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UNSATISFACTORY ATTENDANCE

Amy has worked for the agency for several years. She has always been a good worker – good, that is, when she is actually at work. Unfortunately, that hasn't been too often lately. Amy has a couple of problems. First, she can't seem to get to work on time consistently. There's always some excuse – the car didn't start, the alarm clock didn't ring, she had a problem getting her child to daycare and, of course, the ever popular "traffic problems." All good excuses, to be sure, except when they occur week after week. The other problem is that Amy uses significant amounts of sick leave, generally one or two days at a time. These problems have become very disruptive, and you realize that you need to do something.

In this issue of the Bulletin, and in future issues, we will look at some of the more common conduct and performance problems that you, the supervisor, may encounter. We begin this month with the problem that heads the list – unsatisfactory attendance and, its close cousin, sick leave abuse. First a few observations from the training video “**Combating Absenteeism**” that was mentioned in the **June 2003 Bulletin**:

- **Employees**, not supervisors, are **responsible for obtaining and presenting** administratively acceptable **evidence of illness or injury**.
- **Employees**, not supervisors, are **responsible** for doing whatever is necessary **to get to work on time**.
- **Fair treatment is not the same as identical treatment**. Employees who come to work on time and do not overuse sick leave should be treated differently from those who are chronically tardy or abuse sick leave.
- **Most absenteeism is self-inflicted**. Supervisors can reduce or eliminate absenteeism by approving sick leave only when it is appropriate, and by acting promptly to stop tardiness.
- Except for pre-approved medical examinations, **employees** who are **not completely incapacitated for all available work should not be placed on sick leave**. If work is available within the limitations specified in the employee's medical documentation, he or she can be assigned to such work rather than be placed on sick leave.
- **Employees may be disciplined for failing to follow procedures** for requesting sick leave.

Unsatisfactory Attendance (continued)

- **Supervisors, not employees, are responsible for determining when sick leave is appropriate.**
Supervisors may require employees to present medical documentation that specifies what duties or functions they cannot perform. General conclusions such as “unable to work” or “off work for three weeks” usually do not provide sufficient information to make a decision whether sick leave is appropriate.
- **Supervisors can require medical documentation** when an employee (1) has been previously placed on a leave restriction letter, (2) has been absent due to illness for more than three days, or (3) when there is reason to suspect that an employee is not actually sick or injured. In regard to item (3), please talk to your servicing employee relations specialist before initiating action.

We have a number of options for dealing with tardiness and other attendance problems. The first is **counseling**, which should begin as soon as the problem becomes apparent. To delay this, or any other corrective action, invites trouble since it conveys the notion to the offending employee that the behavior is acceptable (or at least will not be challenged), thereby making correction more difficult. When counseling the employee, don't forget about the **Discussion Model** described in the **June 2003 Bulletin**. (NOTE: At first, you may decide not to document an attendance problem, and just handle it informally. However, if the problem persists, begin documenting immediately.) Additional options may include (1) placing the employee on **Absence Without Official Leave (AWOL)**, (2) **changing** the employee's **assignment or hours of duty**, if possible, (3) **issuing letters of caution and instruction**, (4) **disciplinary action**, and (5) referral to the **Employee Assistance Program**. When these various options should be initiated will generally be the supervisor's call, but once again, early intervention is advisable.

When sick leave abuse is suspected, it is also important to act quickly, particularly since these problems generally take more time to resolve than other attendance problems. The first task is to determine when a particular leave problem constitutes abuse. This determination is somewhat subjective, but a couple of **indicators include a low sick leave balance and the repeated use of sick leave**, one or two days at a time, where there is little or no evidence of a chronic medical condition. Once again, **counseling** is the best place to start. If that does not work, issuing a **leave restriction letter** will normally be the next step. This letter requires the employee to get a medical certificate for each medical absence. Your servicing employee relations specialist can help you write this letter, as well as explore other options if the letter does not solve the problem.

There will probably always be employees who consider coming to work to be only an option. That is why quick and effective action is vital.

The Flexible Work Problem. The growing use of flexible work schedules has been a great benefit to employees but, at the same time, an occasional headache for supervisors. Supervisors need to remember that flexible schedules do not change the basic rules regarding leave usage described above. And as always, the need to accomplish a unit's required work takes priority over individual preferences for a particular schedule. If employees must work a full eight hours daily during heavy work periods, then they need to be told that this is the case. Also, it is not permissible to combine work breaks with unpaid lunch periods. Breaks are not required by regulation, but are compensable rest periods designed to give employees an opportunity to break for a short time from their work to recharge their physical and mental batteries.

COMMON DOCUMENTING ERRORS: ROUND 2

In the **June 2003 Bulletin**, we addressed several common documenting errors. They included (1) placing irrelevant (and potentially damaging) information in the case file, (2) providing unorganized, and hard to follow information, (3) using unexplained technical terminology and jargon, (4) presenting documentation in an unreadable format, and (5) forgetting to sign and date documents. Here are a few more of our favorites:

6. ...AND THE BEHAVIOR WAS OBNOXIOUS AND OBSCENE. The documentation that we receive sometimes includes general descriptive words such as “obnoxious,” “obscene,” “harass,” “threaten,” and so on. The problem with such words, when used to document an event, is that they document feelings, not facts, and therefore are subject to wide interpretation. Now there is not, within limits, anything wrong with expressing feelings in one’s documentation. If, for example, you felt “threatened” or “harassed,” say so. Make certain, however, to include the behavior (words and actions) that resulted in your feelings. Remember, at some point your documentation may be reviewed by a third party, and that person needs to know what happened, not just how you felt about what happened.

7. AND NOW, THE REST OF THE STORY. There are at least two elements involved in every incident – the incident itself, and the consequences of the incident.

Sometimes the consequences may be (or appear to be) obvious. In many cases, however, they must be described. If, for example, an employee screams at a coworker, the consequences of such behavior may vary depending upon the location of the incident. A confrontation between two employees will be considered more serious if it occurs in public. This is particularly true if members of the observing public are regulated by, or receive services from, the agency.

8. DON’T FORGET THE PAST. Sometimes we receive documentation regarding a particular incident or incidents, only to learn later (or not) that the employee has a history. Perhaps the employee has been previously counseled, or has been given a letter of caution or instruction (be sure to also include any relevant instructions issued to the entire work unit), or has been referred to the Employee Assistance Program. This information, and any similar information, is very important and should be included with any documentation that you provide.

One last thought; don’t forget to include, as part of your documentation, any explanation or other information that the employee provides. When reviewing a case, it is important that the reviewer have this information to consider. In some cases, for example those where the seriousness of the conduct precludes a discussion, there will be no employee explanation to consider.

IS IT CONDUCT OR PERFORMANCE?

SITUATION: Until recently, Lucy has been a good employee, but in recent months, her performance has deteriorated to the point where it can no longer be considered satisfactory. Since her duties have not changed, you can't figure out what is going on. *Should this situation be considered a conduct or a performance problem?*

The situation described above is certainly a performance problem in the sense that work is not being performed. However, in terms of how we generally define a performance problem, it is probably something else. A **true performance problem** occurs when an employee is **technically unable** to perform his/her duties – that is, wants to perform but cannot. In the case described above, the employee has proven that she was previously able to perform the identical duties satisfactorily. Therefore, the fact that she is now failing to perform at a previously satisfactory level would indicate that she is now either unwilling to perform satisfactorily, a conduct issue, or perhaps has a medical or some other personal problem that may account for the change.

Performance cases can be complicated. When you are confronted with a possible performance problem, regardless of the circumstances, contact your servicing employee relations specialist for assistance. Performance problems can be processed either under the performance regulations found in 5 CFR, Part 432 or under the conduct regulations found in 5 CFR, Part 752. There are advantages and disadvantages to using each, so it is important that you contact an employee relations specialist early so that both options can be explored. If it is decided that the problem is a true performance problem, and if it is decided that the best solution is to pursue corrective action under Part 432, the employee will need to be placed under a Performance Improvement Plan (PIP) and given a specific amount of time to improve. Your employee relations specialist can help you draft this letter.

We do not know if the following is true, but according to a reliable source (the internet), the following are actual comments that have appeared in performance evaluations given by Federal supervisors. (DISCLAIMER: The Employee Relations Branch does not recommend that such wording be used, although we certainly recognize why supervisors might be driven to use such language.)

- Has two brains, one is lost, and the other is out looking for it.
- Since my last report, this employee has reached bottom and has started to dig.
- He sets low personal standards, and then consistently fails to achieve them.
- This employee is depriving a village somewhere of an idiot. (OUCH!)
- Gates are down, the lights are flashing, but the train isn't coming.
- If you see two people talking and one looks bored, he's the other one.
- The wheel is turning, but the hamster is dead.
- If you stand close enough to him, you can hear the ocean. (OH, CRUEL!!)
- He would argue with a signpost.
- Doesn't have ulcers, but is a carrier.

CORRECTING CONDUCT AND PERFORMANCE PROBLEMS THE USE OF DISCIPLINE

In previous issues of the Bulletin, we have discussed a process that supervisors can use to deal with conduct and performance problems. In the **February 2003** issue, we reviewed the first step in that process – **Documenting Conduct and Performance Problems**. In the **June 2003** issue, we looked at the second step – **Discussing Conduct and Performance Problems**. In this issue, we will begin discussion of the third and final step – **Correcting Conduct and Performance Problems**. Since there are numerous options available for correcting conduct and performance problems, we will begin in this issue by looking at one corrective action – discipline.

If disciplinary action is taken against an employee, the Employee Relations Branch will have primary responsibility for the preparation of letters and other materials, and for guiding the action toward its conclusion. It is important, however, that supervisors have knowledge of this process because (1) it gives them a better idea of what kinds of information they should include in their documentation, and (2) they may, depending upon the delegations for their program, be responsible for signing letters of proposed action or decision.

To begin, it is important to note that the **purpose of discipline is to maintain an efficient, productive and orderly work environment**. Its focus is the **correction** of inappropriate behavior, **not punishment**. It is normally progressive in nature, although there are exceptions (e.g. when the misconduct is very serious). Its limitations include the fact that it can be very time-consuming, can cause hard feelings without resolving the problem, and can be overturned or modified by a third party.

KINDS OF DISCIPLINARY ACTION

1. Letter of Reprimand. The purpose of a letter of reprimand is to correct a problem early, before more serious discipline is necessary. It remains in the employee's Official Personnel Folder (OPF) for two years, after which it is removed from the OPF, and cannot be used as a basis for any subsequent action against the employee. Employees may contest a reprimand by filing a discrimination complaint or a grievance.

2. Suspension of 14 Days or Less. Employees are entitled to a written notice of proposed suspension, a right to reply in writing and/or orally, and a written decision. They may contest an adverse decision by filing a discrimination complaint or a grievance. The document recording this action remains in the OPF permanently.

3. Suspensions of More Than 14 Days, Involuntary Demotions, Furloughs of 30 Days or Less and Removals. Employees are entitled to the same rights (proposal, reply, decision) as noted above. They may contest an adverse decision by appealing to the U.S. Merit Systems Protection Board (bargaining unit employees may either file a negotiated grievance or appeal to the MSPB, but not both) or by filing a discrimination complaint, but not both. The document recording these actions remains in the OPF permanently.

THE DISCIPLINARY PROCESS

The process for suspensions, removals, furloughs and involuntary demotions looks something like this:

1. Proposal. Employees receive a letter proposing the action. This letter includes (1) the specific penalty being proposed,

CORRECTING CONDUCT AND PERFORMANCE PROBLEMS (Continued)

(2) the charge(s) upon which the proposal is based, and (3) the various rights to which the employee is entitled by law and regulation. In addition, employees receive a copy of the evidence that is used as a basis for the proposal.

2. Reply. Among the rights extended to employees is the right to reply to the charges in writing, orally (personally), or both.

3. Decision. Once their replies have been received and considered, employees receive a written letter of decision. This letter specifies the charges that have been sustained and not sustained, the final penalty that will be assessed, and the rights to which the employee is entitled in regard to contesting the final action. As noted above, these rights include the right to file a grievance, a discrimination complaint and possibly an appeal with the U.S. Merit Systems Protection Board.

As you can see, the disciplinary process can be fairly involved and, as noted, it has many limitations. There are times, however, when an employee's actions are so serious, or when other solutions have proven fruitless, that we must turn to discipline. When you are confronted by such situations, contact your servicing employee relations specialist as soon as possible for assistance.

WHAT TO DO WHEN CONTACTED BY AN ATTORNEY. Employees are occasionally contacted by an attorney representing the employee whose discipline is being proposed. If this happens to you, you are not required to speak to the attorney, and should contact your servicing employee relations specialist immediately for guidance. Do not agree to speak with the attorney until you have done this. You may later, during the processing of an appeal or other third party action, be required to provide information in response to a deposition. If so, the employee relations specialist assigned to the case will prepare you for the deposition, and will be present when you give it.



THINK OUTSIDE OF THE BOX

When you are considering corrective action for an employee's misconduct, sometimes it's appropriate to think outside the box of traditional disciplinary actions. Consider this case:

Chris had been a model employee of the agency for over 20 years. Last month he experienced several stressful personal situations, including a divorce. He went to his physician and was prescribed medication to help him sleep. He mistakenly took one of the pills an hour before his tour began, didn't hear his alarm clock and slept through his tour of duty. He failed to call in or provide an explanation as to why he failed to report. Chris was charged with 8 hours of AWOL and given a letter of reprimand. Chris' incidents of AWOL continued and he served two suspensions for his continued misconduct. Chris failed to report to work last week and was charged with 40 hours of AWOL. The USDA guide for disciplinary penalties states the appropriate penalty is removal. This time Chris opens up to you and tells you about his divorce and the sleeping pills. He also accepts responsibility for his misconduct and states that he would like to contact EAP to help him straighten up his act and save his career. How would you correct Chris' behavior?

When you contact your Employee Relations Specialist, he/she will probably suggest a last chance agreement. It's appropriate to consider a Last Chance Agreement (LCA) if:

- The employee's misconduct warrants removal.
- The employee admits to, and accepts responsibility for, the misconduct.
- The employee claims a disability, personal problem or other mitigating factor as the reason for, or as a contributing factor in, his/her misconduct.
- The employee shows potential for rehabilitation.
- The employee agrees to waive all rights to file a grievance, appeal, discrimination complaint, or other third party action.

In our example above, the agency would more than likely conclude that Chris could be a productive employee again. He has admitted to and accepts responsibility for his misconduct, and shows a potential for rehabilitation.

A mutually agreed upon LCA will often accomplish the objectives of both the agency and the employee. With the agency providing Chris an opportunity to prove that he can be a productive employee, combined with some assistance from EAP, Chris could save his career. The agency would benefit from keeping an experienced employee like Chris and

THINK OUTSIDE THE BOX (Continued)

avoiding the administrative costs associated with traditional discipline and the appeals and/or complaints that follow. In addition, communication between Chris and his supervisor will more than likely improve due to a demonstration of trust and goodwill.

Today most agencies encourage the use of alternatives to traditional disciplinary action to reduce the costs/burdens generally associated with such action, to encourage the rebuilding of relationships between employees and supervisors, and to provide employees an opportunity to demonstrate accountability for their actions. In addition to last chance agreements, possible alternatives to discipline include (1) holding a suspension action in abeyance for a specified period of time (if the employee does not commit any further action during this period, no action is taken), (2) LWOP in lieu of suspension, (3) annual leave donations, (4) a letter of apology to the affected parties, and (5) community service related to the employee's offense.

Your Employee Relations Specialist will provide advice when you are considering utilizing an alternative discipline agreement, and will consult with you when writing the agreement offer.

RESOLVING CONFLICTS

It has long been recognized that the most effective way to solve a problem is to talk it out, and find a solution that everyone involved can live with. Although not every problem can or should be solved by this process (e.g. serious disciplinary problems), many can, particularly in the early development of the problem. All MRP agencies have alternative dispute resolution programs that are available to employees. In this issue, we feature the program used in the Agricultural Marketing Service, and have asked the program coordinator, Dr. Linda Josef, to describe this program.

AMS Employee-Designed Conflict Resolution Service



AMS employees helped to design a conflict management service to enable both supervisors and employees to resolve issues and reduce the use of formal processes such as grievances, complaints and personnel actions. The service, called Alternative Resolution, was designed to be easy to use, private and not biased toward management or employees.

Linda Josef was hired to be the Alternative Resolution Program Manager in January 2003. Linda has over 20 years of experience as an Organization Behavior Consultant for Federal Agencies.

RESOLVING CONFLICTS (Continued)

Alternative Resolution is a conflict management tool for any AMS employee built around (1) a telephone hotline to quickly and privately discuss issues, and (2) use of outside professionals to help resolve workplace conflicts.

Telephone Hotline - Supervisors or non-supervisors can call the Hotline and talk to the Program Manager to help open up lines of communication and decide how to handle difficult situations. Alternative Resolution does not determine who was right or wrong in a conflict. The goal is to promote problem solving and communication between employees or between the employee and the supervisor.



There is no paperwork to fill out and no reporting of phone calls. A toll-free number is available (see below).

Outside Professional Assistance - In some cases assistance from outside professionals is recommended to help in conflict resolution. Outside professionals keep the discussion focused on problem solving, limit the conflict, and help the parties agree on a solution.



All outside professionals are experienced and certified in their specialty. They are not employees of USDA and do not report to management.



Alternative Resolution Privacy and Fairness Policy - The Alternative Resolution Service is fair to all employees, and is not biased toward employees or management. All calls to Alternative Resolution are confidential. No one is notified without the employee's consent. In addition, no reports with identifying information are made to management. No identifying records are kept. There is no case file.

Rights to Use Formal Processes Are Preserved - Alternative Resolution may solve your problem. If it doesn't, it will not limit rights to file a grievance, personnel action, or EEO complaint within legal time frames.

Summary – Alternative Resolution is a good thing to try *before* filing a complaint, grievance or adverse personnel action. It's an easy to use, low-stress alternative. The AMS Senior Managers strongly encourage employees to participate.

Contact Information

Toll free number 866-227-0328
DC Metro number 202-690-3017
Outlook Address Book - AMS-AR
www.ams.usda.gov/ar

THE ETHICS CORNER

LIFE AFTER THE GOVERNMENT

There is life after leaving the Federal Government, but employees and former employees must comply with the outside employment/post-employment restrictions prior to and during this afterlife. These restrictions bar certain acts by current and former Government employees which may give the appearance of making unfair use of Government employment and affiliations. Here are a couple of examples:



SITUATION: An employee wishes to negotiate for future employment with a company which he/she deals with in his/her official capacity.

- ❖ The **rule** is that an employee may not participate personally and substantially in any matter involving a person (including company) from whom the employee is seeking non-Federal employment. The employee must disqualify him/herself from making recommendations or decisions which pertain to that person/company, or taking any actions that may affect the person/company. The disqualification, or recusal, should remain effective until negotiations are complete and there is no possibility of a job with the company. See **5 CFR, Part 2635, Subpart F**.

SITUATION: An employee leaves her Government job to work for a private company. This former employee is later given an assignment to respond to some questions raised during an audit of the company conducted by her previous office.

- ❖ The **rule** is that an employee may assist the non-Federal source in writing its response to the audit questions, but not represent the source in matters before the Government. The employee must also be careful not to use any nonpublic information gained while he or she was a Federal employee. There are two "bars" involved in these matters. The first is a **permanent bar** if the employee participated "personally and substantially" in a matter at any time that the matter also involved specific parties. The second is a **two year bar** if the employee did not participate personally or substantially in a matter, but it was pending under his/her official responsibility during his/her last year of service and involved specific parties during that time. See **5 CFR, Part 2635, Subpart F** and **5 CFR, Parts 2637 and 2640**.

You may obtain further information regarding the above restrictions at www.usda-ethics.net, or by contacting Mary Royster, Mission Area Ethics Advisor, at mary.a.royster@aphis.usda.gov.



THE BULLETIN BOARD

- ✚ **CORRECTION:** In the **June 2003 Bulletin**, we noted in the article entitled, “Credit Card Misuse” that employees are expected to submit their travel vouchers within five work days of their return from travel, unless they are on extensive travel. This information was incorrect. According to the *Agricultural Travel Regulations, Chapter 301 (Travel Allowances)*, employees have **ten (10) days** to submit their vouchers. The regulation specifies, in Section 301 – 1.3(a), that employees are obligated to, “Submit an accurate and factual travel voucher to your supervisor within 10 days after completion of travel, or when on extended detail, submit a voucher after each 30 day period of travel.” In this case, the days should be considered calendar days.

- ✚ We are continuing to review the administrative grievance processes in AMS, APHIS and GIPSA, and are getting ready to draft a proposed new directive. We want to thank the persons who responded to a recent survey sent to people who have been involved in grievances. If you have comments that you would like to share regarding this process, or any suggestions for improvement, please contact us at ER.Bulletin@aphis.usda.gov.

LETTERS TO THE EDITOR

“I have several employees. On occasion, they post things on the bulletin board that I don’t feel are appropriate. These things include posters, order forms, sales announcements, and even a political notice advocating a certain policy. What can/should I do about this situation?”



- ❖ Placing personal items on bulletin boards is a common problem. The rule is that bulletin boards in Government-owned space are to be used only for documents related to official Government business. USDA Personnel Bulletin 735-1, Section 735-201(h) prohibits, “Canvassing for sales, or selling, any article...in person or by distributing or posting literature, advertising matter, or any other graphic matter, in or on Government-owned or leased property, or property occupied by the Department...” Agency conduct directives should be consulted for additional prohibitions. The only exception to this rule is that some work locations allow employees to place ads and other personal notices on lunchroom bulletin boards. Two things to remember, however, in regard to this practice. First, every employee must be allowed to post permitted notices. Second, any information that would have a negative impact on the workplace, and therefore a negative impact on the agency’s ability to carry out its work, should be prohibited. Such information would include political and religious information, and any discriminatory or otherwise insensitive information.

EMPLOYEE RELATIONS DIRECTORY

APHIS

Riverdale

Kathy Welsh, *Branch Chief* (301) 734-6486
Michaela Bratten, *Assistant Branch Chief* (301) 734-4992
Lucille Lorenzano (from Project Achieve) (301) 734-4414
Michelle Parker, ERS, Washington/Riverdale (located in Raleigh) (919) 716-5586
FAX: (301) 734-8293

Minneapolis/Fort Collins (Western Region)

Joan Carlson, *Team Leader, Center for Veterinary Biologics, National Veterinary Services Laboratories* (612) 336-3299
Milo Christianson, ERS - MRPBS-Minneapolis, Customer Training, Special Projects, MSPB Assistance (612) 336-3215
Jodi Foley, ERS - Wildlife Services, National Wildlife Research Center (612) 336-3301
Linda Hatfield, ER Assistant, National Agency Checks/Inquiries (NACI) (612) 336-3292
FAX: (612) 370-2297
Trudy Driver, ERS - Plant Protection & Quarantine (PPQ) (970) 494-7417
Dennis McPeters, ERS - Animal Care, MRPBS – WR (IES, IT, ESD), ERS Training, Special Projects, MSPB Assistance (970) 494-7418
Rene Wing, ERS - Veterinary Services, Centers for Epidemiology and Animal Health (970) 494-7416
FAX: (970) 494-7424

Raleigh (Eastern Region)

Barbara Singleton, *Team Leader, Wildlife Services, Animal Care* (919) 716-5637
Inger Alston, ERS - VS (919) 716-5700
Jamie Dove (on detail) - CPHST, MRPBS-ER (IES, IT, ESD) (919) 716-5793
Aziza Clark, ER Assistant (919) 716-5628
Yamira Moreno-Cruz, ERS - PPQ (919) 716-5595
FAX: (919) 716-5654

AMS/GIPSA

Mark Leking, *Branch Chief* (202) 720-5721
Vondell Henson, *Team Leader, APHIS International Services* (202) 720-9039
Margaret Brasfield, ERS -(on detail to Ethics Program; located in Raleigh) (919) 716-5611
Sandy Davis-Conway, ERS - Fruit & Vegetables, Tobacco (202) 205-3855
Julie Dunn, ER Assistant (202) 720-1055
Keela Harris, Secretary (202) 720-5721
Kimberly Meyer-Chambers, ERS – GIPSA, Livestock & Seed, Transportation & Marketing (202) 720-5721
Stephanie Renslow, ERS – Cotton, Dairy, Poultry, Science & Technology (612) 336-3302
(located in Minneapolis)
Mary Royster, ERS - MRP Ethics Advisor (Financial Disclosures, Outside Employment, Conflicts of Interest) (202) 720-9858
Archie Warren, ERS – Fruit & Vegetable (202) 720-5721
FAX: (202) 720-3039