

**UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF HUMAN RESOURCES MANAGEMENT
WASHINGTON, D.C. 20250**

June 3, 1998

PERSONNEL BULLETIN NO. 751-3

SUBJECT: Alternative Discipline

This Bulletin revises the Department's policy on Alternative Discipline.

This Bulletin does not substantially change the current policy. The criteria for entering into alternative discipline remains the same. This revision simplifies some of the procedures for implementing alternative discipline, provides more examples based on actual cases, establishes a monitoring and certification system as part of the agreement, and requires that employees be notified in writing of the reason(s) they failed to fulfill the terms and conditions of the agreement.

This Bulletin supercedes Department Personnel Manual 751, Subchapter 4, dated March 10, 1993.

/s/

Roger L. Bensey
Director
Office of Human Resources Management

Attachments

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Department Personnel Bulletin 751-3 Alternative Discipline

AUTHORITY AND POLICY

This Bulletin provides criteria and procedures for the use of alternative discipline as an option to formal disciplinary actions as described in Department Personnel Manual (DPM) Chapter 751, Subchapter 1.

Mission areas, the Chief Information Officer, the General Counsel and the Inspector General are delegated authority to enter into alternative discipline agreements. Accordingly, mission areas are reminded that authority for alternative discipline is subject to the limits on grade level and type of position described in

DPM 751, Subchapter 1 and Personnel Bulletin 751-1. This authority may be revoked if a mission area improperly applies the criteria or violates the procedures of this Bulletin.

It is the policy of the Department that disciplinary action be limited to the minimum action necessary to correct employee misconduct and to maintain discipline and morale among other employees. In appropriate circumstances, employees may be offered a choice of negotiating an alternative discipline agreement in lieu of traditional discipline suggested in the Department's Table of Disciplinary Penalties (DPM 751, Appendix A). In cases where the appropriate penalty is removal, alternative discipline may not be used.

Alternative discipline is not appropriate when the employee's continued presence in the workplace may pose a threat to the employee or others, or for misconduct that requires by statute a particular penalty or range of penalties (e.g., willful misuse of a government-owned vehicle).

The Department strongly encourages mission areas to use alternative discipline. It is an excellent tool for reducing administrative costs and burdens associated with traditional discipline. Additionally, it encourages managers and supervisors to take a more active role in managing their employees, and provides employees an opportunity to demonstrate accountability for their actions and subsequent rehabilitation for productive Government service.

Effective alternative discipline reflects the combined capabilities of management and employees (and employees' representative, if applicable) to reach voluntary agreement on the type of discipline that accomplishes the objectives of both parties.

Mission areas may offer alternative discipline as a settlement to employee grievances or EEO complaints resulting from traditional disciplinary actions provided that the criteria stated in this Bulletin are met.

When considering whether to enter into an alternative discipline agreement, mission

areas/agencies must ensure the agreement will promote the efficiency of the service. Decisions on the part of an agency to enter into alternative discipline agreements in any particular case must take into consideration the impact on other employees. Identical offenses committed by different employees may result in different forms of alternative or traditional discipline. Mission areas/agencies may not use alternative discipline as a vehicle to inflate a proposed penalty under traditional discipline to pressure employees to agree to alternative discipline.

In implementing the alternative discipline program, mission areas are reminded to be aware of their rights and obligations under the Federal Labor-Management Relations Statute, 5 U.S.C. 7101 et seq., and Executive Order 12871, Labor-Management Partnerships, October 1, 1993, and applicable mission area or agency collective bargaining agreements.

Alternative discipline is offered solely at the discretion of management and its use is voluntary. The supervisor and the employee must agree upon the use of alternative discipline. The supervisor or servicing human resources office cannot decide unilaterally to impose alternative discipline. Under no circumstances is alternative discipline required to be used but, if used, the requirements of this Bulletin must be met.

CRITERIA FOR USE OF ALTERNATIVE DISCIPLINE

Mission areas should establish an alternative discipline program that fits organizational climate and needs. The Department does not require mission areas/agencies to establish or use alternative discipline, however, if used, the minimum requirements as outlined in this subchapter must be met. The following criteria are established to assure consistent application of alternative discipline Departmentwide. These criteria apply to all types of offenses and employees, regardless of position or grade level, unless otherwise exempted:

- The misconduct warrants a penalty less than removal from Federal service. However, a proposed removal that is mitigated at the decision stage may be a candidate for alternative discipline.
- The employee admits that he or she engaged in the identified misconduct, accepts responsibility for it and agrees not to repeat the misconduct.
- The agency determines that alternative discipline has a good probability of preventing further misconduct by the employee and sends the appropriate message to other employees that such misconduct will neither be accepted nor condoned by the agency.
- The employee agrees to waive any and all grievance, appeal, and/or EEO complaint rights with respect to the particular action, and these rights are waived in connection with the particular instance of misconduct even if the traditional discipline is imposed because of a failure to satisfy the terms of the agreement.

The waiver of EEO rights does not bar an employee from citing the incident and/or penalty as background in a later complaint or from filing a complaint about any other matter.

If the criteria are met, the mission area/agency and employee enter into a written agreement specifying the terms and conditions for successful completion of alternative discipline.

PROCEDURES

Alternative discipline may be initiated instead of traditional discipline or at any stage of the traditional process.

Instead of Traditional Discipline: Before entering into an alternative discipline agreement, the servicing human resources office, in consultation with the supervisor, must prepare a written analysis that identifies:

- The employee's misconduct;
- The violated law, rule, regulation, policy or procedure; and,
- The traditional penalty that would have been imposed in the absence of alternative discipline.

The employee is provided an opportunity to review the written analysis in order to make an informed choice between traditional and alternative discipline. Mission areas must advise employees that choosing alternative discipline requires a waiver of appeal, grievance and complaint rights. Additionally, employees must be advised that in choosing alternative discipline instead of initiating traditional discipline, they must also waive certain due process rights found at 5 U.S.C. 7503(b), for suspensions of 14 days or less; or 5 U.S.C. 7513(b) for suspensions of more than 14 days or reduction in grade or pay; or 5 U.S.C. 7543(b), for suspensions of more than 14 days for members of the Senior Executive Service (SES).

Mission areas must consult with the Department's Office of Human Resources Management (OHRM) on cases involving Senior Executives because decision authority for adverse actions on members of the SES resides in OHRM.

The employee is advised that if he or she fails to fulfill the conditions of the agreement, the traditional penalty identified in the written analysis will be immediately imposed which may become a permanent part of the employee's official personnel folder. (See Exhibit 1).

During the Traditional Disciplinary Process: A mission area may issue a proposal but before issuing a decision letter, enter into an alternative discipline agreement. The proposed penalty would become the penalty cited in the alternative

discipline agreement as the consequence for the employee's failure to satisfy the terms and conditions of the alternative discipline agreement. Or, the mission area may issue a decision letter and then enter into an alternative discipline agreement. For example, a mission area may impose a fraction of the decided upon suspension and hold the remainder in abeyance pending successful completion of the alternative discipline agreement. If the employee fails to satisfy the agreement, the remaining suspension could be immediately imposed. (See Exhibit 2).

Regardless of the method used to enter into alternative discipline, the employee may consult with a representative prior to voluntarily choosing alternative discipline.

The terms and conditions of an agreement must be clear, and they are considered fulfilled when the supervisor, in consultation with the servicing human resources office, determines that the employee has satisfied the terms of the agreement.

When the terms and conditions of the alternative discipline agreement are satisfied, the supervisor or servicing human resources office must certify such in writing to the employee. See *"Final Disposition" section of the sample alternative discipline agreements*.

If the employee is unable to fulfill the terms and conditions of the alternative discipline agreement due to circumstances beyond his or her control, the supervisor or servicing human resources office should revise the agreement. For example, an employee would be unable to meet the terms of the agreement if it required the employee to perform 200 hours of community service within a six-month period, but the employee became incapacitated for five of the six months due to an automobile accident.

If the employee fails to satisfy the terms and conditions of the agreement, the supervisor or servicing human resources office will immediately issue a violation notice to the employee. The notice will inform the employee that the agreement has been breached and the penalty specified in the agreement will be effected immediately. (See Exhibit 3).

Mission areas should allow for third-party review of a "factual, nonfrivolous" claim by the employee that the agreement was not violated.

ALTERNATIVE DISCIPLINE AGREEMENTS

All agreements must include the following:

1. A description of the misconduct and a statement that the agency's analysis resulted in a determination that a specified "traditional" penalty is warranted under formal disciplinary procedures. If applicable, attach copies of the proposal and decision letters to the agreement.
2. A statement that the employee admits he or she engaged in the improper conduct, recognizes the misconduct was unacceptable, and promises that these acts will not

occur in the future.

3. A description of the terms and conditions that must be met for the employee to satisfactorily fulfill the agreement. The terms must include the timeframe(s) within which the employee must satisfy the agreement.

4. An acknowledgment that the case file and agreement will be retained in the employee relations office for a period to be determined by the mission area/agency, but not to exceed 4 years.

5. A statement that if the employee fails to satisfy the terms and conditions of the agreement, the penalty specified in the agreement will be effected immediately.

6. A statement that the agreement was voluntarily entered into and that the employee waives all grievance, appeal, and/or complaint rights.

7. If applicable, an acknowledgment that no salary or wage compensation can be requested for any off-duty volunteer service and that such service is not covered by Workers' Compensation.

8. A statement that the misconduct addressed through the alternative discipline agreement and admitted to by the employee constitutes an offense and may be used to support any future progressive disciplinary action(s), alternative or traditional.

9. A statement that the terms and conditions of the agreement are not confidential and may be discussed with parties with a need to know.

10. A statement that the terms and conditions of the agreement are nonprecedential, meaning they are specific to the employee, and they cannot be cited, for any reason, including comparison, in another employee's alternative discipline agreement or traditional disciplinary documents.

11. The signatures of the parties to the agreement. Normally this will include the employee, the employee's representative, the supervisor or other management official authorized to enter into such an agreement, and if desired, any other interested party, such as the mission area/agency human resource specialist.

Agencies will be responsible for establishing a monitoring and certification system to ensure fulfillment of terms and conditions of these agreements. The completion of the Final Disposition section on the agreement will meet this requirement.

EXAMPLES OF ALTERNATIVES TO TRADITIONAL DISCIPLINE

To determine an appropriate alternative discipline, mission areas, supervisors, and employees are encouraged to take a creative and flexible approach, assuring reasonableness, fairness, equity, and promotion of the efficiency of the Service are

exercised. Alternatives generally are limited only by the supervisor's and employee's creativity. *Because each incident of misconduct can be unique, numerous examples are not listed. Mission areas are encouraged to exercise creativity in developing an alternative discipline agreement, and not to view these examples as limiting.*

Some examples of alternative discipline that mission areas have successfully used include:

- The employee performs unpaid off-duty community service related to the misconduct. To prevent the possibility of bringing off-duty volunteer service within the scope of Federal employment, the servicing human resources office and supervisor must assure that they do not perform any action that could be perceived as directing an employee to perform volunteer service. *Off-duty community service is not work performed for the benefit of the agency. The Federal Employees' Compensation Act provides for payment of workers' compensation benefits to employees who sustain an injury while in the performance of their duties in service to the United States.*
- The employee requests Leave Without Pay (LWOP) which results in a loss of pay, however, the servicing human resources office does not have to process a suspension under adverse action procedures and the employee's Official Personnel Folder will not contain evidence of a formal disciplinary action. *Employees covered under the provisions of the Fair Labor Standards Act (FLSA) and who agree to request LWOP in lieu of suspension may not continue to report for duty. These employees are entitled to be paid for work performed for the benefit of the agency. Similarly, these employees may not waive entitlement to overtime provisions of the FLSA or Title 5 for "administrative work" performed after duty hours at the office.*
- The employee donates annual leave to the leave transfer program in lieu of a suspension. *To assure compliance with the law that prohibits coercion of an employee to contribute annual leave under the Voluntary Leave Transfer Program, the employee, and not the supervisor, must pursue the transfer of annual leave with the servicing human resources office.*
- Combination of leave donation and unpaid off-duty community service related to the offense. For example, instead of a 30-day suspension for drinking on the job and absence without official leave, the employee agrees to donate 5 days of annual leave in combination with 120 hours of community service in an alcohol abuse center.
- Combination of traditional suspension with leave donation or financial restitution or any other agreed to alternative. Instead of a 14-day suspension, the employee agrees to a 7-day suspension and donation of 40 hours of annual leave.
- Employee develops and delivers training or briefings related to the admitted misconduct.

- Employee prepares a written analysis of the misconduct, its impact upon the morale of the office and suggestions for correcting the situation. The paper would be done on employee's own time. This is particularly effective for supervisors who engage in misconduct.
- Employee prepares an all-employee or all unit memo describing their misconduct and the resulting consequences. It can be signed by the employee or sent out anonymously.
- Employee agrees to make financial restitution related to misuse of government telephones, copiers, vehicles, or any other government equipment.
- Financial or other counseling on employee's own time and expense.
- Off-duty training in deficient areas with the employee assuming the associated costs. For example, an employee could attend a weekend seminar on how to work with people for misconduct related to making rude, insensitive, or hostile remarks to co-workers or members of the public.

SERVICING HUMAN RESOURCES OFFICES RESPONSIBILITY

Mission area/agency servicing human resources offices that establish and use the Department's alternative discipline system are responsible for maintaining records related to the use of the system in comparison to the use of traditional discipline. These records must be available upon request from the Department's Office of Human Resources Management for oversight and evaluation purposes.

EXHIBIT 1 - SAMPLE ALTERNATIVE DISCIPLINE AGREEMENT

The parties to this Agreement are [Name of Employee], [Employee's position and grade], [Employee's duty location]; the [name of Agency], U.S. Department of Agriculture, by and through its undersigned authorized official (hereafter referred to as AGENCY); and, (at the EMPLOYEE's option), name of a representative of choice.

I, (name of employee), enter into this agreement as an alternative to a 14-day suspension from duty without pay based on my misconduct:

From March 1 through April 30, 1998, during 35 duty hours, I used my government-owned personal computer and color printer to prepare marketing materials for my outside consulting business. I am the office supervisor and I failed to set a high standard of conduct on the proper use of government equipment for my employees.

Based on the above, the AGENCY concluded that issuance of a proposal to suspend me from duty without pay for 14 calendar days is warranted. I understand that formal suspension procedures include the issuance of a letter of proposed suspension; my opportunity to reply orally and in writing to the charges set forth in the letter of proposed suspension; issuance of a decision based on the evidence and my answers to the

charges, including mitigating factors raised by me; and, the right to appeal or grieve the AGENCY's action.

However, I agree to the following terms and conditions as an alternative to the AGENCY initiating formal suspension procedures. I freely and voluntarily agree to these conditions. I have had sufficient time to consider the terms and conditions and to seek advice from an attorney. I fully understand I could have elected to proceed with the imposition of the full 14-day suspension with formal grievance rights rather than elect to use this alternative.

I admit that I committed the misconduct cited above. I regret my actions and agree that, in the future, I will not repeat this misconduct or any other misconduct.

I agree to donate 40 hours of annual leave to the AGENCY's leave transfer program within 30 days from the date of this Agreement. I will initiate contact with my servicing human resources office and complete all necessary paperwork. I will provide a copy of the paperwork to my supervisor showing my donation of 40 hours of annual leave.

I agree to make financial restitution in the amount of \$1,750 to the U.S. Treasury to repay taxpayers for my salary for the hours I spent working on my personal business instead of Government business within 60 days from the date of this Agreement. I agree to provide a copy of the cancelled personal check to my supervisor.

I agree to prepare on my own time a briefing to my state office's employees on the proper use of government equipment. I agree to deliver this briefing after it is approved by my servicing employee relations/ethics office, no later than 6 months from the date of this Agreement.

I understand that if I violate the terms of this Agreement, the AGENCY will issue me a written notice of violation and immediately impose the 14-day suspension.

I understand this agreement does not preclude the AGENCY from taking appropriate action regarding any other misconduct not covered by this agreement.

I knowingly and voluntarily agree to waive any and all rights to appeal, grieve, complain, or otherwise contest actions relating to the conditions of this Agreement, even if, after execution of this Agreement, traditional discipline is imposed because of my failure to satisfy the terms and conditions of the Agreement. I also understand that waiving of EEO rights does not bar me from citing this incident and/or punishment as background in a later complaint.

I understand that if I fully comply with the terms of this Agreement, the 14-day suspension will be canceled and I will be notified of such in writing.

I understand that my admitted misconduct and the 14-day penalty can be considered by the agency in any future progressive disciplinary action for a period of up to 3 years

from the date of the Agreement, even if I fulfill the terms and conditions of this Agreement.

I understand this Agreement will be actively maintained with the disciplinary files in the AGENCY's servicing human resources office (or employee relations office) for a period of 3 years from the effective date of the agreement.

I understand that the terms and conditions of this agreement are not confidential and may be discussed with parties with a need to know.

The PARTIES understand that this agreement is nonprecedential and may not be cited for any reason, including comparison to similar misconduct committed by other employees, in any other proceeding in any forum.

The PARTIES understand the terms of this Agreement and willingly enter into it.

The Agreement becomes effective upon the date of the last signature by the PARTIES involved.

EMPLOYEE SIGNATURE (DATE)

EMPLOYEE'S REPRESENTATIVE (DATE)

FOR THE AGENCY (DATE)

FINAL DISPOSITION:

Terms of Agreement were: Met / Not Met (see attached violation notice)

Supervisor/Human Resource Official's Date
Signature

EXHIBIT 2 - SAMPLE ALTERNATIVE DISCIPLINE AGREEMENT

The parties to this Agreement are [Name of Employee], [Employee's position and grade], [Employee's duty location]; the [name of Agency], U.S. Department of Agriculture, by and through its undersigned authorized official (hereafter referred to as AGENCY); and, (at the EMPLOYEE's option), name of a representative of choice.

I, (name of employee), enter into this agreement as an alternative to a 30-day suspension from duty without pay based on my misconduct:

On October 17, 1997, I initiated and engaged in a fight with my co-worker in the presence of a member of the public visiting the office for service.

Based on the above, the AGENCY completed formal disciplinary procedures to suspend me from duty without pay for 30-calendar days. These procedures included the issuance of a letter of proposed suspension; my opportunity to reply orally and in writing to the charges set forth in the letter of proposed suspension; issuance of a decision based on the evidence and my answers to the charges, including mitigating factors raised by me; and, the right to appeal or grieve the AGENCY's action.

However, I agree to the following terms and conditions as an alternative to the AGENCY's decision to suspend me from duty without pay for 30-calendar days. I freely and voluntarily agree to these conditions. I have had sufficient time to consider the terms and conditions and to seek advice from an attorney, a bargaining unit representative, or other counsel of choice. I fully understand I could have elected to proceed with the imposition of the full 30-day suspension with formal appeal/grievance rights rather than elect to use this alternative.

I admit that I committed the misconduct cited above. I regret my actions and agree that, in the future, I will not repeat this misconduct or any other misconduct.

I agree to accept a 5-day suspension from duty without pay based on my admitted misconduct.

I agree to volunteer 80 hours of my off-duty time to the local community's Shelter for Abused Spouses and Children. This will be completed within 10 months of the date of this Agreement. When completed, I will obtain from the Shelter a statement certifying that I volunteered 80 hours and performed in a satisfactory manner. I will provide this documentation to my supervisor.

I agree to attend the one-day seminar on anger management offered at the local community college on my own time and at my own expense, within 3 months of the date of this agreement. I will provide a copy of my registration form, personal check, and course completion certificate to my supervisor.

I understand that I am not covered by overtime pay provisions of the Fair Labor Standards Act or Title 5 during the off-duty volunteer work and agree not to request any compensation. I understand and agree that this off-duty work will not be covered by Workers' Compensation.

I understand that if I violate the terms of this Agreement, the AGENCY will issue me a written notice of violation and immediately impose the remaining 25 days of my 30-day suspension.

I understand that a second offense of this nature will result in a proposal to remove me from the AGENCY and the Federal Service [or, EMPLOYEE agrees to resign if he/she

commits a second offense of this nature].

I understand this agreement does not preclude the AGENCY from taking appropriate action regarding any other misconduct not covered by this agreement.

I knowingly and voluntarily agree to waive any and all rights to appeal, grieve, complain, or otherwise contest actions relating to the conditions of this Agreement, even if, after execution of this Agreement, traditional discipline is imposed because of my failure to satisfy the terms and conditions of the Agreement. I also understand that waiving my EEO rights does not bar me from citing this incident and/or punishment as background in a later complaint.

I understand that if I fully comply with the terms of this Agreement, the remaining 25-day suspension will be canceled and I will be notified of such in writing.

I understand that my admitted misconduct and the 30-day penalty can be considered by the agency in any future progressive disciplinary action for a period of up to 4 years from the date of the Agreement, even if I fulfill the terms and conditions of this Agreement.

I understand this Agreement will be actively maintained with the disciplinary files in the AGENCY's servicing human resources office (or employee relations office) for a period of 4 years from the effective date of the Agreement.

I understand that the terms and conditions of this Agreement are not confidential and may be discussed with parties with a need to know.

The PARTIES understand that this agreement is nonprecedential and may not be cited for any reason, including comparison to similar misconduct committed by other employees, in any other proceeding in any forum.

The PARTIES understand the terms of this Agreement and willingly enter into it.

The Agreement becomes effective upon the date of the last signature by the PARTIES involved.

EMPLOYEE SIGNATURE (DATE)

EMPLOYEE'S REPRESENTATIVE (DATE)

FOR THE AGENCY (DATE)

FINAL DISPOSITION:

Terms of the Agreement were: Met / Not Met (see attached violation notice)

Supervisor's/Human Resources Official's Date
Signature

EXHIBIT 3 - SAMPLE VIOLATION NOTICE

NOTICE OF VIOLATION OF ALTERNATIVE DISCIPLINE AGREEMENT

TO: Name of Employee

Title, Grade
Organization
Location

FROM: Name of supervisor/deciding official

Title
Organization
Location

This is notice that you violated the terms and/or conditions of the Alternative Discipline Agreement, dated _____, in which you agreed to:

- Donate 40 hours of annual leave to the agency's leave transfer program by June 30, 1998.
- Submit a draft administrative reminder to all employees regarding the proper use of alternative work schedules to the Employee Relations Branch by July 30, 1998.

You failed to comply with your agreement to complete these items instead of the Mission Area/Agency suspending you from duty without pay for 7 calendar days. You did not make a good faith attempt to complete these items, nor did you come to me or the employee relations office to discuss any reasons for your noncompliance.

In accordance with USDA Department Personnel Bulletin 751-3, you will be suspended from duty, from Sunday, August 7 through Saturday, August 13. You will be returned to duty effective Sunday, August 14. The personnel documents reflecting this action will follow.