularly likely to be appropriate when the employee is new or working in an unfamiliar environment.
- b. **Employee Assistance Program (EAP).** In general rule it is in the best interests of both NASA and the employee to rehabilitate rather than remove. Misconduct is not always willful. Sometimes it stems from personal issues or problems which may be helped through EAP. A supervisor should seek to learn enough to make a determination whether to refer an employee to EAP, take disciplinary action, or do both concurrently.
- c. **Letter of Requirement.** In cases where the leave privilege is abused or other conduct or performance deficiencies exist, a supervisor may wish to

impose requirements over an individual which do not apply to the rest of the work force. This can be done by a letter of requirement which establishes the precise circumstances under which leave will be approved or precisely what performance is required.

3.6 Special Disciplinary Situations.

- a. **Leave Abuse.** If an employee is absent without permission, he/she should be charged with Absence without Leave (AWOL). A charge of AWOL will support a disciplinary action. However, an instance of AWOL does not automatically require disciplinary action. An employee who is AWOL is not paid for the period of unapproved absence. Therefore, a supervisor may determine that the loss of pay is sufficient to prevent such absences in the future.
- b. **Non-Duty Status with Pay (Administrative Leave).** Sometimes actions or conduct of an employee will represent a threat to life, health or government property and it will be necessary to get the employee out of the worksite while a disciplinary action is being processed. In such instances, it is permissible to place the employee in a non-duty status with pay for the minimum period necessary.
- c. **Drug and Alcohol Abuse Offenses.** An employee who engages in misconduct involving drugs and/or alcohol shall be disciplined in accordance with the provisions outlined in NPR 3792.1B, Plan for Drug-Free Workplace Program.
- d. **Voluntary Action by Employee.** An employee who is confronted by management with a potential disciplinary situation will sometimes volunteer to accept a lower grade, a reassignment, resign or retire in lieu of disciplinary action. There is nothing wrong with this provided management has not coerced the employee into taking such an action. Great care should be taken to avoid the appearance of coercion. If the employee asks if he/she can resign/retire or what the effect of resignation/retirement on the action being taken would be, refer the employee to OHCM. Employees who believe they were coerced into resigning/retiring or involuntarily taking a change to lower grade may file an appeal with MSPB.
- e. **Performance Related Adverse Action.** Where an employee's deficiencies are performance related rather than due to misconduct, that employee may be demoted or removed either through the procedures described in LPR 3432.1 or through adverse action procedures.

- f. NASA Desk Guide for Table of Disciplinary Offenses and Penalties is to provide guidance to NASA OHCMs when advising supervisors and managers in taking formal disciplinary action. The table can be found at the following URL:

http://nasapeople.nasa.gov/references/NDG03_TableofPenalties.pdf

APPENDIX A. Definitions

- A.1. Adverse Action. Disciplinary action appealable to the Merit Systems Protection Board (MSPB).
- A.2. Appealable Action. A removal; suspension of more than 14 days, including an indefinite suspension; a reduction in grade or pay; or a furlough of 30 days or less.
- A.3. Day. Calendar day.
- A.4. Formal Disciplinary Action. Action taken by a supervisor or manager to correct employee misconduct or other situations that interfere with effective operations. Such action is not intended to be punitive but it serves as a deterrent to unacceptable conduct or behavior, promotes high standards of government service, and maintains public confidence in NASA LaRC. Disciplinary action may only be taken for such cause as will promote the efficiency of service.
- A.5. Furlough. Temporary status without duties and pay because of lack of work or funds for other non-disciplinary reasons.
- A.6. Indefinite suspension. Placing an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the condition(s) set for in the notice of action that may include the completion of any subsequent administrative action.
- A.7. Letter of Caution or Warning. A non-disciplinary written notification issued by a superior to an employee concerning unacceptable conduct and warning the employee that a disciplinary action may be imposed unless the conduct improves.
- A.8. Letter of Requirement. A written notification (order) issued by the superior to an employee concerning conduct deficiencies, such as sick leave abuse or tardiness, which sets forth requirements and procedures to be followed by the employee to avoid future disciplinary action for similar deficient conduct.
- A.9. Oral Admonishment or verbal counseling. An oral notification given by a superior to an employee concerning conduct deficiencies and warning the employee that a disciplinary action or letter of requirement may be imposed for continued deficiencies.
- A.10. Reduction in grade. A reduction to a lower grade level of classification under a position classification system

A.11. Removal. An involuntary separation of an employee from Federal service except when taken as a reduction-in-force action.

A.12. Suspension. Placing an employee in a temporary status without duties and pay for a specified number of days for disciplinary reasons, or pending inquiry. See Indefinite Suspension.

A.13. Written Reprimand. A written remedy by a supervisor for an employee's improper conduct. Written reprimands are maintained in the employee's OPF for up to two (2) years.

APPENDIX B. Acronyms

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| ADR | Alternative Dispute Resolution |
| AWOL | Absence without Leave |
| CBA | Collective Bargaining Agreement |
| CEAP | Civilian Employee Assistance Program |
| CFR | Code of Federal Regulations |
| LAPD | Langley Policy Directive |
| LaRC | Langley Research Center |
| LPR | Langley Procedural Requirements |
| MSPB | Merit Systems Protection Board |
| NASA | National Aeronautics and Space Administration |
| NPR | NASA Procedural Requirements |
| OHCM | Office of Human Capital |
| OPF | Official Personnel Folder |
| RIF | Reduction-in-force |
| USC | United States Code |