

Management Instruction

Procedures for Proposed Adverse Actions Against EAS Levels 18 and Above and PCES 01 Executives

This management instruction (MI) provides the required procedures for developing and finalizing notices of proposed adverse actions against Postal Service employees in Executive and Administrative Schedule (EAS) levels 18 and above and Postal Career Executive Service (PCES) 01 executives. The MI also provides procedures for required consultations when an employee is to be placed on administrative leave. This instruction does not apply to employees of the Inspection Service or the Office of Inspector General.

Adverse Action Procedures

Definitions

Adverse actions, for the purpose of this MI, are removals, suspensions of more than 14 days, furloughs for 30 days or less, and/or reductions in grade or pay.


Appropriate human resources or labor personnel are:

- a. For field employees, including district and area employees, the manager of Human Resources or the manager of Labor Relations for the appropriate district or area. Area Human Resource managers may establish procedures regarding the appropriate contacts for consultations in their area and districts.
- b. For headquarters and headquarters field units, Corporate Personnel.

Designated legal counsels are:

- a. For field employees, including district and area employees, the appropriate field managing Counsel or designee.
- b. For headquarters and headquarters field unit employees, the General Counsel or designee.

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Anthony J. Vegliante
Executive Vice President
Human Resources

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Initial Assessment and Draft

Before drafting the proposed adverse action, the proposing official is required to consult with appropriate human resources or labor personnel. During such consultation, the following must be considered:

- a. Whether the relevant facts supporting the action are substantiated; and
- b. Whether the selected penalty is reasonable and warranted by the severity of the charges.

The proposing official is responsible for completing a draft notice of proposed adverse action in consultation with the appropriate human resources or labor personnel. The charges in the notice must be in sufficient detail to provide the individual adequate notice of the charges. Prior discipline relied upon for the penalty assessment must be cited. The notice of proposed adverse action must include the proper appeal rights as set forth in section 650, *Employee and Labor Relations Manual*, including, if appropriate, the option to mediate the proposed action. The name and address of the appropriate officials to whom a request for mediation must be sent and to whom an appeal is to be directed also must be included in the proposed notice. The proposing official must transmit the final version of the draft to the appropriate human resources or labor personnel.

Legal Counsel Review and Recommendations

The appropriate human resources or labor personnel must submit the draft notice of the proposed adverse action along with all documentation pertaining to that action to the designated legal counsel. The designated legal counsel will review the draft and provide legal advice and recommendations to the appropriate human resources or labor personnel regarding the appropriateness of the charges and the selection of the penalty. The appropriate human resources or labor personnel will advise the proposing official of the designated legal counsel's advice and recommendations. This advice is subject to attorney-client privilege and should not be shared with others and/or placed in the official discipline file. Further, it should not be released during any discovery proceedings without the permission of the designated legal counsel.

Subsequent Action by Proposing Official

If the proposing official agrees with the recommendations of the designated legal counsel, he or she will incorporate the recommendations into the proposed notice of adverse action.

If the proposing official disagrees with the recommendations of the designated legal counsel, he or she must obtain written permission from the manager, Field Labor Relations, Headquarters, to issue charges or select a penalty that was not recommended by designated legal counsel. The written request must include:

- a. The proposing official's draft of the proposed notice of adverse action containing the charges and penalty that he or she would like to issue;
- b. All documentation regarding the proposed charges and penalty, including any prior discipline that will be referenced for penalty assessment;
- c. A copy of the legal counsel's recommendations or a statement regarding what the recommendations were and who made them; and
- d. A written explanation of the reasons the proposing official wants to pursue charges and/or a penalty different from that recommended by the legal counsel.

A copy of the written request for permission to pursue non-recommended charges or penalties must be provided to the legal counsel who reviewed the proposed discipline and to the area manager, Human Resources.

The manager, Field Labor Relations, Headquarters, will issue a written decision on the matter within 15 calendar days of receipt of the proposing official's correspondence.

Administrative Leave

Managers should consult with their appropriate human resources or labor personnel regarding initial placement of an employee on administrative leave or in a non-pay status pending disciplinary action or investigation into possible misconduct. When it is anticipated that an employee will be placed on administrative leave for more than 30 days or placed in a non-pay status for more than 14 days pending disciplinary action or investigation into possible misconduct, the manager must consult with the appropriate human resources or labor personnel, who will in turn consult with the applicable designated legal counsel before providing advice to the manager.

Emergency Situation

In any case where emergency action may be warranted, a telephone request for advice on the action must be made to the appropriate human resources or labor personnel. The appropriate human resources or labor personnel will provide advice in consultation with designated legal counsel.