



UNITED STATES MARINE CORPS
MARINE CORPS RECRUIT DEPOT/WESTERN RECRUITING REGION
1600 HENDERSON AVENUE, SUITE 238
SAN DIEGO, CALIFORNIA 92140-5001

IN REPLY REFER TO:
DepO 12752.2
1B

SEP 23 2003

DEPOT ORDER 12752.2

From: Commanding General
To: Distribution List

Subj: DISCIPLINARY AND ADVERSE ACTIONS

Ref: (a) CPI 432
(b) CPI 752

Encl: (1) Definitions
(2) Delegation of Authority and Responsibilities
(3) Guidance in Effecting Disciplinary Actions
(4) Procedures For Taking Action Based on Misconduct
(5) Guideline Schedule of Disciplinary Offenses and Recommended Remedies

1. Situation. To promulgate the Command policy for correcting offending employees and maintaining discipline and morale through the fair administration of a constructive and progressive disciplinary system. This Order sets forth regulations for effecting adverse actions and provides guidance in disciplinary actions.

2. Cancellation. DepO 12751.2B.

3. Mission

a. Disciplinary and adverse actions shall be taken against an employee only for such causes as will promote the efficiency of the service.

b. Disciplinary and adverse actions may not be taken against an employee on the basis of any prohibited personnel practice (5 USC 2302).

c. Actions taken against unit employees must also be in conformance with the applicable negotiated agreement.

4. Execution. The Marine Corps Recruit Depot, San Diego shall comply with the instructions contained in enclosures (1) through (12). Commanders, staff sections and department heads will ensure that all subordinate managers and supervisors (military and civilian) are thoroughly familiar with the contents of this order and that the order is made available to employees upon request.

DepO 12752.2

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5. Administration and Logistics. Directives issued by this Headquarters are published and distributed via the Directives Control Point at the Depot Adjutant's office.

6. Command and Signal

a. Signal. This Order is effective the date signed.

b. Command. This Order is applicable to all organizations, units, and activities located on the Marine Corps Recruit Depot, San Diego that receive services from the Marine Corps Civilian Human Resources Office-West.



T. W. SPENCER
Chief of Staff

DISTRIBUTION: A

DEFINITIONS

1. Employee

a. For purposes of adverse actions: An individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed one year of current continuous employment under other than a temporary appointment limited to one year or less; and a preference eligible in the excepted service who has completed one year of current continuous service in the same or similar position.

b. For purposes of disciplinary or performance action: An individual paid through appropriated funds regardless of career status or work schedule.

2. Days. Calendar days.

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

4. Adverse Action. A removal, suspension of more than 14 days, reduction in grade, pay, or furlough for 30 days or less.

5. Disciplinary Action. Letters of Reprimand or suspensions of 14 days or less.

6. Corrective Action. An oral admonishment or a Letter of Caution not recorded in an employee's Official Personnel Folder (OPF).

7. Oral Admonishment. An oral (unwritten) corrective action taken by a superior official in response to an employee's improper conduct.

8. Letter of Caution. A written corrective action taken by a superior official in response to an employee's improper conduct.

9. Letter of Requirement. A nondisciplinary, written, notice which levies an employment related requirement upon the recipient.

10. Letter of Reprimand. A written remedy by a superior official in response to an employee's improper conduct.

11. Suspension. The placing of an employee in a temporary non-duty, non-pay status for disciplinary reasons.

12. Removal. The involuntary separation of an employee from the activity except when taken as a reduction in force.

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13. Furlough. The placing of an employee in a temporary status without duties and pay because of a lack of work, funds or other nondisciplinary reasons.

14. Official. A person who has been delegated authority to propose or decide an adverse or disciplinary action under this Order.

DEFINITIONS RELATED TO UNACCEPTABLE PERFORMANCE

1. Opportunity To Demonstrate Acceptable Performance/Performance Improvement Period (PIP). A chance for the employee to show that they can achieve an acceptable level of performance for all critical elements of their position.

2. Acceptable Performance (for the purposes of PIP/Adverse Performance Actions).

a. 2-Tier Performance System: Performance by an employee that meets expectations in the majority of the subelements, for each critical element of a current and established performance plan. The result being a rating of meets expectations performance for that critical element. All critical elements must be rated meets expectations to be considered acceptable performance.

3. Unacceptable Performance. Performance of an employee which fails to meet an acceptable level of performance for one or more critical elements of a current performance plan established for the employee's position.

4. Reasonable Time. An amount of time commensurate with the duties and responsibilities of the employees job which is sufficient to allow the employee to show whether or not the individual can achieve an acceptable level of performance.

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DELEGATION OF AUTHORITY AND RESPONSIBILITIES

1. Delegation of Authority

a. Letters of Caution or Requirement. Civilian and military supervisors of all levels who supervise civil service employees are authorized to issue letters of caution or requirement to their subordinates.

b. Letters of Reprimand. Civilian and military supervisors of all levels who supervise civil service employees are authorized to issue letters of reprimand to their subordinates. All such letters of reprimand shall be staffed through the Civilian Human Resources Office before being delivered to the employee.

c. Civilian and military supervisors of all levels who supervise civil service employees are authorized to propose suspensions, removal, and demotions. These supervisors are authorized to terminate temporary employees or probationary employees.

d. The authority to render final decisions on suspensions, removals, and demotions is delegated to the supervisors and managers in the employee's chain of command.

ACTIONS WILL NOT BE PROPOSED AND EFFECTED BY THE SAME OFFICIAL (WITH THE EXCEPTION OF THE COMMANDING GENERAL)

2. Responsibilitiesa. Managers, Supervisors, and Investigating Officials

(1) The immediate supervisor is responsible for maintaining discipline and morale among the employees supervised and for initiating appropriate action when warranted. When initiating disciplinary actions, supervisors will be guided by enclosure (3). To ensure supervisors exercise maximum responsibility over subordinates, employees will generally receive instructions or discipline from or through immediate supervisors. This does not preclude disciplinary actions being initiated by higher levels of supervision. When this is done, the higher level supervisor should consult with, and to the extent practicable, work through the immediate supervisor. When a supervisor observes an infraction of rules and the immediate supervisor of the employee(s) concerned is not available, this person may take such steps on the spot as appear warranted. Thereafter, this supervisor will locate the supervisor concerned, fully explain the circumstances, and place further responsibility for action in the hands of the immediate supervisor. When military personnel serve as supervisors and managers of civilians, they will exercise the same responsibilities as are exercised by civilian supervisors.

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(2) Any official investigating alleged misconduct, proposing or effecting a disciplinary/adverse action, or initiating certain corrective actions are responsible for ensuring the following:

(a) Administrative investigations are conducted prior to proposing disciplinary/adverse actions.

(b) Reports of Investigation are reviewed by the Human Resources Director prior to taking any disciplinary action.

(c) Letters of Reprimand and Letters of Requirement are reviewed by the Human Resources Director prior to issuing letters of this nature to an employee.

(d) Copies of Letters of Reprimand are provided to the Human Resources Director. The copy will be dated, signed by the issuing official, and contain the employee's acknowledgment of receipt.

(e) Assistant Chiefs of Staff, executive officers, managers, department heads and supervisors will refer disciplinary/adverse actions regarding suspensions or removals and terminations of probationary or temporary employees for misconduct and/or unacceptable performance to the Human Resources Director. Correspondence regarding these actions will be drafted by the Human Resources Director.

(f) A summary of an employee's oral reply, if any, made during the disciplinary reply process is provided to the Human Resources Director.

(g) A copy of the proposed and effect letter, if applicable, is provided to Human Resources Director. The copy will be dated, signed by the issuing official, and contain the employee's acknowledgment of receipt.

(3) The Human Resources Director, is responsible for the following:

(a) Assisting supervisors and management officials at all levels in matters relating to discipline, conduct and adverse actions.

(b) Providing technical review of investigations, Letters of Reprimand and Letters of Requirement and other matters related to discipline.

(c) Providing guidance and recommendations on remedies.

(d) Drafting all adverse and disciplinary actions involving suspensions and removals to ensure consistency and conformance with prescribed regulations and procedures.

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(e) Drafting all termination actions effecting the termination of probationary and temporary employees for misconduct and/or unacceptable performance to ensure consistency and conformance with prescribed regulations and procedures.

(f) Upon request, advising employees against whom adverse action is taken, concerning grievance/appeal rights.

(g) Monitoring disciplinary procedures and recommending changes, as appropriate.

(h) Maintaining a record which, at a minimum, will contain copies of:

The proposed action.

The employee's written answer, if any.

A summary of the employee's oral reply, if any.

The notice of decision and reasons therefor.

Any supporting material.

Any order affecting the decision.

(i) Providing a copy of the record to the Merit Systems Protection Board (MSPB) upon its request and to the employee affected or employee's designated representative upon the employee's written request

GUIDANCE IN EFFECTING DISCIPLINARY ACTIONS

1. Purpose. The purpose of this enclosure is to provide advice and guidance to supervisors and managers in effecting disciplinary actions.

2. Philosophy of Discipline. 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. It is not intended to use disciplinary measures for the sole purpose of punishing employees. 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.

3. Guidance in Selecting a Proper Course of Disciplinary Action

a. Choose the Minimum Disciplinary Action Likely to Correct the Improper Behavior. Prior to taking any disciplinary action, management should consider the total circumstances and take only such action as deemed appropriate to correct the situation. Determining the minimum action likely to correct the problem is extremely important and a responsibility which frequently lies with the immediate supervisor.

b. Disciplinary Actions Must be Fair and Just. This is another way of saying that there must be similar actions for similar offenses. This does not mean that all similar actions must bear identical remedies since there are other factors which should be considered that may mitigate the remedy. It is important that managers have good reasons for imposing significantly different remedies for similar offenses. A good place to start in determining a proper remedy is to look at enclosure (5). While this schedule of recommended remedies is not mandatory, most actions fall within its limits and there should be good reason for deviation from the guide when it occurs.

c. Disciplinary Actions Should be Timely. Being timely does not mean that disciplinary action should be taken in haste. Disciplinary actions should not be taken precipitately because important facts might be ignored. However, the corrective influence of a suspension, for example, may be diminished if it follows the offense by six months or a year.

d. Mitigating, Unusual, or Aggravating Circumstances Should be Considered in Determining a Proper Disciplinary Action. Such considerations as the employee's position, length of service, or prior disciplinary actions should be taken into consideration. If at all possible, obtain the employee's version of the events before initiating a disciplinary action. It may be that the employee will have an acceptable explanation or be able to present mitigating circumstances.

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e. Consider the Employee as a Unique Individual. What is the employee's attitude? Does the employee fully understand the nature of the offense and why the manager is troubled? Is the offense part of a continuing behavioral pattern or does it represent an isolated action? Has the employee been led to believe that the behavior is appropriate?

4. Alternative Courses of Action. While it is generally not considered sound management to ignore instances of employee misconduct, all misconduct does not warrant formal disciplinary action. There are other forms of corrective action available.

a. Explanation or Training. If the employee is unaware of 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. Civilian Employee Assistance Program (CEAP). As a general rule it is in the best interest of the Department of the Navy to rehabilitate rather than remove an employee. Misconduct is not always willful. It may stem from alcoholism, misuse of drugs, or from other personal problems which can be helped through CEAP. Managers must seek guidance and advice from the Human Resources Director on whether to refer an employee to the CEAP administrator, take disciplinary action, or both.

c. Performance Ratings. Most employees are aware of the importance of performance ratings and want to receive favorable ratings. A discussion about performance and/or low performance appraisals should have a positive effect in improving an employee's performance. If an employee's performance becomes unacceptable, action must be taken in accordance with enclosure (11).

d. Withholding Within-Grade Increases. If an employee's performance does not warrant a within-grade increase, it is appropriate to give the employee a negative determination.

e. Oral Admonishments. Oral Admonishments or warnings are informal actions and usually constitute the first step in progressive discipline. As a rule, they are taken by the immediate supervisor for minor violations of a rule or regulation, or to call the employee's attention to certain deficiencies in conduct. Incidents for which an employee is orally admonished will not be counted as prior offenses or subsequent actions; instead, they are used to show that certain aspects of conduct have been brought to an employee's attention.

f. Letter of Caution. A Letter of Caution is a nondisciplinary, written notification to correct an employee's improper conduct. It may be issued to an individual employee or to a group of employees by an immediate supervisor or by a higher level management official. It

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provides the recipient(s) notification that their conduct is failing to meet acceptable standards. Such letters will not be filed in the employee's OPF, but will be retained by the supervisor for a period not to exceed one year. Letters of Caution are grievable through the appropriate grievance procedure.

g. Letter of Requirement. A Letter of Requirement is a nondisciplinary written notice that levies an employment related requirement upon the recipient. It may be issued to an individual employee or to a group of employees by an immediate supervisor or by a higher level management official. A Letter of Requirement may levy a requirement on an employee that is over and above what is expected of other employees; i.e., one which requires medical certification to support future requests for sick leave or one which subjects an employee to certain controls not imposed on other employees. Incidents which form the basis for the issuance of a Letter of Requirement will not be counted as prior offenses when determining the remedy for a subsequent infraction under enclosure (5). Such letters will not be filed in the employee's OPF and will be rescinded in writing in such time as the condition warrants. Letters of requirement may be used during their retention period to show that a particular matter has been officially noted and brought to the employee's attention. Letters of Requirement are grievable through the appropriate grievance procedure and will be reviewed by the Human Resources Director, prior to issuance to an employee.

5. Formal Disciplinary Actions

a. Letter of Reprimand. A Letter of Reprimand is the minimum formal disciplinary action that may be counted as a prior offense when determining a remedy under enclosure (5). It is appropriate when a breach of the employee-employer relationship is of such a nature as to warrant the temporary inclusion of a record in the employee's OPF. It constitutes a fair warning that the employee has failed or is failing to meet the prescribed standards of behavior of the organization. A reprimand is the first step in a possible series of formal disciplinary actions, each more progressive in nature, if the reprimand does not serve its intended purpose. Incidents that form the basis for the issuance of a reprimand may be counted as prior offenses when determining the remedy for a subsequent infraction under enclosure (5). In certain types of offenses, when a suspension may not be the correct remedy, a series of reprimands, progressively more severe in tone would carry weight as suspensions in justifying a subsequent removal action.

b. Suspension of 14 Calendar Days or Less. A suspension is a formal disciplinary action that may be the final warning step in the progressive disciplinary process before removal action. It is a placing of an employee in one or more days of nonduty status without pay. A suspension is appropriate where other non-formal and/or formal actions have failed to

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correct unacceptable conduct or for unacceptable conduct that is so severe that lesser disciplinary action is inappropriate. The financial impact upon the employee should be carefully considered in decisions to suspend, and the number of days set at a point which will serve to be corrective rather than punitive.

c. Suspension for More Than 14 Calendar Days. A suspension of more than 14 calendar days should not, generally, be imposed. Some circumstances which justify such remedies are: (1) when required by law and, (2) when directed by the Office of Personnel Management (OPM).

d. Removal. Removal should be taken only after less severe measures have failed to correct the offending employee, or when the first offense is of such a serious nature that removal action is clearly warranted. A removal action may be based on an employee's conduct off the job as well as on the job. There must clearly be a nexus to the employee's job for off-base conduct to be the cause for removal. A removal action will be initiated only after it has been clearly demonstrated that the employee does not conform to the accepted rules of conduct, and where such action will promote the efficiency of the service.

e. Termination of Probationary and Temporary Employees. Although not disciplinary in nature the termination of a probationary or temporary employee for misconduct and/or unacceptable performance requires processing similar to a disciplinary/adverse action. Although not a mandatory requirement, good business practice dictates that a termination action should be initiated only after it has been clearly demonstrated, by written counseling, that the employee was placed on notice that their conduct and/or performance did not meet the prescribed standards of the organization and subsequently fails to achieve an acceptable level of performance or correct the offending behavior; or when the first offense is of such a serious nature that termination action is clearly warranted. A termination action may be based on an employee's conduct off the job as well as on the job; however, there must clearly be a nexus to the employee's job for off-base conduct to be the cause for termination. Probationary and temporary employees being terminated for unacceptable conduct and/or performance should be allowed a delay of five work days from the time they are presented their letters effecting termination to the effective date of their termination. The Human Resources Director will draft all letters effecting termination of these two categories of employees. Supporting documents are to be provided and will be included in the employee's termination file.

f. Reduction in Grade or Pay. A demotion is not normally an appropriate action since it is usually related to matters of performance. However, in situations of misconduct which appear to warrant removal, demotion to a position of lesser responsibility and authority may be appropriate and serve as a more moderate remedy; e.g., demotion from a

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supervisory to a nonsupervisory position. An employee's previous employment record and the prospect of satisfactory performance in another position should be primary considerations in making this determination.

6. Special Disciplinary Situations

a. Unauthorized Absence. Leave Without Pay (LWOP) is an approved absence. Do not attempt to impose disciplinary action based on the instances of LWOP. If an employee is absent without permission, carry that employee in an Unauthorized Absence (UA) status. A charge of UA will support disciplinary action. However, an instance of UA does not demand a disciplinary action. An employee who is UA is not paid for the period of unapproved absence. UA is charged for the exact amount of time the employee is absent.

b. Substance Abuse Program. All civilian employees, directly or indirectly, affect the mission of the operating forces. Substance abuse among these employees has a detrimental effect on their health, conduct, performance and, therefore, undermines their ability to provide the necessary level of support to assure the readiness of those forces. However, when such abuse is determined to be a handicapping condition, as defined by the Rehabilitation Act of 1973, and the activity knew or should have known that the condition existed prior to the incident giving rise to the consideration of disciplinary action, it must be dealt with in accordance with provisions of CEAP as promulgating the efficiency of the service. Persons who use illegal drugs are not suitable for federal employment. Such prohibited misconduct may warrant administrative corrective action up to and including removal.

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PROCEDURES FOR TAKING ACTION BASED ON MISCONDUCT1. Investigation report

a. Prior to initiating any disciplinary action, management must ascertain whether there is sufficient evidence to justify contemplated action; a prima facie (at first glance) case that can withstand all of the following tests must exist: that the action can be demonstrated to be for such cause as will promote the efficiency of the service; that the evidence has been thoroughly documented and can be supported by testimony or documents in a grievance or an appeal; and, that the proposed action is consistent with other actions taken by the command.

b. Investigations will be initiated in a timely manner after the alleged incident or awareness thereof. Such an investigation may be conducted by the employee's immediate supervisor or by any official so authorized. The investigation may include: acquisition and examination of pertinent evidence, documents and reports; visual inspection of the work or incident site (if relevant); documentation of any unusual conditions or special circumstances and statements or documented interviews of witnesses and the concerned employee. An interview with the employee involved is especially important to the inquiry. A properly conducted inquiry may disclose information or mitigating circumstances which otherwise might not be brought to light until a grievance/appeal hearing. Federal employees have a duty to account for the performance of their duties and failure to cooperate with an administrative investigation can provide the basis for disciplinary action. Federal employees should understand that they have a duty to answer specific questions during an administrative investigation and that disciplinary proceedings could result from those answers. However, employees who invoke their Fifth Amendment Privilege, and or Weingarten Rights and refuse to respond to questions, cannot be disciplined solely because they have invoked their rights. They may, however, be disciplined for not replying if they are advised that: (a) they are going to be asked a number of specific questions concerning the performance of official duties, (b) they have a duty to reply to the questions and agency disciplinary proceedings may be initiated as the result of the answers and (c) their replies cannot be used against them in a criminal case. Under these circumstance the investigating official should contact the Human Resources Director for guidance and advice to avoid immunizing employees from criminal prosecution. Witnesses to the incident's being investigated do not have the right to refuse to make a statement during the course of an administrative investigation. Witnesses have a right to evoke their Weingarten Rights.

c. Prepare an investigation report as outlined in enclosures (6) and (7), recording all information, specifically and in detail; i.e., dates, times, specific instances, and other data necessary to understand the charge.

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d. Forward the investigation report with proposed remedy to the Human Resources Director for technical review.

e. When a Letter of Requirement, or Reprimand is considered the appropriate action, it should be promptly prepared in draft form, using enclosures (9), or (10) as a guide and forwarded to the Human Resources Director for review. After review, the letter will be returned to the supervisor for preparation and issuance to the employee.

f. It should be noted that investigations are discussed in some Union contracts. Investigators should determine the unit status of the employee and abide by any applicable contract provisions.

2. Corrective Actions

a. Oral Admonishment

b. Letter of Caution. A Letter of Caution will:

(1) Specify the reason(s) for its issuance.

(2) State the letter will not be placed in the employee's OPF.

(3) State a copy of the letter will be retained by the supervisor.

(4) State the letter may be referred to if it becomes necessary to initiate a disciplinary or adverse action regarding any future incidents of misconduct.

(5) Contain the date issued and the issuing official's signature.

(6) Contain an employee acknowledgment of receipt. Should the employee refuse to sign the acknowledgement of receipt, annotate, "Employee refused to sign, and a copy was provided to the employee" where the employee would normally acknowledge receipt. Sign and date the refusal and provide the employee an annotated copy of the Letter of Caution.

c. Letter of Requirement. A Letter of Requirement will:

(1) Specify the reason(s) for its issuance.

(2) State concisely the restriction(s) or requirement(s).

(3) State the letter is not a disciplinary action and is grievable through administrative grievance procedures or negotiated collective bargaining agreement (AFGE Local 1881).

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(4) State the letter will not be placed in the employee's OPF.

(5) State that failure to comply with the restrictions/
requirement of the letter may result in disciplinary action, up to and
including removal from federal service.

(6) State that requirements will be reviewed semiannually and that
a written determination to continue or rescind the letter will be provided
at the time of review.

(7) Contain the date issued and the issuing official's signature.

(8) Contain an employee acknowledgment of receipt. Should the
employee refuse to sign the acknowledgement of receipt, annotate,
"Employee refused to sign, and a copy was provided to the employee" where
the employee would normally acknowledge receipt. Sign and date the
refusal and provide the employee an annotated copy of the Letter of
Requirement.

3. Disciplinary Actions

a. Letter of Reprimand. A letter of reprimand will:

(1) Specify the reason(s) for its issuance.

(2) State that it will be placed in the employee's OPF for a
period of not more than one year from the date of the letter.

(3) State the letter is grievable under the appropriate procedure
through administrative grievance procedures or negotiated collective
bargaining agreement (AFGE Local 1881).

(4) State the incident will be counted as a prior offense when
determining a remedy for a subsequent offense.

(5) State that further acts of misconduct could result in more
severe disciplinary action, up to and including removal from federal
service.

(6) Contain the date issued and the issuing official's signature.

(7) Contain an employee acknowledgment of receipt. Should the
employee refuse to sign the acknowledgement of receipt, annotate,
"Employee refused to sign, and a copy was provided to the employee" where
the employee would normally acknowledge receipt. Sign and date the
refusal and provide the employee an annotated copy of the Letter of
Reprimand.

ENCLOSURE (4)

4. Disciplinary/Adverse Actions Prepared By The Human Resources Director

a. The Human Resources Director will draft all correspondence proposing or effecting, if applicable, disciplinary and adverse actions to include termination actions regarding the termination of probationary and temporary employees for misconduct and/or unacceptable performance.

b. Suspension of 14 Days or Less will contain:

(1) A Report of Investigation.

(2) A proposal notice that:

(a) Specifies the offense(s) committed.

(b) Specifies the proposed remedy.

(c) Advises the employee of the right to reply to the action.

(d) Contains the date issued and the issuing official's signature.

(e) Contain an employee acknowledgment of receipt. Should the employee refuse to sign the acknowledgement of receipt, annotate, "Employee refused to sign, and a copy was provided to the employee" where the employee would normally acknowledge receipt. Sign and date the refusal and provide the employee an annotated copy of the proposal letter.

(3) An effect letter that:

(a) States the decision rendered.

(b) Cites the reply summary (if applicable).

(c) Provides the dates of suspension (if applicable).

(d) States that the incident will be counted as a prior offense when determining a remedy for a subsequent offense.

(e) States that further acts of misconduct could result in more severe disciplinary action, up to and including removal from federal service.

(f) Advises of grievance rights through administrative grievance procedures or negotiated collective bargaining agreement (AFGE Local 1881).

(g) Contains the date issued and the issuing official's signature.

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(h) Contain an employee acknowledgment of receipt. Should the employee refuse to sign the acknowledgement of receipt, annotate, "Employee refused to sign, and a copy was provided to the employee" where the employee would normally acknowledge receipt. Sign and date the refusal and provide the employee an annotated copy of the decision letter.

(i) Enclose a Standard Form 50, Notification of Personnel Action.

c. Suspensions of More Than 14 Days, Removals and Other Adverse Actions will contain:

(1) A Report of Investigation.

(2) A proposal notice that:

(a) Specifies the offense(s) committed.

(b) Specifies the proposed remedy.

(c) Advises the employee of the right to reply to the action.

(d) Contains the date issued and the issuing official's signature.

(e) Contain an employee acknowledgment of receipt. Should the employee refuse to sign the acknowledgement of receipt, annotate, "Employee refused to sign, and a copy was provided to the employee" where the employee would normally acknowledge receipt. Sign and date the refusal and provide the employee an annotated copy of the proposal letter.

(3) An effect letter that:

(a) States the decision rendered.

(b) Cites the reply summary (if applicable).

(c) Provides the dates of suspension (if applicable) or the effective date of action.

(d) States that the incident will be counted as a prior offense when determining a remedy for a subsequent offense (if applicable).

(e) Advises of grievance rights or right to appeal, through collective bargaining agreement (AFGE Local 1881).

(f) Contains the date issued and the issuing official's signature.

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(g) Contain an employee acknowledgment of receipt. Should the employee refuse to sign the acknowledgement of receipt, annotate, "Employee refused to sign, and a copy was provided to the employee" where the employee would normally acknowledge receipt. Sign and date the refusal and provide the employee an annotated copy of the effect letter. If the employee is not available to sign, the effect letter should be mailed in a manner to facilitate delivery prior to the effective date of the action, and in a manner that an earnest effort to make delivery can be proven.

(h) Enclose a Standard Form 50, Notification of Personnel Action.

d. Termination of Probationary and Temporary Employees For Misconduct and/or Unacceptable Performance will contain:

(1) A request for termination from the appropriate supervisor/manager which states that the employee:

(a) Was previously counseled that their conduct and/or performance did not meet the prescribed standards of the organization.

(b) Was advised that failure to achieve an acceptable level of performance or correct the offending behavior could result in termination.

(c) Has failed to correct their conduct and/or achieve an acceptable level of performance.

NOTE: A probationary/temporary employee may be removed on a first offense when their conduct is of such a serious nature that termination action is clearly warranted.

(2) An endorsement by the appropriate Commander or Assistant Chief of Staff authorizing the request made by the supervisor/manager.

(3) An effect letter that:

(a) States the decision rendered.

(b) Provides the effective date of action.

(c) Advises the employee of rights to appeal if any.

(d) Contains the date issued and the issuing official's signature.

(e) Contain an employee acknowledgment of receipt. Should the employee refuse to sign the acknowledgement of receipt, annotate,

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"Employee refused to sign, and a copy was provided to the employee" where the employee would normally acknowledge receipt. Sign and date the refusal and provide the employee an annotated copy of the effect letter. If the employee is not available to sign, the effect letter should be mailed in a manner to facilitate delivery prior to the effective date of the action, and in a manner that an earnest effort to make delivery can be proven.

(f) Enclose a Standard Form 50, Notification of Personnel Action.

5. Procedure for Determining Choice of Representative

a. Employees who are in a Bargaining Unit. The Union, by virtue of its exclusive recognition, will normally represent Unit members.

AFGE Local 1881 @ MCRD-SD
Bldg 129
San Diego, CA 92140-5001

1-619-524-0011

b. Employees who are not in a Bargaining Unit

(1) If not in a bargaining unit, an employee's choice of a representative in any of the procedures described in this Order may be disallowed if such a choice would result in a conflict of interest or position, conflict with the priority needs of the activity, or would give rise to unreasonable costs to the government. Such matters of dispute over employee representation will be decided by the level of official delegated authority in enclosure (2) of this Order to render a final written decision of the contemplated action. All matter will be reviewed by the Human Resources Director, prior to referral to the official. Referral of the representation issue will be in writing.

(2) An employee whose representative is disallowed may request review of that decision by the immediate superior in command of the official who rendered the decision within five days of the request.

(3) The reviewing official will review the reason for disallowance as well as any information submitted by the employee and will make a final decision in writing within five days of the request.

(4) Processing of the original action will be held in abeyance pending resolution of the representation.

ENCLOSURE (4)

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GUIDELINE SCHEDULE OF DISCIPLINARY OFFENSES
AND RECOMMENDED REMEDIES
INSTRUCTIONS FOR THE USE OF THE SCHEDULE

1. Instructions for use of this schedule

a. This schedule is a guide. Discipline is not punitive in nature, is expected to be progressive for subsequent offenses, and normally falls within the range shown in this Enclosure or those established in an Alternative Discipline System. Mitigating or aggravating factors can justify a remedy outside the range. For example, remedies greater than those shown can be appropriate when the facts of an aggravated offense, frequent infractions, or simultaneous multiple offenses are established.

b. Consistent with DON policy in SECNAVINST 12752.XX, the schedule generally provides for a range of remedies (e.g., Reprimand to Removal) to provide management with flexibility in correcting conduct deficiencies. Selection of a reasonable remedy from such a broad range should be made with good judgment, including consideration of any appropriate "Douglas Factors," Appendix C. Excessive, arbitrary or capricious remedies and remedies selected without consideration of mitigating factors may be reversed by third parties, if challenged.

c. Some of the offenses listed in this schedule combine several offenses in one statement connected by the word "or." Use only the portion of the statement of offense that accurately describes the employee's conduct; leave out all parts that do not apply. In choosing a charge, it may be better to describe the offense, rather than select a charge from the schedule that does not accurately describe the offense, and then to refer to similar offenses in the schedule when selecting the remedy.

d. The schedule does not cover every possible offense. When specifying an offense not listed in the schedule, be careful when using terms such as "theft" or "fraud," which require establishing the element of intent and should only be used when the element of intent can be proven. Management officials should contact their servicing HRO for assistance in framing appropriate charges.

e. Due to the nature of their positions, offenses by supervisors or managers may warrant more severe remedies than the same offense committed by a non-supervisory employee.

f. All disciplinary actions are to be taken following the provisions of law.

g. All adverse action cases, whether based on off-duty or on-duty misconduct, require establishment of a nexus or link between the conduct and its effect upon the efficiency of the service. Nexus is normally assumed when the misconduct is sustained in on-duty misconduct cases. In

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taking adverse actions for off-duty misconduct, the deciding official must show, by preponderant evidence, that the adverse action will promote the efficiency of the service by establishing a nexus between the off-duty misconduct and the employee's or activity's performance. The activity should not rely on a presumption of nexus but should make its strongest possible argument and introduce evidence showing the relationship between the misconduct and the employee's or activity's performance. The Merit Systems Protection Board generally recognizes three independent means by which an agency may show a nexus linking an employee's off-duty misconduct with the efficiency of the service: (1) a rebuttable presumption of nexus that may arise in certain egregious circumstances based on the nature and gravity of the misconduct; (2) a showing by preponderant evidence that the misconduct affects the employee's or his co-workers' job performance, or management's trust and confidence in the employee's job performance; and (3) a showing by preponderant evidence that the misconduct interfered with or adversely affected the agency's mission. Actual impairment need not be shown, but the agency can establish that the off-duty misconduct is "directly opposed to the agency's mission." Some of the means for showing nexus include but are not limited to establishing: the probability that off-duty misconduct could happen at work; the misconduct caused such notoriety it has affectivity activity's ability to accomplish its mission; the misconduct impacted the work of the supervisor of other employees in the work area.

h. Servicing HROs can provide advice and assistance with issues such as establishing the required nexus between off-duty misconduct and the efficiency of the service, appropriate wording of the charge(s), application of mitigating factors, consistency of remedies, etc., based on current case law. Activity heads/commanders, managers, and supervisors delegated authority to propose and/or decide disciplinary actions are encouraged to take advantage of such assistance to ensure conformance with this Directive.

2. Past offenses

a. When used to select a range of remedies or remedy, a past offense must be described in sufficient detail to enable the employee to understand and respond to it. Past offenses may be used in determining a range of remedies or remedy when:

- (1) The employee was disciplined in writing;
- (2) The employee was provided the opportunity to dispute the action to a higher level; and
- (3) The action was made a matter of record in the employee's OPF.

b. Any past offense may form the basis for proposing a remedy from the next higher range of remedies for a subsequent offense. The offenses need not be identical or similar.

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c. In its decision in United States Postal Service v. Gregory (122 S. Ct. 431 (2001)), the Supreme Court held that the Board may independently review prior disciplinary actions which are pending in grievance proceedings in order to determine the reasonableness of the penalty under appeal. You are cautioned to carefully examine any prior disciplinary actions that are being challenged if they are a factor in determining the reasonableness of the penalty.

d. The following actions may not be counted as past offenses for determining a range of remedies (however, actions discussed in paragraphs (1) and (2) above may be considered when determining an appropriate remedy within a range for any subsequent offense):

(1) Oral admonishments and letters of caution or requirement.

(2) Letters of reprimand dated more than two years before the date of any advance written notice required under this Directive.

(3) Reductions in grade or pay not effected for disciplinary reasons.

3. Other statutory and regulatory offenses. For information concerning other offenses for which employees may be disciplined by removal, fine or imprisonment, including offenses which require minimum mandatory remedies (such as misuse of government vehicles, Hatch Act violations, and giving gifts to superiors), see 5 CFR 734, 5 CFR 735, 5 CFR 2635, and DoD 5500.7-R.

4. Drug and alcohol abuse offenses. Any employee who engages in misconduct involving drugs and/or alcohol shall be disciplined according to this Enclosure, except when covered under safe harbor. Safe harbor is a special situation described as: When the activity is unaware of illegal drug usage, an employee who voluntarily refers himself or herself to the CEAP as a user of illegal drugs under the Safe Harbor provisions of Implementation Directive 792-XX (Civilian Drug-Free Workplace Program in the Department of the Navy) will be exempt from disciplinary action for the admitted acts, including possession incident to such use, provided the employee meets and complies with the requirements of Implementation Directive 792-XX, paragraph 7.b. Employees who admit to using drugs after being notified of a scheduled drug test or just after it is collected, or found to use drugs on the basis of appropriate evidence, drug trafficking and other drug-related misconduct are not covered under safe harbor, per Implementation Directive 792-XX, paragraph 7.b. Also, safe harbor does not insulate the employee from removal based on loss of security clearance. The range of remedies is broad for the various drug abuse first offenses. To determine the appropriate corrective action, you will consider the Douglas Factors in Appendix C. In doing so, you must also recognize that some positions are so sensitive that the conduct affects

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the employee's or his co-workers' job performance or negatively impacts management's trust and confidence in the employee's job performance. Thus, while counseling is always offered, a higher penalty than the minimum is appropriate in such cases.

5. Reasonable Accommodation. Guidance on providing reasonable accommodation is found at the EEOC web site (<http://www.eeoc.gov>) entitled Enforcement Guidance: on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act. You should also check with Office of Counsel to ensure you apply this guidance in a manner consistent with DON Policy.

a. Under the Rehabilitation Act Amendments of 1992, the standards applied under Title I of the Americans with Disabilities Act (ADA) are applicable to Federal employees. Section 104(c)(4) of the ADA permits a covered employer to hold employees who have drug and alcohol problems to the same qualification standards for employment or job performance and behavior as other employees, even if any unsatisfactory performance or behavior is related to the employee's alcoholism. (29 U.S.C. s 12114(c)(4))

(1) An agency is no longer required to offer an alcoholic employee who engages in misconduct a firm choice between treatment and discharge. While the ADA requires employers to consider other forms of reasonable accommodation for employees with alcoholism, for example, a flexible schedule or leave to accommodate an employee's treatment, employers do not have to excuse the violation of uniformly applied conduct or job performance standards by offering firm choice as a form of reasonable accommodation. (Dennis D. Johnson v. Babbitt, Secretary, Department of the Interior, EEOC Petition No. 03940100 (28 March 1996))

(2) To be considered a request for reasonable accommodation, the employee must request accommodation before s/he has committed the misconduct that violates one of the agency's qualification standards for employment or job performance and behavior under which the agency uniformly imposes discipline. (Francis P. Walsh v. USPS, 74 M.S.P.R. 627(1997))

(3) An individual who is currently engaging in the illegal use of drugs, when the agency acts on the basis of such use, is excluded from the definition of "individual with disabilities" in accordance with 29 CFR 1614.203(h).

(4) Trafficking in drugs is misconduct that does not normally entitle an employee to reasonable accommodation. Accordingly an employee who traffics in drugs will be subject to remedies as provided for in this enclosure.

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b. Undue hardship on an activity/command. 29 CFR 1614.203 provides that reasonable accommodation is not required when it would impose an undue hardship on the operation of the program of the employee's activity/command. Undue hardship must be based on an individualized assessment of current circumstances that show a specific reasonable accommodation would cause significant difficulty or expense.

c. Conduct that takes an employee outside the protection of the Rehabilitation Act. Similar to paragraph b above, the MSPB has held that there are "...certain acts of misconduct which when committed by an employee who is an alcoholic or drug addict, take that employee outside the scope of the protecting legislation because the misconduct renders that person not a 'qualified' individual with disabilities." Egregious or notorious misconduct that hampers an employee's ability to perform his or her duties or to represent the agency, or which strikes at the core of the job or the agency's mission, can, standing alone, disqualify a Federal employee from his or her position (see Hougens v. U.S.P.S., 38 M.S.P.R. 135 (1988)).

SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

<u>OFFENSE</u>	<u>RANGE OF REMEDIES</u>		
	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<u>ALCOHOL ABUSE</u>			
Unauthorized possession, sale or transfer of alcohol on duty or on a military ship, aircraft, submarine, activity, or command	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
*Use of, or being under the influence of alcohol on duty or on a military ship, aircraft, submarine, activity or command	14-day suspension to removal	30-day suspension to removal	Removal
<u>ATTENDANCE</u>			
Excessive unauthorized absence (more than 5 consecutive workdays)	Reprimand to removal	10-day suspension to removal	Removal

SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

<u>OFFENSE</u>	<u>RANGE OF REMEDIES</u>		
	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
Leaving job to which assigned or leaving Navy premises at any time during working hours without proper authorization	Reprimand to 5-day suspension	Reprimand to 10-day suspension	Reprimand to removal
Unexcused or unauthorized absence on one or more scheduled days of work or assigned overtime	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Unexcused tardiness	Reprimand	Reprimand to 5-day suspension	Reprimand to removal

*See paragraphs 4 and 5 of this enclosure

DISCRIMINATION

Discrimination against an employee or applicant based on race, color, religion, sex, disability, national origin, or age, or any reprisal or retaliation action against a complainant, representative, witness, or other person involved in the EEO complaint process	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Discrimination based on sexual orientation	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Sexual harassment	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

<u>OFFENSE</u>	<u>RANGE OF REMEDIES</u>		
	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<u>DRUG ABUSE</u>			
*Unlawful use, being under the influence, or possession of drugs or drug paraphernalia on or off duty	14-day suspension to removal	Removal	
*Unlawful use, being under the influence, or possession of drugs or drug paraphernalia on a military ship, aircraft, or submarine	30-day suspension to removal	Removal	
*Mandatory referral to CEAP is required. For additional guidance see paragraphs 4 and 5 of this enclosure.			
<u>DRUG ABUSE</u>			
Refusal to obtain counseling and rehabilitation after having been found to use illegal drugs	Reprimand to removal	Removal	
Unlawful distribution, sale, or transfer of drugs or drug paraphernalia on or off duty	Removal		
<u>DRUG TESTING</u>			
Refusal to provide a urine sample when required	14-day suspension to removal	Removal	
Failure to appear for testing when directed, without a deferral	Reprimand to removal	Removal	

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SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

<u>OFFENSE</u>	<u>RANGE OF REMEDIES</u>		
	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
Substituting, adulterating or otherwise tampering with a urine sample, testing equipment or related paraphernalia	14-day suspension to removal	Removal	
Attempted or actual falsification, misstatement or concealment of a material fact, record, correspondence or other communication prepared in connection with the collection, handling, transportation or testing of urine samples	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
<u>MISCELLANEOUS OFFENSES</u>			
Betting, gambling, or the promotion thereof on duty or on Department of the Navy premises	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Careless workmanship resulting in delay in production or spoilage or waste of materials	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Criminal, dishonest, infamous or notoriously disgraceful conduct	Reprimand to removal	14-day suspension to removal	30 day suspension to removal
Disobedience to constituted authorities; deliberate refusal or failure or delay in carrying out any proper order, work assignment or instruction; insubordination, including failure to follow local or higher level policy	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

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SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

<u>OFFENSE</u>	<u>RANGE OF REMEDIES</u>		
	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
Discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one-year period	Reprimand to 14-day suspension		
Excessive Discourteous conduct to the public within any one-year period or any other pattern of discourteous conduct	Reprimand to 14-day suspension	7-day suspension to 14-day suspension	14-day suspension to removal
Disrespectful conduct, use of insulting, abusive or obscene to or language about other personnel	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
<u>MISCELLANEOUS OFFENSES</u>			
Falsification (or aiding or assisting in falsification) of time and attendance records or claims against the government	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Falsification, misstatement, or concealment of material fact in connection with any official record	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
False testimony or refusal to testify in an inquiry, investigation or other official proceeding	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

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SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

<u>OFFENSE</u>	<u>RANGE OF REMEDIES</u>		
	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
Loafing, wasting time, inattention to duty, sleeping on duty	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
Making threats to other employees or supervisor; fighting; engaging in dangerous horseplay	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
*Misuse of a Government vehicle	Reprimand to removal	30-day suspension to removal	Removal

* 31 U.S.C. 1349(b) requires a minimum suspension of 30 calendar days even for the first offense, if the misuse was willful, i.e., employee acted either with knowledge that the intended use would be characterized as unofficial or with reckless disregard of whether such use was unofficial.

MISCELLANEOUS OFFENSES

Reckless driving or improper operation of motor vehicle:

Causing personal injury to self or others or damage to government property	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
No personal injury to self or others or damage to government property	Reprimand to 5-day suspension	Reprimand to 10-day suspension	14-day suspension to removal
*Unauthorized possession, use, loss, theft or damage to Government property or the property of others	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

* Under Miguel v. Department of the Army, 727 F.2d 1081, 1083-84 (Fed. Cir. 1984), the Federal Circuit Court held that activities must consider the value of items stolen when determining a penalty for "unauthorized possession" or "theft" of government property. In the absence of aggravating factors, a removal based on de minimis theft will likely

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SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

OFFENSERANGE OF REMEDIESFIRST
OFFENSESECOND
OFFENSETHIRD
OFFENSE

result in mitigation of the penalty, even when the activity can show that the employee was on notice that discipline, including removal, could result from theft of government property.

Misuse of government equipment (e.g. unauthorized use of electronic mail, internet, phones, or facsimile equipment)	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
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MISCELLANEOUS OFFENSES

Misuse of Government sponsored travel charge card (e.g. use for unauthorized personal expenses, failure to pay charge card bill in a timely manner, or failure to use card for required expenses arising from official travel)	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
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Unauthorized use of or failure to appropriately monitor use of Government purchase card	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
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PROHIBITED PERSONNEL PRACTICE

Committing a prohibited personnel practice (See 5 U.S.C. 2302)	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
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SAFETY

Failure to observe posted smoking prohibitions	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
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Failure to use protective clothing or equipment	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
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OFFENSE

RANGE OF REMEDIES

FIRST
OFFENSE

SECOND
OFFENSE

THIRD
OFFENSE

SAFETY

Violation of safety or traffic regulations on duty or on an installation (on or off duty):

Causing injury to self or others or damage to property or endangering the safety of self or others

Reprimand to removal

14-day suspension to removal

30-day suspension to removal

No injury or property damage; not endangering the safety of self or others

Reprimand to 5-day

Reprimand to 10-day suspension

Reprimand to removal suspension

SECURITY

Failure to safeguard classified material:

Security compromised

Reprimand

14-day suspension to removal

Removal suspension to removal

Security not compromised

Reprimand to 5-day suspension

Reprimand to 14-day suspension

30-day suspension to removal

UNAUTHORIZED DISCLOSURE
OR USE OF PROTECTED MATERIAL

Unauthorized disclosure or use of information or other protected material (e.g., records covered by the Privacy Act or under 42 CFR Part 2 (CEAP records))

Reprimand to removal

14-day suspension to removal

30-day suspension to removal