

## Employee Relations 101

- 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 should face actions.
- Rights and entitlements are used interchangeably in this course; consult with your ER practitioner for the specific differences.
- 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.

### ***Understanding Status:***

- **Competitive service** - applicants compete with others under OPM merit system.
- **Probationary** - served the first year of service on a career –conditional appointment. This includes new supervisors/managers and term appointees. Probationary employees have limited appeal rights.
- **Excepted service** - used to fill jobs under a special circumstance, e.g., temporary job or critical hiring need
- **Trial period** – is 1 to 2 years in length. Employees have fewer appeal rights. May have full *due process* and appeal rights or limited appeal rights depending on whether they are within the initial period.
  - 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. The supervisor/manager should not 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, supervisors should document a probationary employee’s deficiencies, documentation is a vital to demonstrate that removal of a probationary employee was not done for discriminatory or other inappropriate reasons.

### ***Understanding Collective Bargaining Agreements (CBAs):***

- 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.

### ***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:**

Ability to appeal is largely determined by:

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

**"Weingarten" Rights:**

- 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. This entitles bargaining unit (BU) employees to union representation when an investigative interview is conducted by management and the employee believes that disciplinary action may be the result of that meeting.