

Guidelines for Developing Documentation:

- There are four concepts that are central to the practice of employee relations and important for your role as supervisor/manager. The concepts are:
 - Authorities
 - Status
 - Rights
 - Actions
- Federal employees are covered under a host of specialized laws, regulations, rules, and collective bargaining agreements.
- A worker gains status as an "employee" after a probationary or trial period.
- Employees have specific responsibilities and rights.
- Employees with conduct or performance issues will face actions.
- Rights and entitlements are used interchangeably in this course; ER Practitioners understand the terms in a more specific, more nuanced way that is not necessary for you to understand.

Authorities

- Authorities determine the correct policies and procedures that affect Federal Government employees.
- Management Authority
 - DoD has the authority to hire employees, remove them if necessary, discipline them if necessary, and to take informal and formal actions against employees who are underperforming or commit misconduct.
 - This authority comes from six different sources.
- Flow of Controlling Authorities
 - You should be familiar with the names of the controlling documents for employment relations authority, although knowing the details of title and chapter will fall to the ER Practitioner.
 - There are six sources of authority to govern how you implement correct and fair employment policy and practice.
 - United States Code (U.S.C.)
 - Code of Federal Regulations (CFR)
 - DoD Civilian Personnel Manual (CPM)
 - Component Regulations
 - Subcomponent Regulations
 - Collective Bargaining Agreements
 - These laws and regulations determine what is acceptable action by supervisors/managers and ER Practitioners.
- United States Code (U.S.C.)
 - The United States Code (U.S.C.) is where laws that Congress has passed are organized into 50 areas or codes that govern all public business.
 - Once a law is passed, it is codified or located in the Title to which it pertains.
 - Each Code is arranged into Chapters.
 - For example, U.S.C. Title 5, Chapters 75 (Discipline and Adverse Actions) and 43 (Performance) are the statutory basis for much of what will be discussed in this course.

Authorities (cont'd)

- Code of Federal Regulations (CFR)
 - The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.
 - It is divided into 50 titles that represent broad areas subject to Federal regulation.
 - Each volume of the CFR is updated once each calendar year and is issued on a quarterly basis.
- DoD Civilian Personnel Manual (CPM)
 - The DoD Civilian Personnel Manual (CPM) implements policy, establishes uniform DoD-wide procedures, provides guidelines and model programs, delegates authority, and assigns responsibilities regarding civilian personnel management within the Department of Defense.
- Regulations
 - Component Regulations are those policies and principles that Components have established for efficient service. These policies only apply to the specific Component.
 - Subcomponent Regulations are those policies and principles that have been established by the subcomponent, activity, or organization for efficient service.
- Collective Bargaining Agreements (CBAs)
 - Emphasize that it is important for participants to consult with their Labor Relations Practitioners in order to understand when contract language takes precedence.
 - CBAs are legally binding contracts between management and their respective labor unions.
 - These contracts outline policies, procedures, and general working conditions to which both parties have agreed, and they comply with all of the aforementioned legal and regulatory authorities.
 - A CBA may override Government-wide and component regulations in certain situations.
 - It is important to consult with your Labor Relations Practitioner in order to understand when contract language takes precedence.
 - CBAs are covered in greater detail in the Labor Relations for Supervisors and Managers course.

Status

- It is important for supervisors/managers to understand an employee's status of employment because the status determines how to address conduct or performance issues.
- Key terms for understanding status are:
 - Employee
 - Competitive service
 - Excepted service
 - Probationary period
 - Trial period
- Competitive and Excepted Service
 - These are two very broad distinctions in Federal Government service.
 - Competitive service – applicants compete with others under OPM merit system.
 - Excepted service – used to fill job under a special circumstance, e.g., temporary job or critical hiring need.

Status (cont'd)

Competitive Service

- Probationary and trial employees are similar in that they are in the first year of Federal service; however, the term probationary indicates someone hired for competitive service and the term trial indicates someone hired for excepted service.
 - The competitive civil service refers to Federal employment that uses the Office of Personnel Management's (OPM's) competitive hiring process. This means that OPM, or an agency delegated by OPM, conducts a competitive evaluation and rates the job candidates.
 - Once employed, candidates who have gone through this process have civil service competitive status.
 - An employee with this status can move freely from one Government job to another without going through OPM's competitive hiring evaluation again.
- An employee is an individual who is either in the competitive service who is not serving a probationary or trial period under an initial appointment

or

- Has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less.

Excepted Service

- Excepted service employees are hired for a specific term appointment with a fixed end date.
- The excepted service is comprised of positions and agencies that are not required to use OPM's competitive hiring examination.
- These agencies have authority to establish their own hiring programs to fill excepted service vacancies.
- Excepted service employees have fewer appeal rights (compared to positions in the competitive service) in the event of disciplinary actions or job termination. Employees may have full due process and appeal rights or limited appeal rights depending on whether they are within the initial probationary period.

Probationary and Trial Periods

- The probationary period can be complex because probationers are not the same as employees with finalized appointments.
- An employee must serve a probationary period during the first year of service when given a career-conditional appointment.
- An employee must also serve a probationary period before an initial assignment as either a supervisor or manager becomes final.
- An employee with a term appointment (a limited time period appointment lasting for at least 1 year but less than 4 years) will be given a trial period.
- Prior Federal civilian service counts toward completion of probation if it is in the same agency, same line of work, and without a break in service.
- In addition, upon initial appointment to a supervisory or managerial position, an employee must satisfactorily complete a 1-year probationary period for a supervisory or managerial position.
- These periods are considered an extension of the application process and determine the employee's fitness for continued employment.
- These periods provide DoD with an opportunity to evaluate an individual's conduct and performance on the job to determine if an appointment to the civil service should become final.
- The supervisor/manager evaluates the employee's job performance and work behavior as well as his or her character, conduct, and attitude that affect job performance.

Status (cont'd)

- There are evaluation questions a supervisor/manager should be considering during the probationary and trial periods. Is the employee:
 - Performing assigned tasks effectively?
 - Demonstrating good teamwork?
 - Making good decisions?
 - Using work time appropriately?
 - Following instructions?
- A probationary or trial employee whose performance or conduct is unsatisfactory may be removed at any time during the period.
- The supervisor/manager does not have to wait until the end of the probationary period to initiate action.
- Actions should be taken early in the process. Managers and supervisors should be evaluating employees frequently and not waiting until the 11th month of the probationary period to address problems.
- While no formal requirement exists to document a probationary employee's deficiencies, documentation is a good idea to demonstrate that the removal of a probationary employee was not done for discriminatory or other inappropriate reasons.

Responsibilities and Rights

- This is an important concept within employment law.
- This topic will review protections that all Federal employees have against indiscriminate discipline or wrongful removal.
- Employees have responsibilities to perform their work well, behave professionally, and demonstrate good character.
- Union Status
 - An employee's status as bargaining unit or non-bargaining unit is important.
 - Many positions within the Federal Government afford employees bargaining unit status.
 - A bargaining unit employee is represented by a union. A bargaining unit employee has rights and entitlements that are spelled out in a Collective Bargaining Agreement.
 - A non-bargaining unit employee is not represented by a union.
 - An employee's bargaining unit status can be identified by your Labor Employee Relations Practitioners.
- Employee Rights
 - Note that all employees are protected by the same constitutional freedoms and civil rights which protect citizens of the United States. Other rights stem from laws and legal precedent. Examples of these are freedom of religion, speech, and freedom from unwarranted searches and seizures.
 - Employment rights further protect employees from harassment in the workplace, discrimination in hiring, and offer equal opportunity.
 - All employees at DoD, including supervisors and managers, are protected by laws and regulations. Employees have the same protections and rights as all citizens of the United States.
 - Freedoms, rights, protections, and entitlements stem from the Constitution, Federal laws, legal precedent, and the authorities outlined earlier in the course.
 - Employment rights protect employees from harassment in the workplace, discrimination in hiring, and other examples of unfairness or mistreatment.

Key Terms

Due process

The right of due process requires that employees be given notice of any charges and an opportunity to respond. The Supreme Court held that tenured public employees have a constitutionally protected "property" interest in their employment, meaning that employees have an expectation of continued employment in the absence of "cause."

Right to representation

When an employee's right to representation is discussed in this course, you have to differentiate between three distinct types of representation, each one of which is covered by different regulations:

- Right to be represented during disciplinary procedures
- Right to be represented at an investigation interview dealing with potential disciplinary actions
- Right to be represented during the grievance or appeal process

Efficiency of the service

"Efficiency of the service" is the standard derived from the Code of Federal Regulations that requires that all adverse actions to promote the "efficiency of the service" if the grounds for action relate either to an employee's failure to accomplish his or her duties satisfactorily or to some other legitimate government interest.

In determining whether an adverse action promotes service efficiency, the court examines charges and conduct leading up to the proposal date. At issue are the employee's conduct and its impact on the workplace.

Just Cause

In some cases, an employee may commit an act that is not specifically addressed in the employer's policies, but it is one in which the employer believes discipline or discharge is warranted.

Progressive Discipline

The goal of progressive discipline is to correct unacceptable conduct or behavior that interferes with an employee's ability to do his or her job by first imposing the least intrusive method of discipline deemed necessary. The level of intrusiveness will increase or "progress" if the behavior is not corrected.

In many cases the process starts with the least penalty necessary to correct the behavior.

Not all offenses need to start with the least penalty. For some conduct there is a zero tolerance standard. Examples are workplace violence, being absent without leave (AWOL) for 5 or more days, and so on. These types of offenses can result in an immediate dismissal.

Appeals

Employees who feel an agency action or adverse action was taken against them unfairly may appeal and may possibly have the action reversed.

Many employee rights concern how an employee can appeal an action or adverse action.

Ability to appeal is largely determined by:

- Employee status (i.e., not probationary)
- Terms of collective bargaining agreement, if applicable

“Weingarten” Rights

- The “Weingarten” right is a specific right to representation that is afforded to bargaining unit (BU) employees or when an employee believes that disciplinary action may be the result of a meeting.
- Besides the basic due process right for employees to be represented when responding to proposed discipline, there is an additional right that flows from the labor relations statute, commonly known as the “Weingarten” right. That right extends the right to representation to bargaining unit (BU) employees when an investigative interview is conducted by management.