

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

AIR FORCE INSTRUCTION 36-704

3 JULY 2018



Personnel

**DISCIPLINE AND ADVERSE ACTIONS
OF CIVILIAN EMPLOYEES**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This Instruction implements Air Force Policy Directive 36-7, *Employee and Labor-Management Relations*, and provides guidance for taking disciplinary and adverse actions against certain civilian employees paid with appropriated funds. Use this Air Force Instruction with the requirements in Title 5 United States Code, Chapters 43 and 75, and the Office of Personnel Management's implementing regulations in Title 5, Code of Federal Regulations, Part 752, Subparts A through D, *Adverse Actions*. It applies to Title 5 United States Code employees of the Air Force and Air Force Reserve. The Chief of the National Guard Bureau will determine the extent to which this Instruction will apply to the Title 5 National Guard employees of the National Guard Bureau and the Air National Guard or whether such disciplinary and adverse actions will be governed by separate regulations issued by Chief of the National Guard Bureau. It does not apply to Title 32 Air National Guard Technicians or Title 10 Defense Civilian Intelligence Personnel System personnel.

This instruction requires the collection and/or maintenance of information protected by Title 5 United States Code Section 552a, *The Privacy Act of 1974*. The authorities to collection or maintain the records prescribed in the publication are Title 5, Code of Federal Regulations 293; 10 United States Code 8013, and Executive Order 9397. The application SORN, OPM/GPVT-1, *General Personnel Records*, applies. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual 33-363, Management of Records, and disposed of in accordance with the Air Force Records Disposition Schedule in the Air Force Records Information Management System. The authorities to waive wing/unit level requirements in this publication are identified with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See AFI 33-360, *Publications and Forms*

Management, for a description of the authorities associated with the Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority, or alternately, to the requestors commander for non-tiered compliance items.

In collaboration with the Chief of Air Force Reserve (AF/RE) and the Director of the Air National Guard (NGB/CF), the Deputy Chief of Staff for Manpower, Personnel, and Services (AF/A1) develops personnel policy for civilian employment and labor-management relations policy. This publication may be supplemented at any level: Major Command level supplements must be approved by the Human Resources Strategic Council prior to certification and approval.

SUMMARY OF CHANGES

This document has been substantially revised and needs to be completely reviewed. Major changes include transfer of OPR from Air Force Personnel Operations Agency (AFPOA/DPW) to Civilian Force Management Directorate (AF/A1C), adds Air Force Legal Operations Agency responsibilities, and changes Civilian Personnel Flight to include Civilian Personnel Section. This revision adds the National Guard Bureau – Judge Advocate (NGB-JA) responsibilities, renames, renumbers, and reorganizes the entire Instruction. It revises the definition of workplace discrimination. It clarifies penalties for drug use. It adds charges to the table of penalties including misuse of the Government Travel Card or Government Purchase Card, conduct unbecoming of a federal employee, lack of candor in an official investigation or other formal matter, inappropriate or unwanted physical contact with another individual, conversion of government property, misuse or abuse of government property, unprofessional relationships, and failure to disclose outside business activity or compensated outside employment (where required). This revision removes all reference to Air Force Form 971 which is the accurately titled ‘Supervisor’s Employee Brief.’

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Chapter 1

OVERVIEW

1.1. Air Force Policy. The Air Force depends on a large civilian work force to accomplish its various missions. Managing this work force requires an effective program for planning, developing, monitoring, evaluating and correcting individual and organizational performance. This Instruction provides internal guidance for taking disciplinary and adverse actions against civilian employees.

1.2. Employees covered in this Instruction: Air Force civilian employees serving in the competitive and excepted service, paid from appropriated funds.

1.3. Employees excluded from this Instruction:

1.3.1. Presidential appointees.

1.3.2. Reemployed annuitants.

1.3.3. Senior Executive Service employees.

1.3.4. Administrative law judges covered by 5 United States Code 7521.

1.3.5. National Guard technicians covered by United States Code Title 32.

1.3.6. Non-United States citizens employed in foreign areas who are not entitled to veterans' preference based on service performed with the United States Uniformed Services. The servicing commands establish policies and procedures covering like employees.

1.3.7. Employees paid with non-appropriated funds.

1.3.8. Defense Civilian Intelligence Personnel System employees covered by United States Code Title 10.

1.4. Actions covered in this Instruction:

1.4.1. Admonishment.

1.4.2. Reprimand.

1.4.3. Suspension.

1.4.4. Removal.

1.4.5. Furloughs for 30 days or less.

1.4.6. Change to Lower Grade.

1.5. Non-Discrimination Statement. The Air Force ensures civilian conduct and responsibilities are implemented and applied without unlawful discrimination because of race, color, religion, sex (including pregnancy, gender identity and sexual orientation), national origin, age (40 or older), disability, genetic information, or prior Equal Employment Opportunity activity.

Chapter 2

ROLES AND RESPONSIBILITIES

2.1. Deputy Chief of Staff, Manpower, Personnel & Services (AF/A1):

- 2.1.1. Develops, coordinates, and executes personnel policy and essential procedural guidance for the management of programs in this Instruction.
- 2.1.2. Promotes education and training for leadership and supervisors on standards of conduct, merit system principles, and appropriate corrective action.

2.2. Director, Civilian Force Management Directorate (AF/A1C):

- 2.2.1. Under the authority and direction of the AF/A1, directs development and implementation of the civilian conduct and responsibilities policy.
- 2.2.2. Ensures compliance with the law and Department of Defense regulations.
- 2.2.3. Develops Air Force-wide policy and guidance for taking disciplinary and adverse actions.
- 2.2.4. Provides guidance on provisions of this Instruction.
- 2.2.5. Monitors programs and assess implementation to ensure compliance with this Instruction.

2.3. Air Force Personnel Center:

- 2.3.1. Provides Defense Civilian Personnel Data System operational guidance, training and assistance to the civilian personnel sections as it pertains to adverse and disciplinary transactions.
- 2.3.2. Processes disciplinary and adverse actions according to Office of Personnel Management Operating Manual, Guide to Processing Personnel Actions.
- 2.3.3. Processes personnel actions relative to negotiated settlement agreements and third party decisions such as Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission administrative and judicial class actions. Ensure implementation is compliant with legal and regulatory guidance from draft review to final close-out.

2.4. Major Commands, Combatant Commands, Field Operating Agencies, and Direct Reporting Units:

- 2.4.1. Provides supplemental procedures as needed. (T-1)
- 2.4.2. Advises and assist civilian personnel sections. (T-1)

2.5. Air Force Legal Operations Agency, Labor Law Field Support Center:

- 2.5.1. For civilians covered by this Air Force Instruction, provides the following legal services at locations across the United States and overseas except at the Robins, Hill, Tinker, and Wright-Patterson Air Force Base, the National Guard Bureau, and Air Force Reserve Command bases. These organizations shall provide all labor and employment law services within their respective organizations with the exception of representation in federal court and

Equal Employment Opportunity Commission class actions, which shall be in all instances the responsibility of the Labor Law Field Support Center. References to the Labor Law Field Support Center in this Instruction also refer to these legal offices.

2.5.1.1. Provides the full spectrum of labor and employment law expertise to ensure maximum flexibility for commanders in employing the civilian workforce in support of Air Force operations.

2.5.1.2. Except for those bases identified in 2.5.1 above, Labor Law Field Support Center reviews proposed actions, decision notices and Douglas Factor analyses in actions appealable to the Merit Systems Protection Board for legal sufficiency. At a minimum, the proposal and decision notices are to be reviewed and approved for legal sufficiency by the Labor Law Field Support Center before they are served on the employee.

2.5.1.3. Represents the Air Force at settlement discussions, Merit Systems Protection Board hearings and petitions for review, and related lawsuits in Federal and/or State courts. Provide installation legal offices and civilian personnel sections with copies of acknowledgment orders. Coordinate major case actions with the installation legal office and civilian personnel sections.

2.5.1.4. Works with SAF/GCA on matters involving the Office of Special Counsel.

2.6. Air Force General Counsel (SAF/GC):

2.6.1. Provides guidance and legal review on all policy issues covered by this instruction to the Secretary and members of the Secretariat and the Air Staff.

2.6.2. Provides legal support and guidance regarding all matters involving Civilian Senior Executives and Office of Special Counsel (OSC) matters.

2.7. The National Guard Bureau – Judge Advocate (NGB-JA):

2.7.1. Provides the full spectrum of labor-employment law expertise, managerial advice and representation in cases involving National Guard employees assigned to the National Guard Bureau, to include those within the Air National Guard Directorate, Air National Guard Readiness Center, and other field operating locations of the National Guard Bureau. State Judge advocates will provide the full spectrum of legal support for Title 5 National Guard employees within State National Guards managed under a designation of authority from Chief of the National Guard Bureau.

2.7.2. Is responsible for advising and representing management for National Guard Bureau Title 5 employees. The Chief of the National Guard Bureau is considered the appropriate "head of the agency" or "respondent" for these employees and any claims, grievance or action arising from or relating to any personnel action or condition of employment. The Adjutant General is to be considered the appropriate "head of the agency" or "respondent" for any issue arising from Title 5 National Guard employees managed under a designation of authority issued by the Chief, National Guard Bureau pursuant to 10 United States Code 10508.

2.8. Installation Staff Judge Advocate:

2.8.1. For civilians covered by this Air Force Instruction, reviews proposed actions, decision notices and Douglas Factor analyses in formal disciplinary and adverse actions for legal sufficiency before they are served on the employee. **(T-1)**

2.8.2. Except as provided in paragraph 2.5.1 above, submits all proposed actions, potentially appealable to the Merit Systems Protection Board, to the Labor Law Field Support Center, NGB-JA or Headquarters Air Force Reserve Command (HQ AFRC/JA), for additional legal review prior to issuing proposals and decision notices to employee. **(T-1)**

2.8.3. Ensures Labor Law Field Support Center or NGB-JA is provided a copy of the Merit Systems Protection Board acknowledgement order, if not directly served on Labor Law Field Support Center or NGB-JA, as soon as it is received. **(T-1)**

2.8.4. Secures documentation of disciplinary and adverse actions in accordance with applicable records management rules or, if the employee challenges the action in Equal Employment Opportunity, Merit Systems Protection Board, Office of Special Counsel or applicable grievance procedures, until said action opposing the discipline has been resolved and in consultation with Staff Judge Advocate, Labor Law Field Support Center or NGB-JA, or for Office of Special Counsel matters, SAF/GCA. **(T-1)**

2.8.5. Provides Labor Law Field Support Center or NGB-JA administrative assistance as necessary. **(T-1)**

2.9. Commanders/Civilian equivalents:

2.9.1. Implement disciplinary and adverse action programs within their activities that comply with legal and regulatory requirements. Disciplinary action are not to be taken against any employee for any alleged prohibited activity under investigation by the Office of Special Counsel or for any related activity without the approval of the Special Counsel. Any such proposed disciplinary action must be forwarded to SAF/GCA prior to issuing the proposal to the employee. **(T-0)**

2.9.2. Communicate to civilian employees the overall expectations governing civilian conduct and responsibilities. **(T-1)**

2.9.3. Upon notification of a complaint alleging sexual harassment by a civilian employee, carry out an investigation of the matter in accordance with 10 United States Code 1561. If the complaint is sexual assault, immediately refer the matter to the Air Force Office of Special Investigations. Commanders/Civilian equivalents may not initiate an independent investigation unless Air Force Office of Special Investigations declines to investigate the sexual assault claim. Based on the final report from the investigation, commanders/civilian equivalents are expected to take appropriate disciplinary or adverse action if warranted. **(T-0)**

2.10. Civilian Personnel Sections:

2.10.1. Assist Commanders/civilian equivalents, managers, and supervisors in administering disciplinary and adverse actions. **(T-1)**

2.10.2. Ensure disciplinary actions and adverse actions comply with law, regulation, and policy. **(T-1)**

2.10.3. Coordinate with Staff Judge Advocate Office and Labor Law Field Support Center on disciplinary and adverse actions. For actions involving Air Reserve Technicians, coordination with HQ AFRCR/JA is required. **(T-1)**

2.10.4. Assist leadership and legal counsel in defending disciplinary and adverse actions. **(T-1)**

2.11. Civilian Personnel Officers:

2.11.1. Take actions as directed by Office of Personnel Management, Merit Systems Protection Board, or higher levels of authority of those that fall outside a supervisor's personnel management responsibilities. **(T-0)**

2.11.2. Ensure staff members process disciplinary actions and adverse actions according to Office of Personnel Management Operating Manual, The Guide to Processing Personnel Actions. **(T-0)**

2.11.3. Promptly notify the Designated Agency Ethics Official of terminations of employees in positions that require incumbents to file public financial disclosure reports, with the notification occurring prior to the termination whenever practicable but in no later than 15 days after termination IAW 5 Code of Federal Regulation 2638.105. **(T-0)**

2.12. Supervisors:

2.12.1. Promote good employee-management relations by providing employees with constructive feedback and by documenting counseling sessions with employees. **(T-3)**

2.12.2. Create a work environment free from unlawful discrimination because of race, color, religion, sex (including pregnancy, gender identity and sexual orientation), national origin, age (40 or older), disability, genetic information, or prior Equal Employment Opportunity activity. **(T-0)**

2.12.3. Keep employees informed of rules, regulations, standards of conduct, merit system principles, and maintain conduct and discipline according to policy and established procedures. **(T-3)**

2.12.4. Upon receipt or notification of an Unrestricted Report of an incident of sexual assault, immediately refer the matter to the OSI and notify the commander. **(T-1)**

2.12.5. Gather, analyze, and carefully consider available facts and circumstances before taking or recommending disciplinary action. **(T-3)**

2.12.6. Discipline and counsel employees individually while respecting the privacy interests of the employee. See Paragraph [2.8.1](#). **(T-1)**

2.12.7. Contact civilian personnel section for guidance concerning courses of action. **(T-2)**

2.12.8. Coordinate all proposed and decision notices with the civilian personnel section prior to issuing to employee; sign proposed and decision notices prior to issuing to employee; and consider responses by the employee and/or their representative to proposed actions prior to making your final decision. **(T-2)**

2.12.9. Assist leadership and legal counsel in defending disciplinary or adverse actions. **(T-1)**

2.12.10. Establish, clearly communicate, and consistently enforce reasonable rules and standards of conduct. **(T-3)**

2.12.11. Set a good example. **(T-3)**

2.12.12. Identify conduct that needs improvement in a way that respects the employee's dignity. **(T-3)**

2.12.13. Treat employees fairly and encourage them to improve. **(T-3)**

2.13. Employees:

2.13.1. Responsibly discharge assigned duties.

2.13.2. Respect the administrative authority of those directing their work.

2.13.3. Observe laws, regulations, and policies governing employee conduct and responsibility.

Chapter 3

ADMINISTERING DISCIPLINARY AND ADVERSE ACTIONS

3.1. General Information. For civilians covered by this Air Force Instruction, this chapter provides general guidance to supervisors and managers for the administration of disciplinary and adverse actions. For actions involving bargaining unit employees, refer to the appropriate collective bargaining agreement and contact the civilian personnel section for appropriate interpretation.

3.2. Guidance Applicable to Disciplinary Actions. When considering and taking disciplinary action, supervisors:

3.2.1. Investigate the alleged offense and consider all available relevant facts when appropriate. **(T-1)** Depending upon the allegation(s), the supervisor may have a duty to refrain from investigating where another office (Air Force Office of Special Investigations, Inspector General (IG) or Office of Special Counsel, for example) may have jurisdiction.

3.2.2. Ensure that any action taken is timely, for good cause, and that it complies with applicable law, regulation, and policy. **(T-1)**

3.2.3. Conduct interviews and discipline employees in private. **(T-1)**

3.2.4. Involve the minimum number of people and offices necessary when gathering facts and coordinating actions. **(T-1)**

3.3. Distinguishing Disciplinary from Performance-Based Actions. The process for addressing performance problems is different from the one used for those accused of misconduct. There also are different rules, required steps and appeal rights to the Merit Systems Protection Board. It is important to understand the nature of the employee issue at hand and not to confuse the two processes.

3.4. Distinguishing Disciplinary from Non-disciplinary Actions. Improper identification of whether a cause of action is a disciplinary or non-disciplinary situation may lead to a failure to meet all procedural requirements. A cause of action due to an employee's delinquency and/or misconduct personally attributable to the employee is a disciplinary situation (*e.g.*, include absence without approved leave, violation of leave procedures). A cause of action not due to an employee's delinquency or misconduct is a non-disciplinary situation (*e.g.*, include physical or mental inability to perform the duties of the position, or lack of work or funds necessitating a furlough).

3.5. Governing Requirements. Supervisors and managers are to respect employees' rights established by law, regulation, policy, or collective bargaining agreement. **(T-0)**

3.6. Standards for Taking Disciplinary or Adverse Actions. Managers and supervisors may take a disciplinary or adverse action only for such cause as to promote the efficiency of the service. Supervisors may not take a disciplinary or adverse action against an employee based upon prohibited personnel practices (*e.g.* reprisal) as set forth in 5 United States Code 2302. **(T-0)**

3.7. Burden of Proof. In order to meet the standard for taking an action, managers and supervisors:

3.7.1. Clearly specify the charges or reasons upon which the disciplinary and adverse action is based. **(T-1)** If the employee qualifies as a whistleblower under the civilian whistleblower statutes, the specific charges may need to be proved by a clear and convincing standard of proof. Check with the appropriate legal office.

3.7.2. Be able to prove the specific charges or reasons which form the basis for the action by a preponderance of the evidence. **(T-1)**

3.7.3. Be able to show the connection or “nexus” between the charges and the impact on the efficiency of the service. **(T-1)**

3.7.4. Be able to show that the penalty imposed was appropriate under the circumstances. **(T-1)**

3.8. Representation. Employees in an exclusive bargaining unit have the right to representation according to the terms of any governing collective bargaining agreement. **(T-0)** If a bargaining unit employee reasonably believes an examination by management may result in disciplinary action against him or her, and the employee requests union representation, supervisors and managers at the employee request are to afford a union official, of an appropriate bargaining unit, the opportunity to be present at any examination by a management representative. Employees who are not in an exclusive bargaining unit have the right to be represented by the person of their choice in accordance with 5.3 below.

3.9. Applying Requirements. Supervisors and managers ensure that disciplinary and adverse actions comply with all legal and regulatory requirements. **(T-0)**

3.9.1. A third party review (e.g., Merit Systems Protection Board, Equal Employment Opportunity Commission) may find actions defective that do not comply with governing requirements, either procedurally, on merit or both. The third party may reverse the action or reduce the severity of the action.

3.9.2. An action that is not sustained by a third party because of an error in procedures may be initiated again if the Air Force corrects the deficiency. An action may not be initiated again if the third party's modification or reversal is based on the merits of the case.

Chapter 4

SELECTION OF APPROPRIATE DISCIPLINARY ACTIONS

4.1. Penalty Selection. There are many disciplinary situations and a wide variety of penalties. In deciding which action to take, careful judgment is to be used so that the penalty is not out of proportion to the character of the offense, especially a first offense, and to assure that the penalty is imposed with consistency and equity. Factors which may affect the selection of the appropriate penalty include those established by *Douglas v. Veterans' Administration*, 5 MSPR 280 (1981), commonly referred to as the "Douglas Factors."

4.2. Douglas Factors. The Douglas Factors are twelve factors that are to be considered in determining the severity of a disciplinary or adverse action. **(T-0)** The Douglas Factors Guide (**Attachment 2**) provides supervisors and managers with the twelve factors to be considered when proposing and deciding to take an action. Some of the relevant factors may weigh in the employee's favor and warrant a less severe penalty, while others may not or may even cause management to view the situation as more serious and deserving of a more severe penalty than originally considered.

4.3. Aggravating Factors. Douglas Factors considered aggravating in determining the penalty imposed:

4.3.1. The Proposing Official should include aggravating factors in the proposed action providing the employee an opportunity to respond. **(T-1)**

4.3.2. The Deciding Official should complete a written Douglas Factors analysis; if that analysis identifies aggravating factors not already provided in the proposed action, a copy of the Douglas Factors analysis is to be provided to the employee and/or his representative, and provide the employee and/or his or her representative up to seven (7) days to provide comments prior to making a final decision. In the event that a Deciding Official identifies a Douglas Factor as an aggravating factor not identified in the proposed action, the employee and/or representative are to be notified. **(T-1)**

4.4. Formal disciplinary actions. Formal disciplinary actions consist of reprimands, suspensions, removals, and reductions in pay or grade and are recorded in the employee's official personnel record. The immediate supervisor or manager of the employee being disciplined normally initiates a formal disciplinary action. Formal disciplinary actions, with the exception of a reprimand, require a proposal and decision letter signed by the respective Proposing Official and a Deciding Official. The Deciding Official may uphold, mitigate, or rescind a proposed action. The following are formal disciplinary actions:

4.4.1. Reprimand. A reprimand is an official letter given to an employee for misconduct. See **Chapter 7**.

4.4.2. Suspension. An employee may be suspended without pay for a specified number of days. See **Chapter 8**. In some instances, an employee may be suspended indefinitely.

4.4.3. Reduction in grade. An employee may be moved to a position of lower grade. See **Chapter 9**.

4.4.4. Removal. An employee may be removed from their position for misconduct. See [Chapter 9](#).

4.5. Non-disciplinary adverse actions . Adverse actions may be taken against an employee only for such cause as to promote the efficiency of the service. Just cause is necessary as a basis for an adverse action, and the action is to be determined on the merits of each individual case. Certain kinds of adverse actions are considered non-disciplinary in nature.

4.5.1. Furlough. A furlough of 30-calendar days or less is an adverse action.

4.5.2. Change to lower grade based on Reclassification or Job-Grading Determination. A change to lower grade based on reclassification or job-grading determination is a potential end result of a desk audit or the application of a new standard conducted by the servicing classification authority.

4.5.3. Suitability.

4.5.4. Medical Inability to Perform.

4.5.5. Removal for Transfer of Function.

4.6. The Table of Offenses and Penalty Guide (Attachment 3) . The guide provides supervisors and managers with typical penalties based on offenses. It should be used to evaluate causes of action (offenses), whether or not they are specifically described, so that a sound, supportable penalty may be selected. The guide contains typical offenses and typical penalties only; therefore, one should avoid a mechanical application of the guide in every case. Causes of action and penalties in the guide may not meet the demands of all situations. Use it as guidance along with supervisory judgment in considering the particular circumstances of the matter and the appropriateness of the particular action contemplated. It is far more important that similarly situated employees' delinquency and/or misconduct (comparator cases) and their penalties are considered when deciding on an offense and penalty. The same fair treatment in comparator cases, while not precedential, should be followed when appropriate. Supervisors should discuss potential comparator cases with civilian personnel section before deciding or recommending a disposition.

4.7. Penalties. Supervisors and managers normally apply increasingly severe penalties if an employee continues to breach the employee-employer relationship. If an employee commits egregious misconduct or flagrantly violates rules and regulations, removal may be appropriate for a first or second offense. Supervisors and managers are not required to use progressive discipline.

4.7.1. Supervisors may begin a progression of disciplinary penalties ranging from a reprimand, suspension, or even removal for a first time offense. If offenses continue, the supervisor may propose removal.

4.7.2. Supervisors do not need to include suspensions in a progression if the preceding reprimands clearly show that removal could result from repetitive improper behavior.

4.7.3. A previous suspension is not required before proposing removal.

4.8. Combination of Offenses. When different, significant offenses occur in combination, supervisors may include each offense as a cause of action. In this case, supervisors may impose a more severe penalty than they would have for a single offense; but the penalty should normally

not exceed that typically imposed for the most serious offense as recommended by the penalty guide.

4.9. Multiple Offenses. A series of offenses can occur when more than one offense is committed in a short time period, and appropriate action could not be completed on each offense individually before another was committed, even though management has proceeded at a reasonable pace. Supervisors may assess a more serious penalty for a series of offenses than they would have for a single offense. However, the penalty imposed should normally not exceed the most severe penalty shown in the offense column of **Attachment 3** (considering the number of offenses in the series and any prior offenses) for the most serious cause of action in the series. **(T-1)**

4.10. Prior Offenses. Subject to the following limitations, supervisors should consider an employee's previous disciplinary or adverse action when determining the severity of the penalty for a current offense even though the prior offenses may have involved different misconduct. When used in this manner, supervisors provide notice to the employee that the prior offenses and the resulting penalties imposed are to be considered in the notice of proposed action (if any) and in the notice of final decision. If considered, prior offenses are to be referenced, not only in the notice, but also in the Douglas Factors. **(T-1)**

4.10.1. Supervisors may consider a suspension as a prior offense.

4.10.2. Supervisors may consider a reprimand as a prior offense if its effective date fell within the 2 years preceding the date of the current notice of proposed action.

4.10.3. A documented admonishment may serve as support to the decision that a reprimand would be an appropriate penalty and it may be used to show employee's knowledge and notice of the regulation, rule, or policy that was violated.

4.10.4. Supervisors may use any disciplinary action or counseling to document that an employee has been apprised of a rule, regulation, other instruction, or of his or her past misconduct or delinquency.

4.11. Penalty Support. If an employee grieves or appeals an action, supervisors and managers should be prepared to support the appropriateness of the penalty. For actions appealable to the Merit Systems Protection Board, (e.g. removals, suspensions for more than 14 days, reduction in grade or pay) Deciding Officials are to document in writing their consideration of the relevant Douglas factors. **(T-1)**

4.12. Authority. Generally, the first level supervisor recommends, signs and issues the notice of proposed action. A supervisor or manager at a higher level within the chain of command may recommend, sign, and issue notice of proposed action. There may also be some instances where authority to address certain misconduct is held at a higher level within the chain of command. Normally, second-level or higher-level supervisors, acting as the Deciding Official receives and considers the employee's response, and makes the final decision covered by this instruction. NOTE: Separate Proposing/Deciding Officials are not a statutory requirement, and circumstances may warrant/justify use of a single supervisor or management official as both Proposing and Deciding Official. **(T-2)** However, separate Proposing and Deciding Officials are preferred. Consult with your civilian personnel section Employee Management Relations and Staff Judge Advocate for further advice. In certain instances, the first level supervisor may also act as the Deciding Official. The Deciding Official is normally at least one level above the

Proposing Official. Civilian Personnel Officers or functional chiefs may be designated to sign and issue notice of proposed action, receive and consider employee's response(s), recommend and make final decisions, and take actions as directed by appropriate authorities outside the Air Force (e.g., Merit Systems Protection Board, Department of Defense) and higher level authorities within the Air Force. **(T-0)** This is normally done when the Merit Systems Protection Board orders a personnel action be taken, or when the action corrects an administrative error.

4.13. Reviewing and Coordinating Disciplinary and Adverse Actions.

4.13.1. The civilian personnel section serves as the primary local source for authoritative information, policy, and procedures concerning civilian discipline and adverse actions. The Staff Judge Advocate office and/or the Labor Law Field Support Center provides interpretive opinions of laws, policies, and regulations relating to civilian discipline and adverse actions. HQ AFRC/JA provides interpretive opinions for Air Reserve Technicians. The civilian personnel section shares responsibility with management to ensure compliance and coordinate written notices of proposed actions and final decisions with the servicing Staff Judge Advocate office and/or the Labor Law Field Support Center before delivery to the employee.

4.13.2. The Air Force recommends supervisors seek advice from a civilian personnel section representative before administering an oral/written admonishment.

4.13.3. Except for those bases referenced in 2.5.1, if the adverse action is not appealable to the Merit Systems Protection Board, the local Staff Judge Advocate reviews all notices of proposed disciplinary actions and notices of final decisions for legal sufficiency. **(T-1)**

4.13.4. Except for those bases referenced in 2.5.1, if the adverse action is appealable to the Merit Systems Protection Board, the local Staff Judge Advocate and/or civilian personnel section, with Staff Judge Advocate notification, shall forward the action and supporting documentation to the Labor Law Field Support Center for legal sufficiency. **(T-1)** The local Staff Judge Advocate office's legal review should be included in the documentation. Actions appealable to the Merit Systems Protection Board include, but are not limited to, removals, suspensions of more than 14 days, negative suitability determinations, demotions and furloughs of 30 days or less.

4.13.5. Proposed disciplinary action to be taken against any employee for any alleged prohibited activity under investigation by the Office of Special Counsel or for any related activity must be submitted to and reviewed by SAF/GCA before the Air Force seeks Office of Special Counsel approval to take the disciplinary action. **(T-0)**

Chapter 5

NOTICE OF PROPOSED ADVERSE ACTION, NOTICE OF FINAL DECISION AND RELATED REQUIREMENTS

5.1. Notice of Proposed Adverse Action. This notice gives an employee the opportunity to defend themselves against a proposed action. Proposing Officials should make it clear in all notices that the proposed action does not constitute a final decision.

5.1.1. In the notice of proposed action, Proposing Official should include, but is not limited to:

5.1.1.1. The proposed action. A statement that management has proposed the action but has not yet made its decision. **(T-0)** EXAMPLE: "I am proposing to suspend you for 15 calendar days".

5.1.1.2. The specific reasons for the proposed action. **(T-0)** Normally, cover the current cause of action in the introductory paragraph of the notice of proposed action. Include supporting reasons (such as prior offenses) in separate paragraphs.

5.1.1.3. When proposing a furlough, if a similarly situated employee is not being furloughed, a statement that distinguishes and explains why the employee is being proposed for furlough. **(T-1)**

5.1.1.4. A statement of the employee's right to review the material relied upon to support the reasons for action given in the notice. **(T-0)**

5.1.1.5. Either a statement of what arrangements the employee should make to review the supporting material or a copy of the supporting material enclosed with the notice. **(T-0)**

5.1.1.6. Signature of an official with the authority to propose the action. **(T-0)**

5.1.1.7. The date of the proposed action should be the date the notice is delivered to the employee. **(T-0)**

5.1.1.8. Information about an employee's right to a grievance procedure, if applicable. **(T-0)**

5.1.1.9. Information about an employee's right to appeal to the Merit Systems Protection Board, file an Equal Employment Opportunity complaint and/or Office of Special Counsel claim, if applicable, including the address of, the time limits for appealing, and the effect of choosing one forum over the others. **(T-0)**

5.1.2. In the notice of proposed action, Proposing Officials should also include information such as:

5.1.2.1. The employee's past disciplinary record. **(T-1)**

5.1.2.2. The duration of the notice period. **(T-1)**

5.1.2.3. A statement advising employee of their right to respond verbally and/or in writing to the proposed action and to furnish affidavits and other documentary evidence in support of their answer. **(T-1)**

5.1.2.4. A statement that an employee's response is to be considered by the designated Deciding Official. **(T-1)**

5.1.2.5. The amount of time allowed for the employee to respond and a statement that consideration is to be given to a supportable written request for extending the response time period. If employee is a bargaining unit member, ensure compliance with the collective bargaining agreement relating to response time period if different from this instruction. **(T-1)**

5.1.2.6. A statement informing the employee that management is to issue a final written decision whether or not the employee chooses to submit an oral and/or written response. The person who signs the notice of final written decision normally receives the employee's oral and/or written response. **(T-1)** Management may designate another person to receive the response as long as that person has the authority to recommend a final decision and serves in a position superior to the employee.

5.1.2.7. A statement of the employee's right to representation. **(T-0)**

5.1.2.8. The name, location, and phone number of the person in the civilian personnel section designated to provide the employee with information regarding procedural rights and supporting documentation (if not included along with the proposed action). **(T-1)**

5.1.2.9. The employee's duty status during the notice period. **(T-1)**

5.1.2.10. The notice should also include that the employee is entitled to official time to:

5.1.2.10.1. Review the material relied on to support the proposed action. **(T-1)**

5.1.2.10.2. Prepare a response to the notice. **(T-1)**

5.1.3. In the notice of proposed action, state the reasons for the proposed action, as supported by the accompanying case file. It is most important that the Proposing Official state exactly what delinquency and/or misconduct the employee committed. The Proposing Official initiates the action by identify and stating the cause of action. Causes for adverse action may be reasons personal to the employee such as misconduct, delinquency, or physical or mental inability to perform the duties of the position. Causes also may be impersonal reasons such as the application of new or revised classification standards or the need to correct a merit promotion error. The Proposing Official is to include any aggravating Douglas Factors considered in proposing the action, e.g., past disciplinary actions, seriousness of the offense, in the proposed action notice to the employee giving the employee the opportunity to respond.

5.1.4. Proposing Official should assemble material they relied upon to support the reasons for the proposed action and upon request, make the file available to the employee. This may be done by or through the civilian personnel section. This material may include statements of witnesses, relevant documents, investigative reports or extracts from the reports or relevant material concerning any previous record or action that serves as the basis for the current action and its penalty. **(T-1)**

5.1.4.1. Employees have the right to review the supporting material. **(T-0)**

5.1.4.2. Proposing official, upon request, are to allow employees, the employee's representative, or the employee's designated physician under 5 Code of Federal

Regulation 297.205 to review all supporting material. **(T-0)** Supervisors are not permitted to use material to support their reasons for the action that cannot be shared with these individuals.

5.1.4.3. Special Victim Counsels may be entitled to receive pertinent documents. **(T-1)** Consultation with the servicing legal office is necessary in such document request cases.

5.1.5. When Federal criminal charges have been or may be brought against employees, managers should consider any objection made by the prosecuting authority to proceeding with an administrative action. **(T-1)**

5.2. Advance Notice Period.

5.2.1. Reprimands require no minimum advance notice period unless required by a collective bargaining agreement.

5.2.2. For a suspension of 14 days or less, Proposing Officials are to provide at least 24 hours advance notice. **(T-0)** Normally, Proposing Officials afford employees seven (7) calendar day notice. Advanced notice period may not exceed thirty (30) calendar days. If employee is a bargaining unit member, ensure compliance with collective bargaining agreement related to response period.

5.2.3. The notice period for adverse actions that are appealable to Merit Systems Protection Board is 30 days. **(T-0)** 5 Code of Federal Regulation Part 752.404(d) and section **9.5**. Procedural Requirements provides additional information concerning exceptions.

5.2.4. In the notice of proposed action, state the adverse action goes into effect "not earlier than _____ days (the number of days of advance notice) from the date you receive this notice."

5.3. Employee Representation. Employees who receive a notice of proposed disciplinary or adverse action may seek help preparing their response. When preparing an oral and/or written response to a proposed action, an employee may be represented by an attorney or other representative. Representatives may accompany employees responding to charges verbally or may respond for employees. Representatives' time qualifies as official duty time when on duty status, if the representative is an employee of the Air Force in the same bargaining unit.

5.3.1. Disallowing Representatives. Supervisors may disallow the employee's choice of representative if the activities of the individual as a representative could cause a conflict of interest or position, if releasing the individual from his or her duties could give rise to unreasonable costs to the Government or if the individual's priority work assignments preclude his release to serve as representative. **(T-1)**

5.3.1.1. When disallowing a representative, do so in writing and specifically state the basis for the disallowance to include citing regulatory provisions and other authorities. **(T-1)**

5.3.1.2. Deliver the disallowance to the employee within 5 workdays after receiving notification of a designated representative or as soon as possible thereafter if the employee is unavailable. **(T-1)**

5.3.2. Bargaining Unit Employees' Right to Challenge Disallowance of Representative. Employees in an exclusive bargaining unit may challenge the decision to disallow their

choice of a representative through the collective bargaining agreement process as appropriate. **(T-1)**

5.3.3. Non-bargaining Unit Employees' Right to Challenge Disallowance of Representative.

5.3.3.1. Employees who are not in an exclusive bargaining unit have the right to challenge the decision to disallow their choice of a representative by addressing the challenge, through the civilian personnel section, to Air Force Review Boards Agency, Air Force Civilian Appellate Review Office, Air Force Civilian Appellate Review Office (AFRBA/AFCARO). **(T-1)**

5.3.3.2. In the challenge, the employee should explain why the selected representative should be allowed to serve as their representative and why management's reason for disallowance is inappropriate.

5.3.3.3. Employees should make sure the challenge is submitted to the civilian personnel section within 5 duty days of the disallowance.

5.3.3.4. Within 2 workdays after receipt of the employee's challenge, the civilian personnel section sends the file to AFRBA/AFCARO for a decision. **(T-1)**

5.3.3.5. The civilian personnel section ensures the file contains a clean, legible, unmarked copy of the following documents, as applicable:

5.3.3.5.1. The designation of representation, the disallowance, and the employee's challenge. **(T-1)**

5.3.3.5.2. The employee's and the designated representative's official position descriptions. **(T-1)**

5.3.3.5.3. Official organization charts showing the relationship between relevant positions. **(T-1)**

5.3.3.5.4. Relevant local and Major Command (or comparable organization) guidance and/or regulations. **(T-1)**

5.3.3.5.5. Cases, policy statements, and other materials cited as authority for the disallowance action. **(T-1)**

5.3.3.5.6. When it is necessary to submit a marked copy, certification to the unavailability of an unmarked copy should be provided and all extraneous markings are to be clarified. **(T-1)**

5.3.3.5.7. The civilian personnel section provides the employee an information copy of the transmittal letter that is submitted to AFRBA/AFCARO. **(T-1)**

5.3.3.5.8. The Director of Air Force Review Boards Agency, or designee, expedites a final decision based on the file received from the civilian personnel section.

5.3.3.5.9. AFRBA/AFCARO sends the decision to the employee with an information copy to the civilian personnel section. These decisions are not subject to further administrative review.

5.3.3.5.10. Supervisors and managers are to wait for AFRBA/AFCARO decision before taking any further action on the disciplinary or adverse action. **(T-1)**

5.4. Employees' Response. Employees who receive a written notice of proposed disciplinary or adverse action may respond to that notice to the Deciding Official more than once within the allotted time period provided in the notice of proposed action. Employees may respond to the notice of proposed action orally and/or in writing. Employees should seek an extension from the Deciding Official to provide additional replies beyond that allotted time period. (See paragraph 5.9 for review of replies as a result of premature appeals or grievances.)

5.4.1. Unless a collective bargaining agreement specifies otherwise for bargaining unit employees, the Proposing Official should give the employee a reasonable response period to:

5.4.1.1. Obtain advice and assistance.

5.4.1.2. Review the material relied upon to support the reasons cited in the notice of proposed action.

5.4.1.3. Consider appropriate courses of action.

5.4.1.4. Prepare and submit a response(s).

5.4.2. The Deciding Official determines a reasonable response time and reasonable official time for each action initiated upon request by the employee. Determination should be based on:

5.4.2.1. The facts and circumstances of the specific case.

5.4.2.2. The complexity of the issues involved in the case.

5.4.2.3. The quantity and type of material in the file to be reviewed.

5.4.2.4. The need for assistance and the employee's difficulty in obtaining it.

5.4.3. Deciding Official should honor reasonable requests for additional official time if missions needs and circumstances permit. When employees responds to the notice of proposed action orally, the Deciding Official should summarize the primary points of the presentation for clarity and memorialize in a Memorandum of Record. NOTE: The Air Force authorizes no standard, predetermined definition of "reasonable."

5.4.4. An employee's response, among other things, may:

5.4.4.1. Deny or dispute the charges.

5.4.4.2. Address matters that aren't related solely to the charges in the notice of proposed action.

5.4.4.3. Plead extenuating circumstances.

5.4.4.4. Submit affidavits and statements in support of their answer.

5.5. Consideration of Timely Response. Deciding officials should objectively consider timely response(s) received before making their decision and the notice of final decision is issued.

5.5.1. Deciding officials should not issue the notice of final decision before the time allowed for a response to have expired, including any granted extensions, unless the response time allotted is waived by the employee. **(T-1)**

5.5.2. If an employee's response refutes the reason contained in the notice of proposed action, the Deciding Official should consider this along with his/her review of the evidence objectively, and determine whether a "preponderance of evidence" sustains, mitigates, and/or abrogates the proposed action. **(T-1)**

5.5.3. When necessary, the Deciding Official may postpone the issuance of a decision to collect additional evidence. When there is a substantial delay, the Deciding Official should inform the employee in writing of the delay as soon as determined. When additional evidence is collected or obtained, the employee is to be notified of the new information and provided an opportunity to review and respond to the Deciding Official prior to a final decision being made. **(T-1)**

5.5.4. The decision phase provides for another review of the evidence and factors in penalty selection (including, but not limited to, observation on potential for rehabilitation and mitigating circumstances). Deciding Officials should not base the decision to take an action solely on the conclusion that the employee "failed to refute" or "failed to respond" to the charges.

5.6. Notice of Decision. Deciding Officials are to provide a written notice of decision. This applies regardless of whether the employee replies to the notice of proposed action or the Deciding Official decides to cancel the proposed action or to take a lesser action. Deciding Official may not add reasons for the proposed action without providing notice of them to the employee. The employee is to be informed of all the reasons for the proposed action and granted an opportunity to respond to all of the underlying reasons that form the bases of the charge(s), including if the Deciding Official uncovers new evidence not previously known to the employee while investigating the validity of a response from the employee. **(T-1)**

5.6.1. The person designated to make decisions on proposed actions (Deciding Officials) may mitigate or lessen proposed actions. **EXAMPLE:** The official may decide to change a proposed removal to a suspension or demotion.

5.6.2. If the Deciding Official determines that the decision warrants a more severe action than the proposed action, the action is returned to the Proposing Official for cancellation. This, however, should only be done in rare circumstances. In the event that the Deciding Official wants to cancel the notice of proposed action and issue a new proposal letter with the more severe action, the Deciding Official is to become the Proposing Official. The Deciding Official is normally at least one level above the (new) Proposing Official. **(T-1)**

5.6.3. Deciding Officials, or their designees, strive to deliver notices of decision for adverse actions to employees at or before the time the actions goes into effect. If this is not possible, a diligent effort should be made to deliver the notice and document the effort.

5.6.4. When preparing notices of decision, Deciding Officials are to include the decision in specific terms. **EXAMPLES:** "I have decided to (reprimand you), (suspend you for _ calendar days), (remove you from federal service)." **(T-1)**

5.6.5. The decision should include(s):

5.6.5.1. Only the reason(s) specified in the notice of proposed action and any for which the employee has been given proper notice of and an opportunity to respond to. If more than one charge or specification is sustained, it may be appropriate to add an explanation

that addresses which charge or specification alone, would have resulted in the same penalty. (T-1)

5.6.5.2. A reference to the notice of proposed action and which reasons - have been sustained. (T-1)

5.6.5.3. The employee's past disciplinary record, but only if it was relied on in proposing the current action and it was included in the notice of proposed action. (T-1)

5.6.5.4. The effective date of an adverse action. For suspensions, include the first and last day of the suspension and the date the employee is to return to duty. (T-1)

5.6.5.5. Information about an employee's right to a grievance procedure, if applicable. (T-0)

5.6.5.6. Information about an employee's right to appeal to the Merit Systems Protection Board, file an Equal Employment Opportunity complaint and/or Office of Special Counsel claim, if applicable, including the address of, the time limits for appealing, and the effect of choosing one forum over the others. (T-0)

5.6.5.7. If applicable, a copy, or access to a copy of the Merit Systems Protection Board regulations, and copy or access to a copy of Optional Form (OF) 185, *U. S. Merit Systems Protection Board Appeal Form*. (T-1)

5.6.5.8. The signature of an official with the authority to decide the action. (T-1)

5.6.5.9. The decision date. Date the decision before delivering it to the employee. (T-1)

5.6.5.10. Whether the employee submitted a response and whether all of the information in the response, if submitted, was considered. (T-1)

5.6.5.11. The name, location, and phone number of the person in the civilian personnel section designated to provide the employee with information regarding procedural rights. (T-1)

NOTE: Any materials relied upon that were not included in the original case file, are to be made available to the employee for review and response prior to issuing decision. It may be necessary to amend the proposal and allow for another response period prior to making a decision.

5.7. Delivery of Notice. Proposing and Deciding Officials should provide employees notices in a timely manner or make a diligent effort to do so. Officials may deliver notices either personally, by delivery confirmation, or by other means as appropriate to ensure receipt.

5.7.1. Normally, the Proposing/Deciding Official, or their designee, hand-deliver notices to employees and ask them to sign and date one copy, acknowledging receipt. Should an employee refuse to sign the acknowledgement copy, the person making the delivery should sign and date a statement of delivery to include the place, date, and time of delivery, and note the employee's refusal to sign. NOTE: The employee's written acknowledgement does not indicate agreement with the notice. (T-1)

5.7.2. If personal delivery is impossible, the Proposing/Deciding Official should mail two copies, one via regular mail and a second copy via delivery confirmation when appropriate. (T-1)

5.7.3. Proposing/Deciding Officials are to maintain accurate records of every attempt at delivery as part of the file and document evidence of an employee's effort to avoid delivery. (T-1)

5.8. Recording Actions. Proposing and Deciding Officials must send a record of actions taken under this Chapter to the civilian personnel section for retention and/or annotation in the Defense Civilian Personnel Data System. (T-0) Letter of Reprimands are to be sent to Air Force Personnel Center Directorate for Total Force Service Center (AFPC/DP1) for temporary filing in electronic Official Personnel Folder. (T-1) Suspensions and removals are to be annotated with Standard Form (SF) 50, *Notification of Personnel Action*. The disciplinary file is not maintained in the Official Personnel Folder, only the final action. (T-0)

5.8.1. The local civilian personnel section maintains a copy of the entire file for submission to the Merit Systems Protection Board or Air Force Review Boards Agency (AFRBA/MRBAR) or for the affected employee, if a copy is requested. (T-1)

5.9. Appeal, Complaint, and Grievance Rights. Employees subjected to disciplinary or adverse actions may have appeal rights. Written notices of final decision are to contain specific information about employees appellate and grievance rights. (T-0)

5.9.1. Oral Admonishments, Reprimands, and Suspension for 14 Days or Less. Bargaining unit employees with access to a negotiated grievance procedure may grieve those actions through that procedure only. Bargaining unit employees without access to a negotiated grievance procedure and non-bargaining unit employees may grieve such actions through the Department of Defense Instruction 1400.25, DoD Civilian Personnel Management, Volume 771, *Administrative Grievance System* and the Air Force Instruction 36-706, *Administrative Grievance System*. (T-0)

5.9.2. Removals, Suspensions for More than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less. Employees may appeal these actions to the Merit Systems Protection Board or grieve these actions through negotiated grievance procedures contained in collective bargaining agreement, where applicable, but not both. Merit Systems Protection Board appeals policy and procedure are set by Merit Systems Protection Board. (T-0) Employees who normally can appeal to the Merit Systems Protection Board include, but are not limited to:

5.9.2.1. Employees in the competitive service who have completed a probationary or trial period.

5.9.2.2. Employees in a competitive position under a non-temporary appointment or an employee in the competitive service at the time his position is appointed under Schedule A, B, or C remains in the competitive service while he occupies that position. In all cases involving employees with prior federal civilian service, check all SF 50s pertaining to the employee and consult with Staff Judge Advocate or Labor Law Field Support Center before proposing an action that might be appealable to the Merit Systems Protection Board.

5.9.2.3. Employees in the excepted service who are preference eligible and who have completed 1 year of current continuous service in the same or similar position.

5.9.2.4. Unless excluded by 5 United States Code 7511(b)(8), employees in the excepted service who are non-preference eligible and who have completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less.

5.9.2.5. Employees with competitive status who occupy positions in Schedule B of 5 Code of Federal Regulation Part 213.

5.9.2.6. Employees who were in the competitive service at the time their positions were listed under Schedule A, B, or C of the excepted service and still occupy those positions.

5.9.3. Premature Appeal or Grievance. Employees may not grieve or appeal a notice of proposed action or a notification that initiation of action is being contemplated.

5.10. Documentation. The Civilian personnel section is responsible for maintaining a file containing all documents related to any formal disciplinary and adverse actions. These files contain, at a minimum:

5.10.1. The notice of proposed action. (T-0)

5.10.2. The employee response and/or memorandum summarizing any oral response (or annotation that no written response was made). (T-0)

5.10.3. Notice of decision. (T-0)

5.10.4. All supporting documentation considered by the Deciding Official, such as: witness statements, affidavits, investigative reports, pertinent regulations, personnel actions, reports on personal interviews/group meetings or any other document or information considered by the Deciding Official. (T-0)

5.10.5. Evidence of delivery and/or attempts at delivery and receipt of the proposal and decision letters. (T-0)

5.10.6. Documentation demonstrating the Deciding Official's review of the relevant Douglas factors, when required. **(T-0)**

5.10.7. Legal sufficiency reviews are attorney-client privileged and may contain attorney work product and thus shall not be placed in the portion of the file given to the employee. **(T-1)** Communications, to include emails, between management officials and their servicing legal office, to include the Labor Law Field Support Center, are most likely attorney-client privileged and may contain attorney work product. These communications should not be forwarded nor released without permission from the respective legal office(s).

5.10.8. The erasing, removing, altering, or withholding from another agency of any information about a civilian employee's performance or conduct from an employee's official personnel records, including an employee's Official Personnel Folder and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse personnel action is prohibited by Executive Order 13839, *Promoting Accountability and Streamlining Removal Procedures Consistent with merit System Principles*. The Air Force is permitted to unilaterally correct an action (erasing, removing, altering or withholding from another agency) for purposes other than settlement when the Air Force or an adjudicative body has determined that the action was: taken in violation of law or regulation (e.g., as a result of

reprisal under the Whistleblower Protection Act or discrimination under the Equal Employment Opportunity laws); taken without adequate due process; or made in clear error (clearly erroneous as a matter of fact or law). Any decision to unilaterally correct an action must be explained in writing and be accompanied by a legal review. **(T-0)**

5.11. Investigative Leave and Notice Leave.

5.11.1. An employee may be placed in investigative leave status if the employee is the subject of an investigation.

5.11.2. An employee may be placed in notice leave status if the employee has been issued a proposal letter.

5.11.3. Statutory Requirements. The supervisor may only place an employee in these leave categories if the supervisor has first met the following requirements **(T-0)**:

5.11.3.1. Made a determination with respect to the employee that the continued presence in the workplace during an investigation of the employee or while the employee is in a notice period may:

5.11.3.1.1. Pose a threat to the employee or others;

5.11.3.1.2. Result in the destruction of evidence relevant to an investigation;

5.11.3.1.3. Result in loss of or damage to Government property; or

5.11.3.1.4. Otherwise jeopardize legitimate Government interests

5.11.3.2. Considered the following:

5.11.3.2.1. Assigning the employee to duties in which the employee no longer poses a threat describing under **5.11.3.1.1** to **5.11.3.1.4**;

5.11.3.2.2. Allowing the employee to take leave for which the employee is eligible;

5.11.3.2.3. If the employee is absent from duty without approved leave, carrying the employee in absence without leave status: and

5.11.3.2.4. For an employee subject to notice period, curtailing the notice period if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed; and

5.11.3.3. Determined that none of the available options under 5.11.3.2.1. to 5.11.3.2.4. are appropriate.

5.11.4. Duration of Leave.

5.11.4.1. The first 10 workdays under investigative leave does not require additional reporting or approval. If the investigation cannot be completed within 10 workdays, an extension may be approved by AF/A1C Director for no more than 30 work days. A separate request is required to be made for each period of 30 workdays. Investigative leave may not exceed 90 work days in totality. **(T-0)**

5.11.4.2. Placement of an employee in notice leave may not be for a period longer than the duration of the notice period. **(T-0)**

5.11.4.3. Additional extensions beyond the first 90 work days may be approved. Additional information pertaining to the investigation is required for reporting to Congress within the first 5 days of each extension. **(T-0)**

5.11.5. A written explanation of either notice leave or investigative leave is to be provided to the employee. **(T-0)**

5.11.6. An employee placed in investigative leave is to return to regular duty status no later than the day after the last day of the period of investigative leave. **(T-0)**

Chapter 6

ADMONISHMENT

6.1. Purpose. An admonishment is an informal corrective action that is a disciplinary action. Supervisors issue oral or written admonishments to correct minor misconduct, delinquency or to motivate employees to improve their work habits, work methods, or behavior.

6.2. Performance Discussions and Counseling Sessions. Performance discussions and counseling sessions are non-disciplinary. Use them to guide, encourage, or instruct employees.

6.3. Steps in Considering and Giving an Admonishment. The following steps should assist in taking such an action. Follow the applicable collective bargaining agreement if it provides different instructions.

6.3.1. Observe the employee's representation entitlements.

6.3.2. Gather available facts from any and all applicable sources.

6.3.3. Interview the employee privately and explain the purpose of the interview. State the problem and the facts of the matter in clear, understandable terms. If necessary, ask the employee if they understand the matter being discussed.

6.3.4. Consider the employee's answer and any explanation offered.

6.3.5. Advise the employee of the decision as soon as possible.

6.4. Documenting an Admonishment. Annotate the admonishment on the employee's Supervisor's Employee Brief and include:

6.4.1. The word "admonishment" should be used to distinguish the action from counseling. Annotate a brief description of the reason for the admonishment and the effective date of the admonishment or attach a written decision memorandum.

6.4.2. A note that the employee has been advised of the admonishment. Ask the employee to sign and date the Supervisor's Employee Brief. An employee's signature indicates his or her awareness of the oral admonishment, not agreement to it. If the employee refuses to sign the Supervisor's Employee Brief, the supervisor annotates the date and the employee refused to sign.

6.4.3. Annotation in the Supervisor's Employee Brief that the admonishment remains for a maximum of 1 year unless otherwise specified in a collective bargaining agreement.

6.4.4. Follow-up admonishments by offering help, making suggestions, and encouraging the employee to improve. Note these follow-up actions and any improvement in employees' conduct on Supervisor's Employee Brief.

Chapter 7

LETTERS OF REPRIMAND

7.1. Purpose. Reprimand is a formal disciplinary action. Supervisors and managers issue reprimands to correct misconduct or delinquency and repeated lesser offenses.

7.2. Difference from Letters Stating Standards or Requirements.

7.2.1. Letters that establish special requirements, such as those outlining leave approval procedures or warning to employees of the potential consequences of certain delinquencies are not reprimands.

7.2.2. Letters stating standards or requirements can be used as evidence that an employee was aware or should have been aware of the rules.

7.2.3. Use reprimands to discipline employees who have been advised of management's expectations but fail to meet them for reasons within their control. Supervisors may restate these requirements in letters of reprimand.

7.3. Steps in Considering a Reprimand. These instructions set out recommended steps for supervisors to follow when imposing a reprimand for an employee's misconduct or delinquency. The steps are not mandatory. Follow a collective bargaining agreement if it gives other instructions. **(T-0)** Supervisors:

7.3.1. Complete the steps in this paragraph as soon and as efficiently as possible but not necessarily during one session.

7.3.2. Gather facts from all available sources.

7.3.3. Interview the employee privately. Tell the employee the purpose of the interview. State the problem and the facts so he or she clearly understands.

7.3.3.1. If the discussion satisfactorily resolves the matter, tell the employee and take no further action.

7.3.3.2. If the discussion does not satisfactorily resolve the matter, the official may decide a reprimand is an adequate penalty under the circumstances.

7.3.4. Observe the employee's right to representation.

7.3.5. Prepare and administer the proposal orally. There is no requirement to provide a proposal and decision letter for a reprimand.

7.3.6. Give the employee an opportunity to respond and express their views on the matter. If employees request reasonable time before responding, honor the request, if possible.

7.3.7. Consider the employee's response and any explanations they offer before the notice of final decision is issued.

7.3.8. Resolve any outstanding questions before making a decision. Advise the employee that a decision is to be issued as soon as possible.

7.3.9. Issue the decision to the employee including all applicable notice of rights, if any. **(T-0)**

7.4. Document the Reprimand in the Supervisor's Employee Work Folder.

7.4.1. If, after discussing the case with the civilian personnel section, a decision to reprimand the employee is reached, prepare a "Decision to Reprimand" for coordination with the civilian personnel section before delivering it to the employee. (T-1)

7.4.2. In the establishment of a progression of penalties, immediate supervisor are to reference:

7.4.2.1. Previous offenses; (T-1)

7.4.2.2. The seriousness of their concern with the continued misconduct or delinquency; and (T-1)

7.4.2.3. Warning that a further offense could result in a more severe penalty. (T-1)

7.4.3. The immediate supervisor ensures reprimands are clearly identified with the subject: "Decision to Reprimand." (T-1)

7.4.4. The immediate supervisor sends the signed copy of the "Decision to Reprimand" to the civilian personnel section. (T-1)

7.4.5. The civilian personnel section sends a copy of the "Decision to Reprimand" to the Official Personnel Folder Management Section, AFPC/DP1 for temporary filing in the employee's Official Personnel Folder. The letter of reprimand is filed for up to 2 years from the date of the reprimand in both the Official Personnel Folder and Supervisor's Employee Work Folder. The supervisor and Official Personnel Folder Section destroy the document(s) when the 2 years expire. (T-1)

7.4.6. The Supervisor files a copy of the reprimand in the Supervisor's Employee Work Folder along with the proposal and destroy the reprimand when it expires. (T-1)

7.5. Removal of Reprimand. A formal written reprimand is not permanent in nature and is to be removed from the official personnel folder:

7.5.1. Upon expiration of the period specified in the letter of reprimand, or

7.5.2. Upon departure of the employee from the Department of the Air Force for another federal agency outside of the Department of Defense, or

7.5.3. Upon determination through an appropriate adjudicatory procedure or by an appropriate management official of the involved activity that the reprimand is unwarranted and be withdrawn, or

7.5.4. At the time a reprimand is removed from the official personnel folder, a review should be made of personnel and supervisory records and files, and all references to the reprimand removed unless a reprimand has been cited or relied upon in another disciplinary action.

Chapter 8

SUSPENSION

8.1. Purpose: Suspension is a formal disciplinary and adverse action. Often, it is the final step in the disciplinary process before a removal action and is accompanied by a warning to the employee that a further violation of rules could result in removal. The same supervisor may function as both the proposing and Deciding Official for suspensions, but usually it is best to have different officials serve in each capacity. Reference **Chapter 5** for the overarching process. Refer to your local collective bargaining agreement for disciplinary actions against bargaining unit employees.

8.2. When Considering a Suspension. A suspension prevents an employee from performing work and denies salary for the suspension period. Suspensions are generally to be served on consecutive calendar days (including weekends and holidays) and include a minimum of one scheduled workday to meet the definition of suspension.

8.3. Suspensions for 14 Days or Less. When proposing a suspension for 14 days or less, the official is to provide the employee:

8.3.1. A written notice stating the specific reason(s) for the proposed action and inform the employee of his or her right to review the material relied upon to support the reason(s) for the action given in the notice. **(T-0)**

8.3.2. A reasonable amount of time, but not less than 24 hours, to respond to charges orally, in writing, or both and to furnish affidavits and other documentary evidence in support of his or her respond. Normally, supervisors give employees 7 days to answer a proposed suspension for 14 days or less. If the employee is a bargaining unit employee, the supervisor should follow the applicable collective bargaining agreement for time periods. **(T-0)**

8.3.3. The right to representation by an attorney or other representative. **(T-0)**

8.3.4. A written notice specifying the reason(s) for the decision and advising the employee of his or her appeal rights, once the Deciding Official has made the decision regarding the action. **(T-0)**

8.4. Suspensions for More Than 14 days. When proposing a suspension greater than 14 days, the Proposing Official is to provide an employee:

8.4.1. Thirty (30) days advance written notice stating the specific reasons for the proposed action. **(T-0)**

8.4.2. A reasonable time, but not less than 7 days, to respond to the charges verbally, in writing, or both and to furnish affidavits, and other documentary evidence in support of their answer. **(T-0)**

8.4.3. The right to representation by an attorney or other representative. **(T-0)**

8.4.4. A reasonable amount of regular duty time to review the material relied upon to support the proposed action, to prepare a response, and to secure affidavits. **(T-0)**

8.4.5. A written notice that identifies specific reasons for the decision at the earliest practicable date. **(T-0)**

8.4.6. Proposing officials does not need to comply with the requirement for 30 days advance written notice when proposing a suspension if they have reasonable cause to believe an employee has committed a crime for which a sentence of imprisonment may be imposed. (T-0)

8.5. Indefinite Suspensions. A suspension in which an employee is placed in a temporary status without duties and without pay pending investigation, inquiry, or further agency action for an indefinite period of time. A proposed indefinite suspension is considered non-disciplinary in nature and is proposed in accordance with the law for the efficiency of the service. For example, an indefinite suspension is appropriate when an employee has had their access to classified information / unescorted entry into restricted areas suspended and it is a requirement of their position to retain access to classified information/unescorted entry into restricted areas in order to fully perform their duties and responsibilities. The suspension would end when the underlying issues were adjudicated by the Central Adjudication Facility (CAF) and the Personnel Security Appeals Board (PSAB). The indefinite suspension ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action. When proposing an indefinite suspension, the Proposing Official is to provide the employee:

8.5.1. Thirty (30) days advance written notice stating the specific reasons for the proposed action. (T-0)

8.5.2. A reasonable time, but not less than 7 days, to respond to the charges verbally, in writing, or both and to furnish affidavits and other documentary evidence in support of their answer. (T-0)

8.5.3. The right to representation by an attorney or other representative. (T-0)

8.5.4. A reasonable amount of official time to review the material relied upon to support the proposed action, to prepare a response, and to secure affidavits. (T-0)

8.5.5. A written notice that identifies specific reasons for the decision at the earliest practicable date. (T-0)

8.5.6. Proposing officials need not comply with the requirement for 30 day advance written notice when proposing a suspension if they have reasonable cause to believe an employee has committed a crime for which a sentence of imprisonment may be imposed. (T-0)

Chapter 9

REMOVAL, REDUCTION IN GRADE OR PAY, CHANGE TO LOWER GRADE BASED ON RECLASSIFICATION OR JOB GRADING DETERMINATION, AND FURLOUGH FOR 30 DAYS OR LESS

9.1. Furlough for 30 Days or Less. Major Command/CC (or comparable organizations) are to request prior approval from AF/A1C for a furlough of any duration. Do not announce a proposed furlough before obtaining the required approval.

9.1.1. Requests are to include:

9.1.1.1. Reasons why a furlough is necessary. **(T-1)**

9.1.1.2. Number of employees affected and the proposed length of the furlough. **(T-1)**

9.1.2. Emergency Furloughs. Due to unforeseeable circumstances beyond control of the Agency (such as lack of appropriations), government operations are required to shut down.

9.1.2.1. Proposing officials are not required to give employees advance written notice and opportunity to respond to furloughs without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, natural disasters, or sudden emergencies requiring immediate curtailment of activities.

9.1.2.2. Despite the waiver of the advance notice requirement and the right to response, supervisors are to give employees the other protections provided by law and regulation, including the right to appeal or grieve the action. **(T-0)**

9.2. Reduction in Grade or Pay. A reduction in grade occurs when an employee is moved to a position of lower grade. Reference [Chapter 5](#) for the overarching process.

9.2.1. Reductions-in-grade that entitle employees to grade retention under 5 Code of Federal Regulation, Part 536, Grade and Pay Retention, are not covered by this section, nor are reductions for hourly employees for similar reasons. **(T-0)**

9.2.2. When an adverse action results in pay reduction, state the employee's new salary in the notice. For a change to a lower grade, state the employee's exact pay plan, series, position title, grade, and location (if applicable), and whether the employee is entitled to pay retention. **(T-0)**

9.3. Change to Lower Grade Based on Reclassification or Job Grading Determination. This paragraph addresses reduction in grade (Position Change) when a position is downgraded because of a determination that the position warrants classification at a lower grade due to a classification error or job grading standard change when the position has been classified at the higher grade for less than 1 year.

9.3.1. Contents of Notice of Proposed Adverse Action. Managers are to ensure the notices of proposed adverse actions:

9.3.1.1. State why the position is being downgraded, such as an erroneous classification or because of the application of a new or revised classification standard. **(T-0)**

9.3.1.2. Include a copy of the official position description and either the Office of Personnel Management classification certificate or the classification decision of the Air

Force comparing the grade controlling duties and responsibilities of the position with the applicable published classification or job-grading standards. **(T-0)**

9.3.2. The Proposing Official should advise the employee that the notice of proposed adverse action does not constitute a final decision to demote the employee. **(T-0)**

9.3.3. Consideration of the Employee's Response. An employee's reply is considered by the appropriate Deciding Official. If the Air Force classification decision was based on application of an Office of Personnel Management or Air Force precedent decision and employee's answer contest that decision, management is to consider and respond to the employee's answer in notice of decision. **(T-0)**

9.3.4. The decision notice is to state that the Air Force or Office of Personnel Management has decided to downgrade the position. **(T-0)**

9.3.5. Effective Date of Downgrading. The position may not be downgraded before the 30-day advanced notice has expired. **(T-0)**

9.4. Removal. A disciplinary removal is the most severe disciplinary action. Before initiating a removal, carefully review the facts and circumstances in each case. Reference [Chapter 5](#) for the overarching process.

9.5. Procedural Requirements. Removal actions require certain procedures to ensure employees receive due process and are notified of their rights when an action is being taken against them.

9.5.1. Notice of Proposed Action under this chapter are to include:

9.5.1.1. A written notice stating the specific reason(s) for the proposed action and inform the employee of his or her right to review the material relied upon to support the reason(s) for the action given in the notice. **(T-0)**

9.5.1.2. The right to representation by an attorney or other representative at the employee's expense. **(T-0)**

9.5.1.3. A reasonable amount of official time to review the material relied upon to support the proposed action, to prepare a response, and to secure affidavits. If the employee is covered by a collective bargaining agreement, then follow the provisions of that agreement. **(T-0)**

9.5.2. Thirty (30) days advance written notice. Proposing officials are not required to comply with the requirement for 30 day advance written notice when proposing a suspension or removal if they have reasonable cause to believe an employee has committed a crime for which a sentence of imprisonment may be imposed. **(T-0)**

9.5.3. When the circumstances require that the employee be kept away from the worksite, and no other alternatives are available, supervisors may place the employee in a non-duty paid status (administrative leave in timekeeping systems), provided consultation has been made with civilian personnel section and Staff Judge Advocate Office and/or Labor Law Field Support Center prior to beginning administrative leave status with pay for such time as is necessary to effect the action. This paragraph does not preclude other alternatives where appropriate. **(T-1)**

9.5.4. When the Deciding Official has made the decision regarding the action, a written notice specifying the reason(s) for the decision and advising the employee of his or her appeal rights is provided at the earliest practicable date. **(T-0)** The decision notice to remove should be issued within 15 business days of the end of the employee reply period following a proposed removal.

SHON J. MANASCO
Assistant Secretary of the Air Force
(Manpower and Reserve Affairs)

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

- 5 United States Code, Chapter 7, 2016 Edition
- 5 United States Code, Chapter 12, 2016 Edition
- 5 United States Code, Chapter 33, 2016 Edition
- 5 United States Code, Chapter 35, 2016 Edition
- 5 United States Code, Chapter 43, 2016 Edition
- 5 United States Code, Chapter 75, 2016 Edition
- 5 United States Code 1214(f), 2016 Edition
- 5 United States Code 2302, 2016 Edition
- 5 United States Code 4303, 2016 Edition
- 10 United States Code 1561, 2016 Edition
- 10 United States Code 10508, 2016 Edition
- 5 Code of Federal Regulation Part 315, 2018 Edition
- 5 Code of Federal Regulation Part 430, 2018 Edition
- 5 Code of Federal Regulation Part 432, 2018 Edition
- 5 Code of Federal Regulation Part 531, 2018 Edition
- 5 Code of Federal Regulation Part 532, 2018 Edition
- Executive Order 13839, *Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles*, 25 May 2018
- U.S. Office of Personnel Management, *CSRS and FERS Handbook for Personnel and Payroll Offices*, April 1998
- United States Office of Personnel Management, *Guide to Processing Personnel Actions*
- Department of Defense, Volume 9, *Financial Management Regulation*, June 2015
- DoD Instruction 1400.25, DoD Civilian Personnel Management, 12 December 2017
- Department of Defense 5400.11-R, *Department of Defense Privacy Program*, 14 May 2007
- AF Policy Directive 36-7, *Employee and Labor-Management Relations*, 29 April 2015
- AF Policy Directive 36-8, *Employee Benefits and Entitlements and Work/Life Programs*, 24 December 2014
- AF Instruction 33-115, *Air Force Information Technology (IT) Service Management*, 16 September 2014
- AF Instruction 33-332, *Air Force Privacy and Civil Liberties Program*, 12 January 2015

AF Instruction 33-360, *Publications and Forms Management*, 25 September 2013

AF Instruction 36-706, *Administrative Grievance System*, 22 May 2014

AF Instruction 51-1102, *Cooperation with Office of Special Counsel*, 23 April 2015

AF Instruction 90-508, *Air Force Civilian Drug Demand Reduction Program*, 28 August 2014

AF Manual 33-152, *User Responsibilities and Guidance for Information Systems*, 1 June 2012

AF Manual 33-363, *Management of Records*, 1 March 2008

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

Official Form 185, *U.S. Merit Systems Protection Board Appeal Form*

Standard Form 50, *Notification of Personnel Action*

Standard Form 66, *Official Personnel Folder*

Terms

Adverse Action—A suspension, removal, furlough for 30 days or less, or reduction in grade or pay. These actions don't include those resulting from reduction in force. Adverse actions may or may not be for disciplinary reasons.

Bargaining Unit Employee—An employee included in an appropriate bargaining unit for which a labor organization has been granted exclusive recognition.

Cause of Action—A recognizable offense against the employee-employer relationship such as a violation of rule, regulation or procedure; employment-related off-duty misconduct; failure to fulfill an employment-related agreement; or a mandatory requirement to take an action against an employee. It is disciplinary if it results from delinquency or misconduct by the employee. (A disciplinary cause of action is also called an offense.) It is non-disciplinary, for example, if it results from the employee's disability, the employee's declination of functional transfer, or a management determination such as reclassification of the employee's position or termination of an extended temporary promotion.

Counseling—An informal corrective method, considered non-disciplinary, that provides information, instruction, guidance, advice, assistance, or encouragement. Don't confuse counseling with oral admonishment, which while also an informal corrective method, is considered disciplinary.

Days—Days refers to consecutive calendar days, including holidays, weekends, and other non-duty days.

Deciding Official—The person who signs the notice of final written decision receives the employee's oral and/or written answer. Management may designate another person to receive the answer as long as that person has the authority to recommend a final decision and serves in a position superior to the employee (not necessarily in a supervisory position or in a higher grade).

Disciplinary Action—An action management takes to correct an employee's delinquency or misconduct. Included are oral/written admonishments, reprimands, suspensions, removals and, in

some cases, reductions in grade or pay. Except for oral/written admonishments and reprimands, these disciplinary actions are also adverse actions.

Furlough—A non-disciplinary action placing an employee in a temporary non-duty and non-pay status because of lack of work or funds or for other non-disciplinary reasons. A furlough is an adverse action if it is for a period of 30 calendar days or less. A furlough for more than 30 calendar days is a reduction-in-force action covered by 5 Code of Federal Regulation Part 351.

Grade—A level of classification under a position classification system.

Indefinite Suspension—The placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action for an undetermined length of time.

Nexus—A reasonable connection or factual relationship between the reasons for the action taken and the efficiency of the service.

Non-disciplinary Adverse Action—An adverse action that is taken for reasons other than to correct an employee's delinquency or misconduct or a failure to meet/maintain a condition of employment.

Offense—A cause of action due to an employee's delinquency or misconduct.

Oral Admonishment—Oral Admonishment is an informal corrective action which is a disciplinary action.

Pay—The rate of basic pay fixed by law or administrative action for the position held by an employee.

Preponderance of the Evidence—The degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

Prior Offense—A prior cause of action for which a disciplinary penalty has been imposed.

Probationary Period—The first two years of service of an employee who is under a competitive appointment.

Proposing Official—Generally, the first level supervisor recommends, signs and issues the notice of proposed action. However, a supervisor or manager at a higher level within the chain of command may recommend, sign, and issue proposal if first level supervisor if appropriate.

Reasonable Amount of Time—The amount of time provided depends on each case and the particulars of that situation, such as the amount of and type of material involved and the difficulty in obtaining assistance.

Reprimand—A formal disciplinary memorandum issued to an employee by a management official who has authority to discipline the employee. It is a disciplinary action which is not an adverse action.

Similar Positions—Positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be interchanged between the positions without significant training or undue interruption to the work.

Suspension—An action placing an employee in a temporary status without duties and pay for a determined period of time.

Trial Period—The excepted service equivalent of the probationary period.

Attachment 2

DOUGLAS FACTORS GUIDE

Consider these factors along with [Attachment 3](#). It shows the interrelationships of some key factors in the disciplinary system but neither establishes additional procedural requirements nor automatically sets penalties.

Some of these twelve factors may not be pertinent in a particular case. Some factors may weigh in the employee's favor while other factors may constitute aggravating circumstances that support a harsher penalty. However, it is critical to balance the relevant factors in each individual case and chose a reasonable penalty.

The 12 Douglas Factors are:

Douglas Factor 1: Seriousness of Offense- 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;

- a. How does the charged conduct affect the agency's operations and/or mission?
- b. Was the action intentional/deliberate or inadvertent? Explain.
- c. Was it an isolated incident or was conduct repeated? Explain.
- d. Did the employee gain anything from the conduct?

Douglas Factor 2: Job Level and Type of Employment- The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

- a. Is the employee a supervisor/manager?
- b. Does the person occupy a position of trust? How does the employee's charged conduct relate to his/her position of trust?
- c. Does the employee occupy a position of prominence? Explain.

Douglas Factor 3: Prior Misconduct- The employee's past disciplinary record;

- a. Does the employee have a prior disciplinary record? What for? When?
- b. Is the prior discipline for similar conduct as the current charge(s)? Explain.
- c. Is the discipline a matter of record?
- d. Is it time-barred, i.e. reprimand over 2 years, contract article?
- e. Is the prior discipline still being challenged? Explain.

Douglas Factor 4: Employee's Past Work Record- The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

- a. Length of service?
- b. Prior work record? What do appraisals say?
- c. Ability to get along with others? Contact with other employees/colleagues is generally to coordinate work activities.
- d. Dependability?

Douglas Factor 5: Erosion of Supervisory Confidence- The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;

- a. Is there a loss of trust and confidence? Explain without vague conclusions.
- b. How do job duties relate to a loss of trust and confidence?

Douglas Factor 6: Consistency of Penalty- Consistency of the penalty with those imposed upon other employees for the same or similar offenses;

Is the penalty consistent with that imposed for other employees for similar charges? If not, why?

Douglas Factor 7: Consistency of Penalty with Table of Penalties- Consistency of the penalty with any applicable agency table of penalties;

- a. Is the charged conduct listed in the Table of Penalties?
- b. If not, what offense is most similar?
- c. Is the proposal penalty within the range identified in table? If not, why?

Douglas Factor 8: Notoriety- The notoriety of the offense or its impact upon the reputation of the agency;

- a. Any publicity regarding conduct? What type? Explain.
- b. Any complaints, concerns registered by customers, public, etc.?

Douglas Factor 9: Notice of warning about conduct- The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

- a. Are disciplinary counseling documented? Copies given to employee?
- b. Any briefings/training involving charged violation?
- c. Any general Standards of Conduct briefings? When?
- d. Any letter of expectations provided to the employee about conduct?

Douglas Factor 10: Potential for Rehabilitation- Potential for the employee's rehabilitation;

- a. Early truthful admission?
- b. Remorsefulness/contrition?
- c. Getting assistance with the problem?
- d. Reporting of Misconduct before investigation?

Douglas Factor 11: Mitigating Circumstances- Mitigating circumstances surrounding the offense such as unusual job tension, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter;

- a. Personal Problems?
- b. Medical condition?
- c. Emotional Distress?
- d. Unusual Job tensions?
- e. Malice or provocation by others?

Douglas Factor 12: Effectiveness of a lesser sanction- The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

a. If removal, why not lesser sanction?

b. Were other alternative sanctions considered? If not, why? If so, why were alternative sanctions not used?

Attachment 3

THE TABLE OF OFFENSES AND PENALTY GUIDE

NOTE: This guide and suggested penalties should only be regarded as a guide for determining potential disciplinary actions.

Cause of Action Column: The "Cause of Action" column in the guide explains many of the most common offenses; however, it does not include every possible offense. Supervisors may use this column to determine if an offense fits within the framework of the guide. If a cause of action in the particular case at hand is not shown, supervisors fit the offense into the general framework by relating its nature and seriousness to the fundamental characteristics of those offenses listed. Supervisors need not use the precise language in the guide to describe or state an offense. It is not necessary to state a cause of action exactly as shown in this column. What is important is to state exactly what the employee did wrong, preferably without using legal terms suggesting a crime. If such legal terms were used, it might be necessary to prove all the elements necessary to establish that the crime has been committed, including felonious intent. Cause is best identified by a specific charge or label for the offense IF that charge or label is relevant. Be careful to select a label which fits the facts and not to distort the facts to fit a specified offense in the guide.

Typical Penalty Column. The guide prescribes no minimum or maximum penalty for any cause of action, except where required by law or executive order. The guide does, however, give typical penalties and ranges of penalties for the different offenses. These are merely suggestions based on past practice and experience. Consideration of comparator cases is far more important. Supervisors may not establish a minimum penalty by policy statement or by implementing Instruction. Unless restricted by law or executive order, supervisors and managers may impose no penalty at all or may choose from penalties ranging from reprimand to removal. However, supervisors and managers who take or fail to take action for prohibited reasons (5 United States Code 2302), practice disparate treatment, or fail to maintain good order and conduct may be subject to disciplinary or adverse action. This column does not dictate the penalty to be imposed for a particular (or comparable) offense; rather, it establishes the range of penalties within which the penalty imposed usually falls. Unless otherwise restricted, management may impose no penalty at all or has available a choice of severity of action ranging from oral admonishment to removal.

Cause of Action (Offense)	Typical Penalty		
	First Offense	Second Offense	Third Offense
<p>1. Failure to honor valid debts or legal obligations</p> <p>NOTE: There is no offense unless (a) the validity of the debt is established; (b) there has been a failure to either arrange for or comply with a repayment schedule; and (c) there is a <i>current</i> complaint from the <i>creditor</i>.</p>	Reprimand	Reprimand	Reprimand to Removal
<p>2. Tardiness of less than one-half hour.</p> <p>NOTE: A fourth offense would typically result in a suspension of 5 days or less with the added warning that a "continuation of offenses could result in removal."</p>	Reprimand	Reprimand	Reprimand to 1-day Suspension
<p>3. Tardiness of one-half hour or more, leaving the job without permission, delayed return from lunch, unauthorized absence of 8 hours or less.</p>	Reprimand	Reprimand to 5-day Suspension	Reprimand to Removal
<p>4. Unauthorized absence of more than 8 hours.</p> <p>NOTE: A removal (e.g. unacceptable attendance or failure to maintain a regular work schedule) using adverse action procedures in this regulation, may be initiated for a first or later offense after passage of a reasonable time (a minimum of 10 calendar days) when the employee fails to report for duty and fails to notify management of his or her intentions concerning return to duty, and when management has been unable to ascertain the employee's intentions concerning return. The Air Force does not remove an employee for abandonment of position.</p>	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	5-Day Suspension to Removal
<p>5. Failure to comply with established leave procedures, or failure to honor a valid denial of a leave request.</p>	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	5-Day Suspension to Removal

6a. Failure to observe safety practices including failure to use safety equipment such as eye protection devices and failure to comply with hearing conservation program requirements.	Reprimand to 1-Day Suspension	Reprimand to 5-Day Suspension	Reprimand to Removal
6b. When failure may result in serious injury, loss of life, or major damage to property.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
7a. Violation of security regulations when the breach does not result in release of security information to unauthorized sources and there is no evidence of a compromise of classified information.	Reprimand	Reprimand to 30-Day Suspension	10-Day Suspension to Removal
7b. If violation is intentional or results in unauthorized release or compromise of security information.	10-Day Suspension to Removal	30-Day Suspension to Removal	Removal
8a. Drinking, transferring, or selling alcoholic beverages on duty or on government premises except where authorized. Reporting for duty under the influence of intoxicating liquor.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
8b. Being on duty so intoxicated or under the influence of alcohol or drugs as to be unable to properly perform assigned duties, or to be a hazard to self or others.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
8c. Driving while intoxicated or under the influence of alcohol or drugs. NOTE: See Air Force Instruction 90-508, <i>Air Force Civilian Drug Demand Reduction</i> .	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
9a. Gambling while in the performance of duties.	Reprimand	Reprimand to 5-Day Suspension	Reprimand to Removal
9b. Promotion of or assisting in operation of organized gambling on duty or on government premises.	Reprimand to Removal	5-Day Suspension to Removal	10-Day Suspension to Removal
10a. Loafing or sleeping on duty.	Reprimand	Reprimand to 14-Day Suspension	Reprimand to Removal

10b. When such action may result in injury, loss of life, or damage to property.	Reprimand to Removal	5-Day Suspension to Removal	10-Day Suspension to Removal
11a. While on government premises or on duty, possessing, transferring, selling, or using drug paraphernalia as defined in Air Force Instruction 90-508.	Reprimand to Removal	14-Day Suspension to Removal	Removal
11b. Possession of illicit drugs.	Reprimand to Removal	Removal	
11c. Use of illegal drugs. (Refusal to obtain or successfully complete counseling or rehabilitation is not required for removal. NOTE: Failure of a drug test is more appropriate when there is no evidence of intentional use.)	Reprimand to Removal	Removal	
11d. Sale or transfer of illicit drugs.	Removal		
11e. Tampering with urine specimen, including attempts to alter, adulterate, or substitute a specimen for the employee's own or that of another employee.	Removal		
11f. Refusal to submit to urinalysis. NOTE: See Air Force Instruction 90-508 i). The term "illicit drugs" means a controlled substance included in Schedules I through V, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under section 841 of that Title, or applicable state law. The term "illicit drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by Federal law. ii). The range of disciplinary actions for first offense of illicit drug use is reprimand to removal; oral admonishment as a penalty is not authorized. iii). Initiation of removal from Federal service according to Air Force Instruction 90-508 is required: a. if an employee refuses to obtain or successfully complete counseling or rehabilitation; or	Reprimand to Removal	Removal	

<p>b. after a second finding that an employee has used illicit drugs, including a second verified positive urinalysis test result; or</p> <p>c. if an employee tampers with a urine sample.</p> <p>d. if an employee fails a mandated and/or agreed upon medically approved drug rehabilitation program.</p> <p>NOTE: Marijuana is a Schedule I controlled substance under 21 United States Code 812(b) and 21 United States Code 841-44, meaning its use is a federal crime and it has no acceptable use under Federal law. Therefore, Air Force Instruction 36-704, Discipline and Adverse Action, applies to civilians testing positive for marijuana, regardless of local or state laws on recreational or medicinal use. A prescription for marijuana will not be accepted under 11c or g.</p>			
11g. Failure of a drug test.	Reprimand to Removal	Removal	
12. Making false, malicious, or unfounded statements against other employees, supervisors, other officials, or subordinates to destroy or damage the reputation, authority or official standing of those concerned.	Reprimand to Removal	5-Day Suspension to Removal	10-Day Suspension to Removal
13. Improperly soliciting contributions from other government officers or employees for gifts or presents to those in superior official positions. Improperly accepting gifts or presents offered or presented as contributions from persons in government employ receiving lower salary.	Reprimand	Reprimand to 14-Day Suspension	Reprimand to Removal
14. Rude, boisterous play which adversely affects production, discipline or morale; use of abusive or offensive language; quarreling or inciting to quarrel; or interfering with the production of others.	Reprimand to Removal	Reprimand to Removal	Reprimand to Removal
15. Theft, actual or attempted.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal

16. Misrepresentation; falsification, exaggeration or concealment of a material fact in connection with any official document; withholding of material facts in connection with matters under official investigation; refusal to testify or cooperate in an inquiry, investigation, or other official proceeding.	Reprimand to Removal	30-Day Suspension to Removal	Removal
17. Fighting, threatening or inflicting bodily harm on another, physical resistance to authority or indecent or immoral conduct.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
18. Discourteous conduct. Includes discourteous conduct to the public.	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	Reprimand to Removal
19. Delay or failure to carry out assigned work or instruction in a reasonable period of time.	Reprimand	Reprimand to 5-Day Suspension	Reprimand to Removal
20a. Insubordination, refusal to comply with proper orders, disregard of directives or insolence.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
20b. Failure to follow supervisory instructions – refusing to comply with proper orders or directives whether or not failure is intentional	Reprimand to Removal	Reprimand to Removal	5 Days Suspension to Removal
21a. Loss of, damage to, unauthorized use or destruction of property (including motor vehicles and aircraft), records or information.	Reprimand	Reprimand to 5-Day Suspension	Reprimand to Removal
21b. When willfulness or intent is involved. NOTE: 31 United States Code 638a(c) provides that any officer or employee who willfully uses or authorizes use of government passenger motor vehicles or aircraft for other than official purposes will be suspended for not less than 1 month and will be suspended for a longer period or removed if circumstances warrant. (The minimum 1-month period is established as the effective date of the suspension through the tour of duty for the preceding date of the next month. Examples: 15 July through 14 August or, if the employee's tour of duty is at night	30- Day Suspension to Removal	Removal	

and includes portions of 2 days, from the time the tour of duty begins on 15 July through the end of the tour of duty on 15 August.)			
22. Calling or participating in a strike, work stoppage, or slowdown.	Removal		
23. Picketing if such action interferes with agency operations.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
24a. Careless workmanship or negligence: When consequences may be extreme, an attempt is made to conceal defective work or there is an unauthorized attempt to remove or destroy work.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
24b. Careless workmanship or negligence: Which results in possible or actual minimum damage to aircraft or other property and minor disruption of mission.	Reprimand	Reprimand to 5-Day Suspension	Reprimand to Removal
24c. Careless workmanship or negligence: Which results in possible or actual major damage to aircraft or other property or possible or actual danger to personnel.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
25a. Off duty misconduct of such major import that the employee is unable to fulfill his or her job responsibilities (e.g., incarceration for criminal conviction).	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
25b. Off duty misconduct of such significance that there is an adverse effect upon the Air Force. NOTE: Removal is normally warranted when US citizens employed overseas become culpably involved with the law enforcement authorities of a host government in whose country the USAF facility is a	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal

guest. Such involvement reflects upon the United States and affects the success of its mission overseas.			
26. Aiding and assisting in prosecution of claim against the United States, or receiving any gratuity or any share of or interest in claim from any claimant other than in discharge of proper official duties. This does not include legally protected activities.	Reprimand to Removal	14-Day Suspension to Removal	Removal
27a. Compromise or discredit of examination materials or process resulting from discussion of specific question(s) or content of examination with other employee(s) based on experience in the examination when there is no deliberate effort or intent to compromise the examination materials or process.	Reprimand	Reprimand to 14-Day Suspension	5-Day Suspension to Removal
27b. Compromise of an examination through unauthorized possession, use, or furnishing to others of examination information or materials.	Reprimand to Removal	14-Day Suspension to Removal	Removal
28a. Committing a prohibited personnel practice (see 5 United States Code 2302).	Reprimand to 5-Day Suspension	5-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
28b. If violation was deliberate. NOTE: If a supervisor or manager has engaged in an activity which adversely reflects upon the integrity of the management process (other than reprisal as set forth in 28c below), a decision should be made as to whether he or she should be reassigned or changed to lower grade to a position of a different character.	Reprimand to Removal	Removal	
28c. If a supervisor commits reprisal in violation of 5 United States Code 2302(b)(8) or (b)(9), (as determined by Secretary of the Air Force, an administrative law judge, the Merit Systems Protection Board, the Special Counsel, a judge of the United States, or the Inspector General of the Air Force) NOTE: If a supervisor or manager has engaged in an activity which adversely reflects upon the integrity of the management process, a decision should additionally be made as to whether he or she should	3-Day Suspension to Removal	Removal	

be reassigned or changed to lower grade to a position of a different character.			
29a. Discrimination (including harassment, intimidation or threats) based on race, color, religion, sex (including pregnancy, gender identity and sexual orientation), national origin, age, disability, genetic information, or reprisal.	Reprimand to Removal	Reprimand to Removal	10-Day Suspension to Removal
29b. Sexual Harassment –unwelcomed sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, particularly when submission to such conduct is made directly or indirectly a term or condition of employment, or when an employment decision is based on the person's submission to or rejection of such conduct. Sexual harassment may include, but is not limited to sexual jokes and comments, sexual propositions, comments about a person's body parts, uninvited physical contact, and any sexual picture or statement communicated through computer systems, telephones, and/or social media.	Reprimand to Removal	Reprimand to Removal	10-Day Suspension to Removal
29c. If the discrimination (including harassment, intimidation or threats) was deliberate. NOTE: If a supervisor or manager has engaged in an act of discrimination, a decision should be made as to whether he or she should be reassigned or changed to lower grade to a position of a different character.	Reprimand to Removal	Removal	
30a. Use of abusive or offensive language toward a subordinate; baiting or otherwise inciting a subordinate to violate rules or regulations; coercion in deprivation of an employee's rights; or reprisal for employment of appellate procedures.	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	10-Day Suspension to Removal
30b. If violation was deliberate. NOTE: If a supervisor or manager has engaged in an activity which adversely reflects upon the integrity of the management process, a decision should be made as to whether he or she should be reassigned or changed to lower grade to a position of a different character.	Reprimand to Removal	Removal	

31a. Misuse of Government Travel Card or Government Purchase Card (e.g., use of charge card for unauthorized expenses).	Reprimand to Removal	5-Day Suspension to Removal	10-Day Suspension to Removal
31b. Failure to pay Government Travel Card bill (e.g., failure to pay charge card bill or pay such bill in a timely manner).	Reprimand to Removal	5-Day Suspension to Removal	10-Day Suspension to Removal
31c. Unauthorized use of or failure to appropriately control use of Government Travel Card or Government Purchase Card as a cardholder, approving official responsible for use or oversight of the card in accordance with Department of Defense Financial Management Regulation Volume 9.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
32. Conduct unbecoming of a federal employee	Reprimand to Removal	Reprimand to Removal	Reprimand to Removal
33. Lack of candor in an official investigation or in other formal matter (e.g., Congressional testimony, official Air Force e-mails).	14-Day Suspension to Removal	Removal	
34a. Inappropriate or unwanted physical contact with another individual.	Reprimand to 5-Day Suspension	5-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
34b. If the unwanted physical contact, either directly or through the clothing, involves the genitalia, anus, groin, breast, inner thigh, or buttocks of another individual.	14-Day Suspension to Removal	30-Day Suspension to Removal	Removal
35. Conversion of government property – unauthorized taking or use of thing of value or use in an unauthorized manner or to an unauthorized extent, thereby interfering with the government’s right to control the use of its property.	Reprimand to Removal	Reprimand to Removal	5-Day suspension to Removal
36. Misuse or abuse of government property – using government property, e.g. computers, printers/copiers, telephone, fax, etc. for other than official purposes, except as permitted for limited personal use by paragraph 3.8. of the Air Force Instruction 36-703, <i>Civilian Conduct and Responsibility</i> .	Reprimand to Removal	5-Day suspension to Removal	30-Day suspension to Removal

<p>37. Unprofessional relationships – relationships, whether pursued on or off-duty, which detract from the authority of supervisors and managers or result in, or reasonably create the appearance of, favoritism, misuse of office or position, or the abandonment of organizational goals, and adversely affect the efficiency of the service. Unprofessional relationships can exist between civilian employees, military officers, enlisted members and contractors.</p>	Reprimand to Removal	Reprimand to Removal	10-Day suspension to Removal
<p>38. Failure to disclose to, and where required by the Joint Ethics Regulations, to obtain prior approval from the employee’s supervisor for outside business activity or compensated outside employment.</p>	Reprimand to Removal	Reprimand to Removal	10-Day suspension to Removal
<p>39. Failure as a supervisor to constructively counsel and correct employee performance and/or conduct; failure to gather, analyze, and carefully consider available facts and circumstances before taking or recommending disciplinary action; and/or failure to take action on allegations of misconduct.</p>	Reprimand to Removal	Reprimand to Removal	10-Day Suspension to Removal