

The following constitutes agreement between the Department of Veterans Affairs (VA) and the National VA Council (NVAC) regarding MP-5, Part I, Chapter 752, "Disciplinary and Adverse Actions."

- (M-1) 1. In the chapter under paragraph 3. Policy - change a. (1) to read: "An employee shall be informed in writing honestly and specifically why the action is being brought against him or her."
- (M-2) 2. In the chapter under paragraph 5. Responsibility's - d. Personnel Officer - add "(4) ensuring that all employees are made aware of VA standards of ethical conduct and related responsibilities as well as other laws, rules, and regulations governing VA expectations of acceptable conduct."
- (M-3) 3. In the chapter under paragraph 7. Determining the Facts - add to a. (1) "Immunity and the extent of immunity will be reduced to writing and provided to the employee."
- (M-4) 4. Execution of a "Last Chance," "abeyance" or "Firm Choice" agreement does not in and of itself constitute admission of any wrongdoing.
- (M-6) 5. In the chapter under paragraph 7. Determining the Facts - add to c. Normally the evidence file will contain an index for easier reference to documents.
- (M-7) 6. In the chapter under paragraph 8. Determining Appropriate Action - delete from f. third sentence "if necessary."
- (M-8) 7. In the chapter under paragraph 3. Policy - change a. (3) to read "The employee and representative shall have assurance of freedom from restraint, interference, coercion, discrimination, or reprisal in discussing, preparing and presenting a defense."
- (M-9) 8. In the chapter in paragraph 4. Definitions - add s. "Paid non-duty status is compensating an employee while not on duty."
- (M-10) 9. In the chapter in paragraph 7. Determining the Facts - a. add after the second sentence "Except in very rare or unusual circumstances, if the employee desires a representative, the investigator will wait a reasonable period of time before proceeding."

- (M-14) 10. Upon request, all investigative information and materials will be provided to the employee and/or their representative in accordance with laws, rules, and regulations. This includes information not in the evidence file but which pertains directly to the employee. If information is denied, management will provide its rationale in writing.
- (M-13) 11. Investigations and disciplinary/adverse actions shall be timely. Timeliness will be based upon the circumstances and complexity of each case.
- (M-15) 12. The Union shall be given the opportunity to be represented at any examination of an employee in the unit by a representative of the VA in connection with an investigation, if the employee reasonably believes that the examination may result in disciplinary action against him/her and the employee requests representation. If any supervisor or management official of the VA, in advance of or during the questioning of an employee, contemplates the likelihood of disciplinary action, the employee shall be informed of his/her right to union representation prior to or before further questioning of the employee.
- (M-16) 13. While being questioned or being required to provide a written or sworn statement, the employee will have the right to be represented by the Union. If an employee is the subject of an investigation, the employee will be informed of his/her right to be represented prior to being questioned or required to provide a written or sworn statement.
- (M-17) 14. In the chapter paragraph 8. Determining Appropriate Action - b. (3) change first sentence to read "Referrals under the Employee Assistance Program (EAP) should be made in writing and as early as possible when the supervisor has a conduct or performance related reason to believe the employee has an alcohol or drug abuse problem which is causing the deficiencies."
- (M-18) 15. In the chapter in paragraph 8. Determining Appropriate Action - b. (4) add before the last sentence "Normally, an employee will be maintained in a paid duty status during the period between proposal and decision letters. There are circumstances as outlined in law or governing government wide regulations that allow management to make exception to this provision."

- (M-19) 16. Management should consider the regency of any past disciplinary actions that form part of the basis for a proposed action. Prior disciplinary actions which have expired may not be used. The parties agree to the concept of progressive discipline, designed primarily to correct and improve employee behavior, rather than to punish. Consideration should be given to the use of any actions which are more than three years old, even if they have remained in the OPF. They should be examined closely before they are used to support such action.
- (M-20) 17. The "Douglas Factors" attached to this agreement and as incorporated into chapter 752 shall guide DVA officials in meting out discipline. DVA agrees to comply with said factors at all times as required by 5 MSPB 313.
- (M-21) 18. If there are conflicts between MP-5, Part I, Chapter 752 and Master Agreement(s), the Agreements shall govern.
- (M-22) 19. The employee or his/her representative may respond orally and/or in writing as soon as practical but no later than 14 calendar days from receipt of the proposed adverse action notice. Management has the right to restrict the response time to 7 days when invoking the crime provision.
- (U-70) 20. The employee will receive two copies of the decision letter for an adverse/disciplinary action normally at least 5 days prior to the effective date.
- (U-31) 21. In the chapter under paragraph 6. Officials Authorized to Propose and Decide Actions - change b. (1) to read "Admonishment. The official who may issue a letter of admonishment will normally be the employee's immediate supervisor or in the supervisory line."
- (U-32) 22. In the chapter under paragraph 7 - Determining the Facts - change next to last sentence to read However, the employee must be provided with copies of any material when it is added to the evidence file.
- (U-62) 23. In the chapter in Appendix D3 delete h.
- (U-60) 24. Multiple charges will not be taken against an employee for the same offense as in Southers v. VA 813 F. 2nd. 1223 (Fed. Cir. 1987).

- (U-66) 25. After exhausting the appropriate appeal procedure but prior to proceeding to a third party concerning disciplinary/adverse actions, the union, if designated as the employee's representative, will be permitted to question the witnesses that management used to support proposed actions against employees. Witnesses will not be coerced into providing information.
- (U-73) 26. Supervisors should excuse without charge to leave, infrequent, brief periods of tardiness/absence if such tardiness/absence was for a good cause.
- (M-20) 27. It is understood that the union does not waive any rights unless it is a signatory party to a "last chance" or "abeyance" agreement.
- (M-21a) 28. If there is a violation of a "last chance" or "abeyance" agreement which results in proceeding with the action specified in the agreement, any rights to which the employee is entitled will be observed unless they were waived by the employee in writing.
- (M-21d) 29. The duration of "last chance" or "abeyance" agreements will normally be 6 months to one year. However, the specific period of time must be determined based on the circumstances of the individual case.
- (M-48) 30. In the chapter Section C. Adverse Actions - paragraph 9 - Notice of Proposed Action b. (15) (b) delete "up to."
- (M-64) 31. "Last chance" and "abeyance" agreements are intended to be used to afford the employee the opportunity to correct behavior that could result in adverse action. The parties agree to the concept to progressive discipline, designed primarily to correct and improve employee behavior, rather than to punish.
- (M-22) 32. The employee will be informed of their right to union representation and if the employee elects to have the union represent them in a disciplinary or adverse action they will be given a reasonable amount of time to discuss the "last chance" or "abeyance" agreement with their representative prior to signing any such agreement.

33. Appendix C to the revised MP-5, Part I, Chapter 752 shall incorporate as binding provisions, the Office of Personnel Management (OPM) guidance on last chance and abeyance agreements.
34. Semi-annually, the designated Union official at each of the Department's facilities shall be provided with a summary of the use of last chance and abeyance agreements at that facility, including the number and type of agreement and the nature of the proposed disciplinary charge that preceded the offering of such agreement. Names of the employees involved shall not be included. Acceptance of this information does not preclude the Union's request for any other information disclosable under 5 U.S.C. 7114(b) (4).

  
For Management

  
For the NVAC

10/27/93  
Date