



Langley Research Center

LPR 3752.1 E

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DISCIPLINE AND ADVERSE ACTIONS

National Aeronautics and Space Administration

RESPONSIBLE OFFICE: Langley Human Resources Office**TABLE OF CONTENTS**

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PREFACE

P.1 PURPOSE

- a. This Langley Procedural Requirement (LPR) sets forth procedures and requirements, advice and guidance, and definitions for the administration of employee corrective, disciplinary, and adverse actions. Procedures for taking disciplinary and adverse actions for cause and for performance-based actions are set forth in 5 CFR Parts 752 and 432.
- b. Discipline is a managerial tool intended to correct deficiencies in employee behavior and attitude, correct situations that interfere with efficient operations, maintain high standards of government service, and maintain confidence in NASA LaRC.
- c. Supervisors and managers have an obligation to employees to correct behavioral deficiencies while they are still minor, before the behavior is repeated, escalates, serves as a bad example to others, and/or is believed by the employee to be acceptable, or at least condoned. It is easier to correct an initial instance of deficient behavior than to ignore the situation and try to correct repeated instances later. Likewise, it is advisable to correct a minor instance of misconduct before it becomes a more serious matter.

P.2 APPLICABILITY

- a. This LPR is applicable to all Langley Research Center Employees, except members of the Senior Executive Service, NASA Excepted Service (NEX) employees, and employees in Scientific and Technical (ST) and Senior Level (SL) Positions.
- b. Some personnel actions are excluded from coverage under this LPR. These include, but are not limited to, the following:
 - (1) A Reduction in Force (RIF) action.
 - (2) The separation of an employee serving a probationary period following initial appointment to a competitive position (See LPR 3430.2).
 - (3) A voluntary action initiated by the employee.
 - (4) Termination of a term or time-limited appointment on the expiration date specified as a condition of employment at the time the appointment was made.
 - (5) Reassignment from a position with known promotion potential to a position with no known promotion potential.

- c. In this directive, all mandatory actions (i.e., requirements) are denoted by statements containing the term “shall.” The terms “may” or “can” denote discretionary privilege or permission, “should” denotes a good practice and is recommended, but not required, “will” denotes expected outcome, and “are/is” denote descriptive material.
- d. All document citations are assumed to be the latest version unless otherwise noted.

P.3 AUTHORITY

- a. 5 USC, Chapter 75 – Adverse Actions
- b. 5 CFR, Part 752 – Adverse Actions
- c. LAPD 1200.5, Delegation of Authority to Take Disciplinary and Adverse Actions

P.4 APPLICABLE DOCUMENTS AND FORMS

- a. 5 CFR, Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch
- b. 5 CFR, Part 6091, Supplemental Standards of Ethical Conduct for Employees of the National Aeronautics and Space Administration
- c. NASA Desk Guide for Table of Disciplinary Offenses and Penalties
- d. NPR 3771.1, Grievance System
- e. NPR 3792.1D, Plan for Drug-Free Workplace
- f. NPR 3713.2B, Alternative Dispute Resolution for Discrimination Complaints
- g. LPR 3430.2, Probationary Period
- h. LPR 3432.1, Performance-Based Actions

P.5 MEASUREMENT/VERIFICATION

None

P.6 CANCELLATION

LPR 3752.1, dated July 20, 2010

Original signed on file

Cathy H. Mangum
Associate Director

DISTRIBUTION:

Approved for public release via the Langley Management System; distribution is unlimited.

CHAPTER 1. Responsibilities

1.1 The Langley Human Resources Office (HRO) responsible for providing advice and guidance on rights and responsibilities to both employees and managers. Advice and guidance shall be consistent with this LPR. HRO shall maintain official disciplinary action records.

1.2 Managers and supervisors are responsible for:

- a. Taking positive actions to preclude disciplinary actions. This includes fostering a climate of open communication and understanding and clearly communicating job and conduct expectations.
- b. Setting a good example through their own conduct.
- c. Monitoring employee conduct and promptly taking corrective action, as appropriate.
- d. Referring employees to the Employee Assistance Program (EAP) as appropriate or required.
- e. Consulting with HRO as appropriate.
- f. Complying with provisions of the Collective Bargaining Agreement (CBA) as it applies to bargaining unit employees.
- g. Maintaining supporting documentation in case disciplinary action becomes necessary.

1.3 Employees who fail to comply with the following may be subject to discipline under this LPR. Employees are responsible for:

- a. Conducting themselves, both on and off duty, in a manner that will ensure their conduct does not reflect adversely on NASA LaRC.
- b. Complying with the Standards of Ethical Conduct (5 CFR, Part 2635) and the Supplemental Standards of Ethical Conduct for Employees of NASA (5 CFR, Part 6901).
- c. Following on-the-job work rules and adhering to conduct expectations, including reporting for work as scheduled and in a condition that permits safe and reliable performance of assigned duties.
- d. Performing job duties at an acceptable level and in a safe and reliable manner.

CHAPTER 2. Representation

2.1 Bargaining unit employees may seek representation as prescribed through the applicable CBA. There may be occasions when the activities of an individual acting as an employee's personal representative could cause a conflict of interest or position, conflict with priority needs of the Center, give rise to unreasonable cost to the government, or create an undue hardship on the Center. In such cases, the Center Director or designated official may disallow the person to act as an employee's representative. If the employee wishes to contest the decision to disallow a representative of choice, the employee shall address the request in writing to the next higher level in his/her supervisory chain over the person who made the decision to disallow the representative.

2.2 Non-bargaining unit employees have a right to be represented by an attorney or other representative of their choice, at the employee's expense, during disciplinary action proceedings, except for those related to Letters of Reprimand.

CHAPTER 3. Types of Actions and Procedures

3.1 The use of Alternative Dispute Resolution (ADR) is encouraged for resolution of any workplace dispute or concern in accordance with NPR 3713.2B, "Alternative Dispute Resolution for Discrimination Complaints." ADR services, such as mediation, are available to management whenever employee conduct or performance raises concerns and the employee agrees to participate in the process. For assistance in scheduling ADR, contact the Center's Office of Equal Opportunity Programs.

3.2 Informal (Non-Disciplinary) Actions

Informal action to correct inappropriate or unacceptable conduct is not recorded in the employee's official personnel folder (OPF). However, such may serve as documentation of the employee being on notice concerning the inappropriateness/unacceptability of the conduct. Types of informal actions include:

- a. Oral admonishment or verbal counseling. Supervisors should document the admonishment/counseling discussion as a record of previous action, in the event of future infractions.
- b. Letter of caution or warning. Contact your servicing Employee Relations Specialist, HRO, for assistance in preparing such a letter.

3.3 Formal Disciplinary Actions

Any formal action taken to discipline an employee becomes a matter of written record in the employee's OPF. Types of disciplinary actions include:

- a. Written Reprimand. The written reprimand shall include:
 - (1) The reason(s) for issuance.
 - (2) The employee's right to file a grievance under a CBA or the NASA Grievance System, as appropriate.
 - (3) The length of time the reprimand will be retained in the employee's OPF (up to two years), in accordance with the time frame cited in the Letter of Reprimand.
- b. Suspension for 14 calendar days or less. A suspension of 14 days or less entitles the employee to:
 - (1) An advance written notice (issued at least 15 days prior to effecting the proposed action) that includes:

- (a) The specific reason(s) for the proposed action and any aggravating or mitigating factors considered in proposing the corrective action.
 - (b) The name and title of the official designated to hear an oral reply and/or receive a written reply. The official so designated must have the authority to make a final decision on the proposed suspension.
 - (c) The right to be represented by an attorney or other representative.
 - (d) The right to review, or have a representative review, the material relied on to support the reason(s) for action given in the notice of proposed suspension.
 - (e) Five calendar days to answer orally and/or in writing, and to obtain affidavits and other documentary evidence in support of the answer.
- (2) A written decision at the earliest practicable date that:
- (a) Considers only the reason(s) for the action specified in the advance written notice.
 - (b) Considers any answer the employee and/or the employee's representative made to the designated official.
 - (c) Specifies the reason(s) for the decision.
 - (d) Is signed by an official in a higher position than the official who proposed the action, unless the Center Director issued the advance notice, in which case the Center Director may issue the decision.
 - (e) Specifies the employee's right to file a grievance.
 - (f) Is delivered to the employee before the effective date of the suspension.

3.4 Adverse Actions

3.4.1 Adverse actions are disciplinary actions that may be appealed to the Merit System Protection Board (MSPB) and are matters of a written record in the employee's OPF. Types of adverse actions include:

- a. Removal
- b. Suspension of more than 14 days
- c. Indefinite suspension
- d. Reduction in grade
- e. Furlough of 30 days or less (a furlough of more than 30 days is handled through RIF procedures.)

3.4.2 Actions appealable to the MSPB entitle the affected employee to:

- a. Notice of a proposed adverse action. The employee shall receive at least 30 days advanced written notice, unless there is a reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed or for furlough without pay due to unforeseeable circumstances. When the employee's whereabouts are unknown, the Center shall show that it took reasonable steps to serve the notice. In such instances, the supervisor shall send the notice via both certified and regular mail to the last known address that the employee provided to the Center.
- b. The specific reason(s) for the proposed action. Material that cannot be disclosed to the employee and his or her designated representative may not be considered by the proposing management official. If the action is furlough, the notice shall state the reason(s) for the furlough, and the basis for selecting the employee if all individuals in the employee's competitive level are not being furloughed.
- c. Disclosure of all factors, including prior discipline, and any aggravating factors relied upon for proposal of corrective action. In relying on past misconduct to enhance a penalty, the misconduct shall be referenced in enough detail to permit an informed reply.
- d. The name and title of the official designated to hear an oral reply and/or receive a written reply. The official so designated shall have the authority to make a final decision on the proposed action.
- e. The right to be represented by an attorney or other representative.

- f. The right to a reasonable amount of official time to review, or have a representative review, the material relied upon to support the reason(s) given

in the notice and to prepare an answer and to secure affidavits, if the employee is otherwise in an active duty status.

- g. Fifteen calendar days to answer orally and/or in writing, and to secure and/or furnish affidavits and other documentary evidence in support of the answer.

3.4.3 A written decision is required for all actions appealable to the MSPB. At the earliest practicable date an employee shall be provided a written decision that:

- a. Considers only the reason(s) specified in the advance written notice.
- b. Considers any answer the employee and/or the employee's representative made to the designated official.
- c. Specifies the reason(s) for the decision, considering appropriate penalty factors provided in the NASA Desk Guide for Table of Disciplinary Offenses and Penalties.
- d. Is signed by an official in a higher position than the official who proposed the action, unless the Center Director issued the advance notice, in which case the Center Director may issue the written decision.
- e. Specifies the employee's right to appeal to the MSPB and provides the time limits and address for filing an appeal, MSPB regulations, and the board appeal form.
- f. Is delivered to the employee on or before the effective date of the action.

3.5 Alternative Courses of Action

Supervisors should always address instances of employee misconduct in some manner. However, not all misconduct necessarily warrants formal disciplinary action. Other forms of correction include:

- a. Explanation or Training. If the employee is unaware of the proper performance or conduct, it may be that training, or perhaps a sound explanation, will be sufficient to correct the problem. This alternative is particularly likely to be appropriate when the employee is new or working in an unfamiliar environment.
- b. Employee Assistance Program. As a general rule, it is in the best interests of both NASA and the employee to rehabilitate the employee rather than remove him/her from Federal service. Misconduct is not always willful and sometimes stems from personal issues or problems that may be addressed through EAP. A supervisor should seek to learn enough to determine whether to refer an employee to EAP, take disciplinary action, or both.

- c. Letter of Requirement. In cases where the leave privilege is abused or other conduct or performance deficiencies exist, a supervisor may wish to impose requirements on an individual that do not apply to the rest of the work force. This can be done with a letter of requirement, which establishes the precise circumstances under which leave will be approved or precisely what performance is required.

3.6 Special Disciplinary Situations

- a. Unauthorized Absence. If an employee is absent without permission, he/she should be charged with Absence Without Leave (AWOL). A charge of AWOL will support a disciplinary action; however, an instance of AWOL does not automatically require disciplinary action. An employee who is AWOL is not paid for the period of unapproved absence. Therefore, a supervisor may determine that the loss of pay is sufficient to prevent such absences in the future. Leave abuse, excessive use of approved leave (i.e. LWOP, annual leave, or sick leave), may result in future leave requests being denied and absences charged as AWOL.
- b. Non-Duty Status with Pay (Administrative Leave). Sometimes the actions or conduct of an employee represent a threat to life, health, or government property, and it will be necessary to remove the employee from the worksite while a disciplinary action is being processed. In such instances, it is permissible to place the employee on non-duty status with pay for the minimum period necessary.
- c. Drug and Alcohol Abuse Offenses. An employee who engages in misconduct involving drugs and/or alcohol shall be disciplined in accordance with the provisions outlined in NPR 3792.1D, "Plan for a Drug-Free Workplace."
- d. Voluntary Action by Employee. An employee who is confronted by management with a potential disciplinary situation may volunteer to accept a lower grade or reassignment, resign, or retire in lieu of disciplinary action. Such voluntary actions may be considered an appropriate course of action provided management has not coerced the employee into taking such an action. Great care should be taken to avoid the appearance of coercion. All questions by the employee regarding resignation/retirement or the effect of such on the action being taken should be referred to HRO OHCM. Employees who believe they were coerced into resigning/retiring or involuntarily taking a change to lower grade may file an appeal with MSPB.
- e. Performance-Related Adverse Action. Where an employee's deficiencies are performance-related rather than due to misconduct, the employee may be demoted or removed either through the procedures described in LPR 3432.1 or through adverse action procedures.

3.7 The NASA Desk Guide for Table of Disciplinary Offenses and Penalties provides guidance to NASA HROs when advising supervisors and managers on taking formal disciplinary action. The table can be found at the following URL:

https://searchpub.nssc.nasa.gov/servlet/sm.web.Fetch/NDG03_TableofPenalties.pdf?rhid=1000&did=778169&type=released

It is recommended that all questions concerning this LPR and all disciplinary matters be directed to an HRO Employee Relations Specialist.

APPENDIX A. Definitions

- A.1. **Adverse Action.** Disciplinary action appealable to the Merit Systems Protection Board (MSPB).
- A.2. **Appealable Action.** A removal; suspension of more than 14 days, including an indefinite suspension; a reduction in grade or pay; or a furlough of 30 days or less.
- A.3. **Day.** Calendar day.
- A.4. **Formal Disciplinary Action.** Action taken by a supervisor or manager to correct employee misconduct or other situations that interfere with effective operations. Such action is not intended to be punitive but it serves as a deterrent to unacceptable conduct or behavior, promotes high standards of government service, and maintains public confidence in NASA LaRC. Disciplinary action may be taken only for such cause as will promote the efficiency of service.
- A.5. **Furlough.** Temporary status without duties and pay because of lack of work or funds for other non-disciplinary reasons.
- A.6. **Indefinite suspension.** Placing an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the condition(s) set for in the notice of action that may include the completion of any subsequent administrative action.
- A.7. **Letter of Caution or Warning.** A non-disciplinary written notification issued by a superior to an employee concerning unacceptable conduct and warning the employee that a disciplinary action may be imposed unless the conduct improves.
- A.8. **Letter of Requirement.** A written notification (order) issued by the superior to an employee concerning conduct deficiencies, such as sick leave abuse or tardiness, that sets forth requirements and procedures to be followed by the employee to avoid future disciplinary action for similar deficient conduct.
- A.9. **Oral Admonishment or verbal counseling.** An oral notification given by a superior to an employee concerning conduct deficiencies and warning the employee that a disciplinary action or letter of requirement may be imposed for continued deficiencies.
- A.10. **Reduction in grade.** A reduction to a lower level of classification under a position classification system
- A.11. **Removal.** An involuntary separation of an employee from Federal service, except when taken as a reduction-in-force action.

A.12. Suspension. Placing an employee in a temporary status without duties and pay for a specified number of days for disciplinary reasons, or pending inquiry. See Indefinite Suspension.

A.13. Written Reprimand. A written remedy by a supervisor for an employee's improper conduct. Written reprimands are maintained in the employee's OPF for up to two (2) years.

APPENDIX B. Acronyms

ADR	Alternative Dispute Resolution
AWOL	Absence without Leave
CBA	Collective Bargaining Agreement
CEAP	Civilian Employee Assistance Program
CFR	Code of Federal Regulations
LAPD	Langley Policy Directive
LaRC	Langley Research Center
LPR	Langley Procedural Requirements
MSPB	Merit Systems Protection Board
NASA	National Aeronautics and Space Administration
NEX	NASA Excepted Service
NPR	NASA Procedural Requirements
HRO	Human Resources Office
OPF	Official Personnel Folder
RIF	Reduction in force
SL	Senior Level
ST	Scientific and Technical
USC	United States Code