

## EMPLOYEE/MANAGEMENT RELATIONS

- 1. REASON FOR ISSUE:** To implement provisions of the “Veterans Access, Choice, and Accountability Act of 2014” (Public Law 113-146, dated August 7, 2014) as it relates to Senior Executive Service (SES) removal and transfer procedures.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook contains mandatory VA procedures on employee/management relations. The pages in this handbook replace the corresponding page numbers in VA Handbook 5021. Revised text is contained in [brackets]. This revision amends existing language to exclude SES removals and transfers from the adverse action procedures contained in VA Handbook 5021. These procedures are now determined by the Corporate Senior Executive Management Office (CSEMO.) These changes will be incorporated into the electronic version of VA Handbook 5021 that is maintained on the [Office of Human Resources Management Web site](#).
- 3. RESPONSIBLE OFFICE:** The Employee Relations and Performance Management Service (051), Office of the Deputy Assistant Secretary for Human Resources Management.
- 4. RELATED DIRECTIVE:** VA Directive 5021, Employee/Management Relations.
- 5. RESCISSIONS:** None.

**CERTIFIED BY:**

/s/  
LaVerne H. Council  
Assistant Secretary for  
Information and Technology

**BY DIRECTION OF THE SECRETARY  
OF VETERANS AFFAIRS:**

/s/  
Gina S. Farrisee  
Assistant Secretary for  
Human Resources and Administration

EMPLOYEE/MANAGEMENT RELATIONS

PART I. DISCIPLINARY AND ADVERSE ACTIONS UNDER TITLE 5

CONTENTS

PARAGRAPH	PAGE
<b>CHAPTER 1. GENERAL</b>	
1. <u>SCOPE</u> .....	I-1
2. <u>REFERENCES</u> .....	I-1
3. <u>POLICY</u> .....	I-1
4. <u>DEFINITIONS</u> .....	I-2
5. <u>RESPONSIBILITIES</u> .....	I-3
6. <u>OFFICIAL AUTHORIZED TO PROPOSE AND DECIDE ACTIONS</u> .....	I-5
7. <u>DETERMINING THE FACTS</u> .....	I-6
8. <u>DETERMINING APPROPRIATE ACTION</u> .....	I-8
<b>CHAPTER 2. DISCIPLINARY ACTIONS</b>	
1. <u>ADMONISHMENT</u> .....	I-15
2. <u>REPRIMAND</u> .....	I-16
3. <u>DISCIPLINARY SUSPENSION FOR 14 CALENDAR DAYS OR LESS</u> .....	I-17
<b>CHAPTER 3. ADVERSE ACTIONS</b>	
1. <u>ACTIONS COVERED</u> .....	I-23
2. <u>EMPLOYEES COVERED</u> .....	I-23
3. <u>EMPLOYEES EXCLUDED</u> .....	I-23
4. <u>ACTIONS EXCLUDED</u> .....	I-24
5. <u>TYPES OF ADVERSE ACTIONS</u> .....	I-25
6. <u>BURDEN OF PROOF DURING APPEAL PROCESS</u> .....	I-25
7. <u>EMPLOYEE ENTITLEMENTS</u> .....	I-26
8. <u>EXCEPTIONS TO 30 DAYS ADVANCE NOTICE</u> .....	I-27
9. <u>NOTICE OF PROPOSED ACTION</u> .....	I-27
10. <u>STATUS OF EMPLOYEE DURING ADVANCE NOTICE PERIOD OF ADVERSE ACTION</u> .....	I-29
11. <u>EMPLOYEE’S REPLY</u> .....	I-30
12. <u>ARRIVING AT FINAL DECISION ON THE PROPOSED ADVERSE ACTION</u> .....	I-31
13. <u>DECISION NOTICE</u> .....	I-32
14. <u>ADVERSE ACTIONS RELATING TO THE CRIME PROVISION</u> .....	I-33
15. <u>[SUSPENSIONS OF MORE THAN 14 DAYS] IN THE SENIOR EXECUTIVE SERVICE</u> .....	I-35
16. <u>RECORDS</u> .....	I-[36]



## PART I. DISCIPLINARY AND ADVERSE ACTIONS UNDER TITLE 5

### CHAPTER 1. GENERAL

**1. SCOPE.** This chapter contains the policy for taking disciplinary and adverse actions in the Department of Veterans Affairs (VA). Unless otherwise indicated, the chapter applies to all VA employees appointed under title 5 U.S.C., and under title 38 U.S.C., sections 7401(3).

**2. REFERENCES.** Title 5 U.S.C., chapters 73 and 75; VA Handbook 5005, Staffing, part IV; 5 CFR, part 752; VA Handbook 5019; 38 U.S.C. 7401(3); and 38 U.S.C. 7403(f)(3).

### 3. POLICY

a. The public interest requires the maintenance of high standards of employee integrity, conduct, effectiveness, and service to the public. When such standards are not met, it is essential that prompt and just corrective action be taken. The policy of VA is to maintain standards of conduct and efficiency that will promote the best interests of the service. Disciplinary and adverse actions shall be governed by these basic principles:

(1) An employee shall be informed in writing honestly and specifically why the action is being brought against him or her.

(2) An employee shall be given a reasonable opportunity to present his or her side of the case.

(3) The employee and representative shall have assurance of freedom from restraint, interference, coercion, discrimination, or reprisal in discussing, preparing, and presenting a defense.

b. In taking actions covered by this part, like penalties will generally be imposed for like offenses (see appendix A of this part, for further discussion). However, supervisors should give consideration to several factors when determining what action is appropriate, including the nature and gravity of the offense, the existence of either mitigating or aggravating circumstances, the frequency of the offense, and the employee's position. Adverse actions against employees (excluding employees in the Senior Executive Service (SES)) will be taken only for such cause as will promote the efficiency of the service. [Suspensions of more than 14 calendar days] against SES employees will be based only on misconduct, neglect of duty, malfeasance or failure to accept a directed reassignment, or to accompany a position in a transfer of function.

c. The adverse action procedures described in this part will be used for all actions defined as an adverse action in paragraph 4 and covered under 5 CFR, part 752.

d. An action covered under this part must be in conformance with the merit system principles in 5 U.S.C. 2301 and must not be based on any of the prohibited personnel practices listed in 5 U.S.C. 2302. Accordingly, actions covered under this chapter may not be based on prohibited discrimination because of race, color, religion, sex, national origin, age, or disability. Except when required by statute, an action covered under this chapter must not be taken against an employee because of marital status or partisan political reasons. Actions covered under this chapter must not be taken as

### CHAPTER 3. ADVERSE ACTIONS

**1. ACTIONS COVERED.** The provisions of this chapter apply to suspensions for more than 14 days, removals, reductions in grade or pay, furloughs of 30 days or less, or other actions which result in an involuntary separation or reduction in grade or pay when such actions are not based solely on unacceptable performance.

#### 2. EMPLOYEES COVERED

a. Among those employees covered by the provisions of this chapter are:

(1) Employees in the competitive service who have completed a probationary or trial period for their current appointment;

(2) Employees in the excepted service who are preference eligibles and who have completed 1 year of current continuous employment in the same or similar positions;

(3) Employees in the excepted service (other than a preference eligible) who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; and

(4) Employees in the excepted service (other than a preference eligible) 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) Employees appointed under 38 U.S.C. 7401(3) (i.e., full-time permanent hybrids) or 7405(a)(1)(B) (i.e., part-time permanent hybrids or part-time or full-time temporary hybrids serving terms longer than one year) who have completed their probationary period.

b. Most adverse actions will be initiated against employees who meet the criteria described in the previous subparagraph. However, 5 U.S.C. 7511 and 5 CFR 752.401 (c) provides a comprehensive list of all employees covered by the adverse action provisions of this chapter and should be consulted when questions arise concerning employee coverage.

#### 3. EMPLOYEES EXCLUDED

a. Physicians, dentists, nurses, nurse anesthetists, expanded function dental auxiliaries, physician assistants, podiatrists, [chiropractors,] optometrists, and other health care professionals appointed under 38 U.S.C. 74 (see part II of this handbook). **NOTE:** *Employees appointed under 38 U.S.C. 7401(2) and (3) and hybrid employees appointed under 38 U.S.C. 7405(a)(1)(B), who are part-time and have completed their probationary period or who are part-time or full-time temporary and have completed more than one year of service on an appointment not limited to one year or less, are covered by this chapter.*

b. Schedule C employees;

[c. Senior Executives in the Office of Inspector General;]

[d.] An individual appointed by the President; and,

**[e.]** Members of the Senior Executive Service (except as specifically covered by this chapter).

15. **[SUSPENSIONS FOR MORE THAN 14 DAYS] IN THE SENIOR EXECUTIVE SERVICE**

a. **Actions Covered**

(1) The provisions of this paragraph apply only to [ ] a suspension for more than 14 days. **[NOTE: The “Veterans Access, Choice, and Accountability Act of 2014” (Public Law 113-146, dated August 7, 2014) requires separate procedures for the removal and transfer of those in the Senior Executive Service (SES). For further guidance on these procedures contact the Corporate Senior Executive Management Office (CSEMO).]**

(2) **[A suspension for more than 14 days]** under this paragraph will be based only on misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function,

b. **Employees Covered.** The provisions of this paragraph apply to:

(1) A career employee who:

(a) Has completed the probationary period in the **[SES]**;

(b) Is not required to serve a probationary period; or

(c) Was covered under adverse action procedures immediately before appointment to the SES.

(2) A limited term or limited emergency appointee who:

(a) Received the limited appointment without a break in service in the some agency as the one in which the employee held a career or career-conditional appointment (or an appointment of equivalent tenure as determined by the Office of Personnel Management) in a permanent civil service position outside the SES; and

(b) Was covered under adverse action procedures immediately before appointment to the SES.

c. **Procedures**

(1) **[A suspension for more than 14 days in the SES will be proposed by an appropriate higher level official. Since members of the SES are centralized to the Secretary, the Secretary reserves the right to decide a suspension for more than 14 days against employees in the SES.]**

(2) All procedural requirements for **[a suspension for more than 14 days]** discussed in this chapter must be met.

**PART I**

**CHAPTER 3**

**16. RECORDS**

a. The Department shall retain all relevant documentation concerning disciplinary suspensions and adverse actions in a separate file and make it available for review by the affected employee or his/her representative. At a minimum, the agency's records shall consist of:

(1) A copy of the notice of proposed action.

(2) Evidence supporting the action taken including the affidavits of any witnesses.

(3) The reply of the employee when it is in writing, and/or a summary of any oral reply.

(4) The notice of decision and the reasons therefore.

(5) Evidence of the dates the employee received the notice of proposed action and decision.

(6) Copies of prior disciplinary and adverse actions (SF 50-B, Notification of Personnel Action, should be used to document any previous suspensions).

(7) Copies of relevant timecards if the adverse action was based on absence without leave (AWOL).

b. Disciplinary suspension and adverse action files should be maintained and disposed of in accordance with the provisions of VA Handbook 6300.1.