
**FACTORS TO CONSIDER IN MAKING A DECISION ON DISCIPLINARY/ADVERSE ACTIONS
GUIDANCE FOR DECIDING OFFICIALS**

Below are 12 factors to take into consideration when you are the proposing or deciding official for disciplinary/adverse actions. They should all be considered, however, they are not all applicable in every situation. The questions below each factor are questions that should be considered in addressing the factor.

Factor One: The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

- What makes this conduct so serious?
- How does it impact on the efficiency of the service?

Factor Two: The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.

- Is there anything about this person's position that makes his/her actions particularly more or less serious?
- Is the position held to a higher standard? (Law Enforcement, Supervisors, Fiduciary)
- Does the position have contact with the public?
- Is it a position of prominence?

Factor Three: The employee's past disciplinary action.

- Consider all discipline that occurred within the past five years.

Factor Four: The employee's past work record, including the length of service, performance on the job, ability to get along with fellow workers, and dependability.

- How long has the employee worked for the Government? Lengthy years of service is considered a significant mitigating factor and must be addressed.
- What were the employee's last three performance evaluations? Outstanding performance is a mitigating factor.
- How does the employee get along with co-workers?
- Is the employee dependable?

Factor Five: The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties.

- How has the conduct affected the employee's ability to perform assigned duties?
- How has the conduct affected your confidence in the employee's ability to perform assigned duties?

Factor Six: Consistency of the penalty with those imposed upon other employees for the same or similar offenses.

- Have other employees exhibited the same or similar conduct?

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- ❑ If so, what penalty(ies) have you proposed/decided were appropriate?
- ❑ If this penalty differs, what about this situation warrants a different penalty?
- ❑ Military personnel and civilian employees cannot be compared for the purposes of establishing disparate treatment.

Factor Seven: Consistency of penalty with the table of penalties

- ❑ If the table of penalties addresses this conduct, how is this action consistent with the table?
- ❑ If the table of penalties does not address this specific conduct, how is this action consistent with similar conduct and penalties addressed by the table?
- ❑ If there are multiple charges, explain your rationale in relation to the table of penalties.

Factor Eight: The notoriety of the offense or its impact upon the reputation of the Agency.

- ❑ Is the general public aware of the conduct?
- ❑ How would public knowledge of this conduct affect the Agency's reputation?
- ❑ If the misconduct is widely known within the Agency and affects the overall accomplishment of the Agency's duties and responsibilities, it can be used as an aggravating factor.

Factor Nine: The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

- ❑ What guidelines regarding this conduct were given to the employee?
- ❑ Was the employee counseled on similar conduct in the past?
- ❑ Was the employee disciplined for similar conduct in the past?
- ❑ Even when an employee is not on "formal notice" that possible disciplinary action could result from misconduct, an employee's misconduct will not be excused if his/her "common sense should have forewarned" him/her.

Factor Ten: Potential for the employee's rehabilitation.

- ❑ Has the employee responded positively or negatively to warnings and discipline in the past?
- ❑ Has the employee expressed remorse?
- ❑ Has the employee sought treatment for a medical condition that played a part in the charged misconduct?

Factor Eleven: Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairments, harassment, or bad faith, malice or provocation on the part of others involved in the matter.

- ❑ List all possible mitigating factors including medical.

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- ❑ If misconduct is extremely serious or egregious, mitigating is not appropriate despite any medical condition.
- ❑ If employee claims stress as a mitigating factor, he/she must explain or show how the misconduct was directly related to the stress.

Factor Twelve: The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

- ❑ What other sanctions have you considered (i.e., letter of reprimand, change to lower grade, reassignment, etc.)?
- ❑ Why will no sanction that is less severe be effective to deter such conduct in the future?