



The examples and best practices listed here are illustrative only, and are intended only for use as general advice. An appeal decision is the product of applying the Civil Service Rules, Article and Constitutional principles of Due Process to the unique facts of each case. Accordingly, these FAQ's and the HR Handbook do not predict or guarantee a particular result.

Q. Is this the same notice as the notice of proposed action/opportunity to respond?

A. No. It is the notice to the employee of what action the appointing authority has decided to take, when that action will become effective, and detailed reasons for the action.

Q. When must the agency give written notice of discipline or removal to the employee?

A. Before the time that the action becomes effective.

Q. If the action becomes effective at 4:30 p.m. today, is notice delivered to the employee at 2:30 p.m. today timely?

A. Yes.

Q. What are the consequences of not giving written notice of discipline or removal before the time that the action becomes effective?

A. If the employee appeals the action, the Commission or Referee will reverse the action and order the agency to pay back pay with interest and attorney's fees.

Q. When must the agency prove that it gave timely notice?

A. If the employee appeals the action, the person who mailed or delivered the letter should be prepared to testify. The employee can raise lack of timely notice at any time.

Q. What must the written notice of discipline/removal contain?

A. What action is being taken, the effective date and time of the action, detailed reasons for the action, and notice of appeal rights.

Q. What are "detailed reasons" for the action?

A. The facts (including pertinent dates, times, places, and names) that support the action, not the conclusions to be drawn from those facts. Generally, the detailed reasons include who, what, when, where, why, and how.

Q. Won't these be the same reasons in the notice of proposed action/opportunity to respond?

A. Usually. However, the agency may decide to abandon or reword charges because of the employee's response to the notice of proposed action.

Q. Must the disciplinary/removal letter contain the names of witnesses to the conduct?

A. Only if they are directly involved in the conduct.

Q. What is the difference between witnesses to the conduct and persons directly involved in the conduct?

A. If the agency charges Employee A with accepting a bribe, the letter must identify the person offering the bribe. However, the letter does not have to identify the employees who observed or overheard the transaction.

If the agency charges Employee B with administering the wrong medication to a patient, the letter must identify the patient (in such manner as the law allows). However, the letter does not have to identify the employee who discovered the problem.

Q. Can the notice of discipline/removal refer to attachments?

A. Yes, but the body of the letter should contain the actual charges; attachments should merely supply examples. If the employee appeals the action, the agency must be prepared to show that the attachments actually accompanied the employee's letter.

Q. Can the discipline/removal notice say, "For the reasons listed in the notice of proposed action, you will be ...?"

A. Only if the notice of proposed action is attached to the discipline/removal notice. However, this is a very risky practice and is thus discouraged. If the agency fails to attach the notice of proposed action, then the discipline/removal notice contains no reasons for the action, and if the employee appeals, the Commission or Referee will reverse the action for lack of detailed reasons.

Q. To dismiss an employee for poor performance, may an agency merely recite the dates of substandard ratings?

A. No. The agency must describe in detail the conduct/performance that gave rise to the substandard ratings.

Q. What are the consequences of failing to give the employee detailed reasons for the action?

A. If the employee appeals the action and all the charges are insufficient, the Commission or Referee will reverse the action and order the agency to pay back pay with interest and attorney's fees. If some of the charges are insufficient, the Commission or Referee will dismiss the insufficient charges and the agency faces the decision of going forward with the remaining charges or rescinding the action and starting over.

Q. Must the disciplinary/removal letter describe how the conduct impaired the efficiency of the public service?

A. No, but someone has to be able to articulate it. If the employee appeals the action, the agency generally must prove impairment.

Q. What is the "four corners" rule?

A. If the employee appeals the action, the agency may only put on evidence as to the charges included in the disciplinary/removal letter. [Rule 13.19(m)]

Q. How can an agency use prior discipline to support the severity of the penalty for the current misconduct?

A. By listing the prior disciplinary actions in the current disciplinary letter and, if the employee appeals the action, by offering the prior disciplinary letters into evidence at the hearing.

Q. Must the agency prove the facts underlying the prior disciplinary actions?

A. No.

Q. What is the theory behind this?

A. The employee could have challenged the prior disciplinary actions by appeal. Not having done so, the employee is presumed to have engaged in the conduct charged in the prior disciplinary letters.

Q. How can an agency use prior reprimands, warnings, counseling or other improvement letters to support the severity of the penalty for the current misconduct?

A. By listing these letters in the disciplinary/removal letter and, if the employee appeals the action, by offering these letters and the employee's responses (if any) into evidence at the hearing.

NOTE: to use these letters to support the severity of the penalty for current misconduct, the agency must have notified the employee in the letters of his right to respond and that the agency could use the letter to support future action for the same or similar conduct. (Rule 12.9)

Q. Who should write the disciplinary/removal letter?

A. It is up to the agency. However, successful agencies use their legal resources. The immediate supervisor should provide input because he is usually most familiar with the charges and can express them so that the employee can understand them. A trained letter-drafter can ensure rule compliance and can look at the charges objectively to ensure they make sense and provide sufficient information to the employee.

Q. Tips for disciplinary/removal letters?

A. Use terms exactly as defined in Chapter 1.

Spell out acronyms.

Avoid “needle in the haystack” letters that clutter the charges with unnecessary commentary or background information.

Describe the conduct without characterizing or labeling it.

Bad verbs

Abused

Good verbs

struck, slapped, pushed, cut, shoved, tripped, stabbed, yelled at, spit on

Was insubordinate

failed to comply with an instruction to ...; ordered XYZ software after supervisor disapproved the purchase order; refused to answer investigator's questions; told the supervisor she was “so stupid she would not recognize an accounts receivable ledger if it sat on her;” retorted: “I’ll tell you where you can put that damned report.”

Falsified

reported the count as 86 when it was actually 82; claimed 380 miles for a trip to New Orleans when the map shows round trip mileage of 162; wrote “8:30 a.m.” on your time card, when you did not arrive until 9:30 a.m.

Q. What is the notice of appeal rights?

A. “You have the right to appeal this action to the State Civil Service Commission within 30 calendar days following the date you receive this notice. The appeal procedure is contained in Chapter 13 of the Civil

Service Rules, which is available from the Department of State Civil Service or your Human Resource office.”

Q. What are the consequences of failing to include the notice of appeal rights?

A. It extends the employee’s time for appeal, but it does not affect the validity of the action.

Q. What should an agency do if the letter failed to contain the notice of appeal rights?

A. Send the employee a letter similar to the following:

Dear Employee:

By letter dated _____, I advised you that you were being _____ effective _____. I neglected to provide you notice of your appeal rights, which are:

You have the right to appeal the action to the State Civil Service Commission within 30 calendar days following the date you receive this notice. The appeal procedure is contained in Chapter 13 of the Civil Service Rules, which is available from the Department of State Civil Service or your Human Resource office.

Sincerely,

Appointing Authority

Q. What if the disciplinary letter contains a calculation error?

A. After the effective date of the action, an agency cannot correct a calculation error that increases the severity of the penalty. However, if correcting the error lessens the severity of the penalty, send a corrected letter similar to the following:

Dear Employee:

By letter dated _____, I advised you that your pay would be reduced to \$12.00 per hour for four months. However, this amount is below the minimum of the pay range (AS-612) for your job. Therefore, your pay will be reduced to \$12.43 per hour for four months.

Sincerely,

Appointing Authority

Q. What is the most common mistake with letters of discipline/removal?

A. Mailing the disciplinary/removal letter and having the effective date of the action sooner than the 7th day after mailing.