

## ADVERSE AND DISCIPLINARY ACTIONS

### PART 1: ADVERSE ACTIONS

**SECTION 1. Purpose:** The Agency and the Union recognize that the public interest requires maintenance of efficient operations through high standards of employee performance and conduct. Adverse and Disciplinary actions will be taken in accordance with (IAW) applicable law and regulation.

**SECTION 2. DEFINITIONS:** Adverse actions are removals, suspensions of more than fourteen (14) days, reductions-in-grade or pay (demotions), and furloughs of thirty (30) days or less, as included in subchapter 5 CFR, Part 752.

**SECTION 3. PROCEDURES:** Adverse actions will be taken and implemented IAW applicable laws and regulations. The following procedures will be followed:

A. Employees shall be given at least thirty (30) days advance written notice of any disciplinary or adverse proposal and fifteen (15) days calendar days in which to prepare a reply unless the circumstances require the application of the exceptions to the notice and reply periods in accordance with government-wide regulations such as those found in 5 C.F.R. §§752.404(d)(1) and (2).

B. In the proposal letter the employee will be advised of their right to representation.

C. A copy of the material relied upon to support the reasons given in the notice will be provided to the employee and/or the designated representative upon request.

**SECTION 4. APPEALS:** The decision notice will advise the employee of the specific reasons for the decision and the right to appeal the action to the Merit Systems Protection Board (MSPB) or through the Grievance-Arbitration Process set forth in this CBA.

**SECTION 5. TIMELINESS:** If the Agency believes adverse action is necessary, such action will be initiated in a timely manner after completion of any applicable investigation and review for legal sufficiency. The Agency will make every reasonable effort to initiate such action within thirty (30) days. This requirement does not preclude management from imposing discipline.

### PART 2. DISCIPLINARY ACTIONS:

**SECTION 1. DEFINITIONS:** Disciplinary actions, for the purpose of this article, shall be defined as follows:

A. Letters of Reprimand.

B. Suspensions of fourteen (14) days or less.

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**SECTION 2. PROCEDURES:**

A. If possible, an employee will be given at least fifteen (15) days advance written notice of an administrative disciplinary action unless the circumstances require the application of the exceptions to the notice and reply periods in accordance with government-wide regulations such as those found in 5 C.F.R. §§752.404(d)(1) and (2). The employee will then have fifteen (15) days to present any oral and/or written reply to a designated management official. The employee or the designated representative may request an extension of time in which to reply.

B. In the proposal letter the employee will be advised of their right to representation.

**SECTION 3. PROGRESSIVE DISCIPLINE:** The concept of progressive discipline described in agency regulations shall be followed. The steps of progressive discipline may be bypassed when the severe nature of the behavior makes a lesser form of discipline inappropriate.

**SECTION 4. EMPLOYEE STATEMENTS:** Upon request, a copy of an employee's own written statements made in conjunction with an agency investigation will be provided to the employee and/or the designated representative.

**SECTION 5. TIMELINESS:** If the Agency believes disciplinary action is necessary, such action will be initiated in a timely manner after completion of any applicable investigation and review for legal sufficiency. The Agency will make every effort reasonable effort to initiate such action within thirty (30) days. This requirement does not preclude management from imposing discipline.

**PART 3. LAST CHANCE AGREEMENTS (LCA):**

**A. Forgoing Discipline:** LCA refer to situations in which the Agency agrees to forgo taking a proposed disciplinary or adverse action against an employee in exchange for the employee's agreement to comply for a set period of time with the expectations described in the agreement. The Agreement will specify that if the employee does not meet his or her obligations under the agreement, then the Agency is free to reinstate the proposed disciplinary or adverse action. The Agency and the Union agree that, when last chance agreements are offered, the employee will be informed that signing the agreement is voluntary and of the consequences of failing to enter into the agreement.

**B. Terms of an LCA:** The terms of any LCA offered by the Agency to an employee for their signature shall contain at a minimum the following provisions:

1. The use of LCA shall be for just cause and will not be arbitrary, capricious, or be based on disparate treatment.

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2. The LCA will spell out a list of the primary conditions for compliance. The Parties agree that any breach of the agency-employee relationship may violate the agreement.
3. The LCA shall include a confidentiality clause.
4. Signing an LCA does not constitute admission of any wrongdoing by the employee.
5. The probationary period during which the LCA will be in effect will be specified in the Agreement. If the probationary period exceeds one year, the Agency will explain to the employee the rationale for the longer period.
6. In the event an LCA is for a period of longer than one (1) year the Parties agree, following the first year, to meet to discuss the continuing applicability of the agreement. The employee will be allowed to present at this meeting evidence that they have complied with the conditions in the LCA, such as successful treatment, clean record and improved performance and conduct.
7. When the employee is presented with an LCA the employee will be given an opportunity to consult with their representative. The Agency may require the employee to accept or reject the LCA prior to the completion of the Decision Notification meeting.
8. The agreement shall be effective upon the latest signature of the parties and their representatives, if applicable. No other agreement shall be binding unless signed by all Parties. Any signatures affixed to the agreement via photocopy or facsimile are valid and enforceable as substitutes for original signatures.

**PART 4. DOUGLAS FACTORS:** In arriving at its written decision on any proposed disciplinary or adverse action, the Agency shall comply with applicable law and regulation, and shall also consider the Douglas Factors. As required by 5 CFR Part 752, the Agency will consider only the reasons specified in the notice of proposed action and any answer of the employee and/or the representative made to the Deciding Official, along with any medical documentation provided.

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