

# Management Instruction

## Procedures for Proposed Adverse Actions Against EAS Levels 18 and Above, Technical and Management Pay Bands, and PCES 01 Executives

### Overview

This management instruction (MI) provides the required procedures for the following:

- Developing and finalizing notices of proposed adverse actions against Postal Service™ employees in the following groups:
  - Executive and Administrative Schedule (EAS) levels 18 and above.
  - Technical and Management Pay Bands.
  - Postal Career Executive Service (PCES) 01 executives.
- Required consultations when the Postal Service is placing an employee on administrative leave.

This MI does not apply to employees of the following:

- Inspection Service.
- Office of Inspector General.

### Adverse Action Procedures

#### Definitions

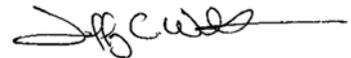
All definitions are for the purpose of this MI.

**Adverse actions** — Removals; suspensions of more than 14 days; furloughs for 30 days or less; and reductions in grade, pay, or both.

**Appropriate human resources or labor personnel** — As defined below:

- a. For field employees, including district and area employees, the manager, Human Resources, or the manager, 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, the manager, Human Resources, Headquarters.

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**Designated legal counsels** — As defined below:

- 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.

### **Initial Assessment and Draft**

Before drafting the proposed adverse action, the proposing official must consult with appropriate human resources or labor personnel. During the consultation, the group must consider the following:

1. Whether the relevant facts supporting the action are substantiated; and
2. 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 notice of proposed adverse action must have sufficient detail to provide the individual adequate notice of the facts supporting the charge or charges. The notice must include the following:

1. **A discussion of the appropriateness of the proposed penalty.**  
The penalty discussion must address both mitigating and aggravating factors that the proposing official took into account before selecting the penalty proposed in the notice. The proposing official must cite any prior disciplinary action he or she relied upon for the penalty assessment and attach a copy of the referenced action to the draft notice.
2. **The proper appeal rights** as set forth in section 650 of the *Employee and Labor Relations Manual*, including the option to mediate the proposed action instead of replying orally to the deciding official. In regards to appeal rights, the deciding official must include in the proposed notice the name and address of the appropriate officials to whom an employee must send the following:
  - a. A request for mediation.
  - b. An appeal.

The proposing official must send the final version of the draft to the appropriate human resources or labor personnel.

### **Legal Counsel Review and Recommendations**

These are the steps of the legal counsel review and recommendations:

1. The appropriate human resources or labor personnel must submit to the designated legal counsel the following:
  - a. The draft notice of the proposed adverse action.
  - b. All documentation pertaining to that action.

2. The designated legal counsel will do the following:
  - a. Review the draft.
  - b. Provide legal advice and recommendations to the appropriate human resources or labor personnel regarding the charges and the selection of the penalty.
3. 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 must not be shared with others or placed in the official discipline file. Further, no one can release it without the permission of the designated legal counsel.

### **Subsequent Action by Proposing Official**

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

If the proposing official disagrees with the designated legal counsel's recommendations, he or she must obtain written permission from the manager, Contract Compliance, Headquarters, to issue charges or select a penalty that the designated legal counsel did not recommend. The written request must include the following:

- 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 the proposing official reference for penalty assessment.
- c. A copy of the legal counsel's recommendations or a statement regarding what the recommendations were and who made them.
- d. A written explanation of the reasons the proposing official wants to pursue different charges, penalty, or both from what the legal counsel recommended.

The proposing official must provide a copy of the written request for permission to pursue non-recommended charges or penalties to the following:

- a. The legal counsel who reviewed the proposed discipline.
- b. The area manager, Human Resources.

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

### **Administrative Leave**

Pending disciplinary action or investigation into possible misconduct, managers must consult with their appropriate human resources or labor personnel regarding initial placement of an employee in one of the following:

- On administrative leave for more than 30 days.
- In a non-pay status for more than 14 days.

The appropriate human resources or labor personnel will consult with the applicable designated legal counsel before providing advice to the manager.

### **Emergency Action**

In any case that may warrant emergency action, the proposing official must call the appropriate human resources or labor personnel for advice on the action. The appropriate human resources or labor personnel will provide advice in consultation with the designated legal counsel.