



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Thursday, October 10, 2019

MEMORANDUM FOR: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: DALE CABANISS, DIRECTOR

Subject: Guidance on Progressive Discipline and Tables of Penalties

Note: The guidance within the memorandum below has been rescinded by Executive Order; please refer to OPM's March 5, 2021 memorandum: <https://www.chcoc.gov/content/guidance-implementation-executive-order-14003-protecting-federal-workforce>

The President's Management Agenda calls for agencies to establish processes that help agencies retain top employees and efficiently remove those who fail to perform or to uphold the public's trust. Executive Order (EO) 13839, signed by the President on May 25, 2018, requires agencies to further facilitate a Federal supervisor's ability to promote civil servant accountability while simultaneously recognizing each employee's procedural rights and protections. Agencies should recognize and reward good performers, while unacceptable performers should be removed if they are provided the opportunity to improve but do not do so. Employee misconduct should be addressed promptly and consistently in the Federal workforce.

A number of agencies have established policies that require progressive discipline when determining penalties for employee misconduct. Progressive discipline is the imposition of the least serious disciplinary or adverse action applicable to correct misconduct with penalties imposed at an escalating level of subsequent offenses. Many agencies have also implemented a table of penalties which provides a list of common infractions along with a suggested range of penalties for each infraction. Finally, agencies often receive collective bargaining proposals from labor unions seeking to impose the use of progressive discipline and tables of penalties and have adopted related provisions in collective bargaining agreements.

Agencies should be mindful that neither the use of progressive discipline nor the adoption of a table of penalties is required by statute, case law or U.S. Office of Personnel Management (OPM) regulations. Further, the use of these approaches presents challenges that agencies should consider prior to adoption. In enacting current law, Congress provided managers with maximum flexibility to pursue adverse actions, whether the underlying impetus is a conduct issue, a failure to perform, or any other reasons related to Federal employment, as needed for the efficiency of the service. Moreover, E.O. 13839 itself, as discussed in the annexed memorandum, provides that supervisors and deciding officials should not be required to use progressive discipline and should calibrate penalties to the specific facts of the particular situation. OPM is aware that agencies have argued to arbitrators that it is inconceivable that the conduct at issue could have resulted in any penalty less than removal. Arbitrators have pointed to the existence of tables of penalties for that type of misconduct as a basis for mitigating the

penalty. The attachment to this memorandum provides guidance on progressive discipline and tables of penalties for agencies to consider when updating disciplinary policies or engaging in collective bargaining.

Agency headquarters-level human resources offices may contact OPM's Accountability and Workforce Relations office at employeeaccountability@opm.gov or 202-606-2930. Other agency employees should contact their agency human resources offices for assistance.

Attachment: Guidance on the Use of Progressive Discipline and Tables of Penalties (See 508-conformant PDF below)

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, and Human Resources Directors