

U.S. Department of Energy
Washington, DC

MINOR CHANGE

DOE O 333.1

Chg 1 (MinChg): 07-09-2018

SUBJECT: MINOR CHANGE TO DOE O 333.1, ADMINISTERING WORK FORCE
DISCIPLINE, ADVERSE AND PERFORMANCE BASED ACTIONS

1. EXPLANATION OF CHANGES. Changes, edits, and additions based on Executive Orders 13836, 13837, and 13839; and the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017.
2. LOCATIONS OF CHANGES:

Page	Paragraph	Changed	To
1	1.a.	To provide requirements and responsibilities for administering work force discipline that includes disciplinary, adverse, and alternative corrective actions in the Department of Energy (DOE).	To provide requirements and responsibilities for administering disciplinary and adverse actions under Title 5 of the United States Code (U.S.C), Chapter 75, for misconduct or performance issues in the Department of Energy (DoE).
1	1.d.(1)	An employee must be informed in writing specifically why a disciplinary or adverse action is being issued against him or her;	An employee must be provided the basis for the action in writing;
3	4.f.	In taking actions under this Order, when practicable, like penalties must be considered for like offenses. However, full consideration should be given to the Douglas Factors found at Appendix B, when determining what action is appropriate for an adverse action, including the nature and gravity of the offense, existence of either mitigating or aggravating circumstances, the frequency of the offense and the employee's position and so forth.	Full consideration should be given to the Douglas Factors found at Appendix B, as appropriate.

Page	Paragraph	Changed	To
3	4.h.	When practicable, the concept of progressive discipline will be administered. Progressive discipline can include informal and formal disciplinary actions. Informal disciplinary actions which are not considered official discipline at DOE include: oral or written letters of counseling, sick leave restrictions, an oral or written admonishment and other notices/actions of a progressive nature. Formal/official disciplinary actions at DOE include: reprimands, suspensions, demotions and removals.	Progressive discipline may be considered. Examples of informal disciplinary actions which are not considered official discipline at DOE include: oral or written letters of counseling, sick leave restrictions, an oral or written admonishment and other notices/actions of a progressive nature. These records are typically retained with the supervisor and thus are not an official part of the record, unless they are used to build a preponderance of evidence through formal disciplinary action(s). Supervisors should consult with their servicing employee relations specialist when deciding to take formal disciplinary action. Formal/official disciplinary actions at DOE include reprimands, suspensions, demotions and removals.
4	4.i.	When applicable, progressive discipline, to include informal and formal disciplinary action, adverse actions, and alternative corrective actions, should be taken for:	Informal and/or formal disciplinary actions adverse actions, and alternative corrective actions, taken in accordance to this order. This includes performance issues, inappropriate behavior, or other forms of misconduct. should be taken for:
4	4.l.	Deleted.	

Page	Paragraph	Changed	To
4	5.b.(1)(e)	Added.	Implement actions directed by OPM and/or respond to other third-party authorities, such as the Federal Services Impasses Panel, Federal Mediation and Conciliation Service, MSPB or EEOC.
4	5.c.(1)(d)	Added.	Review and concur on all petitions for payment of attorney's fees for <i>compliance</i> with statutory and regulatory requirements;
5	5.c.(1)(d)	Renumbered	5.c.(1)(e)
5	5.c.(2)(g)	Added.	Advise DOE OGC of internal legal issues and/or actions taken.
7	5.e.(8)	Added.	Enter and maintain all disciplinary and adverse action case files in the Department's automated Case Management System.
7	5.e.(10)	Added.	Maintain report(s) of all performance-based and conduct based disciplinary and adverse actions through the Department's automated case management system, and submit report(s) to the Office of Human Capital Policy and Accountability upon request.
	6.	Updated References.	
11	7.n.	Added.	This provision however, is allowed on a limited basis to the extent permitted by applicable Executive Orders, statutes, regulations, and rules.

Page	Paragraph	Changed	To
13	7.s.	<u>Official Time</u> . For the purposes of this order, is paid time off from assigned Government duties to represent a union or a BUE.	<u>Official Time or Taxpayer-Funded Union Time</u> . For the purposes of this order, is paid time off from assigned Government duties to represent a union or a BUE to the extent permitted by applicable Executive Orders, statutes, regulations, and rules.
14	7.w.	Added	Accordingly, management officials have the discretion to consider progressive discipline. The penalty for an instance of misconduct or performance issues should be tailored to the facts and individual circumstances
App A, I-5	2.y.	Added.	Knowingly, when acting on behalf of a Federal labor organization, may utilize free or discounted use of government property or any other agency resources if such free or discounted use is not generally available for non-agency business by employees when acting on behalf of non-Federal organizations. Such property and resources include office or meeting space, reserved parking spaces, phones, computers, and computer systems.
App A, I-5	2.z.	Added.	Engaging in lobbying activities during paid time, except in their official capacities as an employee.

Page	Paragraph	Changed	To
App A, I-5	2.aa.	Added.	Accessing the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in 5 USC 2302 (b)(1)-(13). 5 USC Section 2302(b)(14).
App A, I-9	4.	When appropriate and/or applicable to the particular circumstances of an action, supervisors may administer informal actions such as oral or written letters of counseling, sick leave restrictions, AWOL notices, and/or an oral or written admonishment to put the employee on notice of inappropriate conduct. However, there will be occasions where such progressive discipline does not promote the efficiency of the Federal service and formal disciplinary or adverse action will be administered without its use.	Progressive discipline is not required, however, when appropriate and/or applicable to the particular circumstances of an action, supervisors may administer informal actions such as oral or written letters of counseling, sick leave restrictions, AWOL notices, and/or an oral or written admonishment to put the employee on notice of inappropriate conduct. However, there will be occasions where such progressive discipline does not promote the efficiency of the Federal service and formal disciplinary or adverse action will be administered without its use. Accordingly, management officials have the discretion to consider progressive discipline to the extent practicable. The penalty for an instance of misconduct should be tailored to the facts and individual circumstances.
App A, II-1	3.	The probationary employee is entitled to the deciding official's written decision at the earliest practicable date.	The probationary employee is entitled to the deciding official's written decision at the earliest practicable date but no later than 15 business days.

Page	Paragraph	Changed	To
App A, III-3	2.c.(1)	Union representatives will request and use official time in accordance with their CBA requirements.	Union representatives will request and use official time/taxpayer-funded union time in accordance with E.O. 13837.
App A, IV-2	2.c.(1)	Added.	Assign the employee to duties where he/she is no longer a threat to safety, the Department's mission, or to Government property;
App A, IV-2	2.c.(1)-(3)	Renumbered.	2.c.(2)-(4)
App A, IV-3	2.e.	An employee is entitled to be represented by an attorney or other representative, at his/her own cost. A BUE is entitled to union representation, as provided for under 5 U.S.C. Chapter 71 or under the applicable CBA. Where a non-bargaining unit employee seeks to be represented by another DOE employee, the priority needs of the service and potential conflict of interest will be assessed by the deciding official to allow such representation.	An employee is entitled to be represented by an attorney or other representative, at his/her own cost.
App A, IV-3	2.h.	Deleted.	
App A, IV-3	2.i.-n.	Renumbered	2.h.-m.
App A, IV-3	2.n.	Added.	A decision on a proposed removal must be issued within 15 business days or 19 calendar days of the employee's response.

Page	Paragraph	Changed	To
App A, V-2	1.d.	Removed.	MSPB guidelines recommend not using the phrase “clean record” in an agreement; instead relay that specific records will be removed from a specific location (i.e. eOPF) and leave room for records kept by SHRO for statistical purposes.
App A, V-6	3.b.(9)	What will happen to all records of the action if the employee leaves the organization or the Department (be clear if offering to remove records from the eOPF and/or provide a clean reference, be clear if there is a debarment from the Department/Federal service, etc.);	A clear statement that the last chance agreement will remain in the employee’s eOPF
App A, V-6	3.b.(9)	Removed.	It is recommended to not use the phrase “clean record” in an agreement, instead relay that specific records will be removed from a specific location (i.e. eOPF) and leave room for records kept by SHRO for statistical purposes.
App A, V-6	3.f.	The duration of a last chance agreement replacing a permanent eOPF action (suspension/adverse action) should be considered for a minimum five years, to account for the seriousness of replacing an otherwise permanent action in the eOPF.	The last chance agreement will be a permanent eOPF action.
App B, B-1	1.c.	The employee's past disciplinary record;	The employee's past disciplinary record (including all misconduct and disciplinary actions – not just similar records of misconduct or disciplinary actions);

Page	Paragraph	Changed	To
App B, B-8	Table #41	Borrowing money from, or lending money to any subordinate, rate payer, grant recipient or other person obtaining a benefit from DOE.	Borrowing money from, or lending money to any government contractor, subordinate, rate payer, grant recipient or other person obtaining a benefit from DOE.
App B, B-13	Table #52	Engaging in a prohibited personnel practice (see 5 U.S.C. 2302).	Engaging in a prohibited personnel practice (see 5 U.S.C. 2302 and Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017).
		Suspension to Removal	3-day (mandatory)
		Removal	Removal (mandatory)