

MS 652 Corrective and Adverse Actions Procedures

Effective Date: May 1, 2018

Responsible Office: Office of Human Resources

1.0 Purpose

The purpose of these procedures is to provide guidance on implementing corrective and adverse actions for Peace Corps employees in the interest of maintaining the efficiency of the service. The policy guidance is found in MS 652 *Corrective and Adverse Actions Policy*.

All procedures herein shall be coordinated with the Employee and Labor Relations Division in the Office of Human Resources (HR).

2.0 Informal Corrective Actions

As a general rule, informal corrective actions are taken by the supervisor on his or her own initiative in situations of a minor nature involving violation of a rule, policy, standard of conduct, safety practice, or authorized instruction. Such actions may be conducted through a verbal counseling or in writing. The Employee and Labor Relations Division should be consulted as appropriate.

3.0 Formal Corrective or Adverse Actions

The Employee and Labor Relations Division must be consulted in cases of formal corrective or adverse actions.

3.1 Reprimand

3.1.1 Criteria

A reprimand must state:

- (a) The reason(s) for issuance, including charge(s) and specification(s).
- (b) The employee's right to file a grievance under the negotiated grievance procedure or administrative grievance procedure, as appropriate.
- (c) The reprimand will be retained in the employee's Official Personnel Folder (OPF), up to one year, and may be retained by the Peace Corps.

3.2 Suspensions and Removals for Cause

3.2.1 Criteria – Notice of Proposed Action

The Proposing Official shall provide the employee a notice of proposed action that must state:

- (a) The specific proposed action.
- (b) The charge(s) and specification(s).
- (c) The specific reason(s) for the proposed action and any aggravating or mitigating factors considered in proposing this corrective action.
- (d) The name, title, and contact information of the Deciding Official who will hear the oral reply and/or receive a written reply. The official so designated must have authority to either make or recommend a final decision on the proposed action.
- (e) The right to be represented by an attorney or other representative. The attorney or other representative shall be designated in writing.
- (f) The duty status of the employee during the notice period, and that no final decision will be made to effect the action until the employee's reply, if any, has been considered.
- (g) The employee and the employee's attorney or other representative will be given a reasonable amount of official time to prepare a reply.
- (h) The right to review, or have an attorney or other representative review, the material relied upon to support the reason(s) for action given in the notice of proposed action.
- (i) The right to answer orally and/or in writing, and to secure and furnish affidavits and other documentary evidence in support of the answer, including medical documentation (as defined in 5 CFR 339) to support any claim that a medical condition(s) may have caused the conduct cited by the proposed action.
- (j) Any reply the employee provides must be received by the Proposing Official within fourteen days of employee's receipt of the notice of proposed action.
- (k) The right to request an extension of the time limit to reply. The Deciding Official designated to accept the oral or written reply will make the decision to grant or deny such an extension.
- (l) The name and telephone extension of the Employee Relations Specialist who may be contacted for assistance concerning procedures.

3.2.2 Criteria – Notice of Final Decision

The Deciding Official or designee will issue the notice of final decision to the employee, preferably in person, or via email, at the earliest practicable date and must state:

- (a) The reason(s) for the action, which may be based only on the reasons noted in the proposed action.
- (b) The consideration of any answer the employee and/or the employee's representative made to the Designated Official, including medical or other documentation, and any

entitlement to reasonable accommodation under the provisions of the Rehabilitation Act of 1973.

- (c) The consideration of appropriate "Douglas Factors" (Douglas v. Veterans Administration, 5 MSPR 280, 5 MSPB 313(1981)).
- (d) The determined penalty, if any, and the effective date of the penalty, if applicable. The penalty may not be effected prior to delivery of the decision letter. A decision to suspend or remove an employee will be effected no earlier than fourteen (14) days after delivery of the final decision notice.
- (e) The employee's right to file a grievance under the Negotiated Grievance Procedure or the Administrative Grievance Procedure, as appropriate. In the event of a removal decision for cause, instructions on the hearing process with the Foreign Service Grievance Board.

4.0 Issuance of Adverse Action Notices

All official notices should be delivered to the employee, preferably in person, or if not feasible, via email. In addition, the employee will be provided with an extra copy for his/her potential representative, and that copy will be annotated as the representative's copy.

If in-person or email delivery is not possible, two copies of the letter will be sent through the United States mail. One copy shall be sent using the certified return receipt requested service. The second copy shall be sent using regular first class mail.

A final copy of the notice must be forwarded to the Employee Relations Specialist.

5.0 Choosing Among Corrective and Adverse Actions

Taking corrective or adverse actions demand the exercise of responsible judgment so that an employee will not be penalized disproportionately to the character of the offense. This is particularly true of an employee who has a previous record of completely satisfactory service. A supervisor must evaluate each situation on the basis of its own factual circumstances to ensure that the corrective action proposed and taken is reasonable under those circumstances. Factors that should be considered are:

- (a) The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional, technical, inadvertent, committed maliciously, for gain, or has been frequently repeated;
- (b) Employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (c) Employee's past conduct record;
- (d) Employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

- (e) Effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;
- (f) Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- (g) Notoriety of the offense or its impact upon the reputation of the Peace Corps;
- (h) Clarity in notifying or warning the employee of conduct which violated Peace Corps rules;
- (i) Potential for the employee's rehabilitation;
- (j) Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in that matter, conduct that may be attributed to the employee being a victim of domestic violence, sexual assault, or stalking; and
- (k) Adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Not all of these factors apply in every case. The above is not a complete list of possible considerations. Management officials must consider the relevant factors of each case and strike a responsible balance in deciding a reasonable action.

6.0 Appeals

Employees may appeal reprimands, suspensions, and removals for cause under one of the following:

- (a) Bargaining unit employees may appeal under the provisions of Article 20 of the Negotiated Agreement or, in the case of removal for cause, under 22 USC 4010, but not both.
- (b) Non-bargaining unit employees may appeal under the provisions of MS 655 *Direct Hire Employee Grievances*, or in the case of removal for cause, under 22 USC 4010, but not both.

6.1 Freedom from Reprisal or Interference

Employees who have received a proposed corrective action are free to use the appeal procedure without restraint, interference, coercion, discrimination, or reprisal. No employee shall interfere or attempt to interfere with another employee exercising or planning to exercise his or her appeal rights. No employee shall retaliate or threaten to retaliate against an employee exercising or planning to exercise his or her appeal rights. No employee shall interfere, coerce, discriminate against, or retaliate against an employee's representative assisting an employee exercising or planning to exercise his or her appeal rights.

7.0 Representation

An employee may have a representative of his or her own choosing to represent the employee at any step of the disciplinary process. A person chosen by an employee to represent the employee must be willing and able to fulfill the responsibilities of a representative. This means that the representative should be available; should not have conflicts with the duties of his or her position and the responsibilities as a representative; and should not cause the Agency to incur unreasonable costs as a result of serving as a representative.

For Bargaining Unit Employees, if prior to or during a supervisory interview of the employee, the supervisor believes that the discussion may result in a corrective or adverse action against the employee, the supervisor will advise the employee of the right to representation. For further information see Article 19 Corrective and Adverse Actions of the negotiated agreement between the Peace Corps and the Peace Corps Employees Union, AFSCME Local 3548, AFL-CIO.

8.0 Use of Official Time

The employee and the representative, if an employee of Peace Corps and otherwise in an active duty status, shall be considered on official time during the preparation and presentation of a response to a proposed action or the preparation and presentation of an appeal.

The employee and the representative shall be permitted a reasonable amount of official time for the preparation and presentation of a response to a proposed action and for the preparation and presentation of an appeal. The amount of time depends upon the nature and complexity of the action against the employee, the volume of the supporting evidence, and the amount of time that is required to obtain statements or affidavits from employees, or to have access to Agency records and regulations. Requests for additional time may be made and will be granted when justified by the circumstances. Such requests may be made to the employee's first line supervisor.

9.0 Access to Agency Records

For the purpose of preparing a reply to a proposed corrective action or in pursuing an appeal of such an action, employees are entitled to review their official personnel folder and materials the Agency official(s) relied upon to develop and support the proposed action. However, employees may be restricted from examining certain documents, such as

- (a) Documents to which the U.S. Office of Personnel Management limits access, e.g., certain medical information, certain documents in merit promotion files, suitability investigation reports, official personnel folders of other employees, etc.;
- (b) Documents which contain classified national security information; and
- (c) Documents not subject to the disclosure requirements of the Freedom of Information Act, e.g., employment reference checks secured under a pledge of confidence, privileged communications between management officials, etc.

Peace Corps officials shall, upon the written request of the employee or the representative, make available for review any non-restricted document or information relevant to the proposed corrective action or appeal. Disputes as to the relevancy of documents or information shall be resolved by the Office of the General Counsel.