CIVILIAN PERSONNEL PROCEDURES

• CONDUCT and DISCIPLINE
• PERFORMANCE MANAGEMENT
• NEW 2 YEAR PROBATIONARY PERIOD

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CONDUCT OR PERFORMANCE

- Misconduct: A failure or Refusal to Comply with a Rule, Regulation or Requirement.
- Poor Performance: A failure to Perform the Duties of a Position at an Acceptable Level of Quantity, Quality, or Timeliness.

Can do vs. Won’t do
DISCIPLINE

• Purpose of Disciplinary Actions:
  ● To maintain an Efficient, Productive and Orderly Work Environment.
  ● To correct employee misconduct.
  ● NOT to punish an employee.
DISCIPLINARY ACTIONS FOR CONDUCT

• Action is taken under 5 U.S.Code - Chapter 75
• Corrective in nature
• Progressively More Severe
• Taken Only for Just Cause
  (Enforcing rules fairly and consistently)
• Maintain Morale and Improve Behavior
FREQUENT CAUSES OF MISCONDUCT PROBLEMS

- Employee’s Personal Problems
- Poor Attitude Toward Work
- Lax or Inconsistent Enforcement of Rules
- Desire for Personal Gain
- Lack of Motivation

- Bad Example by Coworkers or Supervisor
- Provocation by Supervisor or Coworkers
- Lack of Maturity
- Pressure and Personal Stress
- Misunderstanding of the Rules
COMMON ERRORS IN DISCIPLINARY ACTIONS

• Allowing a problem to continue too long before corrective action is taken.
• Failing to communicate rules and requirements to employees.
• Inconsistent enforcement of rules.
• Reassigning employees rather than correcting problems.
• Basing disciplinary action on personal anger.
• Uneven or arbitrary penalties for similar offenses.
• Failure to fully investigate facts.
SUPERVISOR’S ROLE IN CORRECTING MISCONDUCT

• Spot Problems That Require Correction
• Accurately Analyze Type of Problem – Conduct or Performance
• Refer Employees For Assistance, if Appropriate
• Communicate Rules, Requirements, and Expectations
• Recommend or Take Corrective Action
GATHERING THE FACTS

• A good pre-action fact finding investigation answers important questions.
• WHAT happened?
• WHEN did it happen?
• WHERE did it happen?
• WHO was involved?
• WHY did it happen?
CONSIDERATIONS IN DISCIPLINARY ACTIONS

- Investigation Results
- Evidence of Wrongdoing
- Applicable Rules or Regulations
- Communicating Rules to Employees, where they are aware?
- Consistent Enforcement
DECIDING A COURSE OF ACTION

• Do the facts warrant the need for disciplinary action?
• Is the offense minor or major?
• What action will likely fix the problem?

• DOUGLAS FACTORS
• (Douglas v. VA, 5 MSPB 313, 81 FMSR 7037)
POSSIBLE PENALTIES

• Verbal Counseling or Warning
• Letter of Caution
• Letter of Reprimand
• Suspension
• Reduction in Grade
• Removal From the Federal Service
An Employee who has a medical condition may qualify as a Qualified Handicapped Employee who may require a Reasonable Accommodation.
SUPERVISORS’ EXPECTATIONS

Supervisors who have clearly communicated the rules and the requirements, and who follow those rules and requirements themselves, can reasonably expect that employees will conduct themselves in an appropriate manner.

Steps to Success:

- Be fair and consistent.
- Communicate clearly and be a good listener.
- Be objective in evaluating facts.
- Set the example.
EMPLOYEE RIGHTS

• Verbal Counseling and Letter of Caution are not considered disciplinary in nature and are not placed in the Official Personnel Folder. Not grievable or appealable but may be subject to EEO complaint.

• Letter of Reprimand and Suspensions of 14 days or less are considered disciplinary actions that may be grieved (AGS) or subject to EEO complaint.
• Suspensions for 15 days or more, including indefinite suspensions, removal, reduction in grade or pay and furloughs of 30 days or less are considered adverse actions and if eligible, may be appealed to the MSPB or filing a complaint under EEO regulations.

• The Douglas Factors must always be considered when deciding an adverse action.
PERFORMANCE

• Does the employee have the skills and abilities to perform the duties/tasks of the position?
• The law and regulations specifically exclude probationary/trial employees from the procedures that require the use of an opportunity period. This exclusion is because the entire probationary period is similar to an opportunity period. These employees should receive closer supervisor instruction and training as needed.
PERFORMANCE

• Performance Rating/Reviews
  • Mandatory 3 meetings, more are encouraged. Mid-year progress review Mandatory end of cycle progress review and rating
  • Close out rating required if supervisor or employee leaves/transfers before end of cycle

• Performance Rating:
  • Each critical elements/job objectives rated as 1 -3 -5
• What to include or not include in the Performance Review

• The Review is to evaluate how the employee performed assigned duties

• Be Truthful

• Include successes

• Note any necessary improvements with examples

• DO NOT INCLUDE CONDUCT
• Poor Performance can be addressed in one of two ways under 5 USC: Chapter 43 or Chapter 75
• Under Chapter 43 you must give the employee an opportunity to improve – a performance improvement period (PIP).
• You must provide assistance during this period, such as training
• A PIP is not required under Chapter 75
COMMUNICATING EXPECTATIONS AND PERFORMANCE PROBLEMS

• Most performance problems can be resolved through effective communication between supervisors and employees. A counseling session is an opportunity to clarify expectations and discuss performance problems.

• Ensure the position description is accurate

• Ensure the performance plan is established

• Ensure the standards are clear and reasonable
The National Defense Authorization Act (NDAA) for fiscal year 2016 amended title 10, US Code by adding section 1599e. This new section requires the appointment of “covered employees” within the Department of Defense shall become final only after the employee has served a probationary period of two years. This applies to anyone hired after November 26, 2015.
2 YEAR PROBATION (con’t)

- The 2 year probation applies to any new permanent appointments within the competitive service and all new SES appointments.

However, you must determine if a new employee has prior federal service that may count toward the probationary/trial period.
● What does this mean?

• Employees in the competitive service must complete 2 years of service before they gain full appeal rights with the Merit Systems Protection Board (MSPB)
• COMMUNICATION is key to a successful probation period.

• Documentation of any and all counseling sessions related to performance and/or conduct is critical. Especially so when proposing removal for an unsatisfactory probation period.
The END

QUESTIONS?