To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation and Team Spirit.

NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114(n)), this directive and all related Handbooks, Attachments, and Appendices establish Transportation Security Administration (TSA) policy and must be applied accordingly.

REVISION: This revised directive supersedes TSA MD 1100.75-3, *Addressing Unacceptable Performance and Conduct*, dated June 3, 2013.

SUMMARY OF CHANGES: Section 6, revised the One-Step Process to include one-step removals for arrests for specified offenses.

1. **PURPOSE:** This directive provides TSA policy and procedures for the use of non-disciplinary, corrective, disciplinary, and adverse actions to address unacceptable employee performance and conduct.

2. **SCOPE:** This directive applies to all TSA employees, including members of the Transportation Security Executive Service (TSES). Additional provisions applicable to TSES employees are found in TSA MD 1100.30-24, *Transportation Security Executive Service Program*.

3. **AUTHORITIES:** The Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA)

4. **DEFINITIONS:** See the Handbook to TSA MD 1100.75-3, *Addressing Unacceptable Performance and Conduct*.

5. **RESPONSIBILITIES:**

A. The Assistant Administrator for Human Capital (AA/OHC) is responsible for:

(1) Reviewing requests for delegation of authority related to this directive and rendering a decision.

(2) Administering this policy and ensuring that it supports the mission of the agency.

B. The Office of Professional Responsibility (OPR) is responsible for:

(1) Reviewing Reports of Investigation (ROI) issued by the DHS Office of Inspector General (OIG) or by the TSA Office of Inspection (OOI), as well as any other matter the Assistant Administrator for Professional Responsibility, or his/her designee, determines should be reviewed by OPR.

(2) Issuing adverse, disciplinary, and corrective actions against TSA employees covered by TSA MD 1100.75-7, *Office of Professional Responsibility*.

C. The Office of Chief Counsel (OCC), if requested by OPR or other management officials serving as proposing or deciding officials, is responsible for reviewing any adverse or disciplinary action to advise whether there is sufficient evidence to sustain the action; whether there is a nexus between a legitimate government interest and the misconduct/matter that is the basis for the action; and whether the penalty is reasonable.

D. In matters not adjudicated by OPR, management officials are responsible for reviewing ROIs or other investigative reports and for issuing adverse, disciplinary, or corrective actions in accordance with this directive and the accompanying Handbook when addressing unacceptable employee performance or conduct.

6. POLICY:

A. Actions Covered:

(1) Adverse and Disciplinary Actions. This directive applies to the following adverse and disciplinary actions:

(a) Letter of Reprimand;

(b) Reprimand In Lieu of Suspension;

(c) Suspension of any length, including Indefinite Suspension;

(d) Involuntary Demotion for Performance/Conduct; and

(e) Removal.

NOTE: Refer to Section J of the accompanying Handbook for applicable appeal rights and grievance procedures.

(2) Corrective Actions. This directive applies to the following actions:

(a) Letter of Counseling;

(b) Letter of Guidance and Direction;

(c) Letter of Leave Restriction; and

(d) Specific, Mutually-acceptable, Appropriate, Realistic and Time-based (SMART) Agreement.

NOTE: These actions are not grievable with the exception of Letters of Leave Restriction. For Letters of Leave Restriction, refer to Section J of the accompanying

Handbook for applicable appeal rights or grievance procedures.

B. Actions Not Covered. This directive does not apply to the following actions:

(1) Action taken under involuntary workforce reduction procedures;

(2) Furlough of any length;

(3) Involuntary Demotion During Initial Supervisory or Managerial Trial Period, as described in TSA MD 1100.31-1, *Trial Periods*, if the reduction is to a pay band or rate of pay no lower than that held by the employee before entering the supervisory or managerial position;

(4) Termination of a temporary promotion at any time and return of the employee to a position at a pay band no lower than the one from which promoted;

(5) Placement of an employee serving on an intermittent or seasonal basis in non-duty and non-pay status in accordance with the conditions of the appointment;

(6) Termination during a trial period other than supervisory or managerial trial period;

(7) Reassignment to a different position with the same rate of basic pay;

(8) Termination of a reemployed annuitant;

(9) Termination at any time of a time-limited appointment;

(10) Termination at any time of a time-limited appointment associated with salary offset;

(11) Expiration of a time-limited appointment;

(12) Correction of an erroneous personnel action, including correction of a pay band or rate of pay that is contrary to law, regulation, or TSA policy;

(13) Action directed by a court or other competent authority; and

(14) Voluntary action initiated by the employee, for example, resignation or reduction in pay band.

C. Matters Reviewed and Adjudicated by OPR: Where the conduct of an employee covered by TSA MD 1100.75-7 is the subject of an investigation, OPR will review the matter and take appropriate adverse, disciplinary, or corrective action in accordance with all applicable TSA policies. Refer to TSA MD 1100.75-7 for additional information regarding OPR's jurisdiction.

D. Consequences: Actions covered by this directive and accompanying Handbook may have adverse collateral consequences, such as on award decisions, promotions, or

workforce reductions. Such consequences may be in addition to using the action to demonstrate that the employee was on notice about the performance or conduct in question; using the action for progressive discipline; or using the action to rebut a claim that the employee had no prior history of conduct or performance problems.

E. Efficiency of the Service Standard: An employee may be suspended, removed, or demoted for such cause as will promote the efficiency of the service. This standard generally means that the action must be taken to further a legitimate government interest. Taking adverse or disciplinary action would promote the efficiency of the service when, for example, an employee fails to perform his or her duties acceptably, interferes with other employees' performance of their duties, or exhibits conduct that adversely affects the agency's ability to accomplish its mission.

NOTE: TSES members may be removed for unacceptable performance, misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment. Refer to TSA MD 1100.30-24 for additional information.

F. Sufficiency Review: OPR or management officials serving as proposing or deciding officials may, in their discretion, request OCC to advise whether there is sufficient evidence to sustain an adverse or disciplinary action, whether there is a nexus between a legitimate government interest and the misconduct/performance/matter that is the basis for the action, and whether the penalty is reasonable. The TSA Table of Offenses and Penalties should guide the determination of the reasonableness of the penalty.

G. Nexus: Adverse or disciplinary action may be taken when there is nexus, or connection, between a legitimate government interest and the employee's unacceptable performance, conduct, or matter that is the basis for adverse or disciplinary action. Refer to Section A, Definitions, of the related Handbook for additional information.

H. Non-disciplinary Actions: Certain actions by an employee that are not considered unacceptable performance or conduct may warrant action that promotes the efficiency of the service. For example, if an employee declines to accept a directed reassignment to another commuting area, the declination would not be considered misconduct or unacceptable performance, but the employee's removal would nevertheless be taken "for such cause as will promote the efficiency of the service." Similarly, if an employee is medically unable to perform the functions of the position, the employee is not engaging in misconduct, but still may be removed to promote the efficiency of the service.

I. Unacceptable Conduct or Performance: Disciplinary actions and performance management measures may be taken under the authority of this directive. In situations where disciplinary action is appropriate, consideration should be given to whether the unacceptable behavior is conduct-based or performance-based. To assist in making these distinctions when the matter involves the performance of duties, the guidance offered in the *Definitions* section of the Handbook should be considered as well as the factors below, which include, but are not limited to the following:

(1) Conduct-based actions: Intentional refusal to perform, or a negligent failure to perform acceptably due to factors such as inattention to duty, poor judgment, or negligence. The following factors weigh in favor of treating a matter as conduct-based:

(a) The employee knew, or should have known, of the applicable rule or standard; or

(b) The employee's act or omission was within the employee's control; or

(c) The behavior involves repeated violations of the rule or standard.

(2) Performance-based actions: Inability to meet performance expectations, standards, or goals as set forth in the performance plan. Performance-based actions are held to the substantial evidence standard. Substantial evidence is the degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. It is a lower standard than preponderance of the evidence. The following factors weigh in favor of treating a matter as performance-based:

(a) The performance deficiency persists after the employee has been given notice that his or her performance is deficient; or

(b) The performance deficiency involves the quality, quantity and/or timeliness of work assignments/duties or work products.

(3) Non-disciplinary Performance Management Measures: If there is an inability to meet performance expectations, standards, or goals as set forth in the performance plan, and the performance deficiency indicates a lack of skill, training, information, or other similar, relevant factors, such as the employee's exercise of reasonable care under the circumstances, management is encouraged to consider whether an employee's deficient performance should be addressed in the non-disciplinary context of performance management.

NOTE: Guidance and requirements on addressing deficient unacceptable performance, whether in progress reviews, performance evaluations, or Improvement Performance Notices or Performance Improvement Plans, are provided in TSA MD 1100.43-3, *Employee Performance Management Program* (for non-bargaining unit employees), and TSA MD 1100.43-4, *Transportation Officer Performance System* (TOPS) and in Article 1 of the Collective Bargaining Agreement between TSA and the American Federation of Government Employees. Performance-based actions for TSES members will be taken in accordance with TSA MD 1100.30-24, and the accompanying Handbook. Contact the respective airport/office Lead Employee Relations Specialist (ER), OHC/ER for additional assistance.

J. Progressive Discipline:

(1) Progressive discipline is the process of using the least severe form of action that may be used to correct a deficiency. When appropriate, TSA will take progressively more severe action until the unacceptable performance or conduct is corrected, or the employee is demoted or removed, as appropriate. Management officials should consider applicable aggravating and mitigating factors when making a determination. Refer to the Table of Offenses and Penalties for additional information.

(2) Removal is required for specific TSO offenses and is a permitted penalty for the first violation for other offenses. See Appendix A of the accompanying Handbook for additional details. The Deputy Assistant Administrator for the Office of Security Operations or his/her designee must approve any exception to required removal for listed TSO offenses. For cases under its jurisdiction, OPR may seek an exception from the Deputy Administrator or his/her designee.

(3) Nothing in this section or in the accompanying Handbook prevents management officials from removing an employee after a first offense when the misconduct is so serious as to warrant removal, such as engaging in activity that seriously undermines security interests or poses a threat or danger to TSA employees or to the traveling public, or results in significant monetary loss.

K. One-Step Process: TSA has developed a One-Step Process that allows management officials to impose appropriate adverse or disciplinary actions in an expeditious manner to address specific employee offenses or issues. This One-Step Process includes one-step removals for arrests for specified offenses. See the accompanying Handbook for additional details.

L. Harmful Error: A failure to comply with the provisions of this directive, the accompanying Handbook, or Appendices may be grounds for reversing an action only if it caused TSA to reach a conclusion different from the one it would have reached in the absence of the failure.

7. **PROCEDURES:** Refer to the Handbook to TSA MD 1100.75-3, *Addressing Unacceptable Performance and Conduct*.

8. **APPROVAL AND EFFECTIVE DATE:** This policy is approved and effective the date of signature unless otherwise specified.

APPROVAL

Signed February 12, 2014

Karen Shelton Waters
Assistant Administrator for Human Capital

Date

EFFECTIVE

_____
Date

Distribution:	Administrator, Deputy Administrator, Assistant Administrators, Regional Directors, Federal Security Directors, Supervisory Air Marshals in Charge, Business Management Division Directors, Administrative Officers, and Human Resources Specialists
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Transportation Security Administration

Office of Human Capital

TSA MD 1100.75-3, Handbook

Addressing Unacceptable Performance and Conduct

Policy Effective:	January 2, 2009
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Signed

Karen Shelton Waters
Assistant Administrator for Human Capital

Transportation Security Administration

This Handbook and all related Appendices and/ or Attachments contain stipulations to implement the provisions of TSA MD 1100.75-3, Addressing Unacceptable Performance and Conduct. Until such time as TSA MD 1100.75-3 is rescinded, the Management Directive, Handbook, Appendices, and any Attachments are considered TSA policy, and must be applied accordingly.

Summary of Changes:

Section A, Definitions, redefined Conduct-Based Action, One-Step Process, Performance-based action, and Substantial Evidence; added definitions of Bargaining Unit Employee (BUE), Efficiency of the Service Standard, and National Resolution Center; added reference to Article 1 of the Collective Bargaining Agreement between TSA and the American Federation of Government Employees (AFGE).

Section B, Pre-Decisional Process, clarified.

Section C, Corrective Actions, the retention period for Letters of Counseling changed to five years; added reference to BUEs; removed references to HCM 771-3, *Peer Review*, and added references to HCM 771-4, *National Resolution Center*.

Section D, One and Two-Step Processes, clarified what is required for Letters of Reprimand (LORs); added provisions when using the One-step process; added sleeping on duty while assigned to a security activity and arrests for any offenses listed in Appendix A(2) under one-step removal process.

Section E, Disciplinary Actions, clarified what is required for Letters of Reprimand; removed references to HCM 771-3 and added references to HCM 771-4.

Section J, Appeal Rights and Grievance Procedures, removed references to HCM 771-3 and added references to HCM 771-4.

Appendix A, TSO Offenses for Which Removal is Required/Permitted, modified the list of offenses for which removal is permitted on the first offense; Sleeping on duty while assigned to a security activity moved under TSO offenses for which removal is required.

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A. DEFINITIONS:

(1) Adverse Action: A suspension of more than 14 days, including an indefinite suspension, an involuntary demotion for performance/conduct, or a removal.

(2) Aggravating Factors: Considerations that may enhance the severity of the penalty selected, e.g., the employee's prior disciplinary/adverse action record.

(3) Bargaining Unit Employee (BUE): The following full- and part-time non-supervisory personnel carrying out screening functions under 49 U.S.C. § 44901, as that term is used in the Aviation and Transportation Security Act of 2001, § 111(d). BUEs, as defined in Section II of the Determination, include Transportation Security Officers (TSOs), Lead Transportation Security Officers, and Master and Expert Transportation Security Officers, including Behavior Detection Officers, Security Training Instructors, and Equipment Maintenance Technicians.

NOTE: Coordination Center Officers and Supervisory Transportation Security Officers are not BUEs.

(4) Charge: A description or labeling of the specific act(s) of unacceptable conduct or performance that form the basis for a proposed adverse or disciplinary action.

(5) Conduct-based Action: Taking appropriate action when dealing with job-related or off-duty behavior that does not meet communicated and/or expected standards described in laws, rules, regulations and other authoritative policies and guidance, written and unwritten. Conduct-based actions may be held to the preponderance of the evidence standard or the substantial evidence standard, as appropriate.

(6) Corrective Action: An administrative or non-disciplinary action, such as a Letter of Counseling or a Letter of Guidance and Direction, that informs an employee about unacceptable performance or conduct that should be corrected or improved.

(7) Day: Calendar day.

(8) Deciding Official: A management official or an Office of Professional Responsibility (OPR) official, where applicable, with the authority to impose adverse or disciplinary action.

(9) Demotion: Voluntary or involuntary change to a lower pay band or rate of pay.

(10) Disciplinary Action: Actions consisting of a Letter of Reprimand to a suspension of 14 days or less.

(11) Efficiency of the Service Standard: An employee may be subject to corrective, disciplinary, or adverse action for such cause as will promote the efficiency of the service. This standard generally means that the action must be taken to further a legitimate government interest.

Taking adverse or disciplinary action would promote the efficiency of the service when, for example, an employee fails to perform his or her duties acceptably, interferes with other employees' performance of their duties, or exhibits conduct that adversely affects the agency's ability to accomplish its mission.

NOTE: TSES members may be removed for unacceptable performance, misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment. Refer to TSA MD 1100.30-24, *Transportation Security Executive Service Program*, for additional information.

(12) Intentional Serious Security Breach: Any action or incident involving the intentional, unauthorized and uncontrolled access of persons or property into a sterile or secured area of an airport or TSA facility that is determined by TSA to pose a serious risk to life, safety, or the security of the transportation network, including the traveling public, and which requires an immediate response by TSA and/or law enforcement personnel.

(13) Letter of Reprimand (LOR): The least severe form of disciplinary action that may be issued to address unacceptable performance or conduct. LORs must be placed in the employee's electronic Official Personnel Folder (eOPF) for a specified time, not to exceed two years from the date the letter was issued. The affected employee's supervisor may indefinitely maintain a copy for his/her files after it is removed from the eOPF to show that the employee was on notice of the matters referenced in the letter. If OPR issues the LOR, OPR may maintain a copy for the same purpose. Further, the OPR Assistant Administrator or the management official who issued the LOR has the authority to remove the LOR from the eOPF prior to the end of the two-year period.

(14) Mitigating Factors: Considerations that may lessen the severity of the penalty selected, (e.g., the employee's superior work record).

(15) National Resolution Center (NRC): The TSA office within the Office of Human Capital (OHC) responsible for managing the Unitary Dispute Resolution System (UDRS), the Integrated Conflict Management System (ICMS), the TSA non-EEO mediation program, and other alternative dispute resolution services.

(16) Nexus: For the purposes of an adverse or disciplinary action, it is a connection between a legitimate government interest and the employee's unacceptable performance, conduct, or matter that is the basis for the adverse or disciplinary action. Nexus is presumed when the basis for adverse or disciplinary action is an employee's unsatisfactory job performance or on-duty misconduct, or in the case of criminal activity or other egregious or especially notorious misconduct. However, actions also may be taken against an employee because of off-duty misconduct where there is a nexus between the conduct and the TSA mission and/or effective operation of the agency.

(17) Notice Period: Time frame provided to the employee to provide a response to the proposed adverse or disciplinary action.

(18) Non-Disciplinary Action: Certain actions by an employee that are not considered unacceptable performance or conduct may warrant action that promotes the efficiency of the service.

(19) One-Step Process: The expedited process in which an adverse or disciplinary action may be issued after a meeting with the employee to discuss the allegations/charges, in lieu of a written notice of the proposed action, and an opportunity at the meeting for the employee to respond to the allegations/charges. The one-step process is used only for select actions for TSOs. See Section D for additional information.

(20) Pay Band: A level in TSA's compensation and position classification framework that sets a minimum and maximum rate of basic pay for an occupation based on position category (e.g., Professional, Technical, Specialized, etc.), duties, competencies, and level of responsibility. TSA uses 13 pay bands representing all of its occupations.

(21) Performance-based Action: An action taken at any time during the performance appraisal period to address an employee's failure to meet performance expectations at the achieved expectations level. The goal of such action is to improve employee performance. Performance-based actions are held to the substantial evidence standard. (See TSA MD 1100.43-3, *Employee Performance Management Program*, or, for BUEs, see TSA MD 1100.43-4 *Transportation Officer Performance System*, and Article 1 of the Collective Bargaining Agreement (CBA) between TSA and the American Federation of Government Employees, collectively).

(22) Pre-decisional Process: The process management engages in to determine whether or not a corrective, disciplinary, or adverse action should be proposed or issued. Refer to Section B for additional information.

(23) Preponderance of the Evidence: That degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a purported fact is more likely to be true than untrue.

(24) Proposing Official: A management official, or OPR official, where applicable, with the authority to recommend an adverse or disciplinary action.

(25) Rate of Basic Pay: The rate of pay in the Core Compensation or Transportation Security Executive Service System for the position to which the employee is, or will be, appointed. An employee's rate of basic pay includes a retained rate, but excludes additional pay of any kind (e.g., locality pay, overtime, other forms of premium pay, etc.). Basic pay is also commonly known as base salary.

(26) Removal: Involuntary separation from TSA employment in order to promote the efficiency of the federal service.

(27) Reprimand In Lieu of Suspension: A reprimand issued in lieu of a suspension of 1 to 14

days. Reprimands In Lieu of Suspension are used in situations where a suspension would not be practical (e.g., for excessive absences or AWOL), or in rare instances where the employee's absence during a suspension would create an extreme hardship on the agency's mission. Reprimand In Lieu of Suspension serves the purpose of establishing a record of progressive discipline, at the level of suspension. A copy may be retained indefinitely by the affected employee's supervisor.

(28) S.M.A.R.T. Agreement: An agreement in which the terms are Specific, Mutually acceptable, Appropriate, Realistic and Time-based. SMART agreements can be used as an alternative to discipline or to hold in abeyance a decision to take an adverse or disciplinary action.

(29) Specification: The factual narrative describing the details of the unacceptable performance or conduct identified by the charge.

(30) Substantial Evidence: The degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. It is a lower standard than preponderance of the evidence.

(31) Sufficiency Review:

(a) A preponderance of the evidence, or substantial evidence, as applicable, that supports the unacceptable conduct or performance occurred;

(b) There is a nexus or connection between a legitimate government interest and the misconduct/performance/matter that is the basis for the adverse or disciplinary action; and

(c) The penalty is reasonable.

(32) Two-Step Process: The procedure in which management officials issue a written notice of proposed action to the employee, provide the affected employee with an opportunity to respond, and issue a written notice of decision.

(33) Suspension: Placement of an employee in a non-duty, non-pay status for conduct reasons or pending certain investigative, judicial, or law enforcement proceedings. A suspension may be imposed for a specified time or for an indefinite period.

(34) Veterans' Preference Eligibility: For the purposes of this policy, an employee who meets the criteria set forth in 5 U.S.C. § 2108.

B. PRE-DECISIONAL PROCESS:

The following steps, as applicable, must be completed prior to taking any adverse or disciplinary action, with the exception of LORs. However, if corrective action is taken, management officials may take the following steps.

(1) Assess the incident/allegation/matter;

(2) Engage in relevant fact-finding to the extent necessary to make an informed decision (e.g., obtain related evidence, witness statements, etc.). In general, this should be completed within 30 days of the incident/allegation/matter. The fact-finding for matters investigated by the TSA Office of Inspection, which are generally more complicated, should generally be completed within 90 days of the incident/allegation/matter;

(3) Review all relevant evidence to ensure that the action meets the preponderance of the evidence or substantial evidence standard of proof, as appropriate;

(4) In a one-step process, management must meet with the employee to discuss the incident or allegation, advise the employee of the possible consequences, and provide the employee with an opportunity to respond orally and/or in writing prior to deciding the action. See Section G, Penalty Determination, for a list of factors that may be used as a guide when considering an appropriate penalty;

(5) In a two-step process, management officials must follow the procedures set forth in Section H below. Management officials are not required to meet with the employee before proposing the action; and

(6) Determine whether adverse, disciplinary, or corrective action is appropriate.

C. CORRECTIVE ACTIONS:

(1) Letters of Guidance and Direction/Letters of Counseling:

(a) Content:

(i) A description of the employee's unacceptable performance or conduct;

(ii) The supporting facts;

(iii) A statement of performance or conduct expectations; i.e., what the employee should do to correct the problem;

(iv) A statement that the action is not disciplinary. However, in Letters of Counseling, a statement is included informing the employee that if he or she does not correct the performance or misconduct, more severe adverse or disciplinary action, up to and including removal, may be initiated;

(v) A statement that a copy of the letter will not be placed in the employee's eOPF, but that a copy may be retained by the supervisor in his/her local files and/or by OPR, if applicable, to document that the employee has been placed on notice

regarding the unacceptable performance or conduct;

(vi) A statement that the letter may not be grieved; and

(vii) The signature of the management official who issued the letter.

(b) Delivery and Retention:

(i) Generally, a letter/notice should be delivered in person by the management official who signed it. Where applicable, OPR will make arrangements to deliver the letter/notice to the employee and the employee's supervisor; such delivery may be accomplished electronically. The employee should be asked to sign an acknowledgment of receipt. If the employee elects not to sign the acknowledgment, the supervisor and/or OPR's copy should be annotated with the delivery time and date, the management official's signature, and a statement that the employee received the letter/notice, but elected not to acknowledge receipt.

(ii) A copy is retained in the supervisor's files for up to five years, to show that the employee was on notice of the matters referenced in the letter, but no copy is filed in the employee's eOPF.

(2) Letters of Leave Restriction:

(a) Content:

(i) A description of the circumstances forming the basis for placing the employee on leave restriction;

(ii) The requirements of the leave restriction;

(iii) **For non-BUEs,** a statement that management officials will review the employee's use of leave within a particular time period, no earlier than 90 days from the date issued, and no later than 180 days from the date issued, and rescind or amend the leave restriction if warranted at that time. If there is a failure to review and amend or rescind at that time, the letter will lapse.

(iv) **For BUEs,** leave restriction is used only for issues involving sick leave. The letter will contain a statement advising the employee that medical documentation may be required for each subsequent absence for which sick leave is requested. After a Letter of Leave Restriction is issued, management will review the employee's attendance record at least once every five (5) months. (See CBA, Article 3, Section C.2.f)

(v) A statement that the employee has the right to grieve the Letter of Leave Restriction under HCM 771-4, *National Resolution Center* or TSA MD

1100.77-2, *Grievance Procedures*, if applicable, and must file within 15 calendar days of receipt of the letter; and

(vi) The signature of the management official who issued the letter.

(b) Delivery and Retention:

(i) Generally, a letter/notice should be delivered in person by the management official who signed it. Where applicable, OPR will make arrangements to deliver the letter/notice to the employee and the employee's supervisor; such delivery may be accomplished electronically. The employee should be asked to sign an acknowledgment of receipt. If the employee elects not to sign the acknowledgment, the supervisor and/or OPR's copy should be annotated with the delivery time and date, the management official's signature, and a statement that the employee received the letter/notice, but elected not to acknowledge receipt.

(ii) A copy is retained in the supervisor's files, but no copy is filed in the employee's eOPF.

(3) SMART Agreements:

(a) Content:

(i) Identification of the parties to the agreement;

(ii) A brief description of the incident or adverse/disciplinary decision that is the basis for the agreement;

(iii) A list of the actions or steps the employee has agreed to take or comply with to ensure that the unacceptable performance or conduct described above is not repeated;

(iv) The actions management officials will take, not take, or hold in abeyance in exchange for the employee's agreement;

(v) A notice of what action may be taken if the employee fails to comply with the terms of the agreement;

(vi) A statement of any grievance or appeal rights the employee may have or, if applicable, the employee's agreement to waive those rights as they pertain to an action being held in abeyance;

(vii) A statement regarding how long the agreement will remain in effect. The length shall be relevant to the underlying factors as determined by management officials; and

(viii) The signatures of the affected employee and management official who have agreed to the terms. The management official is generally the official who issued the action/decision.

(b) Delivery and Retention:

(i) The agreement normally should be delivered to the employee in person by the management official who signed the action/decision letter. Where applicable, OPR will make arrangements to deliver the agreement to the employee and the employee's supervisor; such delivery may be accomplished electronically.

(ii) A copy is retained in the supervisor's files. It is not filed in the employee's eOPF.

D. ONE AND TWO-STEP PROCESSES:

TSA has both one-step and two-step processes for the issuance of adverse or disciplinary actions. The one-step process may only be used for specified actions and only **for TSOs.** The two-step process must be used for all other disciplinary/adverse actions, with the exception of LORs and may also be used for those actions allowed under the one-step procedure.

NOTE: LORs are not subject to the one- or two-step process, although they are subject to steps 1, 2, 3 and 6 of the pre-decisional process as described in Section B.

(1) One-Step Process:

(a) Prior to imposing a one-step adverse or disciplinary action, OPR or management officials must ensure that the pre-decisional meeting described in Section B(4) is held with the employee and the employee is afforded the opportunity to respond to the allegations orally and/or in writing.

(b) The one-step process may be used only for the following actions issued to TSOs. The one-step actions in (i), (ii) and (iii) below must meet the preponderance of evidence standard of proof. The one-step actions in (iv) below must meet the substantial evidence standard of proof.

(i) Reprimands In Lieu of Suspension (for three days or less);

(ii) Suspensions of three days or less;

(iii) Indefinite suspensions relating to misconduct by TSOs that necessitates immediate action under the conditions set forth in Section I; and

(iv) Removals involving the following:

(a) Validated failure of drug test;

(b) Validated failure of alcohol test (on duty);

(c) Refusal to submit to TSA-ordered drug or alcohol testing;

(d) Cases involving theft, illegal drug use, possession of illegal drugs, on-duty alcohol use, or being under the influence of drugs or alcohol while on duty;

(e) Intentional serious security breaches;

(f) Sleeping on duty while assigned to a security activity; and

(g) Arrests for any of the offenses listed in Appendix A, Section (2)(g).

NOTE: Section (2) of Appendix A includes all disqualifying offenses listed in 49 C.F.R. § 1542.209(d).

(c) The decision must be issued in accordance with the procedures set forth in Sections H(4) and (5).

(d) When considering using the one-step process for a removal under D(1)(b)(iv)(g), OPR or the responsible management official shall consider the following factors, as appropriate:

(i) Whether the employee has been indicted, or there is equivalent legal process (such as a criminal information or sworn criminal complaint);

(ii) Whether the employee has been arrested pursuant to a warrant issued by a judge or magistrate;

(iii) Whether the employee has been released on his/her own recognizance;

(iv) Whether bail has been denied;

(v) Whether any information, including but not limited to, police reports or witness statements were made available to TSA;

(vi) Whether the arrest was made based solely on uncorroborated assertions of a third party whose veracity is questionable.

NOTE: An employee subject to a one-step removal issued under D(1)(b)(iv)(g) based on an arrest, prior to conviction, for whom all criminal charges are ultimately dropped by the prosecuting authority, or who is later acquitted of such charges, may seek reconsideration of his/her removal by the AA/OHC. Whether to grant the request is

within the sole discretion of TSA. This NOTE is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable by any party against TSA.

(2) Two-Step Process:

(a) The two-step process requires the issuance of a written notice of proposed action and notice of decision. A pre-decisional meeting is optional under this process. The content of the proposal and decision notices are described in Section H.

(b) The following actions are subject to the two-step process:

(i) Reprimand In Lieu of Suspension of more than three days for TSOs and any length for non-TSOs;

(ii) Suspension of 1-14 days (for non-TSOs); Suspension of 4-14 days (for TSOs); and

(iii) Adverse actions.

(c) Designation of Proposing and Deciding Officials for two-step adverse or disciplinary actions: In general, the proposing official is a management official within the employee's chain of supervision, while the deciding official is a management official in the employee's chain of supervision higher than the proposing official. Refer to Appendices B and C for additional information.

NOTE: OPR will issue the proposal and decision notices in matters it adjudicates. See TSA MD 1100.75-7, *Office of Professional Responsibility*, for additional information.

E. DISCIPLINARY ACTIONS:

(1) Letters of Reprimand (LORs):

(a) Content:

(i) A description of the unacceptable performance or conduct that is the basis for the LOR;

(ii) The supporting facts;

(iii) A statement that repetition of the unacceptable performance or conduct may lead to additional, more severe adverse or disciplinary action, up to and including removal;

(iv) A statement that the letter will be placed in the employee's eOPF for up to two years, and that it may be cited as a prior formal disciplinary action in any future

disciplinary matter;

(v) A statement that, following removal of the letter from the employee's eOPF, the supervisor may retain a copy of the letter in his/her local files as documentation that the employee was on notice regarding the performance or conduct referenced in the letter;

(vi) A statement that the employee has the right to grieve the LOR in accordance with HCM 771-4, *National Resolution Center,* or TSA MD 1100.77-2, *Grievance Procedures*, if applicable, and must file within 15 calendar days of receipt of the letter.

(vii) The signature of the management official who issued the letter.

(b) Delivery and Retention:

(i) Generally, the LOR should be delivered in person by the management official who signed it. Where applicable, OPR will make arrangements to deliver the LOR to the employee and the employee's supervisor; such delivery may be accomplished electronically. The employee should be asked to sign an acknowledgment of receipt. If the employee elects not to sign the acknowledgment, the supervisor and/or OPR's copy should be annotated with the delivery time and date, the management official's signature, and a statement that the employee received the letter/notice, but elected not to acknowledge receipt.

(ii) A copy of the LOR may be retained in the employee's eOPF for up to two years, and upon removal from the eOPF, may be retained indefinitely by the supervisor and/or OPR, as applicable.

(2) Reprimand In Lieu of Suspension: The one-step process may be used for Reprimands In Lieu of Suspension of one to three days for TSOs only; the two-step process must be used in all other cases.

(a) Prior to effecting a Reprimand In Lieu of Suspension under this process, the procedures outlined in Sections B and G must be followed.

(b) The proposal and/or decision will be issued in accordance with Section H.

(c) Delivery of Proposal and Decision Notices:

(i) Both the proposal and decision notices should be delivered in person, and the employee should be asked to sign an acknowledgment of receipt. Where applicable, OPR will make arrangements to deliver the letter/notice to the employee and the employee's supervisor; such delivery may be accomplished electronically. If the employee elects not to sign, the file copy shall be annotated

with the delivery time and date, the signature of the individual who delivered the notice, and a statement that the employee received the notice, but elected not to acknowledge receipt.

(ii) If the employee is not on duty or otherwise available to receive it in person, the notice should be delivered both by first class mail and by a delivery method where a signed receipt is requested (e.g., express mail delivery or certified mail with a return receipt requested). TSA will consider that the employee received a regular mailing five days from the date on which the notice was sent, and may use that date as the delivery date or the date on which the employee signed for the express delivery or certified notice, whichever is earlier.

(3) Suspensions of 14 days or less: The one-step process (for TSOs only) may be used for suspensions of three days or less. The two-step process must be used for all other suspensions, with the exception of certain cases of indefinite suspensions under Section I.

(a) Prior to effecting a suspension under this process, the procedures outlined in sections B and G must be followed.

(b) The proposal and/or decision must be issued in accordance with the procedures set forth in Section H.

(c) Delivery of Proposal and Decision Notices:

(i) Both the proposal and decision notices should be delivered in person, and the employee should be asked to sign an acknowledgment of receipt. Where applicable, OPR will make arrangements to deliver the letter/notice to the employee and the employee's supervisor; such delivery may be accomplished electronically. If the employee elects not to sign, the file copy shall be annotated with the delivery time and date, the signature of the individual who delivered the notice, and a statement that the employee received the notice, but elected not to acknowledge receipt.

(ii) If the employee is not on duty or otherwise available to receive it in person, the notice should be delivered both by first class mail and by a delivery method where a signed receipt is requested (e.g., express mail delivery or certified mail with a return receipt requested). TSA will consider that the employee received a regular mailing five days from the date on which the notice was sent, and may use that date as the delivery date or the date on which the employee signed for the express delivery or certified notice, whichever is earlier.

F. ADVERSE ACTIONS:

(1) Adverse actions must be issued under the two-step process, which requires the issuance of a written notice of proposed action and notice of decision. A pre-decisional meeting is optional under this process.

(2) Exception: The one-step process may be used for indefinite suspensions relating to alleged misconduct by TSOs that necessitates immediate action under the conditions set forth in Section I, and for TSO removals described in Section D(1) above.

(3) Designation of proposing and deciding officials: In general, the proposing official is a management official within the employee's chain of supervision, while the deciding official is a management official in the employee's chain of supervision higher than the proposing official.

NOTE: OPR will issue the proposal and decision notices in matters it adjudicates. See TSA MD 1100.75-7, *Office of Professional Responsibility*, for additional information.

G. PENALTY DETERMINATION:

The penalty factors below provide guidance for determining the appropriate penalty. Not all of the factors are relevant in all cases, and other factors relevant to the case may also be considered. The Table of Offenses and Penalties (Table) provides guidance in determining the appropriate penalty. The proposal and decision notices, and any document comprising a corrective action, should refer to the relevant part of the Table, if applicable.

NOTE: These factors do not apply to mandatory removals described in Appendix A or actions involving unacceptable performance, or non-disciplinary removals such as an employee's medical inability to perform or failure to accept a directed reassignment.

(1) The nature and seriousness of the offense, and its relationship 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.

(2) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position. For example, certain employees such as supervisors or law enforcement officers may be held to higher standards than other employees.

(3) The employee's past adverse or disciplinary action record. If past discipline is used, it must be mentioned in the notice of proposed action.

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

(5) The effect of the offense upon the employee's ability to perform at a satisfactory level, and its effect upon the supervisors' confidence in the employee's ability to perform assigned duties.

(6) Consistency of the penalty with those imposed upon similarly situated employees for the same or similar offenses.

(7) The notoriety of the offense or its impact upon the reputation of the agency.

(8) The clarity with which the employee was on notice of any rules violated in committing the offense or had been warned about the conduct in question.

(9) The clarity with which the employee was on notice of performance expectations and problems with his or her performance.

(10) Potential for the employee's rehabilitation.

(11) Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter.

(12) The adequacy and effectiveness of alternative actions to deter such conduct or improve performance in the future by the employee or others.

H. ADJUDICATION PROCESS / PROPOSAL AND DECISION:

(1) The notice of proposed adverse or disciplinary action should, in general, be issued within 30 days of the completion of the fact-finding inquiry, and must include the following information:

(a) The charge(s) and specification(s) for each charge including a description of the evidence that supports the charge(s);

(b) The proposed penalty;

(c) A discussion of any aggravating or mitigating factors that were considered in determining the proposed penalty;

(d) A statement that the employee has the right to present an oral and/or written reply to the proposal within seven calendar days. This time limit may be extended for good cause shown. A request for reconsideration may be presented orally or in writing;

(e) A statement that the employee may be represented by an individual of the employee's choosing in preparing and presenting any reply. If the employee elects to have a representative, the employee must provide the name of his/her representative to the

deciding official in writing, and must provide written notice of any subsequent change in representation;

(f) A statement that the employee's chosen representative may be disallowed if the representation creates a conflict of interest or position, e.g., the representative may not be in the employee's chain of supervision. If the representative is another TSA employee, he/she also may be disallowed if he/she cannot be spared because of critical TSA work. (**NOTE:** The deciding official will make this determination in consultation with OHC and/or a TSA attorney.) Refer to TSA MD 1100.63-3, *Employee Representation* for additional information. In instances where OPR is adjudicating the case, it will make this determination at its discretion;

(g) A statement that costs associated with the employee's representation, including any travel expenses, will be borne by the employee;

(h) A statement that the employee and the representative (if a TSA employee) will be allowed a reasonable amount of official time to review the material relied upon, and to prepare and to present the reply(ies);

(i) A statement that the employee will be provided a copy of the material relied upon to support each charge and specification with the proposal letter. Alternatively, if the material is voluminous or contains SSI, the employee shall be given the opportunity to review the material at a designated TSA location;

NOTE: Any release or review of SSI documents must be coordinated with the SSI Office, and with field counsel/OCC.

(j) A statement that the material relied upon will be released only to the employee and/or the employee's designated representative;

(k) The name of the deciding official and the individual the employee may contact to make arrangements for a reply or to ask any questions;

(l) A statement that the action will not be taken until after any timely reply is received and considered; or, if no reply is received, after the reply period expires; or until after the employee informs management officials that he/she does not intend to reply;

(m) A statement informing the employee of any change in duty status; and

(n) A listing of all the documents relied upon which supported the action.

(2) Duty Status: In most cases, the employee will remain in a duty status during the notice period. However, if the proposing official determines that keeping the employee in his/her current duty status would be a threat to life, property, safety, or the efficient operation of the organization, one of the following alternatives may be used:

(a) If the employee requests, he/she may be allowed to use accrued annual leave, leave without pay, or previously earned compensatory time. Additionally, if appropriate, and in accordance with TSA MD 1100.63-1, *Absence and Leave*, the employee may use accrued sick leave;

(b) The employee remains in a duty status which may include being detailed to another work unit or assigned other duties; or

(c) The employee is placed on administrative leave using current approval guidelines.

(3) The Deciding Official:

(a) Will consider the charges and specifications contained in the proposal notice, the supporting documentation that the employee was provided or had an opportunity to review, and the employee's reply. If the deciding official is or becomes aware of additional evidence other than the evidence the employee had an opportunity to review, and wishes to consider such evidence in reaching a determination, the deciding official must inform the employee and provide him or her an opportunity to review such material and reply to the additional evidence before reaching a decision on the proposed action.

(b) Will consider the employee's written reply, and if applicable, the employee's oral reply. If the deciding official's designee hears the oral reply, he or she shall prepare written notes or a written summary of the reply which will be given due consideration by the deciding official.

(c) Will decide the appropriate penalty.

(4) Content of Decision:

(a) The decision should, in general, be issued within 21 days of the employee's reply to the proposed action, and must address each charge and specification and inform the employee of the deciding official's determination on each charge including the basis for the determination;

(b) The decision must inform the employee that the employee's reply was considered and should discuss defenses raised by the employee;

(c) If the decision is to impose the proposed action, the notice will discuss the penalty determination including any relevant mitigating and aggravating factors considered, as appropriate;

(d) The decision must provide the effective date of the action, as appropriate; and

(e) The decision must provide applicable grievance procedures or appeal rights including time limits, information where to send the grievance or appeal, and must include a copy of any procedures or regulations where required; and

(f) If the decision is a removal, the decision must include statements regarding the employee's obligation to protect SSI, and directions to return all TSA property and uniforms.

(5) Delivery of Proposal and Decision Notices:

(a) Both the proposal and decision notices should be delivered in person, and the employee should be asked to sign an acknowledgment of receipt. Where applicable, OPR will make arrangements to deliver the letter/notice to the employee and the employee's supervisor; such delivery may be accomplished electronically. If the employee elects not to sign, the file copy shall be annotated with the delivery time and date, the signature of the individual who delivered the notice, and a statement that the employee received the notice, but elected not to acknowledge receipt.

(b) If the employee is not on duty or not available to receive it in person, the notice should be delivered both by first class mail and by a delivery method where a signed receipt is requested (e.g., express mail delivery or certified mail with a return receipt requested). TSA will consider that the employee received a regular mailing five days from the date on which the notice was sent, and may use that date as the delivery date or the date on which the employee signed for the express delivery or certified notice, whichever is earlier.

I. INDEFINITE SUSPENSIONS: An indefinite suspension is appropriate when evidence (i.e., more than a mere suspicion or allegation) exists to demonstrate misconduct. The mere fact of an employee being investigated does not automatically result in indefinite suspension. For example, an employee being investigated for alleged discrimination would not necessarily result in an indefinite suspension unless the alleged discrimination impacted the safety of other employees.

(1) Conditions under which indefinite suspensions may be imposed:

(a) Employee has been indicted, or there is equivalent legal process (such as a criminal information or bench appearance), for a crime for which a sentence of imprisonment may be imposed;

(b) Employee has been arrested pursuant to a warrant issued by a judge or magistrate for a crime for which a sentence of imprisonment may be imposed;

(c) An investigation being conducted on serious allegations against an employee that represents a threat, which is so serious that if it proves to be true, the employee's continued presence at the worksite would represent a threat to life, property, safety or the effective operation of the workplace. This could include investigation into or

allegations of theft, fraud or falsification, for example, where there is substantial evidence for which removal would be the likely outcome; or

(d) An employee's security clearance has been suspended, denied, or revoked, and a security clearance is a condition of employment or is otherwise required for the employee's position.

NOTE: Once an indefinite suspension is imposed, management officials must determine if subsequent action, e.g., removal, is justified. If justified, management officials should initiate appropriate action to propose, or issue (if one-step is appropriate), the removal. If it is determined that further action is not warranted, the indefinite suspension will be terminated and the employee returned to duty.

(2) General:

(a) TSA may take action to discharge an employee during the period of an indefinite suspension, if warranted, whether or not criminal charges have been resolved, and whether or not such charges have been resolved in favor of the employee. Such action must be for such cause as will promote the efficiency of the service.

(b) As these actions often are connected with on-going investigations (administrative, civil, or criminal) it is important not to disclose information or evidence that could undermine or jeopardize any ongoing investigation or potential criminal prosecution.

(3) Reconsideration of Indefinite Suspensions Under the One-Step Process:

(a) Once an indefinite suspension has been imposed under the one-step process, the employee has seven calendar days from the effective date to submit a written request for reconsideration. This time limit may be extended for good cause shown. The reconsideration must include any supporting evidence. A request for reconsideration may be made orally and/or in writing.

(b) Upon receipt of a timely request for reconsideration, the deciding official should, in general, issue a decision within seven days of the filing of the request for reconsideration to determine if the indefinite suspension should be continued, or if the employee should be returned to duty status.

(c) If the decision is to return the employee to duty, the deciding official will also recommend if back pay for the suspension period, or any portion thereof, is appropriate. Back pay may be appropriate if failure to pay back pay would result in an injustice to the employee because of the employee's lack of culpability in the incident for which he/she was suspended. AA/OHC shall determine if back pay is appropriate. Indefinite suspensions based on a criminal indictment or an arrest warrant normally will not result in payment of back pay.

(d) The decision regarding the reconsideration shall be prepared and issued in accordance with the procedures set forth in Sections H(3), (4), and (5) above.

(e) An employee may request reconsideration of an indefinite suspension at any time based upon newly acquired information that was not available at the time of the decision to impose the indefinite suspension.

J. APPEAL RIGHTS AND GRIEVANCE PROCEDURES:

(1) Disciplinary Actions: Upon receipt of a disciplinary action, employees may file a grievance under the procedures set forth in HCM 771-4, *National Resolution Center*, or TSA MD 1100.77-2, *Grievance Procedures*, if applicable.

(2) Adverse actions:

(a) Non-TSOs with veterans' preference (preference-eligible) who have at least one year of current continuous service in the same or similar position may appeal to the Merit Systems Protection Board (MSPB).

(b) Non-TSOs (non-preference eligible) who have at least two years of current continuous service in the same or similar position may appeal to the MSPB.

NOTE: MSPB regulations can be found in 5 CFR, Part 1201, and on the MSPB website at www.mspb.gov.

(c) TSOs with veterans' preference (preference-eligible) who have at least one year of current continuous service in the same or similar position may appeal to the OPR Appellate Board, in accordance with TSA MD 1100.77-1, *OPR Appellate Board*.

(d) TSOs (non-preference eligible) who are not serving in a trial period or who have completed two years or more in a time-limited appointment of more than two years, may appeal to the OPR Appellate Board.

(3) Indefinite suspensions: The basis for continuing an indefinite suspension may be appealed to MSPB or to the OPR Appellate Board, where applicable, at any time during the suspension period but no later than 30 days after its termination. However, the basis for the decision imposing an indefinite suspension may not be appealed after 30 days from its effective date.

APPENDIX A: TSO OFFENSES FOR WHICH REMOVAL IS REQUIRED/PERMITTED

(1) TSO Offenses For Which Removal Is **Required**[1]:

(a) Failure to maintain TSO certification requirements;

(b) Validated failure of drug test;

(c) Validated failure of alcohol test (on duty);

(d) Refusal to submit to TSA-ordered drug or alcohol testing;

(e) Cases involving theft, illegal drug use, possession of illegal drugs, on-duty alcohol use, or being under the influence of drugs or alcohol while on duty;

(f) Sleeping on duty while assigned to a security activity;

(g) Intentional serious security breaches, including:

(i) Knowingly operating checkpoint and baggage equipment that is either not working or not turned on; and

(ii) Intentionally conducting improper screening procedures or intentionally allowing persons or property to bypass required screening.

(2) TSO Offenses For Which Removal Is Permitted for the First Offense:

(a) Any intentional act that undermines security operations and the trust and confidence of the traveling public in the integrity of the nation's transportation system;

(b) Any action involving the intentional and unauthorized disclosure of SSI;

(c) Falsification of security logs;

(d) Failure to conduct an operational check at the start of a shift;

(e) Any felony conviction regardless of nexus to employment;

(f) Misuse of TSO metal badge, including impersonating a federal or other law enforcement officer, or use of the metal badge in an attempt to gain special favor or privilege; and

[1] A Federal Security Director (FSD) may seek an exception to mandatory removal by submitting a written request explaining the exculpatory facts and circumstances through the appropriate Regional Director to the Deputy Assistant Administrator for the Office of Security Operations. For OPR cases, the exception may be filed with the OPR Director.

(g) An arrest for any of the following offenses:

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation; 49 U.S.C. 46306;

(ii) Interference with air navigation; 49 U.S.C. 46308;

(iii) Improper transportation of a hazardous material; 49 U.S.C. 46312;

(iv) Aircraft piracy; 49 U.S.C. 46502;

(v) Interference with flight crew members or flight attendants; 49 U.S.C. 46504;

(vi) Commission of certain crimes aboard aircraft in flight; 49 U.S.C. 46506;

(vii) Carrying a weapon or explosive aboard aircraft; 49 U.S.C. 46505;

(viii) Conveying false information and threats; 49 U.S.C. 46507;

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States; 49 U.S.C. 46502(b);

(x) Lighting violations involving transporting controlled substances; 49 U.S.C. 46315;

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; 49 U.S.C. 46314;

(xii) Destruction of an aircraft or aircraft facility; 18 U.S.C. 32;

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping or hostage taking;

(xviii) Treason;

(xix) Rape, aggravated sexual abuse, or any offense of sexual misconduct or exploitation involving a minor or child pornography;

(xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;

(xxi) Extortion;

(xxii) Armed or felony unarmed robbery;

(xxiii) Distribution of, or intent to distribute, a controlled substance;

(xxiv) Felony arson;

(xxv) Felony involving a threat;

(xxvi) Felony involving—

(a) Willful destruction of property;

(b) Importation or manufacture of a controlled substance;

(c) Burglary;

(d) Theft;

(e) Dishonesty, fraud, or misrepresentation;

(f) Possession or distribution of stolen property;

(g) Aggravated assault;

(h) Bribery; or

(i) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than one year;

(xxvii) Violence at international airports; 18 U.S.C. 37; and

(xxviii) Conspiracy or attempt to commit any of the criminal acts listed in subsection (2)(g) of this Appendix.

NOTE: Nothing in this Handbook or related MD prevents management officials from removing an employee after a first offense when the misconduct is so serious as to warrant removal, such as engaging in activity that seriously undermines security interests or poses a threat or danger to TSA employees or to the traveling public, or results in significant monetary loss.

APPENDIX B: DELEGATION OF AUTHORITY FOR TSOs

FSDs have the authority to impose suspensions, including indefinite suspensions, involuntary demotions for performance/conduct, and removals for any TSO in the FSD's chain of supervision.

An FSD **may** delegate certain authority related to non-disciplinary, disciplinary, and adverse actions as summarized below.

NOTE: This delegation does not apply to matters adjudicated by OPR[2].

Letter of Guidance/Direction, Letter of Counseling, and Letter of Leave Restriction	Supervisory TSO (STSO) or higher.
Letter of Reprimand	STSO or higher.
Deciding Official (Suspension of 1-3 days/Reprimand in Lieu of Suspension for 1-3 days)	Transportation Security Manager (TSM) or higher.
Proposing Official (Suspension of 4-14 days/Reprimand in Lieu of Suspension for more than 3 days)	STSO or higher.
Deciding Official (Suspension of 4-14 days/ Reprimand in Lieu of Suspension for more than 3 days)	TSM or higher.
Proposing Official (Suspension of 15 days or more, including Indefinite Suspension, Involuntary Demotion for Performance /Conduct, and Removal)	TSM or higher.*
Deciding Official (Suspension of 15 days or more, including Indefinite Suspension, Involuntary Demotion for Performance /Conduct, and Removal)	AFSD or higher, above the Proposing Official.*

[2] If OPR refers a case to local management for action, it must be initiated by the FSD, but this may be delegated to a level no lower than the AFSD.
* An FSD may request to delegate this authority to the next lower level by submitting a request to the Assistant Administrator for TSA Human Capital.

APPENDIX C: DELEGATION OF AUTHORITY FOR NON-TSOs

AAs, FSDs, and Supervisory Air Marshals in Charge (SACs) have the authority to impose suspensions, including indefinite suspensions, involuntary demotions for performance/conduct, and removals.

AAs, FSDs, and SACs **may** delegate certain authority related to adverse, disciplinary, and corrective actions, as summarized below.

NOTE: This delegation does not apply to matters adjudicated by OPR.

Letter of Guidance/Direction, Letter of Counseling, and Letter of Leave Restriction	Employee's immediate supervisor or other designated official.
Letter of Reprimand	Employee's immediate supervisor or other designated official.
Reprimand in Lieu of Suspension	Employee's immediate supervisor or other designated official.
Proposing Official (Suspension of 14 days or less)	Employee's immediate supervisor or other designated official.
Proposing Official (Suspension of 15 days or more, including Indefinite Suspension, Involuntary Demotion for Performance /Conduct, and Removal)	Employee's chain of supervision or other designated official.
Deciding Official	Employee's chain of supervision but higher than the Proposing Official.

TRANSPORTATION SECURITY ADMINISTRATION
GUIDELINES ON USING THE TABLE OF OFFENSES AND PENALTIES FOR APPROPRIATE DISCIPLINE FOR COMMON OFFENSES

1. The Table of Offenses and Penalties is intended to provide **guidance** for determining appropriate corrective, disciplinary, or adverse actions for some common offenses. It does not replace supervisory judgment for determining appropriate penalties in individual cases. These guidelines apply only to matters involving misconduct; they do not cover performance based management actions.

2. These guidelines should be used in conjunction with TSA MD 1100.75-3, *Addressing Unacceptable Performance and Conduct*, its related Handbook, and all other applicable TSA policies.

3. The language used in the "Nature of Offenses" column provides a general description of certain types of misconduct. The offenses listed below do not cover all possible offenses. Offenses not covered in this guide can be separately identified and may become the basis of disciplinary action as long as there is a nexus between the misconduct and the efficiency of the service. The offenses listed should be considered as general categories of offenses and should not necessarily be used as the specific language for a charge. A list of possible charges for the listed offenses has been added to the Table of Offenses as additional guidance. The possible charges are only suggestions. The selection of a charge label should be made based on the specific facts of each matter.

4. Proposing and Deciding Officials always need to consider applicable mitigating and aggravating factors in determining an appropriate penalty. Such factors can determine whether a penalty should be at the upper or lower end of the guideline range provided in the "Recommended Penalty Range" column. In some cases, the mitigating or aggravating factors may be strong enough to warrant using the "Mitigated Penalty Range" or "Aggravated Penalty Range" column.

5. Examples of mitigating factors include: self-reporting; efforts to remedy wrongdoing; timely acknowledgment of wrongdoing; and long period with no prior discipline. Examples of aggravating factors include: type of position (for example, supervisors and law enforcement officers are held to a higher standard); prior disciplinary record; prior warning/advisement not to commit misconduct; notoriety and impact on reputation of agency; public awareness; and failure to report. See TSA MD 1100.75-3, *Addressing Unacceptable Performance and Conduct*, and its related Handbook, for additional guidance.

6. Management officials have the discretion to go outside the ranges listed in this guide if they determine that circumstances warrant. Although TSA policy favors progressive discipline, where appropriate, if the misconduct is egregious enough or is accompanied by sufficiently aggravating circumstances, progressive discipline may be inappropriate and removal or other severe action would be warranted on the first offense.

7. Where indicated, certain offenses require removal. Appendix A of the Handbook to TSA MD 1100.75-3, *Addressing Unacceptable Performance and Conduct*, contains offenses for which TSOs must or may be removed on the first incident.

8. A demotion may always be considered as an option when the applicable penalty range includes removal. Demotion may also be considered in appropriate circumstances when the applicable penalty range does not include removal.

9. For second and/or successive offenses, the penalty should generally fall within the "Aggravated Penalty Range" column, and may often include removal. In addition, an employee may be charged with several offenses none of which alone would result in removal, but when combined may support such a penalty.

10. In cases where an employee commits more than one offense, the Proposing and Deciding Officials may consider whether the penalty should be in the "Aggravated Penalty Range" column corresponding to the most serious offense being charged.

11. These guidelines do not apply to actions taken under TSA MD 1100.31-1, *Trial Periods*, including terminating employees during their basic trial period.

12. Some offenses may result in a denial or revocation of a security clearance. Such denial/revocation procedures are separate from corrective, disciplinary or adverse actions, and are not covered by these guidelines.

13. Senior officials and law enforcement officials are held to a higher standard of conduct.

14. For off-duty misconduct, there must be a nexus between the conduct and the TSA mission and/or effective operation of the agency.

15. Management officials may consider use of "In Lieu of Reprimand" in situations where a suspension would not be practical, such as unexcused or excessive absences. See TSA MD 1100.75-3, *Addressing Unacceptable Performance and Conduct*, Handbook Section A(9).

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	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
A	Attendance and Leave					
1	Unexcused absences; tardy	Tardy; Unauthorized Absence from Duty	These are brief periods of unauthorized absence for which AWOL is not charged against pay, e.g., taking excessively long breaks, overdue return after absence from the worksite for official business. See TSA MD 1100.63-1, Handbook Section B.2 and B.8 for additional guidance.	Letter of Reprimand (LOR)	Letter of Counseling (LOC)	1-day to 5-day suspension
2	AWOL of one workday or less	AWOL; Unauthorized Absence from Duty	TSA MD 1100.63-1, Handbook Section L. The absences need not be consecutive.	LOR to a 2-day suspension	LOC	3-day suspension to removal
3	AWOL from than 1 to 5 workdays	AWOL; Unauthorized Absence from Duty	TSA MD 1100.63-1, Handbook Section L.	2-day to 5-day suspension	LOR to 1-day suspension	6-day suspension to removal
4	AWOL for a period of more than 5 workdays	AWOL; Unauthorized Absence from Duty	TSA MD 1100.63-1, Handbook Section L.	7-day to 10-day suspension	2-day to 6-day suspension	11-day suspension to removal
5	Failure to follow established leave procedures	Failure to Follow Leave Procedures	TSA MD 1100.63-1, Handbook Section B. When on leave restriction, penalties may be in Aggravated Penalty Range	2-day to 10-day suspension	LOC to 1-day suspension	11-day suspension to removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
6	Improper use of sick leave or other leave programs	Improper Use of Sick Leave; Abuse of Leave; Falsification of T&A; Inappropriate Conduct; Violation of Leave Policy; Lack of Candor; Failure to Follow Leave Procedures	TSA MD 1100.63-1. For example, calling in "sick" when not "sick."	LOR to 5-day suspension	LOC	6-day suspension to removal
7	Excessive unscheduled absences	Excessive Absence; Failure to Maintain a Regular Work Schedule; Inability to Maintain a Regular Work Schedule [note: non-disciplinary removal]	TSA MD 1100.63-1. May be the basis for discipline even if each of the individual absences is approved.	LOR to 5-day suspension	LOC	6-day suspension to removal
8	Failure or unexcused delay in reporting for an overtime assignment	Failure to Follow Instruction; Failure to Report for Scheduled Overtime	TSA MD 1100.63-1, Handbook Section b.1(c). Includes both involuntary and voluntary overtime assignments.	LOR to 2-day suspension	LOC	3-day suspension to removal
B	Inappropriate Comments or Conduct					
1	Using offensive, demeaning, or degrading remarks, comments, statements, or taking actions based on another's race, color, religion, national origin, sex, age, disability, sexual orientation, parental status	Inappropriate Comments; Inappropriate Conduct; Discourteous Conduct; Conduct Unbecoming; Unprofessional Conduct; Off-duty Misconduct	TSA MD 1100.73-5, Handbook Section I. May occur either on or off-duty so long as there is a nexus with the employee's TSA employment; does not require a finding of unlawful discrimination.	5-day to 14-day suspension	LOR to 4-day suspension	15-day suspension to removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
2	Acting or failing to act on an official matter in a manner which improperly takes into consideration an individual's membership in a protected group; taking retaliatory action against an individual involved in the EEO complaint process; failing to take appropriate action to prevent or curtail prohibited discrimination or harassment of a subordinate when the supervisory employee knew or should have known the conduct was discriminatory	Unprofessional Conduct; Inappropriate Conduct; Discourteous Conduct; Disrespectful Conduct; Inappropriate Conduct Toward a Subordinate; Failure to Report Inappropriate Conduct	TSA MD 1100.73-5, Section 5.B (4); TSA MD 1100.73-5, Handbook Section M. On or off-duty; e.g., in employment, appraisal, advancement or treatment of employees (present and former) and applicants; does not require a finding of unlawful discrimination.	5-day suspension to removal	1-day to 4-day suspension	Removal
3	Inappropriate and/or unwelcome verbal or physical conduct of a sexual nature	Misconduct of a Sexual Nature; Inappropriate Comments of a Sexual Nature; Conduct Unbecoming; Off-duty Misconduct	TSA MD 1100.73-3, *Prevention and Elimination of Sexual Harassment in the Workplace*	3-day to 14-day suspension	LOR to 2-day suspension	15-day suspension to removal
4	Taking, threatening to take, or implying that official action will be taken as a result of rejection or submission to a request for sexual favors	; Abuse of Position; Misconduct of a Sexual Nature; Abuse of Supervisory Authority; Conduct Unbecoming	TSA MD 1100.73-3, *Prevention and Elimination of Sexual Harassment in the Workplace*	10-day suspension to removal	5-day to 9-day suspension	11-day suspension to removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
5	Using abusive, offensive, disrespectful, inflammatory or similarly inappropriate language, gestures, or conduct to or about other employees or members of the public	Inappropriate Comments; Discourteous Conduct; ; Conduct Unbecoming; Inappropriate Conduct; Failure to Exercise Courtesy in the Performance of Duties; Off-duty Misconduct	TSA MD 1100.73-5, *Employee Responsibilities and Conduct*, Handbook, Section I	LOR to 5-day suspension	LOC	6-day suspension to removal
6	Fighting, threatening, intimidating, attempting to inflict or inflicting bodily harm on another; harassing or provoking quarrel; engaging in horseplay; any violent, reckless or disorderly act, language, gestures, or conduct	Disorderly Conduct; Disruptive Conduct; Workplace Violence; Striking a Co-Worker; Striking a Passenger; Exercising Poor Judgment; Failure to Comply with Established Safety Procedures; Reckless Conduct	TSA MD 1100.73-5, *Employee Responsibilities and Conduct*, Handbook, Section L	5-day suspension to removal	LOR to 4-day suspension	Removal
C	Drugs and Alcohol					
1	Unauthorized consumption of alcoholic beverages while on duty or on government-owned or leased property (including vehicles)	Misuse of Alcohol; Consuming Alcohol on Duty; Use of Alcohol in Violation of TSA Policy	TSA MD 1100.73-5, *Employee Responsibilities and Conduct*, Handbook, Section O.2.	Removal	N/A	N/A
2	Consuming alcohol or medication, prescribed and over-the-counter; which impairs judgment/ability to safely use and control a firearm. Applies to when carrying a TSA-issued firearm, on or off duty	Misuse of Alcohol; Misuse of Drugs; Failure to Comply with TSA Policy	TSA MD 1100.75-4, *Addressing DUI and DWI Offenses; TWP 3700A; TSA MD 3500.2, 6. G. 3., Firearms Restrictions and Revocation*	14-day suspension to removal	LOR to 13-day suspension	Removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
3	Refusing or failing to submit to, or interfering with a TSA-ordered drug or alcohol test	Refusing to Take Drug Test; Interfering with Drug Test; Failure to Submit to Drug Test; Failure to Follow Instructions; Failure to Follow Policy	TSA MD 1100.75-3, Handbook Section I 1(c) (iii). Includes substituting, adulterating, or otherwise tampering with a test sample.	Removal (DOT Order 3910.1D)	N/A	N/A
4	Positive drug test or admission of illegal drug use	Positive Drug Test; Use of Illegal Drugs; or Misuse of Drugs	TSA MD 1100.75-3, Handbook Section I 1(c). Applies to on-duty and off-duty situations.	Removal (non-TSOs have the possibility for rehabilitation in accordance with DOT Order 3910.1D)	N/A	N/A
5	Violation of the duty to abstain from consuming or being under the influence of alcohol prior to performance of security-related functions	Violation of TSA Policy on Use of Alcohol Prior to Performance of Duties; Misuse of Alcohol	TSA MD 110073-5, Handbook Section O.2. (e). Law enforcement employees cannot consume alcohol for a minimum of ten hours preceding duty. All other employees who occupy Testing Designated Positions cannot consume alcohol for a minimum of four hours preceding performance of security-related function.	14-day suspension to removal	7-day to 13-day suspension	Removal
6	Positive alcohol test while on duty	Positive Alcohol Test	TSA MD 1100.75-3, Handbook Section I 1(c). For TSOs, a test is considered positive if the blood alcohol level is .02 or above; for non-TSOs, the blood alcohol content must be .04 or above	Removal (non-TSOs have the possibility for rehabilitation in accordance with DOT Order 3910.1D)	N/A	N/A

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
7	Operating a Government owned or leased equipment or vehicle, on or off-duty, or a privately owned vehicle, on duty, while under the influence of alcohol, drugs, or other intoxicants	Operating Government Vehicle While Under the Influence of Alcohol; Misuse of a Government Vehicle; Misuse of Alcohol; Operating a Vehicle On Duty While Under the Influence of Alcohol	TSA MD 110073-5, Handbook Section O.2. (g). This does not cover use of government blackberries, or cell-phones, or the like.	Removal	N/A	N/A
8	Unauthorized possession, use, sale, or distribution of illegal drugs or controlled substances	Misuse of Drugs; Possessing Illegal Drugs; Illegally Possessing Drugs; Selling Illegal Drugs; or Illegally Selling Drugs; Distributing Illegal Drugs; Illegally Distributing Drugs	TSA MD 110073-5, Handbook Section O.	Removal	N/ A	N/ A
9	Driving a privately owned vehicle, off duty, while intoxicated or under the influence of alcohol, drugs, or other intoxicants	Driving Under the Influence; Driving While Intoxicated	TSA MD 1100.75-4, *Addressing DUI and DWI Offenses* Second arrest for alcohol-related offense will result in removal.	Law Enforcement Officers (LEOs): 30 day suspension. Non-LEOs: 7-day suspension	LEOs: 14-day to 30-day suspension Non-LEOs: 3-day suspension to 6-day suspension	LEOs: Removal Non-LEOs:14-day suspension to removal
D	Failure/Refusal to Follow Instructions					
1	Disrespectful conduct towards a supervisor or other management official	Unprofessional Conduct; Conduct Unbecoming; Inappropriate Conduct; Disrespectful Conduct; Failure to Exercise Courtesy toward a Supervisor	TSA MD 1100.73-5, Handbook Section 5.A (3). Written, oral, or gesture; includes such behavior towards Team Leaders and acting supervisors/officials.	LOR to 10-day suspension	Letter of Counseling (LOC)	11-day suspension to removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
2	Failure to promptly and fully comply with directions, instructions, or assignments of a supervisor or other management official	Failure to Follow Instructions; Failure to Follow Orders	TSA MD 1100.73-5, Section 5.A (2).	LOR to 10-day suspension	LOC	11-day suspension to removal
3	Insubordination	Insubordination (note: elements for this charge are (1) employee given lawful order; (2) he/she disobeys the order; (3) his/her action was willful and intentional)	TSA MD 1100.73-5, Section 5.A (2).	2-day to 10-day suspension	LOR to 1-day suspension	11-day suspension to removal
4	Failure to follow policies, procedures, practices, protocols, regulations or rules	Failure to Follow Procedures; Failure to Follow Instructions; Failure to Follow TSA Policy; Failure to Follow Regulation	TSA MD 1100.73-5, Section 5.A (7). Inadvertent violations may warrant the Mitigated Penalty Range, and deliberate violations may warrant the Aggravated Penalty Range	LOR to 14-day suspension	LOC	15-day suspension to removal
E	Falsification/Dishonesty/Mis statement					
1	Making misstatement or misrepresentation with the intent to mislead including material and/or intentional falsification, concealment, omission of fact; forgery	Making a False Statement; Lack of Candor; Misrepresentation; Failure to Cooperate in an Investigation; Failure to Follow Instructions	TSA MD 1100.73-5, Handbook Section F and L Includes providing false testimony, and knowingly making a false statement or accusation; for employees in	Removal	N/A	Removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
			positions with potential to testify in court, this violation often jeopardizes their ability to serve as federal witnesses (*Giglio* concerns); making an allegation or complaint that proves unfounded does not necessarily constitute a "knowing" false statement.			
2	Lack of Candor	Lack of Candor; Failure to Cooperate in an Investigation	TSA MD 1100.73-5, Handbook Section F and I. Making a statement that is less than candid, accurate, or complete; a misrepresentation or omission; this charge does not require proving intent to mislead; mitigation may not be available for LEOs due to *Giglio* concerns.	Removal	14-day to 30-day suspension	Removal
3	Unauthorized recording or monitoring of phone calls, conversations, meetings, electronic communications, etc.	Unauthorized Recording; Unauthorized Monitoring; Inappropriate Conduct; Failure to Follow Policy	TSA MD 1100.73-5 Handbook Section H.	3-day to 14-day suspension	LOR to 2-day suspension	15-day suspension to removal
4	Time and attendance fraud	Submitting Inaccurate Time & Attendance Records; Time and Attendance Fraud or Falsification of T&A (note: requires proof of intent); Supplying Incorrect Information on Time and Attendance	TSA MD 1100.73-5, Section 5.A (7).	5-day to 14-day suspension	LOR to 4-day suspension	15-day suspension to removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
F	Inquiries and Investigations					
1	Failing or refusing to give oral or written statements, testimony, or otherwise failure to cooperate in connection with any official inquiry, investigation, or proceeding	Refusal to Cooperate in Agency Investigation; Failure to Cooperate in Agency Investigation; Failure to Follow Instructions	See TSA MD 1100.73-5, Handbook Sections F.5 and F.6 for warnings that should be provided to employees.	Removal	14-day to 30-day suspension	Removal
2	Interfering with an official inquiry, investigation, or administrative or adjudicatory proceeding.	Interfering with an Agency Investigation; Failure to Follow Instruction	TSA MD 1100.73-5, Handbook Sections F.5 and F.6. Includes attempting to influence others involved in an inquiry, releasing information regarding an official inquiry or proceeding when one knows or should know not to do so.	Removal	14-day to 30-day suspension	Removal
G	Integrity and Ethics					
1	Accepting or soliciting a bribe; agreeing to accept or solicit a bribe	Accepting a Bribe; Soliciting a Bribe; Misuse of Position	TSA MD 1100.73-5, Section 5(11). A bribe may include anything of value, loans, or personal gain to the employee or the employee's family.	Removal	N/A	N/A
2	Failing to promptly report an offer of a bribe or attempted bribe	Failure to Report a Bribe; Failure to Report an Attempted Bribe; Inappropriate Conduct; Conduct Unbecoming	TSA MD 1100.73-5, Section 5(9). Regardless of personal involvement or lack thereof.	14-day suspension to removal	5-day to 13-day suspension	Removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
3	Use of position or authority for other than official purposes	Misuse of Position; Abuse of Position; Inappropriate Conduct; Conduct Unbecoming	TSA MD 1100.73-5, Section 6. On or off-duty; includes; directing subordinates to perform work not related to official duties; attempting to use one's position to avoid a legal citation or arrest.	5-day to 14-day suspension	LOR to 4-day suspension	15-day suspension to removal
4	Misuse of government identification, including badges and/or credentials	Misuse of Government Badge; Misuse of Government Credentials; Attempting to Get Preferential Treatment by Use of Badge; Misuse of Position; Abuse of Position; Inappropriate Conduct	TSA MD 1100.73-5, Handbook, Section D (9). For TSOs, TSA MD 1100.73-2, Section 6. OMS 3700, section 14, "Abuse of Position". For example, to attempt to coerce, intimidate, or deceive, or for private gain or advantage.	5-day to 14-day suspension; removal is permissible for TSOs, Inspectors, and Law Enforcement Officers.	LOR to 4-day suspension	15-day suspension to removal
5	Use of public office for private gain	Misuse of Position; Abuse of Position; Using Public Office for Private Gain	5 CFR 2635.702, Subpart G TSA MD 1100.73-5, Section 5(11).	14-day suspension to removal	7-day to 13-day suspension	Removal
6	Using government property, property under government custody, or the property of others, other than as authorized or for other than official purposes	Unauthorized use of Government Property; Unauthorized Use of Another's Property; Misuse of Government Property; Misuse of Government Computer	TSA MD 1100.73-5, Handbook, Section B and D. Includes querying confidential or sensitive databases for other than official purposes or other than as authorized.	3-day to 14-day suspension	LOR to 2-day suspension	15-day suspension to removal
7	Fraudulent or abusive use of a Government charge card or travel card	Improper Use of Government-Sponsored Credit Card; Misuse of Government Credit Card	TSA MD 1000.5, Section 6.B. Using a government-sponsored travel card other than for official travel, misuse of purchase card for private gain.	5-day to 14-day suspension	LOR to 4-day suspension	15-day suspension to removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
8	Improper or negligent use of a Government charge card or travel card	Improper Use of Government-Sponsored Credit Card	TSA MD 1000.5, Section 6.B. Using a government-sponsored travel card other than for official travel, misuse of purchase card for private gain.	1-day to 5-day suspension	LOC to LOR	6-day suspension to removal
9	Directly or indirectly soliciting a gift or accepting a gift, from a prohibited source	Accepting a Gift from a Prohibited Source; Soliciting a Gift from a Prohibited Source	5 CFR 2635 (Subpart B).	5-day to 14-day suspension	LOR to 4-day suspension	15-day suspension to removal
10	Knowingly and inappropriately associating with individuals or groups known to be connected with criminal activities	Inappropriate Conduct; Conduct Unbecoming; Failure to Follow TSA Policy	TSA MD 1100.73-5, Handbook, Section P.3. On or off-duty; includes social, romantic, sexual, financial (including acceptance of gifts), or business relationship.	14-day suspension to removal	LOR to 13-day suspension	Removal
11	Financial conflict of interest	Conflict of Interest; Misuse of Position; Conduct Unbecoming; Failure to Report Relationship	5 CFR 2635 (Subparts D and E).	3-day to 14-day suspension	LOR to 2-day suspension	15-day suspension to removal
12	Creating the appearance of a conflict of interest or of violating the law or the ethical standards of conduct	Appearance of Conflict of Interest	5 CFR 2635, 5 CFR 3101.	LOR to 14-day suspension	LOC	15-day suspension to removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
13	Borrowing any money from a subordinate employee, securing a subordinate's endorsement on a loan, or otherwise having a subordinate assume the financial responsibility of a superior	Borrowing Money from Subordinate; Inappropriate Conduct; Appearance of Impropriety; Misuse of Position; Failure to Follow Policy	TSA MD 1100.73-5 Handbook, Section V.	LOR to 14-day suspension	LOC	15-day to removal
14	Direct or indirect solicitation, or acceptance, of a gift from a subordinate	Inappropriate Conduct; Appearance of Impropriety; Misuse of Position; Failure to Follow TSA Policy; Failure to Follow Ethics Requirements	5 USC 7351, 5 CFR 2635 (Subpart C).	LOR to 14-day suspension	LOC	15-day suspension to removal
15	Soliciting for, or giving, a gift or donation, to an official superior	Inappropriate Conduct; Appearance of Impropriety; Misuse of Position; Failure to Follow TSA Policy; Failure to Follow Ethics Requirements	5 CFR 2635.302.	LOR to 7-day suspension	LOC	8-day suspension to removal
16	Knowingly working on a matter that will affect a person or organization with whom the employee has a covered relationship	Failure to Follow Ethics Requirements; Failure to Disclose; Misuse of Position	5 CFR 2635.502.	LOR to 14-day suspension	LOC	15-day suspension to removal
17	Performing official duties that affect an entity with whom the employee is seeking employment	Failure to Follow Ethics Requirements; Failure to Disclose; Misuse of Position	5 CFR 2635 (Subpart F).	LOR to 14-day suspension	LOC	15-day suspension to removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
18	Engaging in prohibited outside employment	Conflict of Interest; Apparent Conflict of Interest; Failure to Follow Policy	5 CFR 2635 (Subpart H) ; see TSA MD 1100.75-3, Handbook, Section Z.	LOR to 14-day suspension	LOC	15-day suspension to removal
19	Entering into an unauthorized procurement commitment or personal services contract	Inappropriate Conduct; Exercising Poor Judgment	TSA MD 1100.73-5, Handbook, Section C.	5-day to 10-day suspension	LOR to 4-day suspension	11-day suspension to removal
20	Unauthorized canvassing, soliciting, or peddling at TSA or DHS worksite or while on duty	Inappropriate Conduct; Failure to Follow Policy	TSA MD 1100.73-5, *Employee Responsibilities and Conduct*, Handbook, Section T.	LOR to 1-day suspension	LOC	2-day to removal
21	Disclosure of proprietary or source selection information regarding a procurement action	Inappropriate conduct; Unauthorized Disclosure of Information	TSA MD 1100.73-5, Handbook, Section B (3).	5-day to 14-day suspension	LOR to 4-day suspension	15-day suspension to removal
22	Failure to honor just debts or legal obligations in a timely manner	Failure to Honor Financial Obligations; Failure to Timely Honor Debts	5 CFR 2635; TSA MD 1100.73-5, Handbook, Section W. Includes untimely payment of government-sponsored travel card bills; this does not include conduct that results in a loss of travel card for employees for whom maintaining a card is a condition of employment; this is separate from any action that may be taken by Personnel Security.	LOR to 14-day suspension	LOC	15-day suspension to removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
23	Conducting or participating in gambling activity while on duty or in uniform	Gambling on Duty; Gambling While in Uniform	TSA MD 1100.73-5, Handbook, Section U. Includes gambling on the Internet.	1-day to 14-day suspension	LOR	15-day suspension to removal
24	Criminal, infamous, immoral or notoriously disgraceful conduct; conduct that results in a felony or misdemeanor conviction (or finding of not guilty by reason of insanity), guilty or no contest plea, or equivalent or similar legal result or action (the misconduct shall not be deemed "mitigated" by a plea arrangement, suspended sentence, parole in lieu of confinement, sentence limited to time served, probation or other modification of penalty attached to the conviction or associated with the crime)	Off-Duty Misconduct; Engaging in Criminal Misconduct; Conduct Unbecoming; Inappropriate Conduct	5 CFR 735.203; may be on or off-duty; includes misconduct that may be related to the mission of DHS, may include misconduct that receives adverse news media attention or concern by other governmental entities. Criminal misconduct under this provision may include behaviors addressed elsewhere in this Table, such as improper acceptance of money or gifts; if the conduct is addressed through criminal processes, use this offense and range of penalty rather than the other provision NOTE: Conduct that results in a felony or misdemeanor indictment or warrant for arrest pending further court proceedings may result in an indefinite suspension until the matter is resolved (see TSA MD 1100.75-3	31-day suspension to removal	14-day to 30-day suspension	Removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
			Handbook Section J and Appendix A; see also TSA MD 1100.88-1), which notes the statutory requirement for removal of a federal law enforcement officer convicted of a felony.			
25	Taking reprisal against employees for exercising their rights, or attempting to dissuade employees from filing complaints	Inappropriate Conduct; Misuse of Position; Failure to Follow Policy; Inappropriate Conduct Toward a Subordinate	TSA MD 1100.73-5, Handbook, Section M (4).	10-day suspension to removal	LOR to 9-day suspension	Removal
26	Inappropriate Relationships in the Workplace / Nepotism	Failure to Report a Relationship; Failure to Follow Policy	TSA MD 1100.73-5 Handbook, Sections J and CC.	14-day suspension-removal	LOR to 13-day suspension.	15-day suspension to removal.
H	Neglect of Duty					
1	Missed Mission for FAMs	Negligent Performance of Duties; Failure to Exercise Due Diligence in Performance of Duties; Failure to Follow Procedures	OMS 3700 9.b. Progressive Discipline for Repeat Offenses.	1-day to 7-day suspension	LOC to LOR	8-day suspension to removal
2	Improperly equipped and/or incognizant of information required for the proper performance of duty	Negligent Performance of Duties; Failure to Exercise Due Diligence in Performance of Duties; Failure to Follow Procedures	OMS 3700 9.c. Progressive Discipline for Repeat Offenses.	3-day to 14-day suspension	LOC to 2-day suspension	15-day suspension to removal
3	Interference with other employees in the performance of official duties	Inappropriate Conduct; Unprofessional Conduct; Misuse of Position	TSA MD 1100.73-5, Section 6.B. Includes deliberate as well as reckless or negligent conduct.	LOR to 10-day suspension	LOC	11-day suspension to removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
4	Engaging in or encouraging a strike, work stoppage/slowdown, or sick out	Inappropriate Conduct; Engaging in a [strike, work stoppage, work slowdown, sick out]; Encouraging a [strike, work stoppage, work slowdown, sick out]	TSA MD 1100.73-5, Handbook, Section S.	Removal	N/A	N/A
5	Inattention to duty where there is no potential danger to life or property or potential loss of revenue	Inattention to Duty; Negligent Performance of Duties	TSA MD 1100.73-5, Section 6.B.	LOR to 10-day suspension	LOC	11-day suspension to removal
6	Inattention to duty, where there is a potential danger to human life, property, or revenue, or damage/injury/loss actually occurs	Inattention to Duty; Negligent Performance of Duty	TSA MD 1100.73-5, Section 6.B; also Section E.	14-day suspension to removal	LOC to 13-day suspension	Removal
7	Negligent or careless performance of duties; including inspection, investigation, or other enforcement function	Failure to Exercise Due Diligence in Performance of Duties; Failure to Follow Procedure; Negligent Performance of Duties	TSA MD 1100.73-5, Negative impact could be considered an aggravating factor.	5-day to 14-day suspension	LOR to 4-day suspension	15-day suspension to removal
I	Personal Appearance and Hygiene/Uniform Requirements					
1	Violation of TSO uniform and appearance requirements (except in cases involving medical or religious accommodation)	Failure to Follow Policy; Inappropriate Conduct; Failure to Adhere to Uniform Requirements	TSA MD 1100.73-2, *TSO Dress and Appearance Responsibilities;* also covers violations of accommodations that are granted.	LOR to 3-day suspension	LOC	4-day to 14-day suspension

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
2	Failure to maintain a neat, clean and businesslike appearance or to comply with uniform or dress standards while on duty	Failure to Comply with Uniform Standards; Unprofessional Conduct	TSA MD 1100.73-5, *Employee Responsibilities and Conduct*, Section 5(4).	LOR to 3-day suspension	LOC	4-day to 14-day suspension
J	Property Misuse/Damage					
1	Improper or negligent operation of government owned or leased property	Misuse of Government Property; Negligent Operation of Government Property; Unauthorized Use of Government Property; Failure to Follow Proper Procedures for Handling Govt Property	TSA MD 1100.73-5, Handbook, Section D. No willfulness or intent; includes automobiles, and other equipment.	LOR to 14-day suspension	LOC	15-day suspension to removal
2	Damaging government property, equipment, records, etc.	Damaging Government Property; Losing Government Property; Misuse of Government Property; Failure to Follow Established Procedures	TSA MD 1100.73-5, Handbook, Section D. Penalty depends on value of property, extent of damage, and degree of fault.	LOR to 14-day suspension	LOC	15-day suspension to removal
3	Unauthorized use or misuse of law enforcement equipment, resources	Misuse of Law Enforcement Equipment; Failure to Follow Procedures	TSA MD 1100.73-5, Handbook, Section D. Includes unauthorized use of government database(s) and electronic sensing devices; this charge carries a higher penalty than misuse of other government property as it could potentially jeopardize a law enforcement operation.	LOR to 14-day suspension	LOC	15-day suspension to removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
4	Willful misuse of (or authorizing the misuse of) any government-owned or -leased passenger vehicle (including aircraft and seagoing vessel); authorizing the use of government vehicle for other than official purposes	Misuse of Government Vehicle; Use of a Government Vehicle for an Unauthorized Purpose; Authorizing Use of Government Vehicle for Unauthorized Purpose	31 USC 1349(b); TSA MD 1100.73-5 Handbook, Section D.(8); TSA MD200.53; TSA MD 200.59.	30-day suspension to removal for willful offenses; 3-14-day suspension for other offenses	N/A for willful offenses; LOC to LOR for other offenses	Removal
5	Unauthorized personal use of government computers, software systems, fax machines, telephones, copiers, etc.	Unauthorized Use of Government Property; Misuse of Government Property; Misuse of Government Computer	TSA MD 1100.73-5, Handbook, Section D. Includes use that interferes with one's work or the work of others, excessive personal use of such equipment or systems, accessing or transmitting sexually explicit material.	14-day suspension to removal	LOR to 13-day suspension	Removal
K	Reporting Responsibilities					
1	Failure to promptly report one's own arrest to superiors and/or appropriate investigative office	Failure to Report Arrest; Failure to Timely Report Arrest	TSA MD 1100.73-5, Section 5.A (8). All employees must report personal arrests to their immediate supervisor or to any manager in the chain of supervision within 24 hours of the arrest, or as soon as possible thereafter. When an employee fails to report an arrest within 48 hours, the penalty may be in Aggravated Penalty Range.	3-day suspension to 5-day suspension	1-day suspension to 2-day suspension	6-day suspension to removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
2	Concealing or failing to report, missing, lost, or damaged, government property or funds or property or funds in the government's custody or care	Failure to Comply with Reporting Obligation; Failure to Report Lost Property; Failure to Safeguard Government Property	TSA MD 1100.73-5, Section 5.A (9) and (10).	6-day to 10-day suspension	LOC to 5-day suspension	15-day suspension to removal
3	Failing to report an accident or injury to a person, including oneself, or damage to property, occurring on duty or arising from acts committed or occurring within the scope of employment	Failure to Report [accident; injury; damage to property]	TSA MD 1100.73-5, Section 5.A (12).	6-day to14-day suspension	LOC to 5-day suspension	15-day suspension to removal
4	Failing to promptly report violations of TSA policies or procedures	Failure to Report; Inappropriate Conduct; Failure to Exercise Due Diligence	TSA MD 1100.73-5, Section 5.A (8).	LOR to 3-day suspension	LOC	4-day suspension to removal
5	Failing to timely complete or submit required financial disclosure forms	Failing to Timely File Financial Disclosure Form; Failure to Follow Directions	TSA MD 1100.73-5, Section 5.A (8).	LOR to 2-day suspension	LOC	3-day to 7-day suspension

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
L	Safety/Security/Health					
1	Failure to observe and/or enforce safety and health regulations, rules, signs, and instructions, or to perform duties in a safe manner; failure to wear protective clothing and equipment, including vehicle safety restraints	Failure to Observe Safety Procedures; Unsafe Use of Government Equipment; Failure to Follow Instructions; Careless Performance of Duties; Negligent Performance of Duties; Inattention to Duty; Improper Use of Government Equipment	TSA MD 1100.73-5, Handbook, Section E.	LOR to 14-day suspension	LOC	15-day suspension to removal
2	Endangering the safety of, or causing injury to, any person through carelessness or failure to follow instructions	Careless Performance of Duties; Engaging in Unsafe Practices; Inattention to Duty; Failure to Follow Instructions; Negligent Performance of Duties; Unsafe Use of Government Equipment	Evidence of willfulness or recklessness are strong aggravating factors.	3-day to 14-day suspension	LOR to 2-day suspension	15-day suspension to removal
3	Violation of local traffic laws of any state or political subdivision while operating a government-owned or leased vehicle	Misuse of a Government Vehicle; Violation of Traffic Laws While Operating a Government Vehicle; Conduct Unbecoming; Inappropriate Conduct	Does not apply to authorized surveillance or other law enforcement operations.	LOR to 14-day suspension	LOC	15-day suspension to removal
4	Violations of traffic regulations, , or improper operation of a private vehicle on duty or on government controlled premises	Inappropriate Conduct; Failure to Follow Established Procedures	Disciplinary action may be taken in addition to any applicable traffic fine or penalty.	LOR to 14-day suspension	LOC	15-day suspension to removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
M	Screening and Security					
1	Failure to follow Standard Operating Procedures	Failure to Follow Standard Operating Procedures; Failure to Follow Instructions	TSA MD 1100.75-3 Handbook, Appendix A. Inadvertent violations may warrant the Mitigated Penalty Range; deliberate violations warrant the Aggravated Penalty Range.	5-day suspension to removal	LOR to 4-day suspension	Removal
2	Intentionally allowing persons or property to bypass required screening	Intentionally Allowing a Person to Bypass Required Screening; Intentionally Allowing Property to Bypass Required Screening; Failure to Follow Standard Operating Procedure; Intentional Failure to Follow Standard Operating Procedure	TSA MD 1100.75-3 Handbook, Appendix A; this includes TSA employees. Removal is required for intentional serious security breaches per TSA MD 1100.75-3 Handbook, Appendix A.1.f.i. & ii.	7-day suspension to removal; removal required for intentional serious security breaches	LOR to 6-day suspension	Removal
3	Knowingly operating equipment that is not working or not turned on	Failure to Follow Standard Operating Procedure; Knowingly Operating Equipment that is Not Working; Knowingly Operating Equipment that is Not Turned On	TSA MD 1100.75-3 Handbook, Appendix A.	5-day suspension to removal; removal required for intentional serious security breaches	LOR to 4-day suspension	Removal
4	Failure to conduct an operational check at the start of a shift	Failure to Following Standard Operating Procedure; Failure to Exercise Due Diligence in the Performance of Duties; Negligent Performance of Duties	TSA MD 1100.75-3 Handbook, Appendix A.	3-day suspension to removal; removal required for intentional serious security breaches	LOC to 2-day suspension	Removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
5	Sleeping while engaged in security duties	Sleeping on Duty; Inattention to Duty	TSA MD 1100.75-3 Handbook, Appendix A. Includes sleeping while on duty at a passenger security checkpoint, an exit lane or the baggage screening area; and FAMs traveling in mission status.	Removal	14-day to 30-day suspension	Removal
6	Engaging in an activity that seriously undermines security or that could pose a threat or danger to the traveling public	Inappropriate Conduct; Failure to Follow Procedures; Engaging in Unsafe Work Practices; Negligent Performance of Duties	TSA MD 1100.73-5 Section 6.c.; TSA MD 1100.75-3 Handbook, Appendix A.	14-day suspension to removal	LOR to 13-day suspension	15-day suspension to removal
N	Unauthorized Taking/Possession					
1	Unauthorized use, removal, or possession of a thing of value belonging to another employee or private citizen; colluding with others to commit such acts	Unauthorized Possession; Unauthorized Use; Unauthorized Removal; Inappropriate Conduct; Conduct Unbecoming		14-day suspension to removal	LOR to 13-day suspension	Removal
2	Actual or attempted theft, or other unauthorized taking of funds or property owned or controlled by the Government; colluding with others to commit such acts	Unauthorized Possession; Unauthorized Taking; Attempted Unauthorized Possession; Inappropriate Conduct; Conduct Unbecoming	Conversion of seized property to personal use or sale may result in removal for a first offense.	14-day suspension to removal.	LOR to 13-day suspension	Removal
3	Theft	Theft	TSA MD 1100.75-3; TSA MD 1100.75-3 Handbook, Appendix A.1.e. Removal required for TSO.	14-day suspension to removal; for TSOs: removal is mandatory	LOR to 13-day suspension	Removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
O	Weapons-Related					
1	Failure to report the discharge of a firearm or use of a weapon as required by applicable policy	Failure to Follow Policy; Failure to Report	TWP 8220 Section 8 For all items in this section, "weapon" refers to, but is not limited to, authorized firearms, batons, and chemical spray.	8-day to 14-day suspension	LOR to 7-day suspension	15-day suspension to removal
2	Inappropriate storage, care, loss, or misplacement of a weapon or ammunition	Improper Handling of a Weapon; Failure to Follow Proper Safety Practices; Loss of TSA-Issued Firearm	TWP 8220 Section 6 (B) Damage caused by carelessness may be an aggravating factor.	5-day to 14-day suspension	LOR to 4-day suspension	15-day suspension to removal
3	Inappropriate display of a weapon or ammunition	Inappropriate Conduct; Conduct Unbecoming; Unprofessional Conduct; Failure to Follow Proper Safety Practices; Inappropriate Storage of a Weapon	TWP 8220 Section 4 (C)(5) Includes inappropriate brandishing.	5-day to 14-day suspension	LOR to 4-day suspension	15-day suspension to removal
4	Unauthorized or illegal possession of a weapon or ammunition	Unauthorized Possession of a Weapon; Unauthorized Possession of Ammunition	TWP 8220 Section 4(C).	6-day to 14-day suspension	LOR to 5-day suspension	15-day suspension to removal
5	Unnecessary discharge of a weapon	Misuse of Firearm; Failure to Follow Proper Safety Practices; Failure to Follow Proper Gun Handling Practices; Exercising Poor Judgment	TWP 8220 Section 8.	See (a) and (b) below:	See (a) and (b) below:	See (a) and (b) below:

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
	(a) Where there is apparent danger to human life:					
	(1) Intentional			Removal	N/A	N/A
	(2) Unintentional			14-day to removal	10-day to 13-day suspension	Removal
	(b) Where there is no apparent danger to human life:					
	(1) Intentional			14-day suspension to removal	7-day to 13-day suspension	Removal
	(2) Unintentional			7-day to 14-day suspension	3-day to 6-day suspension	15-day suspension to removal
P	Safeguarding Information		5 U.S.C. § 552a; Office of Management and Budget Memorandum M-07-016, Safeguarding Against and Responding to the Breach of Personally Identifiable Information			
1	Careless and/or negligent handling of PII, or other materials covered by the Privacy Act	Failure to Secure Government Information; Failure to Follow Procedures; Improper Handling of Government Documents [Information]; Unauthorized Disclosure; Failure to Safeguard Government Information	TSA MD 3700.4, Handling Sensitive Personally Identifiable Information.	LOR to 14-day suspension	Remedial Training to LOC	Removal
2	Unauthorized disclosure of PII or other materials covered by the Privacy Act	Unauthorized Disclosure of Information	TSA MD 3700.4, Handling Sensitive Personally Identifiable Information.	LOR to 14-day suspension	Remedial Training to LOC	Removal

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
3	Violation of security procedures covering information, documents, records, or other material that is classified or SSI	Improper Handling of Sensitive Information; Failure to Follow Proper Procedures; Improper Disclosure of Sensitive Information; Failure to Safeguard Government Information	DHS MD 11056.1, Sensitive Security Information; TSA MD 2810.1, SSI Program.	LOR to 14-day suspension	LOC	15-day suspension to removal
4	Unauthorized disclosure of information, documents, records, or other material that is classified or SSI	Unauthorized Disclosure; Improper Handling of Government Information; Failure to Safeguard Government Information	DHS MD 11056.1, Sensitive Security Information; TSA MD 2810.1, SSI Program.	15-day to 30-day suspension	1-day to 14-day suspension	Removal
Q	Mishandling of Classified National Security Information					
1	An infraction is when no compromise of classified of Classified National Security Information has occurred		These are incidents for which an employee unwittingly grants eligibility for, or allows access to Classified National Security Information (CNSI).	Remedial Training to LOC in Personnel Security Division file for 1 year	Remedial Training	N/A

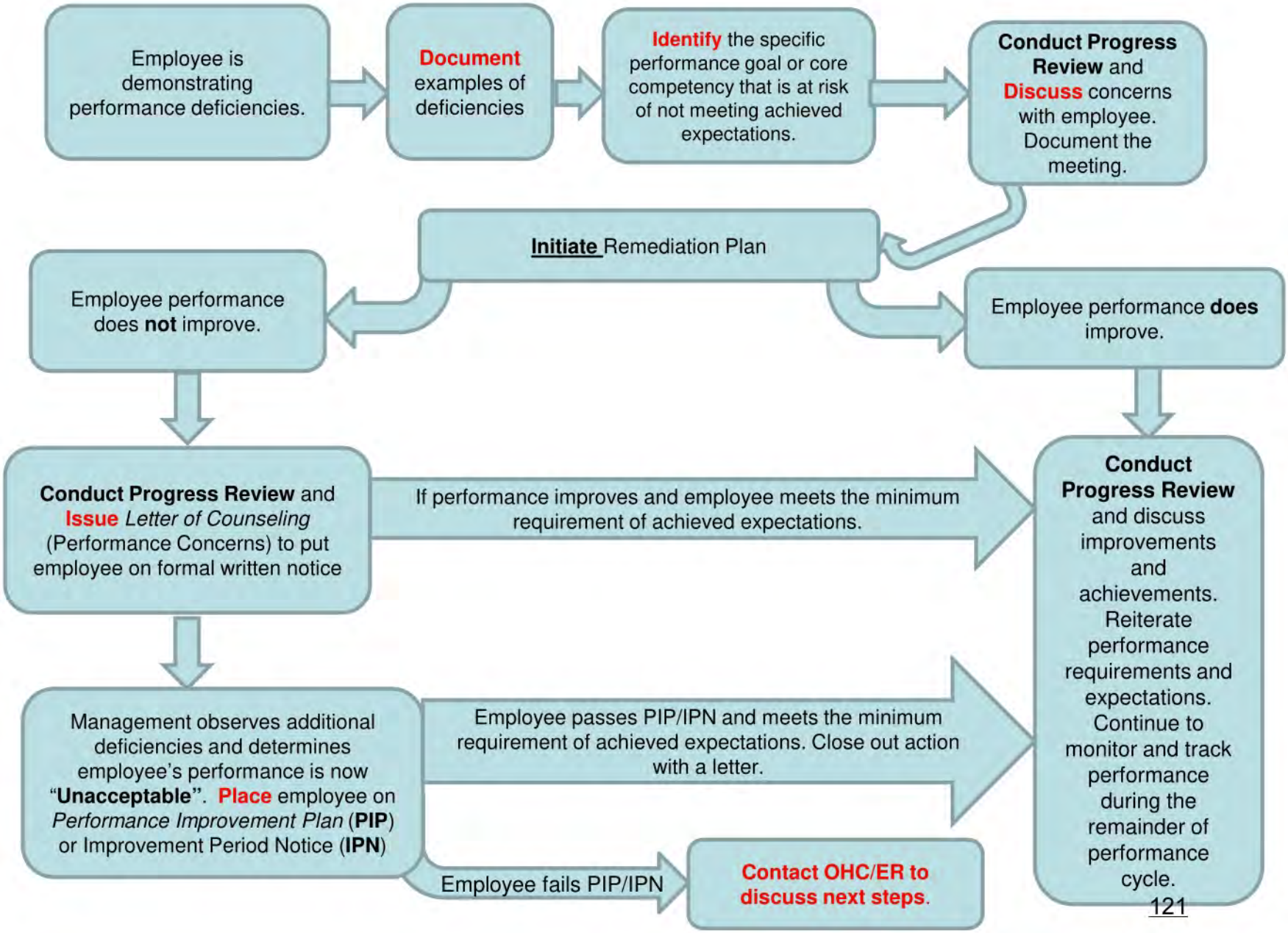
	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
2	A violation of Classified National Security Information		These are incidents for which an employee knowingly and willfully grants eligibility for, or allows access to Classified National Security Information (CNSI). Executive Order 12968, Section 6.4. Executive Order 13526, Section 5.5(c). Title 50 USC Section 783 Title 18 USC Section 798 Title 18 USC Section 794 DHS Instruction 121-01-011 Chapter 5, Section 8.	LOR to removal Loss or denial of access to CNSI The type of sanction imposed is based on several considerations, including: (1) Severity of the incident; (2) Intent of the person committing the security violation or infraction; (3) Extent of training the person(s) has received; and (4) Frequency of which the individual has been found responsible in the commission of other such security violations and infractions. DHS Instruction 121-01-011, Chapter 5, Section 8	Remedial Training to LOC in Personnel Security Division file for 1 year	Removal and fine of not more than $10,000 and/or imprisonment

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
3	Any knowing, willful, or negligent action that could reasonably be expected to result in an unauthorized disclosure of classified information		DHS Instruction 121-01-011 Chapter 5, Section 2.	LOR to removal Loss or denial of access to CNSI	Remedial Training to LOC in Personnel Security Division file for 1 year	Removal and fine of not more than $10,000 and/or imprisonment
4	Any knowing, willful, or negligent action to classify or continue the classification of information contrary to the requirements of Executive Order 13526 a its implementing directive 32 CFR 2001		DHS Instruction 121-01-011 Chapter 5, Section 2.	LOR to removal Loss or denial of access to CNSI	Remedial Training to LOC in Personnel Security Division file for 1 year	Removal and fine of not more than $10,000 and/or imprisonment
5	Any incident involving computer or telecommunications equipment or media that may result in disclosure of classified information to unauthorized individuals, or that results in unauthorized modification or destruction of classified system data, loss of classified computer system processing capability, or loss or theft of classified computer system media		DHS Instruction 121-01-011 Chapter 5, Section 2.	LOR to removal Loss or denial of access to CNSI	Remedial Training to LOC in Personnel Security Division file for 1 year	Removal and fine of not more than $10,000 and/or imprisonment

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
6	Any incident involving the processing of classified information on computer equipment that has not been specifically approved and accredited for that purpose by an authorized official		DHS Instruction 121-01-011 Chapter 5, Section 2.	LOR to removal Loss or denial of access to CNSI	Remedial Training to LOC in Personnel Security Division file for 1 year	Removal and fine of not more than $10,000 and/or imprisonment
7	Any incident involving the shipment of classified information by an unapproved method or any evidence of tampering with a shipment, delivery, or mailing of packages containing classified information		DHS Instruction 121-01-011 Chapter 5, Section 2.	LOR to removal Loss or denial of access to CNSI	Remedial Training To LOC in Personnel Security file for 1 year	Removal and fine of not more than $10,000 and/or imprisonment
8	Any incident in which classified information is not stored by an approved means		DHS Instruction 121-01-011 Chapter 5, Section 2.	LOR to removal Loss or denial of access to CNSI	Remedial Training To LOC in Personnel Security Division file for 1 year	Removal and fine of not more than $10,000 and/or imprisonment
9	Any incident in which classified information is inadvertently revealed or released to a person not authorized access		DHS Instruction 121-01-011 Chapter 5, Section 2.	LOR to removal Loss or denial of access to CNSI	Remedial Training To LOC in Personnel Security Division file for 1 year	Removal and fine of not more than $10,000 and/or imprisonment
10	Any incident in which classified information has been destroyed without authorized means		DHS Instruction 121-01-011 Chapter 5, Section 2.	LOR to removal Loss or denial of access to CNSI	Remedial Training To LOC in Personnel Security Division file for 1 year	Removal and fine of not more than $10,000 and/or imprisonment

	NATURE OF OFFENSES	Possible Charges	REFERENCES/ EXPLANATORY NOTES	RECOMMENDED PENALTY RANGE	MITIGATED PENALTY RANGE	AGGRAVATED PENALTY RANGE
11	Any incident in which classified information has been reproduced without authorization or contrary to specific restrictions imposed by the originator		DHS Instruction 121-01-011 Chapter 5, Section 2.	LOR to removal Loss or denial of access to CNSI	Remedial Training To LOC in Personnel Security Division file for 1 year	Removal and fine of not more than $10,000 and/or imprisonment
12	Any other incident in which classified information is not safeguarded or handled in accordance with prescribed procedures		DHS Instruction 121-01-011 Chapter 5, Section 2.	LOR to removal Loss or denial of access to CNSI	Remedial Training To LOC in Personnel Security Division file for 1 year	Removal and fine of not more than $10,000 and/or imprisonment

Addressing Performance Deficiencies



Resignation *v.* Resignation ILIA (in lieu of an ***involuntary*** action)

A Resignation (NOA[1] 317) is a separation initiated by an employee; it cannot be denied or delayed because management is drafting an adverse action. Unless the employee was notified in writing BEFORE submitting his/her resignation, DO NOT record any adverse Agency Finding on the Standard Form 52 (SF52) *Request for Personnel Action,* the SF50 *Notification of Personnel Action*, in the employee's Official Personnel Folder, or in the Employee Performance Folder. TSA will process what is typically referred to as a "clean SF50." However, if management is aware of misconduct (e.g., positive drug test, arrest), that information should be noted in the ER Data Base (under Description/Issue.

Agency findings should be documented on the resignation SF 52/50 (NOA 317) *only* when the employee has appeal rights (i.e., MSPB or OAB). An employee with **appeal rights[2] (i.e., completed his/her trial period),** should have their SF52/SF50 Resignation annotated with an Agency Finding *only* when the employee has been notified *in writing* of an agency action *BEFORE* the resignation was submitted. Specifically, an Agency Finding should be included on the SF52 if the employee was notified of:

- a proposed or pending disciplinary or adverse action;
- a proposed or pending position change due to failure to complete a supervisory/managerial probationary period successfully; or,
- proposed removal from the Senior Executive Service.

When the employee has been notified in *writing* **and** *submits* his/her resignation (NOA 317), the following remarks/codes should be used, as appropriate:

Code Name: Explanation

✓ (S28) Agency Finding: Resigned after receiving written notice on (date) of decision to separate for (reasons).

✓ (S29) Agency Finding: Resigned after receiving written notice on (date) of decision to demote for (reasons).

✓ (S30) Agency Finding: Resigned after receiving written notice on (date) of decision to suspend for (reasons).

✓ (S31) Agency Finding: Resigned after receiving written notice on (date) of proposal to separate for (reasons).

✓ (S32) Agency Finding: Resigned after receiving written notice on (date) of proposal to demote for (reasons).

✓ (S33) Agency Finding: Resigned after receiving written notice on (date) of proposal to suspend for (reasons).

Unless the employee was notified in writing BEFORE submitting the resignation, do NOT record any adverse agency findings on the SF 52 and 50.

A Resignation - ILIA (in lieu of involuntary action) **(NOA 312)** is a separation initiated by the employee under circumstances that meet the definition of "involuntary separation" in Chapter 44 of **The CSRS and FERS Handbook.** **(NOTE:** ***INVOLUNTARY SEPARATION*** is a separation against the will of and without the consent of the employee, other than separation for cause on charges of misconduct or delinquency. Examples include separation based on reduction in force, abolishment of position, expiration of term of office, lack of funds, and unacceptable performance (unless due to the employee's misconduct).

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[1] Nature of Action

[2] When an employee is serving an initial appointment a trial period as required by TSA agency regulations, or on an appointment which does not afford appeal rights, NO agency findings regarding employee's resignation or agency reasons for termination may be placed on the SF 52/50.

Employee Relations Program Division
Office of Human Capital

Course Title: *2-Day Basic Supervisory Employee Relations Training*
Date:
Location:
Instructor:

Course Evaluation

Participants: The purpose of this form is to provide you with an opportunity to give feedback on the course you have just attended. This evaluation is important because it provides us with information to improve the course.

Please check the appropriate box and offer any comments you may have about the course:

Element	Excellent	Good	Fair	Poor	Comments
Instructor's demonstrated knowledge of course content					
Instructor's willingness and effectiveness in asking and answering questions					
Instructor's overall effectiveness					
How would you rate the class materials/handouts?					
How would you rate your overall experience with this training class?					

Please answer the following questions:

1. What was most helpful?

2. What was least helpful?

3. Any suggestions or comments to help us improve future training classes?

4. Any additional comments…

Thank You!

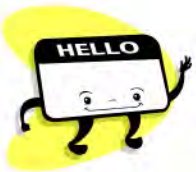
2-Day Employee Relations Basic Supervisory Training

Transportation Security Administration

OHC WP

Introductions

- Let's get acquainted…
  - ✓Name
  - ✓Title/Position
  - ✓How long at TSA?
  - ✓Employee Relations experience, if any



Transportation Security Administration

OHC WP

Logistics

- Start & End Times
- Breaks
- Phones & Email Messages
- Other Administrative Information

Transportation Security Administration

Course Objectives

- Overview of Employee Relations (ER)
- Understand TSA's *Leadership Problem Solving Model (LPSM)* and *Interest-Based Problem Solving (IBPS)*
- Enhance ER knowledge and skills
- Understand penalty analysis
- Develop skills to draft corrective, disciplinary and adverse actions – "*Management Tool Box*"
- Understand sufficiency review
- Avenues of Redress

Transportation Security Administration

TSA Employee Relations Division

- Non-Disciplinary and Corrective Actions
- Disciplinary and Adverse Actions
- Addressing Unacceptable Performance
- Grievances and Appeals
- Suitability
- Integrated Database

Transportation Security Administration

OHC WP

Traditional Management and Employee Rights

Management Rights

- Hire
- Fire
- Promote
- Discipline
- Assign work
- Reassign
- Reward
- Determine Rules
- Determine Methods/Means/ Technologies

Employee Rights

- Due Process
- Representation
- Grieve
- Appeal/MSPB/OAB/NRC
- EEO Protection
- Privacy
- Health and Safety
- Whistleblowing
- Leave
- Protection from Hostile, Capricious and Arbitrary Actions
- Protection Against Prohibited Personnel Activity

Transportation Security Administration

OHC WP

Employee Relations Responsibilities

Managers/Supervisors

- Make decisions on appropriate actions to include corrective, disciplinary and adverse actions.

ER Specialists or HR Representatives

- Advise…
  - On solutions to employee problems
  - Corrective, disciplinary and adverse actions
  - Addressing unacceptable performance
  - On statutory, regulatory or policy requirements

Transportation Security Administration

OHC WP

Traditional Approach to Addressing Employee Problems

Rights-based Approach

Stresses factors such as control, obedience, authority, and employee expectations centered on fitting in, compliance, and respect:

- Supervisor maintains control over information, procedures, etc.
- Employee obeys supervisory orders
- Supervisor is the authority figure

Transportation Security Administration

OHC WP

TSA Approach to Addressing Employee Problems

Interest-Based Approach

Stresses factors such as openness, information sharing, respect, creativeness, consensus and objectivity. Involves developing:

- **Clear terms of reference and standards**
- **Effective communication processes and tools**
- **Ground rules for dealing with interpersonal conflict**
- **Consensus building methods and processes**
- **Methods of measuring outcomes and satisfaction**

Transportation Security Administration

OHC WP

Interest-Based Problem Solving

Management Role

- **Practice openness, information sharing, respect and objectivity**
- **Set clear expectations and standards**
- **Address behavior and factors driving behavior – root causes**
- **Focus on outcomes and not personalities**
- **Constructively deal with conflict**
- **Approach people problems by *"recognizing, responding, resolving and reflecting"***
- **Focus on *"employee problems"* vs. *"problem employees***
- ***80/20 Rule***

Transportation Security Administration

OHC WP

Interest-Based Problem Solving

Employee Role

- **Responsibility to be *"Part of the Solution"* vs. *"Part of the Problem"***
- **Choose to accept responsibility and change behavior or face consequences for engaging in undesirable conduct**
- **Acceptance of responsibility makes a good candidate for interest-based problem solving**
- **Refusal to acknowledge problem forces management to use rights-based approach**

Transportation Security Administration

OHC WP

Exercise Managerial Discretion

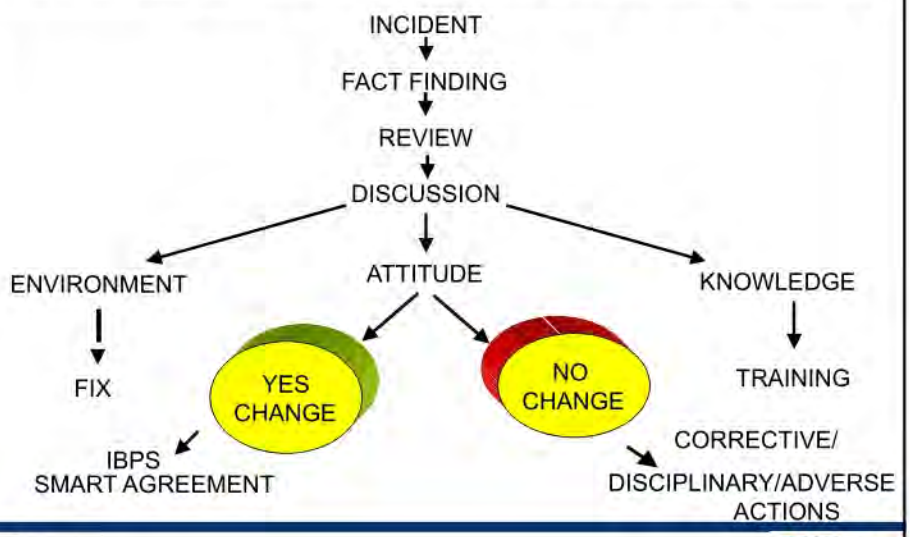
State Business Reason (Mission) and Is Not …

- **Arbitrary (determined by impulse or whim)**
- **Capricious (done with ill will)**
- **Discriminatory (violation of Title VII/disparate treatment)**
- **Retaliatory (revenge, repayment)**

Transportation Security Administration

OHC WP

Leadership Problem Solving Model (LPSM)



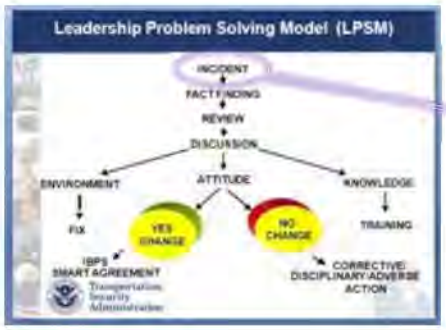
Transportation Security Administration

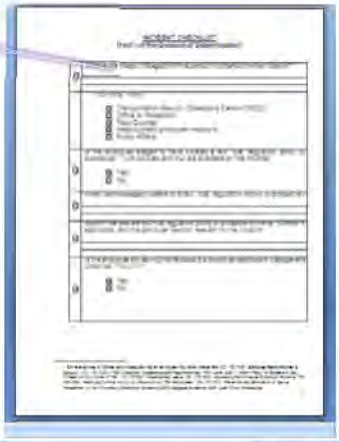
Working Through the LPSM

- Incident Checklist
- Fact Finding Checklist
- Review Checklist
- Discussion Checklist
- Deciding on Appropriate Action Checklist

Transportation Security Administration

Incident Checklist





Transportation Security Administration

OHC WP

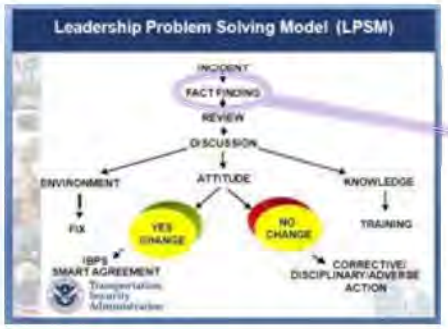
Incident Reporting and Fact Finding Responsibilities

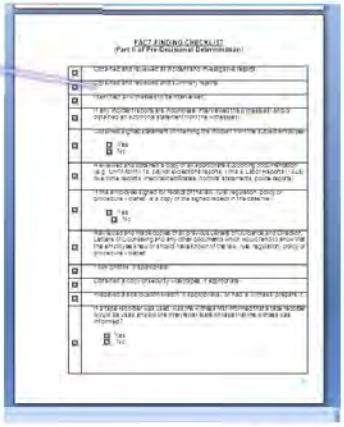
- **Supervisors must promptly notify OOI and the Personnel Security Section (PerSec) of known or suspected arrests or criminal activity on the part of employees (all levels)**
- **In accordance with TSA's PerSec program, supervisors must report any information that raises doubts about an employees continued eligibility for TSA employment or security clearance, such as access to sensitive information.**
- **OOI/DHS OIG is responsible for investigating all matters involving senior-level (K through M pay bands, TSES, TSARs and FSD in Title) law enforcement, and J band employees.**

Transportation Security Administration

OHC WP

Fact Finding Checklist





TSA Guidance on conducting local inquires:

TSA MD 700.2 Informal Administrative Inquiries

Transportation Security Administration

Fact Finding

Interviewing Techniques

- Have a clear set of objectives
- Set the climate
- Control the direction of the interview
- Use open ended/closed ended questions
- Listen
- Take notes
- Gather facts
- Get a signed/dated written statement

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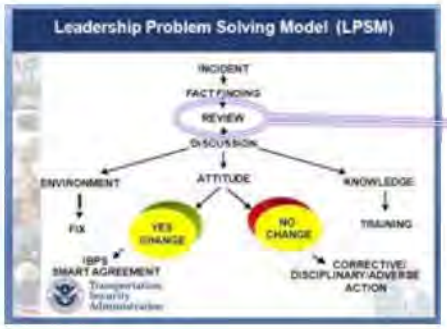
Review Checklist



Evidence

- Preponderance
  - More likely than not
  - Used for most discipline and adverse actions
- Substantial
  - Lower standard that preponderance
  - A reasonable person might conclude/accept, even though other reasonable persons might disagree
  - Used for one-step and performance-based actions

Evidence

- Substantial Evidence
  - Performance–based Actions
  - Certain One-Step Removals (TSOs only)*
- Preponderance of the evidence is the standard of proof required for all other disciplinary and adverse actions

** Per the Handbook to TSA MD 1100.75-3*

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Evidence (Cont.)

Credibility Considerations

- Eyewitness or hearsay
- Contradictions -- Facts in dispute
- Witness's bias or lack of bias
- Prior inconsistent statement
- Relationships

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Nexus

- Adverse or disciplinary action may be taken when there is a nexus, or connection, between a legitimate government interest and the employee's unacceptable performance, conduct, or matter that is the basis for the adverse or disciplinary action.
- Presumed for unsatisfactory job performance or on-duty misconduct, or in the case of criminal activity or other egregious or especially notorious misconduct that impacts TSA's mission or impacts the individual's ability to perform the duties of his/her position.
- The agency must show that its adverse or disciplinary action promotes the efficiency of the service.

Nexus (Cont.)
Off-duty Conduct

Establishing Nexus:

1) Presumption of nexus may arise in certain egregious circumstances;

2) by a preponderance of evidence, that the misconduct at issue has adversely affected the employee's or coworkers' job performance or the agency trust and confidence in the employee's job performance; and

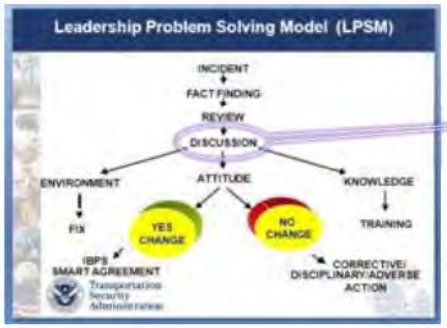
3) it may show, by a preponderance of the evidence, that the misconduct interfered with or adversely affected the agency's mission

Workshop

Conducting Fact-Finding

Transportation Security Administration

Discussion Checklist



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Pre-Decisional Discussion

Provides "Due Process" to employees in 1-step actions:

- **Right to oral/written notice of the charge(s) or allegation(s)**
- **Right to an explanation of the evidence and the possible consequences**
- **Right to an opportunity to present their side of the story**

NOTE: Failure to provide proper due process would be cause for overturning a disciplinary or adverse action on appeal.

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Pre-Decisional Discussion

Process

- **Set the climate**
- **Give your perspective**
- **Get the employee's perspective**
- **Determine the root cause of the problem**
- **Determine appropriate options**

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Workshop

Conducting a Pre-decisional Discussion*

Utilizing Discussion Checklist

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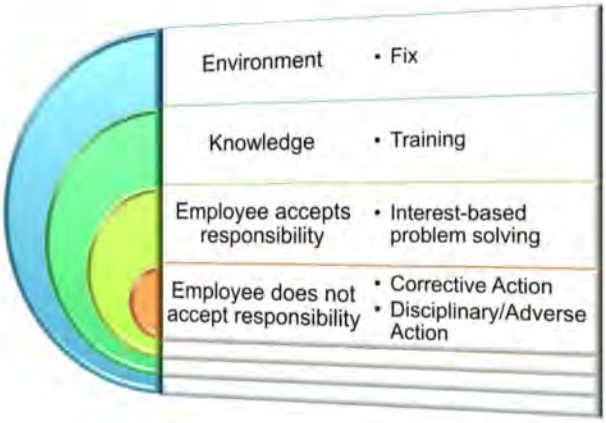
After the Pre-Decisional Discussion



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What's Next?

- Is there sufficient evidence to support a charge of misconduct?
  - If no, collect more evidence or close out the case
  - If yes, proceed…
- What if there is new information?

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Management "Tool Kit"

Corrective Actions

- Letter of Guidance and Direction
- Letter of Counseling
- Letter of Leave Restriction
- S.M.A.R.T. Agreements
- PIP/IPN

Disciplinary Actions

- Letter of Reprimand
- Reprimand in Lieu of Suspension ≤ 14 days *
- Suspension ≤ 14 days*

Adverse Actions

- Suspensions ≥ 15 days
- Indefinite Suspensions*
- Involuntary Demotion for Performance/Conduct
- Removal*

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* Limited Use of 1-Step Actions

One-Step Actions

- Only a Decision Notice is Issued
- Can only be used for TSOs (TSO, LTSO, STSO, MTSO, ETSO, STI, BDO)
- Must conduct the PDD
- Can only be used for
  - RILO (≤ 3 days)
  - Suspension (≤ 3 Days)
  - Indefinite Suspensions
  - Certain Removals

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One-Step Removals

- Validated Drug Test Failure
- Validated Alcohol Test Failure (on duty)
- Refusal to submit (drug or alcohol)
- Theft, Illegal drug use, Possession of illegal drugs (on duty), Alcohol use or being under the influence (on duty)
- Intentional Serious Security Breach
- Sleeping on Duty while assigned to security activity
- Certain Arrests (See Appendix A, Section 2. g)

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Indefinite Suspension

- **Indefinite suspension places an employee in a non-pay/non-duty status.**
- **Appropriate when evidence (i.e., more than a mere suspicion or allegation) exists to demonstrate misconduct.**

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Indefinite Suspension

Conditions under which may be imposed -

(a) Employee has been **indicted,** or there is equivalent legal process (such as a criminal information or bench appearance), for a **crime** for which a **sentence of imprisonment may be imposed**; or

(b) Employee has been **arrested pursuant to a warrant** issued by a judge or magistrate for a **crime** for which a **term of imprisonment may be imposed**; or

(c) An **investigation** is being conducted on **serious allegations** against an employee that **represents a threat**, which is so serious that if it proves to be true, the employee's continued presence at the worksite would **represent a threat to life, property, safety or the effective operation of the workplace**. This could include investigation into or allegations of theft, fraud or falsification, for example, where these is substantial evidence, and removal is the likely outcome; or

(d) An employee's **security clearance** has been **suspended, denied, or revoked**, **and** a security clearance is a **condition of employment or is otherwise required** for the employee's position.

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Indefinite Suspension

Important!

- **Once an indefinite suspension is imposed, management officials must determine if subsequent action, (i.e., removal), is justified.**
- **If justified, management officials should initiate appropriate action to propose the removal. If it is determined that further action is not warranted, the indefinite suspension will be terminated and the employee returned to duty.**

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Indefinite Suspension

Harmful/Procedural Errors

- **Failure to meet criteria of MD 1100.75-3**
  - **Incorrectly charging the underlying misconduct as a reason**
- **One-Step Process (TSO):**
  - **Failure to conduct pre-decisional meeting**
  - **Failure to respond to reconsideration request**
- **Failure to end indefinite suspension, if appropriate**

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Administrative Leave

When can you use it?

- When the employee's continued presence may represent a threat to others; result in loss or damage; or jeopardize government interests.
- FSD has authority to approve up to 30 days
- Authority may not be delegated
- Pending outcome of proposed removal, indefinite suspension, investigation, or management inquiry
- Decision must be supported by documentation
  - Detailed allegations
  - Alternatives considered
  - Justifications
  - Number of days required

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Administrative Leave

Employee Instructions

- Work Schedule Mon-Fri (8:00 to 4:30)
- Employee is responsible for being "on call"
- Must request leave if unavailable based on sick or annual leave usage
- Must schedule and use restored or "use or lose" as well as comp time
- "Use or lose" leave or comp time lost while on Admin leave will not be restored

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Drafting Disciplinary/Adverse Actions

Due Process

Right to a written notice of the reasons for the action and includes:

- **Charges: what did the employee do?**
- **Specifications: the factual details of the charge**
- **Material relied upon**
- **Right to representation**
- **Right to respond orally and/or in writing**
- **Written decision**
- **Right to appeal the decision***

*Different for Trial Period and non-Trial Period employees

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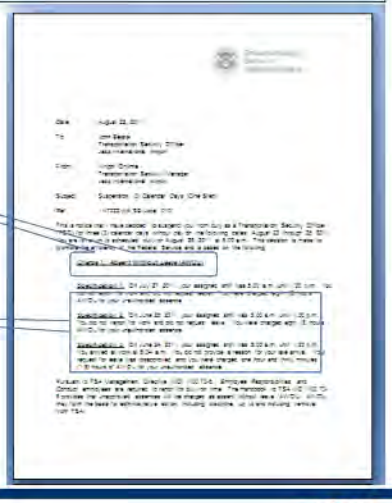
Charges and Specifications

Sample Disciplinary Notice

Charge

Specifications

Go to Reference Tab



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Charges and Specifications

What is a Charge?

- Label used to describe the misconduct

What is an Element?

- Components or essential part of a charge that must be proven

What is a Specification?

- The factual narrative that describes the details that led to the charge (who, what, where, when)

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Charges and Specifications

Charge

- The "Charge" is the reason for the action.

Examples of Charges:

- Absence Without Leave (AWOL)
- Failure to Follow Instruction
- Sleeping on Duty
- Unauthorized Possession of Government Property
- Disrespectful Language

What are some other charges?

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Charges and Specifications

Framing Charges

Rule #1 – Use only words you can prove

Rule #2 – Understand the role of intent

Rule #3 – Use only single characterizations

Rule #4 – Use specific language when you can

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Charges and Specifications

Elements

- Elements are the unique components of the charge that must exist, must be proven, and must support the basis on which action may be considered:

  ✓All elements of a Charge must be proven

  ✓If one element of a Charge is not proven, the entire Charge falls

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Charges and Specifications

Specifications

- The *"specification"* is the narrative that describes in detail what happened:
  - Essential facts only: The *Who, What, When, and Where*?
  - All else goes elsewhere, otherwise one assumes the risk of proving additional and unnecessary information
  - All specifications do not need to be sustained to uphold a single charge; however, consideration will be given to whether or not the lesser number of specifications remaining will mitigate the penalty

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Charges and Specifications

Example Specification

"On (date) at approximately XX:XX hours *[when]*, at location [where], you *[who]* did *[what]*."

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Charges and Specifications

Exercise: Which would you choose, and why?

Charge: Absence Without Leave (AWOL)

Specification Options:

A. On January 10, 2017, your assigned tour of duty was 8:00 a.m. to 4:30 p.m. You did not report for work and did not request leave. You were charged with 8 hours of AWOL.

- or –

B. On January 10, 2017, you were charged with AWOL.

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Charges and Specifications

Exercise: Which would you choose, and why?

Charge: Inappropriate Language

Specification Options:

A. On January 21, 2017, you made an inappropriate comment. Your co-workers were upset.

- or -

B. On January 21, 2017, in a meeting with your co-workers, you called TSO Smith a big, fat, dumb, pig, or words to that effect.

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Charges and Specifications

Charge: Absence Without Leave

- Employee was absent from duty; and
- The absence was either not authorized or a request for leave was properly denied.

Specification:

On [date], your assigned tour of duty was 8:00 a.m. to 4:30 p.m. You did not report for work and you did not request leave. You were charged 8 hours of AWOL for your unauthorized absence.

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Charges and Specifications

Charge: Excessive Approved Absence

- Employee's LWOP absences were for a compelling reason beyond the employee's control so agency's approval/disapproval was immaterial;
- Absences continued beyond a reasonable time,
- Employee warned that adverse action might be initiated unless the employee became available for duty; and
- Position needed to be filled by an employee available for duty on a regular full time /part-time basis.

Specification:

On [dates] and on [add'l dates, if applicable], you were granted LWOP. This LWOP continued for [since/duration] days. By approving LWOP, your absence was for a compelling reason beyond your control and approval or disapproval was immaterial. In addition, these absences, lasting [days], continued for an unreasonable period of time, and we warned you by letter dated [date],that adverse actions may be initiated unless you became available for duty. Your position is one that needs to be filled by an employee available for duty on a regular, full time [part-time] basis.

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Charges and Specifications

Charge: Failure to Follow Leave Procedures

- Agency procedures for requesting leave exist;
- The employee had knowledge of the leave requesting procedures; and
- Employee violated the procedures.

Specification:

On [date], your assigned tour of duty was 8:00 a.m. to 4:30 p.m. You did not report for work and you did not request leave in accordance with established agency procedures.

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Charges and Specifications

Charge: Failure to Follow Instructions

- Employee was given proper, clear, and legal instructions by someone with authority; and
- Employee failed to follow the instruction(s) without regard to whether the failure was intentional or unintentional.

Specification:

On [date], you were instructed by your supervisor to [What]. Nonetheless, you failed to follow that instruction.

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Charges and Specifications

Charge: Lack of Candor

- Employee's statement(s) is less than candid, truthful, accurate or complete;
- Knowingly made or withheld.

Specification:

On [date] you were questioned as to [what matter]. Specifically, you were asked [question(s) posed]. You answered this question by stating [or failing to state], [describe the misstatement or the withheld information], when you knew you had in fact [describe the complete fact].

OR

On [date] you submitted a statement in which you said or wrote (what). On [date] you submitted an additional statement in which you said or wrote (what). These contradictory statements demonstrate that you were less than candid and not forthcoming.

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Charges and Specifications

Charge: Inappropriate Comment

- Employee made certain comments; and
- The comments were discourteous and inappropriate

Specification:

On [date], you [describe comment] toward [name] by saying [recount comment]. These statements were inappropriate for the workplace.

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Charges and Specifications

Charge: Unacceptable Conduct

- Employee engaged in certain conduct; and
- The conduct was improper, unsuitable or detracted from the employee's character or reputation

Specification:

On [date] at [location], you [describe unacceptable behavior].

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Charges and Specifications

Charge: Careless Performance of Duties

- Employee engaged in conduct related to role as an employee;
- Employee was on notice of the obligation;
- Employee engaged in conduct which violated policy; and
- Employee conduct evidenced at least a lack of due care.

Specification:

On [date], you were on duty at (location) and (describe behavior). Agency policy provides (describe policy), yet you [describe failure /omission]. You were made aware of this policy by (name/OLC, etc.) Your actions described above constitutes a violation of this policy.

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Charges and Specifications

Charge: Disorderly Conduct

- Employee engaged in inappropriate conduct;
- That is disruptive; and
- Has no legitimate purpose

Specification:

On [date] at [location], you [describe the acts without characterizing them legally]. This conduct was inappropriate and [describe the disruption].

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Charges and Specifications

Charge: Unauthorized Possession of Government Property

- Employee possessed government property; and
- The possession was without authorization

Specification

On [date], you possessed [describe the property]. This possession was without authorization.

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Charges and Specifications

Charge: Misconduct of a Sexual Nature

- Employee engaged in verbal and/or physical misconduct; and
- The conduct is sexual in nature

Specification:

On [date], you [describe verbal and/or physical misconduct of a sexual nature] toward [name] by saying [recount behavior].

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Misconduct of Sexual Nature

Remember! Simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory charges in the terms and conditions of employment that would constitute sexual harassment.

However, inappropriate conduct of a sexual nature must be addressed promptly

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Charges and Specifications

Intent Charges

- Insubordination
- Threat
- Assault
- Theft
- Falsification

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Charges and Specifications

The Element of Intent

Proving that someone intended to commit the offense is difficult.

"Intent is defined as one's mental attitude, including purpose, will, and determination at the time of committing the act. Intent may be inferred from circumstantial evidence."

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Charges and Specifications

Charge: Insubordination

- Employee was given a lawful order;
- Employee disobeyed the order; and
- The disobedience was <u>willful and intentional</u>

Specification:

On [date], at [location], you were ordered to [describe order] by Supervisor Smith; however you did not [do what] (must describe failure and why failure was willful and intentional).

What is an alternate charge?

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Charges and Specifications

Charge: Threat

- Listener's reaction
- Listener's apprehension of harm;
- Speaker's intent;
- Any Conditional nature of the statement(s); and
- Attendant circumstances

Specification

On [date], during a conversation with [who], you said [specific statement]. After you made that statement …[who was told about the statement, reactions of listener/mgt., the object of the alleged threatening remark(s), attendant circumstances, i.e., previous threats, employee's mental/emotional state]

What is an alternate charge?

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Charges and Specifications

Charge: Assault

- A willful attempt or threat to inflict bodily harm;
- A present apparent ability to do so;
- A reasonable fear of bodily harm on the part of the victim created by the conduct; and
- The conduct was without justification (i.e., was unlawful)

Specification:

On [date], you assaulted [who] by [describe act; e.g., striking at or striking] with [device] without justification intending to cause bodily injury.

What is an alternate charge?

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Charges and Specifications

Charge: Theft

- Employee took another's property;
- Employee acted without authorization;
- Employee acted with intent to permanently deprive the owner of possession; and
- Employee acted with a guilty mind

Specification:

On [date], you took [describe theft and other relevant circumstances, to include those which suggest an intent to permanently deprive]. You knew that it was another's property and you took it without authorization.

What is an alternate charge?

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Charges and Specifications

Charge: Falsification

- The employee supplied wrong information;
- The information was material;
- The information was knowingly supplied; and
- The information was supplied with the intention to deceive

Specification:

On [date], you said [described statement made or information given]. This information/statement was knowingly false and made with the intention to deceive the agency.

What is an alternate charge?

Charges and Specifications

Charge: Sexual Harassment (Title VII Criteria)

Tangible Employment Action (Formerly Quid Pro Quo ("something for something"))

- Employee subjected to sexual advances, requests for favors or other verbal or physical conduct of a sexual nature;
- Conduct was based on sex;
- Conduct was unwelcome; and
- Employment benefits on sexual favors

Hostile Work Environment

- Employee subjected to sexual advances, requests for favors or other verbal or physical contact of a sexual nature;
- Conduct based on sex;
- Conduct unwelcome; and
- Sufficiently severe or pervasive to interfere with job performance….

Continued next slide…

Charges and Specifications

Charge: Sexual Harassment (Title VII Criteria)… (Cont.)

Specification:

On [date], you [describe the nature of the hostile work environment, tangible employment action, or conduct that violates agency policy. Specify "who, what, when, where", as well as frequency, severity, whether threatening, humiliating, or offensive, and impact on work performance].

What is an alternate charge?

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Charges and Specifications

Multiple Charges

- **One act may be the basis for more than one charge**
  - **Are the charges based on genuinely different reasons with different burdens of proof?**
  - **Cumulative charges are not justified on the basis that one act of misconduct may be characterized several ways, or was repeated, predictably, several times. This is sometimes called "piling on."**

Scenario:

Your employee did not report for work as scheduled at the start of her shift, 6:00 a.m. and did not call into work to request leave. At approximately 9:00 a.m. she approached you and said, "I guess I overslept, where do you what me to report?"

What are the possible charges?

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Charges and Specifications

Using Multiple Components in One Charge

What would you have to prove if the charge was…

- **Failure to follow leave requesting procedures resulting in a charge of AWOL**
- **Repeated acts of insubordination?**
- **Shouting at your supervisor, causing your co-workers to be fearful, and impacting employee morale?**
- **Failure to follow directions and Insubordination?**
- **Directing the unauthorized use of government materials for other than official purposes?**

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Workshop

Writing Charges and Specifications

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PENALTY FACTORS

TSA Penalty Factors

1. 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.

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

3. The employee's past misconduct or disciplinary record.

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

5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties.

6. Consistency of the penalty with those imposed upon similarly situated employees for the same or similar offenses.

7. The notoriety of the offense or its impact upon the reputation of the agency.

8. The clarity with which the employee was on notice of any rules violated in committing the offense or had been warned about the conduct in question.

9. The clarity with which the employee was on notice of performance expectations and problems with his/her performance.

10. The potential for the employee's rehabilitation.

11. Any mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter.

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

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Penalty Determination

Considerations

- **The purpose of penalty is to *correct behavior*, <u>not</u> meant as a punishment.**
- **Penalty factors provide guidance in determining appropriate penalty.**
- ***The <u>penalty is reasonable</u>* to the offense through an analysis of aggravating and mitigating factors (*<u>Sufficiency Review</u>*).**
- **Penalty determined within the context of *progressive discipline.***
- **Refer to Table of Offenses and Penalties guidance**

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Penalty Determination

Considerations (Cont.)

- Not all factors apply in every case, must consider relevant factors
- Aggravating factors must be addressed in the proposal - may add to decision, *but be careful*
- Any mitigating factors provided in an employee's oral and written replies must be addressed in the decision
- Explain how factors relate to penalty - do not just list the factors
- Every case considered *individually*
- Penalty factor analysis not required for mandatory removal or indefinite suspension actions

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Penalty Determination

Factors

- Mitigating Factors: Considerations that may *lessen* the severity of the penalty selected (e.g., the employee's superior work record)
- Aggravating Factors: Considerations that may *enhance* the severity of the penalty selected (e.g., the employee's prior disciplinary/adverse action record)

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Penalty Determination

Factors

.....go to the
Penalty Factor WORKSHEET

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Penalty Determination Analysis

In determining the penalty, I have considered the nature of your position and its relation to the misconduct, your disciplinary record, your length of service, the notoriety, and the potential for rehabilitation, and decided that removal is warranted.

Any problem with this penalty analysis?

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Penalty Factors

1. Nature and Seriousness of the Offense and its relationship to employee's duties, position and responsibilities

Most *important* factor to consider –

- **How connected is the offense to agency mission and employee's duties?**
- **Intentional?**
- **Inadvertent?**
- **Repeated?**
- **Consequential?**
- **Personal gain?**

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Penalty Factors

Example: Nature and Seriousness of the Offense...

"I have considered that as a Transportation Security Officer, you are entrusted with securing the lives and property of passengers. Your inattention to duty strikes at the very core of TSA's mission. Your negligence allowed passenger bags to be loaded onto an airplane without being screened, potentially putting in peril the safety of the traveling public."

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Penalty Factors

2. Employee's job level and type of employment

Some Employees may be held to a higher standard:

- Law Enforcement
- Supervisors and managers
- Responsible for safety of others
- Fiduciary
- Positions of trust
- Contact with the public
- Prominence of position

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Penalty Factors

Example: Employee's job level and type of employment

"I have considered that as a supervisor, you are held to a higher standard. Your position requires providing positive leadership and serving as a role model for subordinates by demonstrating a commitment to TSA's mission and adhering to policies and procedures. By failing to comply with proper security procedures, you breached this responsibility. You violated the very policies you are entrusted to enforce."

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Penalty Factors

3. Past disciplinary record

- All past discipline/corrective actions relevant
- Similar and more recent misconduct most serious
- Series of misconduct aggravating
- Must be listed in ***proposal*** and decision
- Expired discipline may be used to show employee was on notice - e.g. LOR

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Penalty Factors

Example: Past Discipline

"I have considered as an aggravating factor that this is not your first instance of misconduct. You received a letter of reprimand in June 2016 for inappropriate conduct and were suspended for three days in October 2016 for misconduct of inattention to duty. I have considered that you were put on clear notice and warned that future misconduct may result in more severe discipline up to and including removal from federal service."

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Consideration of Prior Disciplinary Actions

Disciplinary Action	Retention	May Be Considered…
Letter of Reprimand (LOR)	Copy placed in affected employee's eOPF for a period not-to-exceed 2 years, but may be removed earlier by issuing official or chain of command. If OPR issues the LOR, the AA/OPR or the management official who issued the LOR has the authority to remove the LOR prior to the end of the 2-year period.	As prior disciplinary history in the penalty factors and for progressive discipline during the 2-year period. After the 2-year period, the LOR may be used to show the employee was on notice of the matters referenced in the letter.
Reprimand in Lieu of Suspension	May be retained by the affected employee's supervisor.	As prior disciplinary history in the penalty factors and for progressive discipline

Please refer to TSA Management Directive 1100.75-3: Addressing Unacceptable Performance and Conduct and the accompanying handbook for additional guidance and information.

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Consideration of Prior Disciplinary or Adverse Actions

Disciplinary or Adverse Action	Retention	May Be Considered…
Suspension (including indefinite suspension)	SF-50 (Notification of Personnel Action) documents suspension and is permanently retained in employee's eOPF	As prior disciplinary history in the penalty factors and for progressive discipline
Involuntary Demotion	SF-50 (Notification of Personnel Action) documents demotion and is permanently retained in employee's eOPF	As prior disciplinary history in the penalty factors and for progressive discipline

Please refer TSA Management Directive 1100.75-3: Addressing Unacceptable Performance and Conduct and the accompanying handbook for additional guidance and information

Transportation Security Administration

OHC WP

Penalty Factors

4. Length of Service and Work Record

- Use poor performance only if it is documented
- Length of service is generally used as a mitigating factor
- Discussed and balanced against other factors

Transportation Security Administration

OHC WP

Penalty Factors

Example: Length of service….

I have considered mitigating factors such as you have been employed by TSA since September 2002, your promotion(s), you awards record and your history of satisfactory performance record. Although these can be considered migrating factors, they do not outweigh the seriousness of your misconduct and your violation of agency policy and procedures.

Transportation Security Administration

OHC WP

Penalty Factors

5. Effect of offense on supervisory confidence

- Should be more than conclusory statement
- Hard to establish loss of trust if employee has been working for a long time after management was aware of offense
- Consider contradictory actions-awards, promotions, appraisals

Transportation Security Administration

OHC WP

Penalty Factors

Example: Effect on supervisor's confidence

"I find your lack of candor during the investigation to be extremely serious as it goes to the heart of your honesty and integrity. As a senior TSA official at the airport, management must have the utmost confidence that you will be truthful and fully responsive and candid to management and investigators during official inquiries. Based on your lack of candor during the investigation, I have lost all trust in your ability to perform your duties with integrity or to be honest with management and/or investigators in response to future inquiries. I find your lack of candor so serious, that this charge alone warrants effecting your removal."

Transportation Security Administration

OHC WP

Penalty Factors

6. Consistency of Penalty

- To establish disparate treatment, employees must be similarly situated:
  - Service
  - Employment history
  - Position and duties
  - Organization
- If penalty appropriate to gravity of offense, disparate penalty generally no basis for mitigation.

Transportation Security Administration

Penalty Factors

Example: Consistency of Penalty

"Lastly, I considered the guidance contained in the Table of Offenses and Penalties, which specifically provides "for second and/or successive offenses, the penalty should generally fall within the Aggravated Penalty Range column, and may often include removal." Under Screening and Security M.1., the aggravated penalty range is removal. The recommended penalty range under M.1. is a 5-days suspension to removal. After balancing the above aggravating and mitigating factors I have determined the recommended penalty range is appropriate and proposing your suspension for five (5) calendar days is reasonable, warranted, and is the least action necessary to promote the efficiency of the Federal service. I believe 5-day suspension will impress upon you the seriousness of your actions and that future discipline will not be necessary."

Transportation Security Administration

Penalty Factors

7. Notoriety of Offense

- More severe penalty when misconduct is widely known
- The *potential* for publicity also can be considered
- Addresses both co-workers and the public - but stay away from affecting employee morale issues

Transportation Security Administration

OHC WP

Penalty Factors

Example: Notoriety of Offense

"TSA depends upon the public's confidence that it can ensure the safety and security of passengers. As such, you are expected to conduct yourself in a manner that does not adversely reflect on TSA, or negatively impact the ability to discharge its mission, cause embarrassment to the agency, or cause the public and/or TSA to question an employee's judgment or trustworthiness. Employees in direct contact with the public bear a heavy responsibility, as their conduct and appearance have a significant impact on the public's attitude toward the Federal government and TSA. In that regard, your conduct in the presence of passengers and coworkers is totally unacceptable."

Transportation Security Administration

OHC WP

Penalty Factors

8 & 9. Clarity of Notice Rules Violated/Performance Expectations

- Consider whether employee knew or should have known rules violated
- Consider whether employee was on notice of performance expectations and performance deficiencies
- Retention period for Letter of Counseling – 5 years (*effective 2/12/14*)
- Expired discipline may be used to show employee was on notice - e.g. LOR
- Consider whether the employee was on notice/or warned of the consequences of future misconduct resulting in more severe disciplinary action up to and including removal.

Transportation Security Administration

OHC WP

Penalty Factors

Example: Clarity of Notice

" You are well aware of the policies and procedures regarding attendance. You received and signed for (Management Directive) in each of the last four years on March 9, 2013, March 11, 2014, March 23, 2015, and March 14, 2016. Those directives clearly state the requirements for calling in for unscheduled leave. Further, you were specifically counseled on these policies by your supervisor in June 2015. You were made aware of performance expectations regarding checkpoint procedures through OLC training, OJT, and as indicated in your performance agreement."

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OHC WP

Penalty Factors

10. Potential for Rehabilitation

- Prior warnings and discipline not effective
- Consider remorse – more weight if shown prior to offense being known
- Employee comes forward before investigation

Transportation Security Administration

Penalty Factors

Example: Potential for Rehabilitation

"I have considered that your conduct has been repeated despite several efforts to correct your behavior. You have been counseled, reprimanded, and suspended for similar misconduct, yet you have not improved. Moreover, you have not acknowledged any wrongdoing or accepted responsibility. This leads me to conclude that rehabilitation is not likely."

OR

"I considered that you demonstrated remorse, accepted responsibility for your behavior and said you would not engage in this behavior again. Therefore, I find your potential for rehabilitation to be good."

Transportation Security Administration

Penalty Factors

11. Mitigating Circumstances

- Address the mitigating circumstances...or a third party will
- Determine whether the mitigating circumstance is connected to the misconduct
- Mitigating circumstances don't always lessen the penalty

Transportation Security Administration

Penalty Factors

Example: Mitigating Circumstances

"I have considered mitigating factors such as you have been employed by TSA since September 2002, your promotion to the E-band in 2004, to LTSO in 2010, you awards record and your otherwise satisfactory performance record. I also considered that during the pre-decisional meeting you noted that your recent incidents of reporting late to work resulted from problems encountered when the school system changed its starting time. You indicated you were making arrangements with a neighbor to take your child to the bus stop and that should resolve the problems with the late arrival. You also showed a great amount of remorse for the problems you were causing your supervisors. I further considered that you accepted responsibility for your actions in this matter. However, I find the nature and seriousness of your misconduct as described above along with the aggravating factors far outweigh the mitigating factors."

Transportation Security Administration

Penalty Factors

Alternative Sanctions – Adequacy and Effectiveness

Deciding official should address why alternative sanction would/would not work

- **Prior corrective actions**
- **Loss of trust**
- **Impact on employee-employer relationship**
- **Public awareness of offense**

Transportation Security Administration

Penalty Factors

Example: Selecting an Alternative Sanction

"However, regarding your negligent performance I have also considered that during the FY16 performance cycle, you were assigned to several supervisors. Further, you take responsibility for careless workmanship, and promised that you will not let your personal matters interfere with work. I must be able to rely on you to be attentive to your duties at all times. I also took into consideration that, in your response to the proposal, you ended by assuring your performance will improve. Although these can be considered mitigating factors, they do no outweigh the seriousness of your misconduct and the problems your conduct has had on our mission and your coworkers. Your misconduct directly impacted the proper and effective accomplishment of your official duties and responsibilities, and well as TSA's mission. Therefore, I find a 14-day suspension to be appropriate and reasonable in this case.

However, I need you at work and a suspension would add an additional workload to your coworkers. Therefore, it is my decision to impose a Reprimand in Lieu of a 14-day Suspension. This penalty falls within the range of penalties in the TSA's Table of Offenses and Penalties."

Transportation Security Administration

Penalty Factors

Example: Not selecting an Alternative Sanction

"TSA expects its employees to be honest, trustworthy, and candid. Your failure to be fully forthcoming when responding to an official agency investigation gives me legitimate cause for concern as to whether you possess the requisite degree of good judgment, trustworthiness, and reliability necessary in a position entailing an enormous responsibility for the lives and property of others. Your conduct had irreparably damaged the employer-employee relationship. Therefore, I find that proposing your removal is the only appropriate action to promote the efficiency of the service."

Transportation Security Administration

Penalty Determination

Remember! Always address penalty factor…

#1 – The nature and seriousness of the offense…

#3 – The employee's past adverse or disciplinary record…

#10 – Potential for employee's rehabilitation….

#11 – Mitigating circumstances surrounding the offense…

Transportation Security Administration

TSA Table of Offenses and Penalties (TOP)

- Guiding source for corrective, disciplinary and adverse actions involving misconduct* for all employees
- Proposing & Deciding Officials (PO/DO) always need to consider *applicable* mitigating & aggravating factors in determining an appropriate penalty.
- Management officials have the discretion to go outside the ranges listed in this guide if they determine that circumstances warrant.
- For second and/or successive offenses, the penalty should generally fall within the "Aggravated Penalty Range" column
- In cases where an employee commits more than one offense, the PO & DO may consider whether the penalty should be in the "Aggravated Penalty Range" column corresponding to the most serious offense being charged.
- A demotion may always be considered as an option when the applicable penalty range includes removal. Demotion may also be considered in appropriate circumstances when the applicable penalty range does not include removal.

*Not Performance

Transportation Security Administration

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Progressive Discipline

- TSA promotes concept of progressive discipline.
- A manager should administer the least amount of discipline to correct the behavior or deficiency.
- Some offenses are so egregious as to warrant serious disciplinary actions on a first offense.
- Progressive discipline is applicable during trial period; however, counseling and lower level sanctions should be limited if problems persist.

Transportation Security Administration

OHC WP

Progressive Discipline

TSO Offenses for Which Removal is Required

(a) Failure to maintain TSO certification requirements;

(b) Validated failure of drug test*;

(c) Validated failure of alcohol test (on duty)*;

(d) Refusal to submit to TSA-ordered drug or alcohol testing*;

(e) Cases involving theft, illegal drug use, on-duty alcohol use, or being under the influence of drugs or alcohol while on duty*;

(f) Sleeping on duty while assigned to a security activity*;

(g) Intentional serious security breaches* (i) and (ii)

** One-step actions permissible and require a Pre-decisional meeting with employee.*

Transportation Security Administration

OHC WP

Progressive Discipline

TSO Offenses for Which Removal is Permitted

(a) Intentional acts undermining security operations…;

(b) Intentional and unauthorized disclosure of SSI;

(c) Falsification of security logs;

(d) Failure to conduct operational check at start of shift;

(e) Any felony conviction regardless of nexus to employment;

(f) Misuse of TSO metal badge; and

(g) Arrests for offenses list in Appendix A, Sec. (2)(g)*

** One-step actions permissible and require a Pre-decisional meeting with employee.*

Transportation Security Administration

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Due Process

For 2-step actions:

- **Right to advance written notice of the charge(s);**
- **Right to reply**
- **Right to representation; and**
- **Right to a written decision**

NOTE: Failure to provide proper due process would be cause for overturning a disciplinary or adverse action on appeal.

Transportation Security Administration

OHC WP

Representation Rights

When do employee's have the right to Representation

- **During a pre-decisional discussion (PDD)/investigation in which they have a reasonable belief that a disciplinary action may result (Bargaining Unit Employees {BUE} Only)**
- **Responding to an adverse or disciplinary action**
- **Participating in the Equal Employment Opportunity (EEO) process**
- **Participating in the appeals process**
- **Participating in an approved mediation activity**
- **When a Performance Improvement (PIP) is being issued**

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OHC WP

Sufficiency Review

- A substantial evidence or preponderance of the evidence supports that the unacceptable conduct or performance occurred;
- There is a nexus or connection between a legitimate government interest and the misconduct/matter that is the basis for the adverse or disciplinary action; and
- The penalty is reasonable.

Note: OPR or other management officials may, in their discretion, request OCC to provide sufficiency review

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"*ER*" Sufficiency Review

- Is there a nexus;
- Review ER database for prior discipline:
- Is (are) the charge(s) properly framed;
- Does the evidence prove the charge;
- Progressive discipline;
- Is the penalty appropriate, and
- Was due process provided.

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Authority to Take Action

Office of Professional Responsibility

OPR has authority to determine and take appropriate action in cases involving senior-level (J and higher Pay Bands, TSES, TSARs, and FSD in title), law enforcement

One-Step Process (Corrective Actions and LORs):

- Action issued without providing employee opportunity to challenge it in advance
- The deciding official is an OPR Unit Chief.

Two-Step Process (Disciplinary and Adverse Actions):

- Requires the issuance of a written notice of proposed action, an opportunity to reply, and notice of decision.
- The proposing official is an OPR Case Manager, while the deciding official is an OPR Unit Chief.

Transportation Security Administration

Authority to Take Action

The Proposing Official* (PO)

- In general, the PO is a management official within the employee's chain of supervision
- Assesses the incident/allegation/matter.
- Determines whether and what adverse or disciplinary action is appropriate and recommends the action.
- Issues a proposal, generally within 30 days of the completion of the fact-finding inquiry, which must include:
  - The charge(s) and specification(s), including a description of the evidence that supports the charge(s);
  - The proposed penalty;
  - A discussion of any aggravating or mitigating factors that were considered in determining the proposed penalty;
  - Description of the employee's right to reply and designate a representative.

**Refer to Appendix B and Appendix C in the Handbook to TSA MD 1100.75-3*

Transportation Security Administration

Authority to Take Action

The Deciding Official

- *Is* a management official within the employee's chain of command/supervision, higher than the PO
- Considers the Charges and Specifications contained in the proposal notice, the supporting documentation that the employee was provided or had an opportunity to review,* and the employee's reply.
- Decides the appropriate penalty.
- Issues a decision, generally within 21 days of the employee's last reply, which must include:
  - The official's determination for each charge and specification and the basis for the determination;
  - The penalty determination, if applicable, including any relevant mitigating and aggravating factors considered.

*Note: If the deciding official is or becomes aware of additional evidence other than the evidence the employee had an opportunity to review, and wishes to consider such evidence in reaching a determination, the deciding official must inform the employee and provide him or her an opportunity to review such material and reply to the additional evidence before reaching a decision on the proposed action.

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Authority to Take Action

Delegation of Authority – TSO Actions

Letter of Guidance/Direction, Letter of Counseling, and Letter of Leave Restriction	Supervisory TSO (STSO) or higher.
Letter of Reprimand	STSO or higher.
Deciding Official (Suspension of 1-3 days/Reprimand in Lieu of Suspension for 1-3 days)	Transportation Security Manager (TSM) or higher.
Proposing Official (Suspension of 4-14 days/Reprimand in Lieu of Suspension for more than 3 days)	STSO or higher.
Deciding Official (Suspension of 4-14 days/ Reprimand in Lieu of Suspension for more than 3 days)	TSM or higher.
Proposing Official (Suspension of 15 days or more, including Indefinite Suspension, Involuntary Demotion for Performance /Conduct, and Removal)	TSM or higher.*
Deciding Official (Suspension of 15 days or more, including Indefinite Suspension, Involuntary Demotion for Performance /Conduct, and Removal)	AFSD or higher, above the Proposing Official.*

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Authority to Take Action

Delegation of Authority – Non TSO Actions

Letter of Guidance/Direction, Letter of Counseling, and Letter of Leave Restriction	Employee's immediate supervisor or other designated official.
Letter of Reprimand	Employee's immediate supervisor or other designated official.
Reprimand in Lieu of Suspension	Employee's immediate supervisor or other designated official.
Proposing Official (Suspension of 14 days or less)	Employee's immediate supervisor or other designated official.
Proposing Official (Suspension of 15 days or more, including Indefinite Suspension, Involuntary Demotion for Performance /Conduct, and Removal)	Employee's chain of supervision or other designated official.
Deciding Official	Employee's chain of supervision but higher than the Proposing Official.

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What action would you take???

See Deciding on Appropriate Action Checklist

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Applicable TSA Policies and Procedures

- **TSA MD 1100.75-3 and Handbook; *Addressing Unacceptable Performance and Conduct***
- **TSA MD 1100.73-5 and Handbook: *Employee Responsibilities and Code of Conduct***
- **The Table of Offenses and Penalties**

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Addressing Leave Issues

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Addressing Leave Issues

The Leave Request

- **Must be requested by the employee using OPM Form-71, *Request for Leave or Approved Absence* or WebTA leave request feature.**
- **Management cannot complete the OPM Form-71 for the employee**
- **Local offices may not modify the OPM Form 71 or develop and use other forms to request leave**

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Addressing Leave Issues

General Information

- In most cases, charged in 15 minute increments
- May not be charged on holidays, RDOs, or non-workdays authorized by Administrative Order
- May not be charged when an employee does not work scheduled overtime
- Must follow TSA MD 1100.63-1 and Handbook
  - Local procedures must follow HCM Letter 630-5

Transportation Security Administration

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Addressing Leave Issues

General Information (Cont.)

- Requests for unscheduled leave- generally employees must notify management 60 minutes prior to the start of the employee's scheduled shift*
- Employees are responsible for ensuring sufficient leave is available or will be available on the dates of the request
- Supervisors are responsible for verifying leave is available or will be available on the dates of the request

CBA – *BUEs should notify management at least 60 minutes prior to the start of their scheduled shift to request anticipated leave*

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Addressing Leave Issues

General Information (Cont.)

- If the dates for the absence are approved and the employee does not have available paid leave on those dates, the employee cannot be charged AWOL
- Employees may not be required to use advance leave
- Supervisors are responsible for approving/denying leave requests

Note: Denial requires written reason in the space provided on the OPM Form 71

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Addressing Leave Issues

Learn the Basic Rules

- Set clear expectation in accordance with policy
- Enforce policies (require OPM Form 71 or WebTA)

Handling those more difficult situations

- Questionable supporting documentation
- Failure to call in
- Recurring emergency leave requests
- Talk to the employee – find out what is going on

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Possible Leave Abuse Indicators

- Uses sick leave as soon as it is earned;
- Frequent use of sick leave in conjunction with RDOs or holidays;
- Pattern of using sick leave after receiving an undesirable work assignment;
- Calling in sick after being denied annual leave;
- Repeated absences on any specific day;
- Repeated absences after an overtime assignment

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Possible Issues with Documentation

- Illegible medical documentation
- Health Care Provider (HCP) is not the proper specialist signing the medical document (Family Counselor validating need for open-heart surgery)
- Altered documentation (whiteout, ink doesn't match, photocopied, different handwriting, modified dates, etc…)

Can you call HCP?

Transportation Security Administration

Addressing Leave Abuse

Management Action

- Gather information on employee's leave usage; track and monitor
- Discuss concerns with employee
- Take appropriate corrective measures
- If necessary, issue a leave restriction letter
- ENFORCE the leave restriction letter
- Reassess attendance after a reasonable time
- If necessary, take appropriate disciplinary/adverse action

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AWOL vs. LWOP

AWOL

- Unauthorized unpaid absence from work
- No call; no show
- Tardy
- Failure to provide acceptable supporting documentation

LWOP

- Authorized unpaid absence from work
- Generally, employee requested
- Managements discretion to approve, except for:
  - FMLA
  - OWCP
  - Military
  - Veteran Medical

Transportation Security Administration

Best Practices

Do	Do Not
• Learn the policy • Timely approve/deny leave • Monitor leave usage • Timely address possible leave abuse • Seek advice from OHC-Employee Relations	• Deny leave that an employee is entitled to • Take disciplinary action for approved leave • Use leave balances as factor in promotion or detail selections • Assume what type of leave an employee would request

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Sick Leave Usage

Sick Leave May Be Granted for…

1. The employee's medical, dental, or optical examination or treatment;
2. The employee's incapacitation due to physical or mental illness, injury, pregnancy, or childbirth;
3. To prevent exposure of a communicable disease to other employees and/or the general public;
4. The employee to participate in activities related to the adoption of a child; and
5. Medical related family care and bereavement purposes

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Sick Leave Usage

Family Care and Bereavement Purposes

1. General Medical Care and Bereavement Purposes

   a. Providing care for a family member as a result of physical or mental illness, injury, pregnancy or childbirth, medical, dental, or optical examination or treatment; exposure to a communicable disease and the family member's presence in the community would jeopardize the health of others; or

   b. Making arrangements necessitated by the death of a family member, attending the funeral of a family member, and/or travel to the locale where services will be held.

   Leave year limitations?

Sick Leave Usage

Family Care and Bereavement Purposes (Cont.)

2. Care of a Family Member with a Serious Health Condition

Same serious health condition definition as for FMLA

Leave year limitations?

Sick Leave Usage

Family Member for Use of Sick Leave

1. Employee's spouse and the spouse's parents;
2. children, including adopted and step children and their spouses;
3. parents and their spouses;
4. siblings and their spouses;
5. grandparents and their spouses,
6. grandchildren and their spouses;
7. domestic partners and their parents;
8. domestic partners of the aforementioned family members; and
9. any individual related by blood or affinity whose relation to the employee is the equivalent of a family relationship.

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OHC WP

Sick Leave Usage

Family Member for Use of Sick Leave (Cont.)

Domestic Partner: An adult in a committed relationship with another adult, including both, same-sex and opposite-sex relationships.

Committed Relationship: A relationship in which the employee and the domestic partner of the employee are each other's sole domestic partner and are not married to or domestic partners with anyone else, and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

Transportation Security Administration

OHC WP

Sick Leave Usage

Advanced Sick Leave

- May be granted for:
  - Personal illness;
  - Medical appointments;
  - Adoption purposes; or
  - To provide care for a family member
- Maximum number of hours
- Requires administratively acceptable medical documentation
- Agency discretion – not an entitlement

Transportation Security Administration

OHC WP

Sick Leave Usage

When is Medical Documentation Required?

- Management request
- Advanced sick leave
- Participation in VLTP
- Sick leave absence of 30 calendar days or more
- FMLA
- Absences related to adoption

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Questions???

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Family Medical Leave Act (FMLA)

Purpose:

- Balance the demands of the workplace and needs of working families
- Address changing demographics
  - Increase of women in workforce
  - Increase of single parents
  - Increase of dual-income families
  - Increase demands of parental care
  - Increase time demands of work
- Employee choice between job and family care responsibilities
- Promote stability and economic security of families
- Promote national interests in preserving family integrity

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FMLA – Leave Entitlement

- 12 or 26 administrative workweeks of LWOP
- 12 month period begins on a date the employee first uses FMLA leave (e.g., Aug 25, 2014 thru Aug 24, 2015)
- May be used continuously or intermittently, when applicable
- Limitations for retroactively invoking FMLA – both employee and personal representative physically or mentally incapable during employee's absence (request must be made within 2 days of returning to duty)
- Employees can substitute available paid leave for any portion of the 12 weeks of LWOP – sick leave*, annual leave, compensatory time, and donated annual leave
- FMLA is an entitlement when criteria are met

**Supervisors must grant paid leave under FMLA for a qualifying condition however, limited amounts of sick leave may be used to care for family members with a serious health condition*

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OHC WP

FMLA – Entitlements

- Birth of a son or daughter and care of the newborn child (within one year of birth)
- Care of a spouse (legal union including common law marriage where recognized), son or daughter (under 18 or 18 and over and incapable of self care*), or parent with a serious health condition**
- Placement of a son or daughter with the employee for adoption or foster care
- Serious health condition of the employee
- Military Exigency Leave***
- Military caregiver leave – 26 weeks in a 12 month period***

** due to a mental or physical disability*
*** no close affinity relationships*
**** no age limitation on son or daughter*

NOTE: 12 weeks / 12 months unless indicated otherwise

Transportation Security Administration

OHC WP

FMLA - Eligibility

Who is eligible?

- **Eligibility requirements are determined by type of appointment the employee is serving**
- **For most TSA employees to be eligible for leave under FMLA, they must:**
  - **earn sick and annual leave**
  - **have completed 12 months of Federal civilian service**

NOTE: This does not include employees serving under intermittent or temporary appointments that will expire in one year or less

Transportation Security Administration

OHC WP

FMLA – Health Care Providers (HCP)

- **Licensed Doctor of Medicine/Doctor of Osteopathy**
- **Any health care provider recognized by FEHB**
- **Any HCP licensed/certified under Federal or State law to provide service**
- **Christian Science Practitioner**
- **A Native American recognized as a traditional healing practitioner by native traditional religious leaders who practices traditional healing methods**
- **HCP who is authorized to practice and practices in a country other than the United States**

Transportation Security Administration

OHC WP

FMLA – Serious Health Conditions (SHC)

An illness, injury, impairment or physical or mental condition that involves –

(i) Inpatient care (at least one night), including period of incapacity and subsequent treatment

(ii) Continuing treatment by HCP that includes examinations to determine if there is a SHC and evaluation of such a condition or evaluations determine that a SHC exists. Continuing treatment by a HCP may include one or more of the following…

FMLA – SHC (Cont.)

(ii) Continuing treatment by a HCP may include one or more of the following…

A. Period of incapacity > 3 consecutive days including subsequent treatment of period of incapacity related to condition

B. Period of incapacity due to pregnancy/childbirth

C. Period of incapacity or treatment due to chronic SHC

D. Period of incapacity where a condition is permanent or long-term for which treatment may not be effective (e.g., stroke)

E. Period of absence to receive multiple treatments (to include recovery) that would likely result of period of incapacity (chemo, dialysis, etc.)

FMLA – SHC (Cont.)

Serious Health Conditions do not include:

- Routine physical, eye or dental exams
- Continuing treatment that includes over-the-counter medication, bed rest, exercise--doesn't require visit to HCP
- Absence because of use of illegal substance, unless employee receives treatment
- Flu, earache, upset stomach, minor ulcers, routine dental, etc.

Transportation Security Administration

OHC WP

FMLA Medical Certification - Employee

Employee must provide written medical certification of serious health conditions that includes:

- Date serious health condition began
- Probable duration, or if chronic/continuing condition statement of unknown duration
- Likelihood, duration, and frequency of episodes of incapacitation
- Medical facts of serious health condition by HCP, statement of incapacitation, examination, treatment and unable to perform one or more of essential duties (identified by management).
- Provisional approval when employee provides limited or no medical documentation

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OHC WP

FMLA Medical Certification – Family Member

- Same medical information as required for employee, plus statement from health care provider that family member:
  - requires psychological comfort and/or physical care;
  - needs assistance for basic medical, hygienic, nutritional, safety or transportation; or
  - would benefit from employee's care or presence
- Employee statement on the care the employee will provide to the family member and an estimate of the time needed to provide the care
- Provisional Approval

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OHC WP

Basic FMLA

Maternity & Paternity

- If a father and mother are both employed by TSA, each is entitled to up to 12 administrative workweeks of LWOP under FMLA for the birth of a child or placement of a child with the employee for adoption or foster care.
- Generally, employees will not begin use of leave under FMLA until the birth of a child.
- May begin the 12-month period for birth of a child before the actual date of birth.
- When bonding with a newborn, the employee must invoke the entitlement before the child's first birthday. The bonding must be completed before the child's first birthday.
- Bonding intermittently both agency and employee must agree.

Transportation Security Administration

OHC WP

FMLA Notification Requirements

- Management must notify employees of their entitlement and responsibilities under FMLA
- Employees must invoke entitlement to FMLA leave - *Verbal or Written**
- Employees must give at least 30 days notice when need is foreseeable
- Failure may delay the approval for 30 days notice, unless circumstances are unforeseeable. Give notice as soon as possible
- Management may not deny or delay leave when need is unforeseeable and employee is unable to provide notice
- Employees must make reasonable effort to schedule planned medical treatment so not to disrupt mission

* *Employees can use OPM Form 71 FMLA to invoke*

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FMLA – What you must do

- Inform employee of FMLA
- Approve LWOP/paid leave that qualifies
- Approve appropriate intermittent leave

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OHC WP

FMLA - What you can't do

- Deny leave that qualifies for FMLA
- May not count Federal holidays towards FMLA entitlement
- Request more medical documentation than necessary
- Change an employee's job
- Call the HCP
- Cannot request medical documentation for each absence related to intermittent leave use

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OHC WP

FMLA - Remember

- Employee must request FMLA
- Employee must provide acceptable medical certification
- Employee can substitute paid leave for any portion of 12 weeks of LWOP
- Employee must follow established leave request procedures
- Management must grant a request for leave under FMLA for a qualifying condition
- An employee who does not comply with the notification requirements may have the approval of leave under FMLA delayed
- An employee who does not provide acceptable medical certification is not entitled to leave under FMLA

Transportation Security Administration

OHC WP

FMLA FORMS

Department of Labor (DOL) forms for requesting FMLA leave

- **WH-380E, *Certification of Health Care Provider for Employee's Serious Health Condition*;**
- **WH-380F, *Certification of Health Care Provider for Family Member's Serious Health Condition*;**
- **WH-384, *Certification of Qualifying Exigency for Military Family Leave*; and**
- **WH-385, *Certification for Serious Injury or Illness of Covered Service member -- for Military Family Leave.***

Transportation Security Administration

OHC WP

Applicable TSA Policies and Procedures

- **TSA MD 1100.63-1 *Absence and Leave;* effective 9/23/2013**
- **TSA HCM Letter 630-5 Local Attendance and Leave Guidelines; effective 01/30/08**
- **TSA MD, Handbooks for BUEs and non-BUEs**
- **Collective Bargaining Agreement**

Transportation Security Administration

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Test your FMLA Knowledge…

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Test your FMLA Knowledge…

1. Do employees have to provide notice of an intention to use FMLA leave?
2. If an employee fails to follow agency leave requesting procedures for FMLA, the absence can be charged as AWOL?
3. Do siblings qualify as family members for FMLA?
4. What guidance can you provide supervisors on managing intermittent leave usage?

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Test your FMLA Knowledge…

An employee requests to have 12 weeks of FMLA leave because her adult daughter was seriously injured in a car accident, and hospitalized in intensive care.

Is the employee entitled to the leave under FMLA?

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Test your FMLA Knowledge…

A supervisor tells you that one of her employees has asked for intermittent leave to bond with his newborn child. This is the employee's first child, and the child does not have any serious health issues. The time off that the employee wants will conflict with the agency's preparation for an upcoming court case for which this person will be an expert witness, and he will need to work closely with the agency's counsel to develop the agency's evidence to present against an airline who has been sanctioned for several major security violations. The supervisor is aware that FMLA is an entitlement program, but to grant the leave will also cause a major hardship as the agency prepare for trial. She is also aware that to contact the employee frequently when he is on FMLA leave may also be viewed as an interference with the person's right to use the leave.

What do you advise?

Transportation Security Administration

OHC WP

Test your FMLA Knowledge…

A husband and wife both work for TSA, however they report to different supervisors. Each have approached their supervisor requesting 12 weeks of FMLA leave to adopt a child. They are adopting a child from India, and both need to travel there to complete the legal formalities. Upon returning home they want to continue using FMLA to take their infant for medical appointments and to bond with their newly adopted child.

Can management approve the 12 weeks of leave for each parent in this situation?

Transportation Security Administration

OHC WP

Workplace Scenario

…what would you advise???

Transportation Security Administration

OHC WP

Workshop

Beginning in September, LTSO Payne Phree began requesting unscheduled sick leave every Tuesday and the Friday that wasn't his RDO. Although his requests usually were made 6 hours to 60 minutes before the start of his scheduled shift, the last 3 occasions he called in after his start time. As a result, STSO Wallis Alert reviewed LTSO Phree's T&As which revealed a sick leave usage pattern showing he requested and was approved sick leave for every Tuesday in September and October, and for 3 Fridays during this same time.

STSO Alert went to the break room to set up a meeting to talk to LTSO Phree, but he wasn't among the group of officers there. However, he did overhear an officer talking about winning the football pool Monday during the party held at LTSO Phree's house. Another officer admitted to losing the football pool one Monday and one Thursday night because of a last minute scores, nonetheless LTSO Phree threw the best weekday football parties because his brother always brought a keg and pizzas or subs from his restaurant. They agreed and joked that during dull football games LTSO Phree and his brother would engage the party goers in drinking games, because they had to kill the keg. STSO Alert found LTSO Phree and asked him to come to the conference room for a meeting in 3 hours.

STSO Alert calls you and explains the situation and asks you how he should handle this matter.

What do you advise???

Transportation Security Administration

Workshop

LTSO Phree was on pre-approved annual leave the first week in November. Upon returning to duty, he requested unscheduled sick leave on the first 2 Tuesdays (the "between" Friday was his RDO), correctly following leave requesting procedures. STSO Alert called LTSO Phree and told him to report to the conference room.

STSO Alert asked him to explain what was going on with Tuesdays, could he provide assistance to LTSO Phree? Did he need a short term change in his schedule? LTSO Phree insisted no, nothing like that….and he definitely did not want a change in his schedule. LTSO Phree said he felt he was being harassed and he was being treated differently than anyone else. He was invoking FMLA and he might file a complaint. STSO Alert tells LTSO Phree that it is his right to invoke FMLA and to file a complaint. He asks if LTSO Phree had any questions, to which Phree responds no. LTSO Phree was told to return to duty.

STSO Alert calls you and tells you about the latest conversation he had with LTSO Phree.

What do you advise???

Transportation Security Administration

Workshop

The next Friday, LTSO Phree requested and was approved annual leave because he wasn't feeling well. His next duty day, he submitted medical documentation to take leave under Family Medical Leave Act (FMLA). LTSO Phree was approved for intermittent leave under FMLA after Office of Chief Medical Office (OCMO) reviewed the medical documentation he submitted identifying his serious health condition. OCMO determined that debilitating migraine headaches are a serious health condition. LTSO Phree's health care provider (HCP) predicted that he may need leave up to 2 day per month.

During the first 3 months after being approved to take leave under FMLA, he requested 5 days of FMLA leave the first month, 7 days the second month and 5 days the third month.

STSO Alert contacts you about LTSO Phree's FMLA leave usage.

What do you advise???

Transportation Security Administration

OHC WP

Workshop

Management requested OCMO reviewed his leave records and FMLA medical documentation to make a fitness for duty determination. OCMO instructed LTSO Phree to provided updated medical information to assist them in addressing management's query into his fitness for duty.

His HCP wrote that although he had not seen LTSO Phree for nearly 4 months, it is possible that his patient is going through a rough patch and needs many days off to deal with migraines; however, LTSO Phree was prescribed a narcotic to treat his migraine headaches. OCMO determined that based on information from the HCP, LTSO Phree was unqualified for a TSO position.

STSO Alert and TSM Everett Ready contact you for guidance asking you what is the next step.

What do you advise???

Transportation Security Administration

OHC WP

Workshop

During his oral reply to AFSD-S Hammer Mill, LTSO Phree claims he is cured, and reminds AFSD Mill that he hasn't taken any leave since 2 weeks before he received the proposed removal notice. LTSO Phree submits updated medical documentation from his HCP who provides that LTSO Phree has responded favorably to using aspirin, has had no signs of a migraine headache and no longer needs FMLA.

Further LTSO Phree describes a stressful family matter that lasted for months and is now resolved. (Mrs. Phree reported her purse stolen that held $5,000 cash from the unapproved sale of his motorcycle…her purse with cash was later found in the trunk of her car under the spare tire). This matter mostly likely contributed to his headaches. OCMO reconsiders its first determination, and now finds LTSO Phree fit for duty.

AFSD Mills asks for your assistance in drafting his decision.

What do you advise???

Transportation Security Administration

Workshop

Six weeks after being returned to duty, LTSO Phree invokes and is approved to take intermittent leave under FMLA, approximately 1 day a week to care for his 8 and 10 year old daughters who suffer from migraine headaches.

AFSD Mill, TSM Ready and STSO Alert want to fire, or at least demote LTSO Phree.

What do you advise???

Transportation Security Administration

Questions???

Transportation Security Administration

FITNESS FOR DUTY

Transportation Security Administration

Fit For Duty Evaluations (FFD)

- Applies to TSA employees occupying positions with medical requirements
- Used to assess an employee's physical and psychological ability to safely and effectively perform the essential functions of his/her position
- Management may require a *"covered"* employee undergo a FFD* when they:

1. Directly observe and/or have credible information that a medical condition ….
2. Have a reasonable belief that an employee will pose a significant risk of substantial harm
3. Learn of an employee's medical condition through self-report or through a credible third party and additional medical information is needed to assess
4. Notified by TSA Drug- and Alcohol-Free Workplace Program (DAFWP) of employee's drug test show results use of a legally prescribed medication that may adversely impact performance of safety/security sensitive functions

NOTE: ***Prior to referring an employee for a FFD, management officials should consult with Employee Relations***

Transportation Security Administration

OHC WP

FFD Cont.

- An employee with an open DOL OWCP may not be subjected to a FFD for the same condition accepted by the DOL OWCP, unless the employee has been returned to full and unrestricted duty.
- The Office of the Chief Medical Office (OCMO) will conduct FFD at the request of referring management officials, and will decline requests that do not meet the requirements of this directive*, or are in laws, policies or regulations. In the event a request is declined, the OCMO will inform the requesting official of the basis for the declination.
- FFDs will result in one of the following fitness-for-duty determinations:

(1) **Medically Qualified**:

(2) **Temporarily Not Medically Qualified**

(3) **Not Medically Qualified for Full and Unrestricted Duty**:

Transportation Security Administration

OHC WP

FFD Cont.

- Employees ***must cooperate*** with TSA's efforts to obtain the medical information (e.g., documentation requests or TSA-ordered examinations, if applicable) necessary for rendering a fitness-for-duty determination.

  (1) Employees must provide the requested medical documentation within 30 calendar days of the request by the OCMO. (OCMO may grant an extensions on a case-by-case basis)

  (2) If the OCMO determines, employee will be required to undergo a medical examination by a TSA-designated healthcare provider.

  (3) If an employee fails to provide the requested medical documentation within the required timeframe or to comply with a TSA-ordered medical examination, employee may be determined to be Not Medically Qualified for Full and Unrestricted Duty and/or be subject to discipline for non-compliance, up to and including removal.

- When an employee is found "Temporarily Not Medically Qualified" or "Not Medically Qualified for Full and Unrestricted Duty," the appropriate management official should consult with Employee Relations and/or the OCC, as appropriate, for additional guidance.

- OCMO will provide requesting management official with an official written determination.

***NOTE**: Employees found "Temporarily Not Medically Qualified" or "Not Medically Qualified for Full and Unrestricted Duty" may be eligible for light duty, reasonable accommodation or reassignment, if applicable.*

Transportation Security Administration

OHC WP

Applicable TSA Policies and Procedures

- **TSA MD 1100.33-2: *Management-Initiated Fitness for Duty Evaluations;* effective 12/9/2016**
- **TSA Form 1133-2; *Management-Initiated Fitness for Duty Evaluations Request***
- **TSA From 1134; *Medical Information Release Authorization***

Transportation Security Administration

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Performance Management

- Addressing Unacceptable Performance

Transportation Security Administration

OHC WP

Performance Management

Performance vs. Misconduct

The inability of an employee to perform duties at a satisfactory level.

vs.

Employee's unwillingness to adhere to established procedures or supervisory instructions

Transportation Security Administration

OHC WP

Performance Management

Supervisory Responsibilities

- Communicate plan and expectations
- Initiate performance agreement
- Discuss agreement and developmental needs, if any
- Monitor and assess performance
- Provide feedback
- Conduct mid-cycle review
- Document failures and accomplishments*
- Address inadequate performance

Transportation Security Administration

*Note: TSA MD 1100.45-1; Awards and Recogni

Performance Management

Employees Responsibilities

- Performing at an acceptable level
- Informing supervisors of difficulty in carrying out assignments
- Seeking clarification of instructions

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Performance Management

What Influences Performance?

- Knowledge/skill—The employee doesn't know how to perform.
- Environmental—Something or someone keeps the employee from performing
- Motivational/attitudinal—The employee doesn't want to perform or there are flawed incentives that discourage him/her from performing

Transportation Security Administration

Performance Management

Addressing Performance Deficiencies

Appropriate action must be taken immediately upon a determination of unacceptable performance.

- Determine whether the performance deficiencies were caused by factors outside the employee's control.
- Does it relate to the inability to perform the job duties or misconduct?
- Is it related to a critical element in the performance plan?
- Collect documentation.

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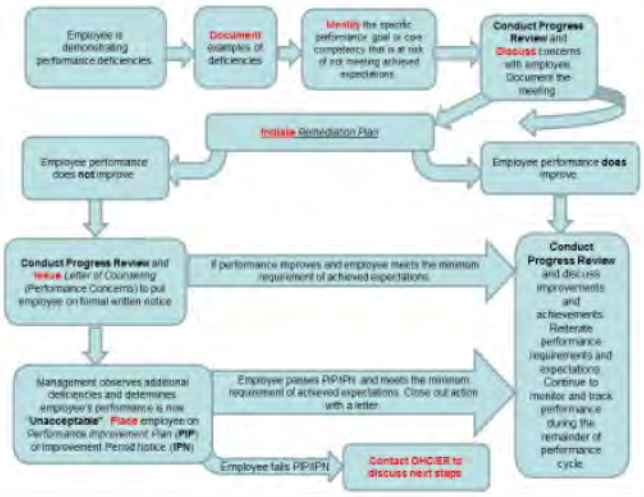
Performance Management

Addressing Performance Deficiencies



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Performance Management

Performance Counseling/Progress Review

- What date did employee sign the performance agreement?
- When did management determine employee's performance is unacceptable?
- Provide specific examples that demonstrate performance deficiencies;
- Discuss what is required to bring performance up to acceptable level;
- If no improvement, what's the next step?

Transportation Security Administration

Performance Management

Improvement Period Notice (IPN) / Performance Improvement Period (PIP)

- What is the purpose?
  To provide the employee an opportunity to bring his/her performance up to an acceptable level
- When is it provided?
  When an employee's performance is unacceptable in one or more critical elements
- Why is it important?
  If you want to take a performance based action, you must give the employee the opportunity to show acceptable performance
- Is it required?
  It is required if you plan on taking a performance based action such as demotion or removal.

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Performance Management

What's in a IPN/PIP?

- Statement of when an employee signed/was under performance plan
- Statement of unacceptable performance
- Clear notice of the critical elements that were unsatisfactory and examples
- Level of performance required to meet standards
- Statement of assistance to be provided
- Notice of consequences of failing IPN/PIP
- Duration of IPN/PIP

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Performance Management

TSO Performance Standards

Core Competencies

- Conscientiousness
- Critical Thinking
- Integrity/Honesty
- Interpersonal Skills
- Leadership *
- Oral Communication
- Teamwork

* LTSO

Performance Goals

- Screening
- Public Trust
- Job Knowledge and Skills
- Leads*

Mission Critical

Transportation Security Administration

Performance Management

Assistance Provided during the IPN/PIP

- Weekly supervisory meetings;
- Mentoring;
- OLC training courses;
- Review of SOPs;
- OJT
- Role Play /Practices
- Classroom training

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Performance Management

What's after the IPN/PIP?

- Was assistance provided and documented?
- Was performance documented during IPN/PIP?
- Was leave taken into account?
- Did the employee perform at an acceptable level?
- What are the next steps?

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Performance Management

After Action

IPN/PIP Successful

- Notify employee of successful completion with PIP close out letter.

IPN/PIP Unsuccessful

- Reassignment
- Demotion
- Removal

Transportation Security Administration

Performance Management

Documentation for a Performance Based Action

- Weekly meeting notes;
- MFR from mentors;
- Online OLC completion report;
- List of formal training;
- Examples of continued deficiencies

Transportation Security Administration

Performance Disputes

Employees cannot grieve:

- The content of performance discussions including progress reviews
- The content or receipt of an IPN or PIP
- The content of performance elements and standards

Transportation Security Administration

Performance Disputes

Employees can grieve:

- **The final yearly rating**
- **Management failed to conduct the required reviews per TSA policy or the CBA**
- **That an IPN or PIP notice or process was deficient per TSA policy or the CBA**

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OHC WP

Applicable TSA References

- **TSA MD 1100.43-3: *Employee Performance Management Program* (EPMP) or EPMP iShare site at https://team.ishare.tsa.dhs.gov/sites/HCapital/HCDevelop/OPMI/ePerformanceResources/default.aspx**
- **Collective Bargaining Agreement**
- **TSA MD 1100.43-4: *Transportation Officer Performance System* (TOPS) or TOPS iShare site at https://team.ishare.tsa.dhs.gov/sites/HCapital/MSCD/PMI/TOPS/default.aspx**

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Workshop

Letter of Counseling (Performance Concerns)

Transportation Security Administration

AVENUES of REDRESS

- National Resolution Center (NRC)
- Merit Systems Protection Board (MSPB)
- Office of Professional Responsibility Appellant Board (OAB)

Transportation Security Administration

National Resolution Center (NRC)

- Mediation/Alternate Dispute Resolution (ADR)
- Unitary Dispute Resolution System - Grievance Process
  - Disciplinary actions and workplace disputes
  - Determination allegations including alleged CBA violations

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Mediation/Alternate Dispute Resolution

- In Mediation/ADR, a neutral third party attempts to assist the employee and management reach a mutually agreeable solution to the dispute
- Mediation can be requested prior to Grievance or OPR Appellant Board (OAB). If unresolved, the employee still has the right to pursue the appropriate forum
- Mediation style is facilitative and restricted to matters outside EEO

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OHC WP

Grievance Process

Designated Grievance Official (DGO)

- DGO identified in the discipline decision letter
- Grievances must be filed within 15 days with NRC
- NRC notifies employee of acceptance or rejections within 7 days
- If accepted, grievance forwarded to DGO within 3 days;
- DGO has the authority to grant, in whole or in part, modify or deny the relief sought by grievant

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Grievance Process (Cont.)

DGO's responsibilities

- Must not have been involved in the disciplinary action
- Must be J band or above; equal to or above deciding official unless designated/approved by FSD
- Must meet with grievant (face to face, if possible) within 10 days of NRC notification
- Must issue written decision within 7 days of reply period or final meeting or 7 days of completing additional fact finding if deemed necessary

Transportation Security Administration

OHC WP

Neutral 3rd Party Review

OPR Appellant Board (OAB)	Merit Systems Protection Board (MSPB)
Suspension ≥ 15 days	Suspension ≥ 15 days
Involuntary Demotions for performance/conduct	Reduction in pay and/or pay band
Furlough of any length	Furlough of ≤ 30 days
Removals	Removals
Other actions as directed by the TSA Administrator	
Scope: TSO Workforce	Scope: Non-TSO Workforce
Internal to TSA	Government Agencies

Transportation Security Administration

OAB and MSPB

What do they review?

- Did the evidence prove the charge?
- Was the charge appropriate?
- Was there a nexus?
- Was the penalty appropriate?
- Did the action promote the efficiency of the service?
- Were there harmful or procedural errors?
- Was due process provided?

Transportation Security Administration

Applicable TSA Policies

- **HCM Policy 771-4 and Handbook, *National Resolution Center***
  - **TSA Form 1115-1*; Grievance-Mediation Request***
- **TSA MD 1100.77-1 and Handbook, *OPR Appellate Board***
  - **TSA Form 1177-1*; OPR Appellate Board Appeal***

✓ ***NOTE: information for MSPB can be found on www.MSPB.gov***

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Questions???

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OHC WP

ER RELATED MATTERS

- Resignations
- Workplace Violence Prevention
- Anti-Harassment Program (POCs)
- TSA Academy
- Integrated Database

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OHC WP

Resignations (NOA 317)

- separation initiated by an employee
- a voluntary action and management cannot force an employee to resign.
- is not a management "option" to be used in order to avoid taking an appropriate action.
- An employee can choose to resign at any time on any date.
- Remarks on a Resignation SF50
  - Document the employee's reason for resigning or "gave no reason for resigning"
  - Agency Finding- should be documented on the SF50 only when the employee has appeal rights and has been notified in writing of an agency action.

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Resignation ILIA (in lieu of an involuntary action)*

- Nature of Action 312 (v. Resignation NOA 317)
- Initiated by employee under circumstances of "involuntary separation" (a separation against the will of and without the consent of the employee)
  - Reduction in Force (RIF)
  - Abolishment of Position
  - Lack of Funds
  - Unacceptable Performance
- Other than separation for cause on charges of misconduct or delinquency

*See guidance under References

Transportation Security Administration

TSA Workplace Violence Prevention

- TSA MD 2800.12, *Workplace Violence Prevention Program*
- Provides guidance on:
  - Preventing
  - Identifying
  - Reporting and Responding
  - Establishes Roles and Responsibilities
- Violent acts include physical assaults, suicide, threats, harassment, intimidation, oral or written statements, and gestures/expressions that communicate a direct/indirect threat of physical harm; or which otherwise frighten or cause an individual concern for his or her personal safety
- ER is part of the multidisciplinary response team providing advise on administrative and/or disciplinary actions related to workplace violence

Transportation Security Administration

Anti-Harassment Program/Coordinator (AHPC)

- Who is the AHPC?
  - Jan Wassell (571) 227-6140
- Responsibilities…
  - Serve as POC for management officials to report allegations of harassment
  - Coordinate all management fact-finding inquiries
  - Provide advice and guidance
  - Serve as the official custodian of fact-finding inquiry reports

Transportation Security Administration

OHC WP

Contact Information

- Anti-Harassment Hotline: (571) 227-1336
- Office of Civil Rights and Liberties: (877) EEO-4TSA; OCRL TTY (866) 536-9679
- Office of the Ombudsman: (571) 227-2383
- Office of Inspection: (571) 227-1800
- Employee Assistance Program: (800) 222-0364 or TTY: (800) 887-5506 or www.FOH4you.com
- Office of Inspector General: (800) 323-8603
- TSA Workplace Violence Prevention Program: (571) 227-4214

Transportation Security Administration

OHC WP

TSA Academy

- All conduct and performance-based actions are initiated by Academy ER Lead
- TSA MD 1100.73-5 and FLETC Student Handbook*
- Extremely Serious About Misconduct Violations, to include:
  - Attendance
  - Harassment (any type)
  - Misuse of Internet
  - Curfews/Cohabitation
  - Alcohol Related
    - Purchase in uniform
    - "Under the influence" leading to misconduct
  - Disrespectful/Discourteous conduct towards roommate
  - Unauthorized Video/Pictures

*All students both on and off duty will be stringently held to the policies and standards of TSA MD 1100.73-5, *Employee Responsibilities and Conduct*, and the *FLETC Student Handbook* while in attendance.

Transportation Security Administration

ER Database Case Management

- Must record ALL corrective, disciplinary and adverse actions, support documentation, including;
  - Letters of Guidance and Direction
  - Letters of counseling
  - Leave restrictions
  - Disciplinary and Adverse Actions
  - ROIs
  - Grievance / Appeal Decisions
  - PIP/IPN
- Constitutes the official agency record
  - Case records must be accurately, completely and timely uploaded and put in "completed" status
  - All supporting documents to be scanned and uploaded
  - All applicable data fields need to be filled-in
  - ***Do not password protect documents or upload TSA MDs and Handbooks into case files***

Transportation Security Administration

ER Case File Audit Checklist

1-Step Actions Documentation

- Copy of signed decision letter w/receipt acknowledge/proof of delivery, if applicable
- Evidence of documented Pre-Decisional Discussion
- Appropriate Charges/Specifications
- Supporting Documentation/Attachments (Evidence Review)
- Written/Oral Reply or Summary
- Thorough Penalty Analysis
- Reasonable/Appropriate Penalty
- Sufficiency Review
- Appeal/Grievance Rights
- SF52/SF50

Transportation Security Administration

OHC WP

ER Case File Audit Checklist

2-Step Actions Documentation

- Copy of signed proposal letter w/receipt acknowledge/proof of delivery, if applicable
- Appropriate Charges/Specifications
- Supporting Documentation/Attachments (Evidence Review)
- Written/Oral Reply or Summary
- Copy of signed decision letter w/receipt acknowledgement /proof of delivery, if applicable
- Thorough Penalty Analysis
- Reasonable/Appropriate Penalty
- Sufficiency Review
- Appeal/Grievance Rights
- SF52(s)/SF50(s)

Transportation Security Administration

OHC WP

ER Case File Audit Checklist

Other Actions

(Corrective actions, Resignation, Terminations, Trial Period Demotions, No Action, etc…)

- Copy of signed letter w/receipt acknowledge/proof of delivery, if applicable
- Supporting Documentation (Evidence Review)
- SF52/SF50, if applicable

Transportation Security Administration

OHC WP

ER Case Management Checklists*

- ER Case File Audit Checklist – Data Fields
- ER Case File Audit Checklist – Supporting Documentation

Please note for all cases :

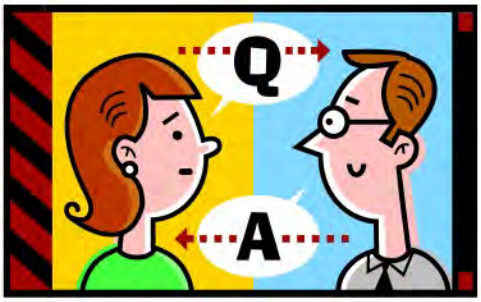
- *do not password protect* any documentation that is uploaded to the ER Integrated Database;
- do not upload checklists, prior corrective actions, MDs or policies.

In those cases that result in no action, resignation or retirement, a case file is still required to be opened and the supporting documentation and case records must be uploaded.

**Found on ER iShare page and under ER Case Management Literature Tab*

Transportation Security Administration

OHC WP



Transportation Security Administration

Evaluations

How Did <u>We</u> Do?

Transportation Security Administration

THE END!

Goodbye…

Thank you!

Transportation Security Administration