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## CHAPTER 4. HUD TABLE OF OFFENSES AND PENALTIES

### 4-1 Introduction and Purpose

- A. The purpose of the Table (Appendix 1) is to recommend to supervisors and managers appropriate penalties for offenses listed herein and in the Standards of Ethical Conduct and to provide a framework for constructive and rehabilitative discipline. The use of this Table as a guide will help to ensure appropriateness of penalty in relation to the charge, as well as relative consistency in discipline throughout the Department. A disciplinary action is intended as a constructive device and, as such, should:
1. Correct offending conduct, attitude, or work habits;
  2. Help to maintain discipline and morale; and
  3. Be reasonable in its degree of severity.
- B. Progressively stronger disciplinary actions are to be applied when an employee commits repeated offenses. 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 Nature of Offense, the latter is considered a **second** offense and not the first offense. For example, if an employee is charged with disruptive behavior and is given an official reprimand (first offense), and is subsequently charged with insubordination (second offense), the appropriate penalty range for an insubordination charge is a 30-day suspension to removal.
- C. The Table does not cover every possible offense, but it does list the more common types of offenses and the range of penalties normally assessed for those offenses. Examples of additional offenses are discussed in the Standards of Ethical Conduct. The fact that an offense is not listed in the Table does not mean that a penalty cannot be imposed when an offense is committed. In such instances, a reasonable penalty can be determined by comparison with those listed.
- D. HUD employees may be subject to criminal prosecution when there is evidence of a possible statutory violation. It is the policy of HUD that an employee who has been arrested and held for further legal action by a magistrate court or indicted by a grand jury for an offense which is job-related 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,

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HUD may then proceed with a removal or other appropriate action. When evidence has been developed by HUD that indicates a possible statutory violation, the Office of Inspector General will refer the matter to the Department of Justice for further investigation and possible prosecution. If the Department of Justice declines to prosecute, the employee involved in the alleged wrongdoing may then be subject to an appropriate administrative action consistent with the penalties contained in the Table.

- E. The range of penalties described in the Table is intended to serve as a guide. Greater or lesser penalties than suggested may be imposed as circumstances warrant. Any determination that the offense is "more serious" or "less serious" should be based upon the factors described in paragraph 4-2 below, and must be justified in at least the decision notice.
- F. The servicing human resources office must be consulted for advice and assistance regarding the procedural requirements that must be followed when applying penalties, formal or informal. This consultation requirement includes securing advice on the merits of the charge(s), appropriateness of the penalty being proposed, as well as consistency of penalty throughout the Department. In this connection, users of this Table should review this entire Handbook.

#### **4-2 Application of the Table of Offenses and Penalties**

- A. In selecting the appropriate penalty for a specific offense, responsible judgment must be exercised so that an employee will not be penalized out of proportion to the offense. Supervisors and managers must be as consistent as possible when proposing and imposing disciplinary or adverse actions and must not make arbitrary or capricious decisions. In more egregious situations removal might be the appropriate penalty for the first offense of misconduct.
- B. The Douglas Factors should be considered in selecting a penalty. These factors are the following:
  - 1. The nature and seriousness of the offense, and its relationship to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
  - 2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.

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3. The employee's disciplinary record (within the past 3 years, or longer in more serious cases).
  4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
  5. The 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;
  6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
  7. Consistency of the penalty with any applicable agency table of penalties;
  8. The notoriety of the offense or its impact upon the reputation of the Agency;
  9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
  10. Potential for the employee's rehabilitation;
  11. 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 the matter; and
  12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

#### **4-3 Administrative Guidance**

- A. One of the goals of personnel management is the early identification of problems so they can be corrected with a minimum of adversity. When a situation does require correction, supervisors and managers have a wide range of options.

Minor misconduct, for example, may be corrected if the supervisor or manager talks to the employee promptly about the misbehavior after the first instance. In some cases, it

may be helpful to refer the employee to a trained counselor from the employee assistance program who can help the employee identify and resolve the problems underlying the misconduct.

When a more formal or severe remedy is appropriate, measures such as an official reprimand will often convince the employee to change the undesirable behavior. These actions are less severe than short suspensions or adverse actions described elsewhere in this Handbook, and do not attach the permanent stigma to an employee's record that short suspensions or an adverse action would.

The most common forms of traditional discipline short of a short suspension or adverse action fall into the following major categories. These remedial corrective actions are most effective if they are taken as soon as possible after the misconduct occurs.

1. An oral warning or admonishment. This is nothing more than a face to face meeting where the supervisor or manager tells the employee about the misconduct and puts the employee on notice of the behavior management expects. When this is done in a prompt, direct, and non-adversarial way, it is often all that is required.
2. A written letter of caution, warning, counseling, admonishment, requirements, etc. Agencies refer to this disciplinary remedy by various names. It is essentially a written equivalent of the oral warning/admonishment described above, and is often used to follow up on such a face to face meeting. It is not put in the Official Personnel Folder (OPF), but it often warns the employee that more formal and severe action will result if the employee does not correct the behavior. Such letters must notify the employee whether or not it will be used when assessing a penalty for any future misconduct.
3. An official reprimand. This is a written warning to an employee, usually issued when prior, more informal discipline has not corrected the misconduct, or when the misconduct is considered too serious for informal remedies. A copy of the official reprimand is placed in the employee's OPF for a period not to exceed two years. The official reprimand may be removed from the OPF in less than two years if it appears to have had the desired effect upon the employee, i.e., no recurrences, improvement in situation, etc. If there are no longer supervisors in the chain of command who are familiar with the situation or the employee is

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reassigned to a different organization, the employee may appeal to his/her current first level supervisor for removal of the official reprimand from his/her OPF after one year under the same criteria described above.

The official reprimand will normally warn the employee that failure to correct the offending behavior will result in more serious action.

- B. Suspension penalties are without pay. Annual leave, sick leave, or leave without pay cannot be substituted for a period of suspension.
- C. Depending on the circumstances involved, consideration may be given to a reduction in grade action (demotion) or reduction in pay in lieu of removal.
- D. Proposed disciplinary actions resulting from violations of the Standards of Ethical Conduct may require consultation in some instances with an Agency Ethics Official (Office of General Counsel).

#### **4-4 Alcoholism and Drug Abuse**

When proposing an action based on alcohol- or drug-related misconduct, refer to HUD's Drug-Free Workplace Plan; and HUD Handbook 792.2 REV-2, Employee Assistance Program, dated 10-15-90, and research current caselaw for guidance.

NOTE: The caselaw on alcohol- and drug-related misconduct is ever changing. Therefore, it is imperative that the current caselaw be researched before taking action when alcohol- or drug-related misconduct is involved.