

TABLE OF OFFENSES AND PENALTIES

This Table provides a list of common infractions, along with a suggested range of penalties for each; it does not presume to cover all possible offenses, nor does it mandate the use of specific penalties in most disciplinary situations. The range of penalties described in the Table is intended to serve as a guide to discipline, not a rigid standard, and deviations are allowable for a variety of reasons. Greater or lesser penalties than suggested may be imposed as circumstances warrant, and based on a consideration of mitigating and aggravating factors. Management officials must exercise reasonable judgment and consider all relevant factors (as reflected in the guidance found at Appendix A) in determining the most appropriate corrective action for each situation. Any penalty determination outside the suggested range should be based upon a reasonable consideration of the factors described in Appendix A, and the rationale documented in the decision notice.

The use of this Table as a guide will help to ensure appropriateness of penalty in relation to the charge(s), as well as relative consistency in discipline throughout the Department. The fact that a particular offense is not listed in the Table does not mean that the employee cannot be charged with that offense. In such instances, a reasonable penalty can be determined (with the assistance of the servicing HRO) by a comparison to those offenses listed in the Table.

The Table lists only disciplinary and adverse actions which become a matter of record in the employee's Official Personnel Folder; it does not mention oral warnings, counseling notices, and other corrective actions which may be more appropriate for correcting minor offenses. The *First Offense* column, therefore, refers to the first offense for which a disciplinary/adverse action is taken, although it may not be the first time the employee engaged in misconduct.

Progressively stronger corrective actions should be taken if an employee repeatedly engages in misconduct. When an employee receives corrective action for an offense which falls under one range of penalties, and later commits a different offense under the same or another category of offense, the latter is considered a second offense for progressive disciplinary purposes. For example, if an employee is charged with absence without leave (AWOL) and is issued an official reprimand (first offense), then is later charged with insubordination for subsequent misconduct, the appropriate penalty range for the insubordination charge is a 30-day suspension to removal (as a second offense).

In addition to a management-initiated corrective action, a Department employee also may be subject to criminal prosecution when there is evidence of a possible statutory violation; such evidence should be provided to the Office of Inspector General, which then may refer the matter to the Department of Justice for further consideration and possible prosecution. If the Department of Justice declines to prosecute, the employee involved in the alleged wrongdoing will then be subject to an appropriate administrative action consistent with the penalties contained in this Table. An employee who has been arrested and held for further legal action by a

magistrate court, or indicted by a grand jury for an imprisonable offense, should be indefinitely suspended without pay pending the outcome of the judicial process so as not to prejudice the employee's right to due process in the criminal case. If the employee pleads guilty or is convicted, the Department may then proceed with a removal or other appropriate action; in the absence of a conviction, the indefinite suspension should end, although other administrative action may be taken.

The servicing HRO must be consulted regarding the procedural requirements to follow when taking corrective action. This consultation requirement includes securing advice on the merits of the charge(s) and the appropriateness and Departmental-consistency of the penalty being proposed. In situations involving possible violations of the Department’s Standards of Ethical Conduct, supervisors/managers should also consult with a bureau Ethics Counselor and/or an ethics official from the Office of the Solicitor, Office of Ethics.

Nature of Offense (General Misconduct)	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense	Remarks
<p>1. Attendance-related offenses.</p> <p>a. Absence without leave (AWOL). This includes tardiness and unauthorized delay in returning from lunch and break periods, or in returning after leaving work station on official business; unauthorized departure or absence from duty station.</p> <p>b. Failure to follow established leave procedures; failure to provide administratively acceptable documentation to support absence(s).</p> <p>c. Excessive unauthorized absences (e.g., more than 5 consecutive workdays).</p>	<p>Written Reprimand to 5-day suspension</p> <p>Written Reprimand to 5-day suspension</p> <p>5-day suspension to removal</p>	<p>5- to 30-day suspension</p> <p>5- to 30-day suspension</p> <p>14-day suspension to removal</p>	<p>30-day suspension to removal</p> <p>30-day suspension to removal</p> <p>Removal</p>	<p>Refer to 370 DM 630 for leave requirements and guidance. Penalty depends primarily on length and frequency of unacceptable absences. Removal may be appropriate for a first or second offense if the absence is prolonged, the failure to adhere to leave procedures is flagrant, or the circumstances are otherwise particularly burdensome.</p>

<p>2. Improper or unauthorized release of sensitive and administratively-controlled information or employee records; failure to safeguard classified material.</p> <p>a. Information is not compromised and release is unintentional.</p> <p>b. Information is compromised and release is unintentional.</p> <p>c. Release of restricted information is deliberate.</p>	<p>Written Reprimand to 5-day suspension</p> <p>Written Reprimand to 30-day suspension</p> <p>30-day suspension to removal</p>	<p>5- to 30-day suspension</p> <p>30-day suspension to removal</p> <p>Removal</p>	<p>30-day suspension to removal</p> <p>Removal</p>	<p>Refer to 5 USC 552a and 43 CFR 2.52 for Privacy Act provisions regarding the misuse of personal information; also refer to 18 USC 798 and 18 USC 1905. Deliberate disclosures of Privacy Act information must be referred to OIG.</p>
<p>3. Offenses related to substance abuse.</p> <p>a. Alcohol-related</p> <p>(1) Reporting to or being on duty while “under the influence” of alcohol.</p> <p>(2) Unauthorized use and/or possession of alcoholic beverages while on Government premises (or vehicle).</p> <p>(3) Operating a Government vehicle/aircraft while “under the influence” of alcohol.</p> <p>b. Drug-related</p> <p>(1) Administratively confirmed positive finding under the testing portion of the Drug-Free Workplace Program.</p> <p>(2) Unlawful use, being under the influence or</p>	<p>Written Reprimand to 5-day suspension</p> <p>Written Reprimand to 30-day suspension</p> <p>30-day suspension to removal</p> <p>Written Reprimand to removal</p> <p>Written Reprimand to removal</p>	<p>5- to 30-day suspension</p> <p>30-day suspension to removal</p> <p>Removal</p> <p>Removal</p> <p>30-day suspension to removal</p>	<p>30-day suspension to removal</p> <p>Removal</p> <p>Removal</p>	<p>Refer to 43 CFR 20.505, 370 DM 792, Drug-Free Workplace (Zero Tolerance) Policy, DOI Handbook on the Department of Transportation Alcohol and Drug Testing Program, and DOI Federal Railroad Administration Supplement for specific guidance.</p> <p>Actions involving these offenses must assure that counseling or rehabilitative assistance is offered; however, referral to an employee assistance program (EAP) does not preclude the initiation of corrective action.</p> <p>The illegal drugs currently</p>

<p>unauthorized possession of drugs, drug paraphernalia or controlled substance while on Government premises or in a duty status.</p> <p>(3) Sale or transfer of an illegal drug or controlled substance while on Government premises (or vehicle).</p> <p>(4) Refusal or failure to provide a required specimen for drug-testing; tampering with a drug-test specimen; refusal to obtain counseling or rehabilitation (after finding of illegal drug use).</p>	<p>Removal</p> <p>14-day suspension to removal</p>	<p>30-day suspension to removal</p>	<p>Removal</p>	<p>tested for (as defined in 370 DM 792, Subchapters 9 & 10) include: marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). However, the Department is authorized to test for any illegal drugs as deemed necessary.</p> <p>When there is possession of illegal drugs - call law enforcement and notify OIG.</p> <p>When the substance is prescribed by an appropriate medical authority and used accordingly, it would not be an offense.</p> <p>370 DM 792, 10.12 requires mandatory initiation of removal from service for a second offense of failing to refrain from illegal drug use.</p>
<p>4. Discourteous conduct (e.g., rude, insolent, disgraceful acts or remarks) toward supervisors, co-workers, or the public.</p>	<p>Written Reprimand to 5-day suspension</p>	<p>5- to 30-day suspension</p>	<p>30-day suspension to removal</p>	<p>5 USC 7503(a) permits suspension of 14 days or less of any employee with four documented instances of discourteous conduct toward the public within a one-year period as confirmed by an immediate supervisor, or any other pattern of discourteous conduct.</p>

5. Boisterous or disruptive/disorderly conduct; use of insulting, intimidating, abusive or offensive language to or about another employee or supervisor.	Written Reprimand to 5-day suspension	5- to 30-day suspension	30-day suspension to removal	
6. Deliberately making known false, malicious, or unfounded statements against co-workers, supervisors, subordinates, or Government officials which could undermine the authority or damage the reputation of those concerned.	Written Reprimand to removal	14-day suspension to removal	30-day suspension to removal	Refer to 5 USC 2302(b)(8) and (9), prohibiting actions against employees for engaging in protected activities.
7. Threatening statements or behavior (of a physical nature).	14-day suspension to removal	Removal		Charge involving “threat” must consider the listener's reactions, the listener's apprehension of harm, the speaker's intent, any conditional nature of the statements, and the attendant circumstances – refer to <u>Metz v. Dept. of Treasury</u> , 780 F.2d 1001 (Fed. Cir. 1986).
8. Fighting and offenses related to fighting. a. Engaging in potentially dangerous “horseplay.” b. Hitting, pushing, or other acts against another without causing injury. c. Hitting, pushing, or other acts against another causing injury.	Written Reprimand to 14-day suspension 5- to 30-day suspension 30-day suspension to removal	14-day suspension to removal 30-day suspension to removal Removal	30-day suspension to removal Removal	Penalty depends on such factors as provocation, extent of injuries, and whether actions were defensive or offensive in nature.
9. Misconduct of a sexual nature that includes, but is not limited to, unwelcome sexual remarks, indecent comments/jokes, offensive sexual banter, unwanted sexual advances, or unwelcome physical touching.	Written Reprimand to removal	14- day suspension to removal	Removal	Refer to the Department’s Zero Tolerance Policy; penalty may include mandatory training. More severe discipline is appropriate for egregious misconduct.

10. Failure to provide equal opportunity regardless of race, color, religion, gender, national origin, age, marital status, political affiliation, sexual orientation or handicapping condition.	Written Reprimand to removal	14-day suspension to removal	Removal	Refer to 5 CFR 2635.101(13).
11. Unauthorized possession/sale (actual or attempted) of Government property or property of others; improper acceptance of Government funds/reimbursement.	Written Reprimand to removal	14-day suspension to removal	30-day suspension to removal	Referral to OIG may be appropriate.
12. Loss, misuse of, damage to or failure to safeguard Government property, records, or information (e.g., willful or negligent damage to Government resources; carelessness in performance of duty resulting in waste of public funds).	Written Reprimand to 14-day suspension	14- to 30-day suspension	30-day suspension to removal	Refer to 5 CFR 2635.101(9). For misuse of Government vehicles, see item 5 under Violations of Statute. Referral to OIG may be appropriate.
13. Failure to comply with safety regulations, instructions or prescribed safe practices; failure to use proper safety equipment; failure to report accident or injury.	Written Reprimand to 14-day suspension	14- to 30-day suspension	30-day suspension to removal	
14. Sleeping or loafing while on duty; inattention to duty; willful idleness while on duty.	Written Reprimand to 5-day suspension	5- to 14-day suspension	14-day suspension to removal	Seriousness of offense is greater if persons/property endangered.
15. Failure or delay in carrying out instructions; failure or carelessness in performing assigned work; failure to take/complete officially-directed training.	Written Reprimand to 14-day suspension	14- to 30-day suspension	30-day suspension to removal	Refer to 370 DM 430 to deal with unacceptable performance and performance-based actions.
16. Insubordination; disregard of directive; refusal to comply with a proper order.	5-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.502. An “insubordination” charge requires a showing that the employee <u>deliberately</u> disregarded supervisory directives. In some instances (e.g., refusal to report for an

				ordered reassignment) removal may be appropriate.
17. Falsification/misrepresentation of official Government records or documents including, but not limited to, time and attendance records, travel vouchers, job applications, performance appraisals, claims for benefits, and other employment-related documents.	Written Reprimand to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.510. Referral to OIG may be appropriate.
18. Misrepresentation, falsification, exaggeration, concealment or withholding of material fact in connection with an official Government investigation, inquiry or other administrative proceeding.	14-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.510. Referral to OIG may be appropriate.
19. Refusal to testify or cooperate in connection with any administrative investigation, inquiry, or other proper proceeding (when criminal charges are not anticipated).	5-day suspension to removal	14-day suspension to removal	30-day suspension to removal	
20. Prohibited/improper use of Government property (e.g., office equipment; supplies; facilities; credentials; records; communication resources; cellular phones; official time); misuse of the Internet/electronic mail; using the Internet/electronic mail for unauthorized purposes.	Written Reprimand to 14-day suspension More severe discipline (including removal) may be appropriate for first/second offense if misconduct involves using the Department's Internet/electronic mail system for prohibited reasons, including gambling, accessing/sending prohibited sexually-related material, or other egregious acts	14- to 30-day suspension More severe discipline (including removal) may be appropriate for first/second offense if misconduct involves using the Department's Internet/electronic mail system for prohibited reasons, including gambling, accessing/sending prohibited sexually-related material, or other egregious acts	30-day suspension to removal	Refer to 5 CFR 2635.704 and 705(a); 410 DM 2 (Limited Personal Use of Government Personal Property). Consider issue of employee notice regarding agency policy.

	of misuse.	of misuse.		
<p>21. Offenses related to gambling.</p> <p>a. Participating in a gambling activity while on Government premises or in a duty status (e.g., office pools).</p> <p>b. Operating, assisting, or promoting a gambling activity while on Government premises or in a duty status or while others involved are in a duty status.</p>	<p>Written Reprimand to 14-day suspension</p> <p>5- to 30-day suspension</p>	<p>14- to 30-day suspension</p> <p>30-day suspension to removal</p>	<p>30-day suspension to removal</p> <p>Removal</p>	<p>Refer to 5 CFR 735.201.</p>
<p>22. Indebtedness; failure to meet financial obligations in a proper and timely manner.</p>	<p>Written Reprimand to 5-day suspension</p>	<p>5- to 14-day suspension</p>	<p>14-day suspension to removal</p>	<p>Refer to 5 CFR 2635.809. Actionable if there is a nexus between the failure to pay and the efficiency of the service. Since a suspension may reduce an employee's ability to pay overdue financial obligations, a reprimand may be more appropriate for a first offense (more severe discipline may be appropriate for subsequent offenses). Special care is called for in dealing with this type of offense, as it may involve mitigating circumstances.</p>
<p>23. Offenses related to Government travel charge card and/or purchase card.</p> <p>a. Misuse of travel card (i.e., personal/unauthorized purchases) or delinquent in payment.</p> <p>b. Misuse of travel card (i.e., personal/unauthorized purchases) and delinquent in payment.</p> <p>c. Unauthorized use of or failure to appropriately</p>	<p>Written Reprimand to 30-day suspension</p> <p>5- to 30-day suspension</p> <p>Written Reprimand</p>	<p>5-day suspension to removal</p> <p>14-day suspension to removal</p> <p>14-day suspension to</p>	<p>30-day suspension to removal</p> <p>Removal</p>	<p>Refer to Financial Administration Memorandum (FAM) 2000-010 for further information and instructions on Resolving Delinquencies on Individually-billed Travel Card Accounts, and the Department's Integrated Charge Card Program Guide (revised 4/2004).</p>

monitor use of Government purchase card; “micro-purchasing” violations.	to 30-day suspension	removal	Removal	
24. Carrying a firearm or other weapon on Government property (or in Government vehicle) unless specifically authorized/required in the performance of duties.	30-day suspension to removal	Removal		Refer to 43 CFR 20.511.
25. Using public office for private gain.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.702.
26. Engaging in unauthorized/prohibited selling, soliciting or fundraising activities.	Written Reprimand to 5-day suspension	5- to 14-day suspension	14-day suspension to removal	Refer to 5 CFR 2635.808.
27. Engaging in prohibited outside employment or private business activities.	Written Reprimand to removal	Removal		Refer to 5 CFR 3501.105.
28. Participating in particular matters while having a conflicting financial interest.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.401. Consult Ethics Office and may require referral to OIG. See 18 USC 208.
29. Participating in matters affecting financial interests of an entity where employment is being sought.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.601. Consult Ethics Office and may require referral to OIG. See 18 USC 208.
30. Violating the Department’s Code of Scientific Conduct (or other professional code of conduct that applies to employees required to maintain a professional license or membership).	Written Reprimand to 30-day suspension	30-day suspension to removal	Removal	Refer to 305 DM 3.
31. Violating the Standards of Ethical Conduct not covered elsewhere in this Table.	Written Reprimand to removal	14-day suspension to removal	Removal	Refer to 5 CFR 2635.

32. Unauthorized use of nonpublic information.	Written Reprimand to removal	Removal		Refer to 5 CFR 2635.703.
33. Engaging (on-duty or off-duty) in criminal, infamous, dishonest, or notoriously disgraceful conduct prejudicial to the Government.	5-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.501.
Nature of Offense (Supervisory Misconduct)	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense	Remarks
1. Taking, directing others to take, recommending or approving any action which may be considered a “prohibited personnel practice” (e.g., reprisal against an employee for engaging in protected activities; discrimination based on race, color, gender, age, religion, national origin, marital status, political affiliation, sexual orientation or handicapping condition).	5-day suspension to removal	14-day suspension to removal	Removal	Refer to 5 USC 2302, 5 CFR 2635.101(13), and related Department policies. Action may be taken regardless of whether there was an official “finding” of discrimination (or other prohibited personnel practice).
2. Taking reprisal action against an employee for exercising rights provided by the Federal Service Labor-Management Relations Statute.	5- to 30-day suspension	14-day suspension to removal	Removal	Refer to 5 USC, Chapter 71.
3. Neglecting to recommend/take corrective action upon receipt of information regarding the job-related misconduct of a subordinate employee.	Written Reprimand to 30-day suspension	14-day suspension to removal	Removal	
4. Failure to appropriately monitor employee use of Government purchase/travel charge card.	Written Reprimand to 14-day suspension	14-day suspension to removal	Removal	
5. Misconduct of a sexual nature that includes, but is not limited to, unwelcome sexual remarks, indecent comments/jokes, offensive sexual banter, unwanted sexual advances, or unwelcome physical touching.	5-day suspension to removal	14-day suspension to removal	Removal	Refer to the Department’s Zero Tolerance Policy; penalty may include mandatory training. More severe discipline is appropriate for egregious misconduct.

6. Influencing or attempting to influence the DOI employment of a relative.	5- to 30-day suspension	14-day suspension to removal	Removal	Refer to 5 USC 3110.
7. Violating, or inducing a subordinate to violate, the Department's Code of Scientific Conduct (or other profession's Code of Ethical Conduct).	5-day suspension to removal	Removal	Removal	Refer to 305 DM 3.
8. Using Government employees in duty status for other than official purposes.	Written Reprimand to removal	14-day suspension to removal	30-day suspension to removal	Refer to 5 CFR 2635.705(b).
Nature of Offense (Violations of Statute)	Penalty for First Offense	Penalty for Second Offense	Penalty for Third Offense	Remarks
1. Engaging in prohibited partisan political activity (e.g., partisan campaigning; soliciting/receiving political contributions).	30-day suspension to removal	Removal		Refer to 5 USC, Sections 7321-7326.
2. Participating in a strike, work stoppage, work slowdown, sick-out, or other similar job action.	30-day suspension to removal	Removal		Refer to 5 USC 7311.
3. Misappropriating/misapplying Government funds; directing, expecting, or rendering services not covered by appropriations.	1- to 30-day suspension	30-day suspension to removal	Removal	Refer to 31 USC 1301, 1341 and 1349.
4. Willfully mutilating or destroying a public record.	Removal			Refer to 18 USC 2071.
5. Willfully using or authorizing the use of a Government vehicle/aircraft for other than official purposes.	30-day suspension to removal	Removal		Refer to 31 USC 1344 and 1349.
6. Engaging in actions against national security.	30-day suspension to removal	Removal		Refer to 5 USC 7532.