Arkansas Department of the Military
Cabinet Secretary - Brigadier General Olen Chad Bridges,
The Adjutant General

Policy Title: Employee Disciplinary Procedure

Policy Number: 21

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I. PURPOSE:

The following establishes uniform procedures to address the failure of employees of the Arkansas Department of the Military (DOTM) to meet minimum performance expectations and ensure discipline and other corrective measures are applied in a consistent, objective, and good faith manner.

The procedures described in this policy are mandatory, and the performance expectations apply to all employees, including supervisors/managers.

II. POLICY

DOTM employees are expected to abide by all DOTM behavior standards to include, but not limited to, applicable state and federal laws, all relevant TAG policies, applicable OPM polices, all DOTM policies and standard operating procedures, and minimum employee performance standards contained in Appendix A. Employees who fail to comply with any of these standards may be subject to corrective action or discipline as outlined in this policy.

The policy is available to all employees at https://military.arkansas.gov/department-of-military-offices/policies/ or from the DOTM Human Resource Department (DOTM HR). All DOTM employees shall review this policy as well as all other DOTM policies and rules to ensure they understand the performance expected of DOTM employees and possible consequences of failing to meet performance expectations. Employees who need further explanation of the Employee Discipline Procedures or any DOTM policy should seek guidance through their supervisory chain or DOTM HR.

Nothing in this policy creates either an express or implied property interest or right of expectancy of continued employment or contract, nor does it alter the DOTM's employment-at-will doctrine.

This policy is subordinate to state and federal law and should be interpreted and applied in a manner consistent with all governing employment regulations.

III. PARTIES AND RESPONSIBILITIES

A. The Adjutant General (TAG)

TAG considers the recommended disciplinary action and issues the final agency decision in Level Two disciplinary actions. TAG may delegate responsibility for issuing the final agency decision to the Deputy Adjutant General (DAG) or the DOTM Chief of Staff as he/she deems appropriate.

B. DOTM Legal Office

The DOTM Legal Office advises TAG, or his/her delegate, in disciplinary cases including Level Two disciplinary actions and provides legal guidance and direction to all supervisors/managers on disciplinary responsibilities, rights, and obligations. It also defends any administrative complaint, grievance, claim, or action against the agency. A member of the DOTM Legal Office shall review every document created during the disciplinary process and shall observe every roundtable to ensure legal and procedural compliance.

C. DOTM Human Resource Department

The DOTM Human Resource Department (DOTM HR) administers disciplinary action in accordance with governing authorities to state employees on behalf of TAG and in coordination with the DOTM Legal Office, where appropriate. The DOTM HR Director, or his/her delegate, serves as Chair of all proposed disciplinary roundtable discussions. With respect to supervisors/managers, DOTM HR: (1) provides necessary training on the administration of discipline under this policy; (2) provides procedural guidance and direction disciplinary responsibilities, rights, and obligations; (3) assists with the procedural aspects of an action before the issuing of a proposed action or original decision; and, (4) maintains procedural deadlines within the process. With respect to DOTM employees, DOTM HR will provides general and procedural guidance and case information to the affected employee(s). DOTM HR advises TAG or his/her delegate in disciplinary cases and consults with the DOTM Legal Office for legal advice on disciplinary actions and proposed penalties.

D. Supervisors/Managers

All DOTM Supervisors/Managers are expected to maintain an office or shop atmosphere conducive to good employee-management relations. Supervisors/Managers must ensure that employees understand their duties and workplace practices, safety, and security requirements. To that end, Supervisors/Managers are required to monitor employee conduct and performance to ensure compliance with conduct standards and workplace expectations and promptly act to resolve any issues. Supervisors should communicate and maintain expectations to reduce the need for corrective actions of disciplinary actions. When needed, supervisors will conduct investigations into allegations of employee misconduct or poor performance in a timely manner. Supervisors/Managers must also recommend discipline in a timely manner, usually within 10 business days of learning of the alleged poor performance or misconduct. Supervisors will not be permitted to use undocumented past events as the basis for discipline or additional

disciplinary charges. When recommending or administering discipline, Supervisors/Managers must do so in a consistent, objective, and good-faith manner, which means ensuring that any action recommended or taken is justified by the facts and circumstances of the case and is consistent with agency policy and precedent. Supervisors/Managers must participate in the roundtable process complete all required documentation under this policy.

E. Proposing Official

The Proposing Official is the initiator of the proposed disciplinary action and is usually the employee's first line supervisor but can be anyone in the employee's supervisory chain. When recommending or administering discipline, the Proposing Official will identify the specific violation the employee purportedly committed and develop facts that constitute cause for action. The facts must show that corrective action or disciplinary action is warranted by a preponderance of the evidence, which means that the employee more likely than not, engaged in the behavior with which he or she is charged. The Proposing Official shall consult with DOTM HR and the DOTM Legal Office before administering corrective action or discipline under this policy. The Proposing Official is responsible for completing the DOTM Disciplinary Factors Analysis Form and Notification of Proposed Adverse Action Memorandum, with the assistance of DOTM HR and DOTM Legal Office, which together explain the rationale for all factors (mitigating, aggravating, or neutral) and how the analysis was used to determine the proposed penalty. The Proposing Official should consult with DOTM HR and DOTM Legal Office as needed.

F. Issuing Official

The Issuing Official is the author of the Original Agency Decision. The Issuing Official is usually someone in the Proposing Official's supervisory chain but can be the Proposing Official if no other supervisor exists or other facts necessitate a review from the Proposing Official. The Issuing Official will review the documents prepared by the Proposing Official and the employee's response to said documents and conduct an independent evaluation of the facts and circumstances surrounding the proposed discipline. The Issuing Official must issue a specific recommendation and the facts that support the recommendation. The Issuing Official must respond to the employee's response in the Original Agency Decision and explain how that response factored into the Issuing Official's decision. The Issuing Official must consult with DOTM HR and DOTM Legal when drafting the Original Agency Decision.

G. Reviewing Official (if used)

The Reviewing Official is appointed by TAG when TAG is the Deciding Official to help facilitate TAG's decision. The Reviewing Official independently reviews the proposed action and consults with the DOTM HR Director and the DOTM Legal Office for legal advice on the proposed disciplinary action, information contained in the Disciplinary Analysis Factors Worksheet, and proposed penalty. The Reviewing Official prepares and provides a recommendation to TAG, or his or her designee, for the final agency decision. There is no response by the employee at the Reviewing Official stage, unless the Reviewing Official uses or relies on any information not previously provided to the employee. If the Reviewing Official plans to use or rely on any information not previously provided to employee, the employee must be allowed to submit a

written response to that information. If TAG delegates the authority to issue the Final Agency Decision to the DAG or the DOTM Chief of Staff, the reviewing official role is not required but may be used at the discretion of the delegate.

H. Deciding Official

The Deciding Official is either TAG or his/her designee. The Deciding Official provides the final agency decision on a Level Two disciplinary action proposed by the Proposing Official. The Deciding Official will review the documents prepared by the Issuing Official and/or Reviewing Official and the employee's response to said documents and conduct an independent evaluation of the facts and circumstances surrounding the proposed discipline. The Deciding Official, in consultation with DOTM HR and the DOTM Legal Office, will issue a specific final determination and the facts that support the determination.

I. Employee

The employee is responsible for maintaining professional conduct and courtesy in the workplace and for cooperating with the disciplinary action administrative and investigative process. Employees should familiarize themselves with this policy and ask questions as needed. Employees are responsible for meeting any given deadlines or requesting any extensions under this policy. An employee's acknowledgment of the receipt of a notice of misconduct or poor performance does not imply agreement with the alleged misconduct or poor performance.

IV. KEY ASPECTS

A. Investigations

DOTM investigations regarding alleged employee misconduct or poor performance will be conducted pursuant to Arkansas Code Annotated §12-61-104 and AR 15-6, Procedures for Administrative Investigations and Boards of Officers through either a preliminary inquiry or administrative investigation. Not all corrective actions, verbal warnings, or written warnings will require a preliminary inquiry or administrative investigation. Supervisors/managers should consult DOTM Legal regarding investigations of employee misconduct. All witness statements, whether sworn or unsworn, will utilize DA Form 2823, Sworn Statement. *See* Appendix B.

B. Verbal Warning Summary Memorandum

The document written by the employee's supervisor after a verbal warning is issued. See Appendix C for an example.

C. Written Warning Memorandum

The document written by the employee's supervisor after a written warning is issued. See Appendix D for an example.

D. Roundtable Discussions

Supervisors/managers may request a roundtable discussion through DOTM HR to discuss any potential employee misconduct or poor performance. Roundtable discussions will be chaired by the DOTM HR Director and may include the DOTM Legal Office, Equal Opportunity Compliance Officer, all supervisors/managers in the chain of command of the employee in question, and any other relevant individuals. The objective of a roundtable discussion is to discuss employee misconduct or poor performance and options available to the supervisor/manager. The employee is not present at the Roundtable. Roundtables are mandatory prior to initiating Level Two disciplinary action. When it is known that the Roundtable will consider Level Two disciplinary action, the Disciplinary Analysis Factors Worksheet must be submitted to members of the Roundtable before the meeting.

E. Disciplinary Factors Analysis Worksheet

The Disciplinary Factors Analysis Worksheet (Appendix E) is prepared by the Proposing Official and used to gather all relevant information and ensure aggravating or mitigating factors are considered prior to formal discipline being administered. It **must** be completed before formal disciplinary action is taken and must be reviewed by the roundtable discussion panel if Level Two discipline is being proposed or considered.

F. Proposed Disciplinary Action Memorandum

The document written by the Proposing Official notifying the employee that a Level Two Disciplinary Action is being recommended. The Proposed Disciplinary Action Memorandum is written only after a roundtable discussion where the Proposing Official and the Roundtable members agree that Level Two discipline is appropriate. See Appendix F for an example.

G. Original Agency Decision Memorandum

The document written after the employee has had time to respond to the Proposed Disciplinary Action Memorandum by the Proposing Official. The Original Agency Decision Memorandum must summarize and reply to the employee's response, if submitted, and state whether a Level Two Disciplinary Action is still being recommended and the basis for such recommendation. After considering the employee's response, the Original Agency Decision may approve, modify to a lesser degree, or reject the proposed disciplinary action contained in the Proposed Disciplinary Action Memorandum. See Appendix G for an example.

H. Reviewing Official Letter of Recommendation

The document written by either the DAG or Chief of Staff to TAG, independently summarizing all relevant information and evidence and recommending that TAG approve, modify to a lesser degree, or reject the Level Two Action contained in the Original Agency Decision Memorandum. See Appendix H for an example.

I. Final Agency Decision Memorandum

The document written by either TAG, DAG, or Chief of Staff (depending on whether a Reviewing Official is used) approving, modifying to a lesser degree, or rejecting the Level Two Action contained in the Original Agency Decision Memorandum. See Appendix I for an example.

V. TIMING

All actions taken under this policy should be started within 45 calendar days of the supervisor learning of the alleged misconduct or poor performance. If an action is started after a supervisor has had notice for 45 calendar days, the supervisor must document a reasonable justification for the delay in starting the disciplinary action in the disciplinary paperwork. If a disciplinary case is referred to an investigation under paragraph IV(A) “Investigation,” the supervisor will have an additional 45 calendar days to take action following the completion of the investigation.

VI. TYPES OF CORRECTIVE MEASURES AND DISCIPLINE

The DOTM has two avenues for rectifying employee performance issues: corrective action and formal disciplinary procedures. The action to be taken for an instance of misconduct or poor performance should be tailored to the facts and circumstances. Each employee’s work performance and disciplinary history are unique, and the action should be calibrated to the specific facts and circumstances of each individual employee’s situation.

A. Progressive Disciplinary Action

Progressive discipline is recommended to impose discipline at the level commensurate with the offense and allow the employee to take measures to improve performance with the lowest level of disciplinary action. However, some violations are so serious that progressive discipline may not be appropriate given the nature of the infraction. For guidance on appropriate penalties, see Table of Penalties, Appendix J.

B. Corrective Action

Corrective action is defined as a communication from a supervisor/manager requiring an employee to stop or to not repeat misconduct or poor performance and can be conducted either via counseling or a verbal warning. A corrective action is appropriate when the misconduct or performance issue is minor or cessation or non-repetition of the misconduct or performance issue is a satisfactory resolution of the matter. Corrective counseling and routine coaching are options that should be considered prior to formal disciplinary action as well as between various steps of progressive formal discipline action, when possible. These tools are utilized to communicate, define expectations, and provide an opportunity for the employee to improve his or her non-compliance before resorting to formal disciplinary action. Corrective counseling and coaching are not discipline; however, instances of counseling and coaching should be well documented and maintained within the supervisor’s/manager’s file.

For a physical depiction of the Corrective Action process, please see Appendix K.

1. **Coaching**

Routine conversations where the Supervisor/Manager trains, tutors, or gives instruction. Coaching is a collaboration between the Supervisor/Manager to build the employee's skillset, knowledge, and/or confidence.

2. **Counseling**

Where corrective action is appropriate, counseling may be suitable. Counseling is oral and not recorded with DOTM HR, however Supervisors/Managers should keep instances of counseling documented in their own files. A counseling is not applicable as a disciplinary for the purposes of progressive discipline under Level One or Level Two.

3. **Verbal Warning**

If the minor misconduct continues or is repeated after counseling but corrective action is still appropriate, a verbal warning is warranted. A verbal warning is not considered formal discipline but is documented in writing on the Verbal Warning Summary Memorandum (Appendix C) and maintained in the supervisor's/manager's employee file for a period of one year.

Before the verbal warning is issued, the supervisor shall consult DOTM HR and DOTM Legal Office to aid in review and finalizing the verbal warning. The employee must be allowed to write his or her response to the facts and reasons stated verbally by the supervisor/manager. The supervisor/manager will state the date on which the verbal warning and response will be expunged, absent continuation or repetition of the minor misconduct. After one year, the employee may request the verbal warning be removed from his or her file. A verbal warning is not applicable as a disciplinary for the purposes of progressive discipline under Level One or Level Two.

Supervisors/Managers and Deciding Officials are not required to issue a verbal warning before proposing formal disciplinary action. The penalty for an instance of misconduct should be tailored to the facts and circumstances.

If an employee disagrees with the issuance or content of a verbal warning, the employee may submit a written statement and any supporting documentation to the issuing official within seven business days. All documentation submitted will be made part of the Verbal Warning and kept for one year.

Supervisors must consult DOTM HR and DOTM Legal before issuing a third counseling, third verbal warning, or a combination of three counseling and verbal warnings to the same employee in a 12-month period. For the purposes of this section, the three corrective actions are not required to all be for the same offense.

C. Formal Disciplinary Action

1. Level 1—Written Warning

A written warning is a disciplinary action and should be documented on the Written Warning Memorandum, Appendix D. It may be used when corrective action is ineffective or when the nature of the offense warrants a more serious and formal action.

A written warning may be accompanied by a six (6) month disciplinary probation period, performance improvement plan (PIP), other disciplinary actions, or a combination thereof. All documentation accompanying the written warning will be placed in the employee's personnel file for a period of one to three years, as specified by the issuing authority. At the end of this period, the employee may request the written warning be removed from his or her employment file.

Written warnings require coordination between the employee's first-line supervisor/manager and other individuals in the employee's supervisory chain before being issued. A supervisor may request a roundtable before issuing a written warning, but a roundtable is not required at this stage of the disciplinary process. A written warning is normally issued by an employee's first-line supervisor/manager but can be written by a different management official. The first-line supervisor/manager will receive a copy of the written warning if it is issued by a different management official. The issuing individual must determine, by a preponderance of the evidence, that the facts supporting the issuance of the written warning are substantiated. This might, but does not always, require a formal or informal investigation. The written warning will be cleared for procedural accuracy through DOTM HR and DOTM Legal Office before being administered. All written warnings must at a minimum include the following:

A. A description of the offense in sufficient detail to show why the Written Warning is being issued.
B. The timeframe that the written warning will remain in effect in the employee's personnel file, typically one to three years.
C. The employee's right to respond to the written warning.

Repetition of the same offense may warrant more severe disciplinary action, as indicated in the table of penalties (See Appendix J). Written warnings are not subject to grievance procedures. Written warnings may be used as evidence of a previous offense for consideration of progressive discipline in formal disciplinary action proceedings only if the new disciplinary action is commenced before the written warning has expired and if the written warning is otherwise still in effect. However, expired written warnings may always be used as impeachment evidence to call into question the credibility of the individual when relevant, or in the case of similar misconduct or poor performance to demonstrate that the employee knew, or should have known, that the alleged misconduct or poor performance was improper.

If an employee disagrees with the issuance or content of a written warning, the employee may submit a written statement and any supporting documentation to the issuing official within seven business days. All documentation submitted will be made part of the written warning and kept for the same length of time as identified in the written warning.

Supervisors must consult DOTM HR and DOTM Legal before issuing a third written warning to the same employee in a 12-month period. Under this section, the three written warnings are not required to all be for the same offense.

For a physical depiction of this process, please see Appendix K.

2. Level Two—Suspension, Termination, or Demotion

Multiple infractions of the same kind or initial occurrences of serious conduct violations or performance standards may require personnel actions that is of a severity that a suspension, reduction in grade or status, or termination is warranted. Issuances of suspensions, terminations, or demotions will be documented in the Proposed Disciplinary Action Memorandum (Appendix F), the Original Agency Decision (Appendix G), the Reviewing Official Letter of Recommendation (if applicable) (Appendix H), and the Final Agency Decision Letter from TAG or his or her designee (Appendix I).

A. **Suspension:** Removal of an employee from the workplace for a day or more. Suspensions may be with or without pay based on the circumstances at issue. Suspensions are to be used for major or repeated violations of standards or when management determines that the violation warrants the removal of the employee for a day or more. A suspension shall be accompanied by an automatic six (6) month probationary period to commence upon the employee's return to duty. A suspension for poor performance will also be accompanied by a performance improvement plan (PIP). The dates of suspension are to be scheduled as soon as possible following the imposition of the penalty. All documentation supporting the suspension shall be retained in the employee's personnel file for a period of five years. At the end of this five-year period, the employee may request the notice of suspension be removed from his or her employee file. If an employee is suspended without pay, he or she may not use accrued leave to offset the lost funds.

B. **Termination**: Termination is a final decision to remove the employee from the agency. Termination is appropriate for major policy and procedure violations or when the accumulation of violations has been exhausted or has exceeded available disciplinary sanctions warranting discharge. All documentation supporting the termination shall be retained in the employee's personnel file for a period of five years.

C. **Demotion**. In some circumstances a demotion may be more appropriate than suspension or termination. In those instances, the employee may be demoted by either position or grade. An employee must be qualified for the position to which he or she is demoted. A demotion shall be accompanied by an automatic six (6) month probationary period and performance improvement plan, and all supporting documentation shall be placed in the employee's personnel file for a period of five years. At the end of this five-year period, the employee may request the notice of demotion be removed from his or her employee file. All demotions will follow the

demotion guidelines set by the Office of Personnel Management.

A Level Two discipline action must follow the procedures set forth in Section VII.

VII. LEVEL TWO DISCIPLINARY PROCEDURES

The following process only applies to formal disciplinary action measures where a Level Two penalty is proposed. These procedures may be used for Level One written warnings if the supervisor or proposing official requests. This process is depicted on the flowchart in Appendix L.

A. Step One: Initial Roundtable

The Proposing Official will coordinate with the DOTM HR Director to schedule a roundtable that may include the DOTM Legal Office, Equal Opportunity Compliance Officer, supervisors/managers of the employee in question, and other relevant individuals. All levels of an employee's supervisory chain must be notified before the initial roundtable is held. The employee is not present during the Roundtable discussion.

If it is known that a Level Two disciplinary action is being proposed or considered, the Proposing Official must complete the Disciplinary Analysis Factors Worksheet prior to the Roundtable meeting. A summary of the matter will be provided by the supervisor/manager to the roundtable using the DOTM Disciplinary Factor Analysis Worksheet. The allegations will be discussed by the roundtable to determine whether there exists a possible failure to meet behavior expectations that, if true, would warrant disciplinary action. The roundtable may determine that further investigation is warranted. If the roundtable agrees that disciplinary action is warranted, the Proposing Official will proceed to step two and draft a Proposed Disciplinary Action Memorandum. See Appendix F.

B. Step Two: Proposed Disciplinary Action Memorandum

The Proposed Disciplinary Action Memorandum is the first official document produced in the Level Two disciplinary action proceeding and must include, at a minimum, the items outlined below. The memorandum is prepared by the Proposing Official and will include all supporting documentation for the proposed action. A sample format for the Proposed Disciplinary Action Memorandum is contained in Appendix F. The Proposed Disciplinary Action Memorandum must have a completed DOTM Disciplinary Factor Analysis Worksheet attached (See Appendix E).

1. **Cause**. The cause is the reason that the disciplinary action is being proposed. Stating the cause by listing an offense from Appendix A is not sufficient. Enough additional facts must be included in the proposed action memorandum to allow the employee to know the details (who, what, when, and where) of the employee's offense(s). Separate causes can be addressed in the same action. The standard of proof for upholding an administrative disciplinary action based on conduct is "preponderance of the evidence." The definition of a preponderance of evidence is generally accepted to be that a claim is more likely to be true than not. There may be sufficient evidence to support a disciplinary action even if the facts are insufficient for a criminal conviction.

2. **Proposed Penalty**. The proposed penalty must be stated completely and include a brief statement explaining why that particular penalty was selected. Penalties must be similar for offenses with like circumstances. The Table of Penalties for Various Offenses (Appendix J) provides a general guide for common offenses. Variation from the proposed penalties is permissible when facts and circumstances warrant it, but when circumstances require variation, those circumstances must be detailed so the employee can respond. When a termination is proposed, the proposed action memorandum will also indicate the *proposed* effective date of the termination at least 30 days from the date of the proposal. No penalty will be imposed until TAG or his/her designee issues an agency decision approving a penalty. An employee may be suspended, terminated, or demoted before the expiration of the 30-day period if the employee waives his or her right to respond under this policy *or* the entire process, including all permitted employee replies, are completed before the 30th day identified in the Proposed Action Memorandum.

3. **Factors Considered**. The Proposing Official will complete a DOTM Disciplinary Factors Analysis Worksheet and explain the rationale for all aggravating and mitigating factors in consultation with the DOTM Legal Office and DOTM HR. See Appendix E.

4. **The Right to Review Material and Interview Witnesses**. The employee is entitled to review, copy, or receive materials relevant to the proposed action; this includes having witnesses identified and the right to interview witnesses with their consent. These materials may be provided as copies. If these materials are not available at the original time of review, the time for the employee's response does not start until the materials are made available to the employee. Documents in the public domain may be used if the employee has access to the material.

5. **The Right to Respond**. The employee must be informed of his or her right to respond to the proposed disciplinary action memorandum. The employee's response should be submitted directly to the Issuing Official. The employee's response in this stage must be in writing so that it can be reviewed by the Issuing Official and the Deciding and/or Reviewing Official. The employee also must be informed of the timeframe for making the response. Timeframes will be specified in calendar days, and a minimum of seven days will be afforded for the employee to respond. Employers must provide a reasonable amount of duty time for the employee to prepare a response. Voluntary statements or documents may be submitted as part of any response. More than one response by the employee may be submitted during the response stage, such as when new information comes to light during the employee's initial response. A response is not required, and no adverse inference may be drawn from the fact that the employee did not submit a response.

6. **Extensions**. The employee may request an extension of time to respond, and the employee must be informed of the process for requesting extensions to submit a response. The employee should articulate the reason for an extension in writing and in sufficient detail for the individual receiving the request to make an informed decision.

The individual receiving the request, normally the proposing official, may ask for clarification of the extension request when appropriate. Any extension of more than 20 **total** days requires Chief of Staff approval.

7. **Grievance Information**. The letter must tell the employee whether the disciplinary action is grievable if sustained and inform the employee about rights under the grievance process including all relevant timelines.

8. **DOTM HR Technical Assistance**. The employee must be provided with the name and contact information of a member of DOTM HR for procedural assistance. DOTM HR cannot provide representation for the employee concerning the merits of the charge but may provide procedural advice.

Once the Proposed Disciplinary Action Memorandum is completed and has received procedural clearance from DOTM HR and Legal, the Proposing Official should give a copy of the Proposed Disciplinary Action Memorandum and all other relevant supporting documents, including the completed Disciplinary Analysis Factors Worksheet, to the employee to sign for acknowledgement purposes. The Proposing Official should then send the signed Proposed Disciplinary Action Memorandum, the completed Disciplinary Analysis Worksheet, and copies of all other relevant information considered to the Issuing Official. The employee will submit his or her response to the Proposed Disciplinary Action Memorandum directly to the Issuing Official.

C. Step Three: Original Agency Decision

After the employee's response is submitted or the employee's time to respond has expired, the Issuing Official shall issue the Original Agency Decision Memorandum. The Original Agency Decision Memorandum should, at a minimum, include:

1. **Cause.** The cause is the reason that the disciplinary action is being proposed as outlined in the Proposed Disciplinary Action Memorandum.

2. **Decision.** Whether the disciplinary action is being recommended, modified to a lesser degree, or rejected.

3. **Effective Date**. The date the disciplinary action becomes effective.

4. **Employee's Response.** The issuer of the Original Agency Decision must summarize the employee's response to the Proposed Disciplinary Action Memorandum and respond to each mitigating factor submitted by employee.

5. **Factors considered**. The issuer of the Original Agency Decision must document what facts he or she considered when making his or her determination, including information submitted by the employee in their response.

6. **Next Steps**. The employee must be informed of the next step in the process, i.e., whether the Original Agency Decision is being sent to the Reviewing Official or TAG designee for a Final Agency Decision.

7. **Right to Respond**: If the Original Agency Decision Memorandum is being sent directly to the

Deciding Official (either the TAG or his or her designee) the employee must be informed of his or her right to respond. The employee's response should be sent to the Issuing Official, who will send the response to the Deciding Official for review. If a Reviewing Official is being used, the employee has no right to respond prior to the issuance of the Letter of Recommendation but may respond before the Final Agency Decision is issued. See Final Agency Decision procedures below for more information.

8. **Grievance Information**. The letter must tell the employee whether the disciplinary action is grievable if sustained and inform the employee about rights under the grievance process including all relevant timelines.

9. **DOTM HR Technical Assistance.** The employee must be provided with the name and contact information of a member of DOTM HR for procedural assistance. DOTM HR cannot provide representation for the employee concerning the merits of the charge but may provide procedural advice.

Once the Original Agency Decision Memorandum is completed and has received procedural clearance from DOTM HR and Legal, the Issuing Official should give a copy of the Original Agency Decision Memorandum and all other relevant supporting documents, including the completed Disciplinary Analysis Factors Worksheet, to the employee to sign for acknowledgement purposes.

1. Reviewing Official Used

When the TAG elects to remain the Deciding Official, there will be no employee response to the Original Agency Decision. Instead, the employee will be allowed to submit a second response to TAG before he or she issues the Final Agency Decision. When a Reviewing Official is used, the Issuing Official should send the signed Original Agency Decision Memorandum, the completed Disciplinary Analysis Worksheet, and copies of all other relevant information considered in making the Original Agency Decision directly to the Reviewing Official after the employee signs the Original Agency Decision acknowledgement.

2. No Reviewing Official Used

When the TAG has delegated the Final Agency Decision to the DAG or Chief of Staff, the employee may submit a response before the DAG or Chief of Staff issues the Final Agency Decision. After the employee submits his or her response or after the employee's time to respond has passed, the Issuing Official should send the signed Original Agency Decision Memorandum, the completed Disciplinary Analysis Worksheet, copies of all other relevant information considered in making the Original Agency Decision, and the employee's response to the Original Agency Decision to the Deciding Official for review before the Final Agency Decision.

D. <u>Step Four: Final Agency Decision</u>

The Final Agency Decision is the final internal step in the disciplinary process and involves an independent review of the merits of the case by TAG or his or her designee. The Final Agency

Decision can be made by TAG, or if TAG elects, he or she may delegate decision-making authority to the DAG or the DOTM Chief of Staff to make the agency decision.

If TAG is the final decision maker, there is an intermediate step to help develop TAG's knowledge and understanding of the situation using a Reviewing Official. The Reviewing Official will examine all of the relevant information and then prepare a Letter of Recommendation to TAG regarding the proposed disciplinary action. The use of a Reviewing Official **is not** required when TAG delegates final decision-making authority to the DAG or the Chief of Staff, but the DAG or Chief of Staff may elect to appoint a Reviewing Official if he or she believes it would be beneficial.

The agency must remain aware that the employee is entitled to any information considered in deciding a disciplinary action. If any information, other than the employe's response, is presented after the issuance of a proposed action, and TAG or other Deciding Official considers that information, the employee must be made aware of that new information and provided an additional opportunity to respond. In making the Agency Decision, TAG, or his or her designee, may sustain, reduce, or dismiss the penalty. The final decision maker may take an action using a standard other than preponderance of the evidence, where appropriate.

1. **TAG Procedures**

Intermediate Reviewing Official and Letter or Recommendation to TAG

If the TAG is the Deciding Official in a formal disciplinary action, the Original Agency Decision Memorandum will be sent to the Reviewing Official for review. The purpose of the Reviewing Official is to review all relevant information objectively and prepare a formal letter of recommendation proposing the agency's action for TAG review and consideration, synthesizing key facts and information for the recommendation.

The optional Reviewing Official process is used when TAG is the Deciding Official for formal disciplinary actions. When using this option, the Reviewing Official named in the proposed action letter must make a recommendation to TAG for the agency decision. The recommendation can be equal to or lesser than the penalty proposed, it cannot be greater. The letter of recommendation will be prepared with assistance from the DOTM Legal Office and DOTM HR. See Appendix H for a sample Letter of Recommendation. It is critical to remember that the employee has the right to be informed of and respond to any information used to develop the disciplinary action. Therefore, take care to ensure that the Reviewing Official considers only that information in the proposal and response or, if additional items are considered, notify the employee of the additional information, and provide them an additional time to respond. The disciplinary action letter of recommendation must contain the following:

1. **Recommendation.** The recommendation in specific terms. The Reviewing Official may recommend to TAG to uphold the proposed action, select a less-severe penalty, or cancel the action. If the Reviewing Official recommends that the proposed penalty in the proposed action letter be imposed, he or she must clearly state the basis for why such disciplinary action is appropriate. If the Reviewing Official recommends a

modification of the penalty contained in the proposed action letter, the Reviewing Official must explain his or her reasons for the modification.

2. **Justification.** The specific reasons for the recommendation. This should include only the information provided in the notice of proposed action. If additional information (other than mitigating factors provided in the employee's response) is considered, the employee must be provided notice of that and allowed additional time to respond to that information. It should include a reference to the proposed notice, and which charges were sustained. It should include the reasons for the recommendation in enough detail to document the basis for the action. It may include the employee's past disciplinary record but only if it was relied on in proposing the action and included in the notice. Further, it will include a reply to any factors provided in the employee's response and how those factors affected the recommendation. (If the employee's response caused a consideration of a factor to be further aggravating, the employee must be informed of such and allowed time to respond to that information.). No information outside of that provided in the proposed action letter or the employee's response can be considered by the Reviewing Official unless an additional notice to employee and an additional response period is granted to address that information.

3. **Effective Date.** The proposed effective date of a Level Two disciplinary action. For suspensions, include the first and last day of the suspension and the date and time the employee is to return to duty. The effective date may not be before the date of the agency decision letter. If the recommended action is termination, the termination cannot be effective on a date sooner than thirty (30) days after the date of the proposed action letter. An employee may be suspended, terminated, or demoted before the expiration of the 30-day period if the employee waives his or her right to respond under this policy *or* the entire process, including all permitted employee replies, are completed before the 30th day identified in the Proposed Action Memorandum.

4. **Right to Respond**. When TAG is the Deciding Official, the employee may respond to the Reviewing Official's Recommendation Letter before the Final Agency Decision is made. The Reviewing Official must inform the employee of the right to respond and the deadline for the response, no longer than 7 days. The employee **cannot** introduce new information in his or her appeal to TAG unless it is determined that the issuing official of the Original Agency Decision or the Reviewing Official considered information not previously shared with the employee with an opportunity for response. The employee's appeal may, using the evidence previously provided to the employee and Reviewing Official, explain why the employee believes the proposed discipline is unwarranted.

5. **Identification.** The signature block and signature of the Reviewing Official.

6. **Grievance Information**. The letter must tell the employee whether the disciplinary action is grievable if sustained and inform the employee about rights under the grievance process including all relevant timelines.

7. **Provide DOTM HR Assistance Information**. Provide contact information for a member of DOTM HR who can provide technical and procedural assistance.

Once the Letter of Recommendation is completed and has received procedural clearance from DOTM HR and Legal, the Reviewing Official should give a copy of the Letter of Recommendation and all other relevant supporting documents, including the completed Disciplinary Analysis Factors Worksheet, to the employee to sign for acknowledgement purposes. The employee will submit any response directly to the Reviewing Official. After the employee submits his or her response or after the employee's time to respond has passed, the Reviewing Official should send the signed Letter of Recommendation, the completed Disciplinary Analysis Worksheet, copies of all other relevant information considered in making the Letter of Recommendation, and the employee's response to the Letter of Recommendation to the Deciding Official for review before the Final Agency Decision.

2. DAG or Chief of Staff Procedures

If TAG chooses to delegate the final decision-making authority to the DAG or the DOTM Chief of Staff, the delegation memo should clearly state that TAG is not the deciding authority and there is no longer any need for a Reviewing Official. The DAG or Chief of Staff may still elect to use a Reviewing Official, subject to the same requirements listed above, if he or she believes a Reviewing Official would be beneficial to facilitating the final agency decision.

3. Issuance of Final Decision

The Deciding Official (TAG or designee) will issue the Final Agency Decision. The Final Agency Decision must be based on the following criteria:

1. Did the employee do what he or she is charged with?

2. Will some discipline, based on the proven misconduct or poor performance, promote the efficiency of the Agency?

3. Is the penalty reasonable?

A. Final Agency Decision Letter

The Final Agency Decision will be set forth in an Agency Decision Letter, explaining the rationale for the decision. The Agency Decision letter contains the following:

1. **Decision**. The decision in specific terms.

2. **Rationale.** The specific reasons for the decision. This will include only the reasons specified in the notice of proposed action (or for which the employee was subsequently provided additional notice and an opportunity to respond) and the evidence provided to employee. This will include, at a minimum, a reference to the proposed notice, the recommendation if applicable, and the reason(s) the penalty is

sustained, including witness statements, the Disciplinary Analysis Factors Worksheet, employee statements, and other relevant evidence provided to the employee during the process. Further, it will include the reasons for the decision in enough detail to document the basis for the action. It may include the employee's past disciplinary record, but only if it was relied on in proposing the action and included in the notice. If the Deciding Official considers any additional factors as aggravating beyond those identified in the proposed action or Reviewing Official's recommendation, that information must be provided to the employee with an additional time to respond prior to issuing the decision.

3. **Effective Date**. The effective date of a disciplinary action. For suspensions, include the first and last day of the suspension and the date and time the employee is to return to duty.

4. **Grievance rights.** Information about an employee's right to a grievance procedure, if applicable. The information must include information for filing a grievance and the time limits for appealing.

5. **Identification.** Deciding Official's signature block and signature.

6. **Decision date**. The date the decision is issued before delivering it to the employee.

VIII. UNAVAILABLE EMPLOYEES

In the event an employee is physically unavailable to receive any document identified in this policy, a copy of the document will be mailed to the employee at the address on file with DOTM HR via certified mail. Any timeframe identified in this policy will begin to run on the day the letter is mailed to the employee, but three days must be added to any responsive deadline to account for mailing.

IX. NEW HIRE PROBATIONARY EMPLOYEES

Employees in their new hire probationary period may be dismissed from employment with DOTM without completing all steps of the process above. If a supervisor wishes to terminate a probationary employee, the supervisor must still request a roundtable to ensure proper justification for dismissal exists. If the Roundtable recommends termination, the supervisor shall issue an Original Agency Decision Memorandum notifying the employee of termination, which shall be treated as the Final Agency Decision. No additional documentation from TAG, DAG, or Chief of Staff is required.

X. RESIGNATION DURING INVESTIGATION

If an employee resigns at any time after an investigation begins but before discipline is administered, the investigation shall continue, and a report will be prepared at the conclusion to determine if the employee would have been discharged, and whether the employee jeopardized the health or safety of any person or the integrity or public image of DOTM.

Employees who resign during an investigation are ineligible for re-hire within the DOTM without approval from the Chief of Staff.

XI. REMOVAL OF DUTY ASSIGNMENT

Upon having reasonable cause to suspect that an employee may jeopardize the health or safety of any person, or the integrity of DOTM, a person in the employee's supervisory chain may immediately relieve the employee from regularly assigned duty. The supervisor will immediately coordinate with the DOTM Legal Office and DOTM HR after relieving an employee from their assigned duties.

The employee shall remain off regularly assigned duty until the administrative resolution of discipline, a decision is made not to discipline the employee, or a decision is made to discipline the employee at the written counseling or written warning level.

Removal from duty pending disciplinary action shall be with full pay and benefits.

XII. PROMOTION AND MERIT RAISE ELIGIBILITY

Employees placed on probation, who receive a suspension or demotion, or who otherwise receive a disciplinary performance improvement plan under this policy are ineligible for promotion or merit raises for 12-months.

APPENDIX A
Supplement to the DOTM Code of Conduct

This section supplements the DOTM's Code of Conduct (Policy 2) and provides guidance on the minimum acceptable behavior and expectations of all DOTM employees.

Employees are expected to comply with all workplace policies, rules, job-related standards, standard practices and requirements, state and federal laws and regulations, administrative rules and guidance, and supervisor guidance, orders, or instruction.

Employees may receive corrective action or discipline action for any offense which, in the judgment of the agency, undermines the effectiveness of the agency's mission. The acts described below are examples of unacceptable employee misconduct that would warrant corrective action or disciplinary action even as a first offense. This list is not intended to be exhaustive, but rather instructive as to what constitutes unacceptable employee workplace conduct. Employees who engage in any type of conduct which may be injurious to the DOTM, or which interferes with the efficient operations, damages the reputation of DOTM, or is contrary to the best interests of DOTM and its employees shall also be subject to corrective action or disciplinary action. The characterization of an infraction as "minor" or "intermediate" is not determinative, and the level of infraction is subject to change depending on the severity of the facts surrounding the specific incident at issue or number of times the infraction has occurred.

Minor infractions

- Unsatisfactory attendance.
- Excessive tardiness.
- Abuse of state time (e.g., unauthorized time away from the work area, use of state time for personal business, or leaving the work are during work hours without permission).
- Using tobacco or electronic cigarettes or personal vaporizers that serve as a substitute for tobacco use in any DOTM motor vehicle or building owned or by DOTM or within 25 feet of the entrance to any such building except in designated smoking areas.
- Unsatisfactory job performance (failure to perform assignments or otherwise comply with established policy).
- Failing to observe traffic laws or failing to report traffic violations received while on duty or while operating a DOTM vehicle.

Intermediate infractions

- Loss of or damage to DOTM property, records, or the property of other persons, either intentionally or by neglect.
- Absence of two (2) consecutive workdays without prior authorization or satisfactory reason (not applicable to extra help or employees in new hire probationary status).
- Sleeping during work hours (not applicable to firefighters)
- No-call, no-shows.
- Failure or refusal to work scheduled hours as required, to include overtime.
- Failure to report job-related personal injury, accident, or property damage to the employee's supervisor, regardless of whether the supervisor knows of the occurrence and regardless of

the reason for the occurrence.

- Failing or refusing to cooperate in a DOTM investigation. An employee may refuse to answer a question on the basis that the answer would expose the employee to criminal violation; however, the investigator, supervisor, or other decision-maker may consider and draw inferences from the employee's failure or refusal to answer.
- Insubordination, defiance of authority, intentional refusal to obey an employer's lawful and reasonable order; Disrespectful behavior that would undermine a supervisor's level of respect and ability to manage. (e.g., intimidation, harassment, confrontational actions, or other disruptive behaviors).
- Selling or attempting to sell any goods or services during working hours or while occupying any property under the jurisdiction of The Adjutant General pursuant to A.C.A. §12-63-211.

Major infractions

- Possession of any weapon or explosive on DOTM or customer property without authorization.
- Abuse of official authority.
- Any acts or threats of physical violence.
- Possession, use, sale, distribution of, or impairment by alcohol or any other substance during working hours, other than properly prescribed drugs or over-the-counter drugs.
- Illegal gambling during working hours or while occupying any property under the jurisdiction of The Adjutant General pursuant to A.C.A. §12-63-211.
- Any criminal conviction for illegal conduct occurring on or off the job that is of such a nature that to continue the employee in their position could constitute negligence regarding the agency's duties to other employees, clients, visitors and/or students.
- Threatening or coercing persons associated with any state agency or participating in any type of concerted interference with state operations.
- Falsification of any agency records including, but not limited to vouchers, reports, insurance claims, time or leave records, client records, or any other state documents.
- Accessing or use of DOTM data, information, or property without authority.
- Violation of DOTM Equal Employment Opportunity Policy.
- Possession, use, transfer, theft, unauthorized removal, or sale of any DOTM property without authorization (including, but not limited to records, real property, or property of other persons).
- Misuse of government internet or government issued electronic devices (e.g., accessing pornography, electronic stalking, etc.).

APPENDIX B
Sworn Statement

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY:	Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).
PRINCIPAL PURPOSE:	To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.
ROUTINE USES:	Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.
DISCLOSURE:	Disclosure of your SSN and other information is voluntary.

1. LOCATION	DATE *(YYYYMMDD)*	TIME	14. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME	16. SSN		GRADE/STATUS
8. ORGANIZATION OR ADDRESS			

9. , WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

10. EXHIBIT	111. INITIALS OF PERSON MAKING STATEMENT

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF TAKEN AT DATED

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE IND/CATED.

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USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

[±]

STATEMENT OF TAKEN AT DATED

9. STATEMENT *(Continued)*

INITIALS OF PERSON MAKING STATEMENT

Page 2 of 3

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APO AEM v1.04ES

STATEMENT OF _____ TAKEN AT _____ DATED _____

AFFIDAVIT

I, _____ , HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3 . I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

(Signature of Person Making Statement)

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this _____ day of _____ , _____ at _____ .

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

DA FORM 2823, NOV 2006

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APPENDIX C
Verbal Warning Summary

[DATE]

MEMORANDUM FOR [INSERT EMPLOYEE NAME]

FROM: [INSERT SUPERVISOR NAME]

SUBJECT: Corrective Action—Summary of Verbal Warning

1. Employee Name, this is a written counseling (non-disciplinary action) to address [summarize violation.] Specifically, on 24 February 2022, you failed to complete your assigned tasks in a timely manner.

2. When asked about this violation, you stated [summarize employee response.]

3. [Summarize why conduct is unacceptable or negatively impacts the Agency's mission, considering employee's statement or explanation]

4. This verbal warning will remain in your employee file for one year. On [insert date], you may request that it be removed from your employee file.

5. Should you disagree with out finding, you have (7) days to reply; your reply will become a part of this memo.

SIGNATURE BLOCK of Supervisor

I _____ acknowledge receipt of this Memorandum regarding corrective action, dated _____ February 20__. My signature below is not an indication that I agree with the content of the letter, only my acknowledgement that I received a copy of this corrective action.

_____ _____
Employee Signature Date

APPENDIX D
Written Warning Memorandum

[DATE]

MEMORANDUM FOR: Name of Employee

FROM: Supervisor Name inserted here

SUBJECT: Formal Disciplinary Action—Notice of Level 1 Action—Written Warning

1. This is a written letter of reprimand constituting a Level 1 Discipline action concerning your recent conduct in the workplace. I have reviewed and considered all relevant factors associated with this event, including your statement, if provided, and as a result, I consider this written warning warranted.

2. Specifically, you are charged with the following professional violations: **Failure to Observe Written Regulations, Rules; Violation where safety to persons or property is not involved**

(1) **Specification 1:** On Date, at approximately 1200, you were observed striking MSgt Snuffy Smith with your hand in his genital region with enough force to cause him significant pain and discomfort.

(2) **Specification 2:** On 06 March 2019, at approximately 1200, you violated TAG Policy 2013-12, Workplace Violence Policy when you struck MSgt Smith in the groin.

3. When asked about the above violation(s), you stated: [summarize employee response]

4. After review, I find the following **background and substantiating facts** or, if and investigation was conducted, summarize the findings of the investigation:

a. On 06 March 2019, at approximately 1200 hours, you and MSgt Smith were at the designated smoking area on the west side of the maintenance hangar near the control tower at Little Rock Air Force Base, Jacksonville, AR 72099.

b. During the conversation between you and MSgt Smith, comments were made about the previous isochronal inspection on aircraft 629.

c. After the comments you responded by striking MSgt Smith in his genital area which caused him significant pain and discomfort.

d. Then you had a brief discussion with TSgt Employee 1 before you returned to the maintenance hangar.

e. You did not check to see if MSgt Smith was “OK” and you did not apologize to him for your actions.

5. After review, I find the following **mitigating or aggravating facts**: [list, if applicable]

6. **Summary:** Based on all of the above, I determine, by a preponderance of the evidence, that you committed [insert professional violation] and therefore, disciplinary action is appropriate. [Explain why conduct is unacceptable and/or negatively impacts the Agency's mission of effectiveness. Explain how this Level 1 Disciplinary Action will aim to rectify employee's behavior or misconduct.]

7. I want to caution you that further acts of misconduct will not be tolerated and will result in more severe disciplinary measures being taken that may include a suspension to removal.

8. [If the written warning will be accompanied by a performance improvement plan, probation, or other qualifier, the qualifier must be noted and a rationale provided.]

9. This letter will be filed in our employee file for [insert time specification, one to three years]. On [date], you may request this warning be removed from your file.

10. The Human Resources Department has been consulted on the issuance of this written warning. You may contact Human Resources with any procedural questions, however Human Resources is not your representative and cannot advise you concerning the merits of this warning.

Supervisor Name,
Job Position Title

I_____ acknowledge receipt of this Memorandum regarding Level 1 disciplinary action, dated..... My signature below is not an indication that I agree with the content of the letter, only my acknowledgement that I received a copy of this corrective action.

_____ _____
Employee Signature Date

APPENDIX E
Disciplinary Analysis Factors Worksheet

ARKANSAS DEPARTMENT OF MILITARY
DISCIPLINARY FACTORS ANALYSIS WORKSHEET
Determining Appropriateness of Penalty Checklist

Employee's Name: _____

Action Proposed and Date of Proposal: Select _____

Note: This Disciplinary Factors Analysis Worksheet must be completed and presented to the employee at the initial presentation of the Proposed Action Letter.

NOTICE

As the Proposing Official you are responsible for considering all relevant factors (listed below) in determining whether the proposed disciplinary action is appropriate. Your analysis of the factors will be considered part of the case file, and you could be asked to testify regarding your analysis, should the employee appeal the decision. Be sure to include all information that you relied upon in making your determination regarding the appropriateness of the penalty in this analysis of these factors.

INSTRUCTIONS

Each of the factors should be considered in light of the facts and circumstances presented in management's proposal letter (and supporting documents) and in the employee's reply.

For each factor, you should annotate whether the factor has been considered aggravating, mitigating, or having no impact (was neutral) in your formulating your final decision.

Write a brief explanation for each factor you determine to be aggravating or mitigating- particularly with respect to those factors you consider "aggravating."

Aggravating: to make more severe, intense, serious, worse, or grave.

Neutral: Neither a contributing nor detracting factor.

Mitigating: to make less severe, intense.

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1. Nature and seriousness of the offense. Nature of the offense (briefly summarize what happened). Seriousness of the offense (explain how serious and why so serious):

Nature

Seriousness

☐ Aggravating ☐ Neutral ☐ Mitigating

Explanation

2. Employee's job level and type of employment.

a. Employee's Title, Series, and Grade IT 12

b. Is the employee a supervisor? ☐ Yes ☐ No

c. Is the employee in a position of special trust? ☐ Yes ☐ No

d. Is the misconduct related to public contact required by the job? ☐ Yes ☐ No
[For example, rude to customers.]

e. Is the misconduct directly related to the job? ☐ Yes ☐ No
[For example, supply clerk who steals supplies in his or her care.]

☐ Aggravating ☐ Neutral ☐ Mitigating

Explanation

3. Employee's past disciplinary record:

List all previous disciplinary actions considered

Action effected | | Date | |

☐ Aggravating ☐ Neutral ☐ Mitigating

Explanation

4. Employee's past work record.

a. How long has the employee been with the current department? |

b. How long has the employee been with the state government? |

c. Ratings of last three performance appraisals.

Last Rating of Record	N/A
Year Prior Rating of Record	N/A
Two Years Prior Rating of Record	N/A

d. Is current performance acceptable? ☐ Yes ☐ No

[If no, attach counseling to this form]

☐ Aggravating ☐ Neutral ☐ Mitigating

Explanation

5. Effect of the offense on the employee's ability to perform his or her job and effect on supervisor's confidence in the employee.

Did the offense affect:

a. The employee's ability to do the job? [For example, an employee cannot perform job duties if AWOL.] ☐ Yes ☐ No

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b. Your confidence in the employee's ability to do job? [For example, the employee is responsible for approving leave but lied on a timecard.] ☐ Yes ☐ No

c. Your confidence in the employee's ability to uphold the organization's mission? ☐ Yes ☐ No

☐ Aggravating ☐ Neutral ☐ Mitigating

Explanation

6. Consistency of penalty with other employees' penalties for similar offenses.

☐ Aggravating ☐ Neutral ☐ Mitigating

Explanation:

7. Consistency with agency's Table of Penalties. [The table is only a guide; and reasons for departing from it must be rational, well-reasoned, and explained because disparate treatment often forms the basis for claims of discrimination.

☐ Aggravating ☐ Neutral ☐ Mitigating

Explanation:

8. Notoriety of the offense or its impact on the agency's reputation. [Adverse publicity within or the possibility of adverse publicity outside the agency that could have a negative impact on the reputation of the agency or the agency's mission is a factor that may be considered to enhance a penalty.]

☐ Aggravating ☐ Neutral ☐ Mitigating

Explanation:

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9. Clarity of notice to employee of unacceptable conduct.

☐ Aggravating ☐ Neutral ☐ Mitigating

Explanation:

10. Potential for employee's rehabilitation.

☐ Aggravating ☐ Neutral ☐ Mitigating

Explanation:

11. Mitigating circumstances.

The following factors do not excuse the misconduct; however, they may encourage you to reduce (mitigate) the penalty if the employee:

a. Was under unusual job stress? ☐ Yes ☐ No
[For example, stress contributed to the employee's insubordination.]

b. Was experiencing personal problems? ☐ Yes ☐ No

c. Was provoked? ☐ Yes ☐ No
[For example, a coworker threatened the employee before the employee punched the coworker.]

d. Was apologetic? ☐ Yes ☐ No

e. Brought the misconduct to management's attention? ☐ Yes ☐ No
[For example, the employee confessed the misuse of a Government Travel

☐ Aggravating ☐ Neutral ☐ Mitigating

Explanation:

Employee Signature Date

APPENDIX F
Notification of Proposed Adverse Action Memorandum Sample

Department of Military
Governor Sara Huckabee Sanders
The Adjutant General, Brigadier General Olen Chad Bridges

Date

INSERT NAME

Subject Notification of Proposed Adverse Action

1. This is notification that I propose to (suspend for (number] days and/or change lo lower grade or remove) you from your position as [Title and grade of position] for the following (Charge(s)].

a. Charge One (example Failure to follow established leave procedures))

1) (Specification 1. Your established work schedule is 0800-1630 which has been in effect since the date of your appointment on [Date)

2) (Specification 2. On (Dale) you arrived to work 15 minutes after your scheduled duty shift without an appropriate explanation and you were counseled that repeated tardiness v.'Old result in disciplinary or adverse action.)

3) (Specification 3. On [Date] you received a letter of reprimand for being absent without leave (AWOL) for 8 hours on (Date).

4) (Specification4. On [Date) you arrived at work 30 minutes past your scheduled work shift start. When you were confronted for this behavior your behavior became inappropriate.

b. (Charge Two (example Discourtesy)]

1) (Specification 1. In regards to Charge 1, Specification 4, when I asked you to report to my office regarding your repeated tardiness you told me that I could "Go to Hell".
2) (Specification 2. After your remark I asked that you calm down and if you could not calm down that you should request leave and leave the workplace but that your prior unexcused absence would still be coded as AWOL and you could face a disciplinary action for that charge. You told me that I could take my disciplinary action 'Stick it'. NOTE: The use of vulgar language here is for the purpose of highlighting the fact that all factual information is necessary. Sometimes it becomes necessary to

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include language that an employee has used, however offensive, to ensure the facts are known.

2. The witnesses known to me are [names and positions]. You are entitled to interview them and any other employee(s) or military members who may have relevant information if they are willing to be interviewed. You may arrange interviews on your own or with my assistance. I have enclosed all documents that I have relied upon for your use. OR: You may review and copy the documents I have relied upon by making arrangements with [name] at [location]. [NOTE: the period for the employee to reply does not start until the supporting documents are made available to the employee.]

3. In order to determine an appropriate penalty, I considered what are outlined in the DOTM Factors Analysist Worksheet. The analysis of those factors that I conducted is included in [Name attachment] along with an explanation of any that I considered to be aggravating factors.

4. You have the right to reply to this proposed action letter orally, in writing, or by both methods to [name, address, and contact information], who will receive your reply(s) and issue the original decision letter after the period for reply has ended. That reply must be received by [the named individual] no later than [no less than seven days from the date of this letter]. You will be granted [amount of time, hours, or days] of excused absence to prepare your reply. Arrange for the use of this time with your immediate supervisor.

5. If this proposal is sustained, you may have appeal rights through INSERT POLICY NAME. If you have questions regarding these options, you may contact the [name, address, and contact information].

6. The DOTM Human Resource Department has been consulted on the issuance of this letter and [Name and contact information] of the DOTM HR Department is available to answer your procedural questions. This DOTM HR Department member is not your representative.

7. After the period for your reply has ended, the [Reviewing Official will make a recommendation to TAG for their final decision] OR [Deciding Official will issue the original decision letter]. If you require more time to reply, you must request an extension from the Reviewing/Deciding Official in writing, provide the reasons for the extension, and provide the period of time for your requested extension. This request must be received by the Deciding Official before the end of the reply period. The official may grant all, a portion, or none of this extension request.

8. [Optional] [Provide employee assistance information.]

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[Signature block]

I [Name], have received this letter of proposed action this [number] day of [Month, Year]. My signing below is not agreement with the content, only acknowledgement that I have received a copy of the letter.

_____

[employee's name]

APPENDIX G
Original Agency Decision Memorandum

October 14th, 2023

Memorandum for Mr. John Doe, Budget Analyst, Department of the Military, Camp Joseph T. Robinson

Subject: Original Decision Letter for Adverse Action for John Doe

1. **Background:** On September 15, 2023, John Doe's direct supervisor, Stephen Schmo proposed that John Doe be suspended without pay for one week for failing to follow DOTM Policy 1, Workplace Professionalism Policy. John Doe was given ten days to respond, as permitted in Department of Military Policy 21, Employee Discipline Procedure, Section VII(B)(5), and informed on how to request an extension to this timeframe. No extension was requested, and Mr. Doe timely submitted a response to the proposed charges against him.

2. **Original Agency Decision:** Upon review of the information already provided to the employee and having considered fully Mr. Doe's response, I find that the charges are sustained by a preponderance of the evidence. I recommend that John Doe be suspended, without pay, for one day.

3. **Effective Date:** This action will become effective November 14, 2023, or after the TAG issues the Final Agency Decision, whichever is later.

4. **Employee Response:** John Doe was issued a copy of Mr. Schmo's Proposed Action Letter recommending suspension on September 15, 2023. The letter provided John Doe ten (10) days to reply to the proposed action. John Doe was entitled to interview any witnesses or employees related to the proposed action and include such information in his reply. John Doe timely submitted a reply, which I will address below.

   Charge 1 Specification 1: Fraudulent timekeeping
   Summary of Mr. Doe's response: Mr. Doe admitted that he did not submit leave for the three days he missed work during the week of September 5, 2023. Mr. Doe stated that it was not intentional, but instead, he forgot to submit leave once back.
   Supervisor response: There are times employees must submit leave upon return. However, you were reminded twice via email to submit your leave upon your return, and you did not. Under these circumstances the failure to submit time must be considered an intentional act.

5. **Final decision**: I recommend a one-day suspension without leave for failure to follow established leave procedures.

6. **Factors Considered:** In recommending this action, I considered Mr. Doe's time sheet for the week of September 5, 2023, the emails sent to Mr. Doe requesting he submit leave on September 8 and September 9, 2023, the completed disciplinary analysis factors worksheet, the DOTM Table of Penalties, and Mr. Doe's response to the Notice of Proposed Adverse Action. See Enclosures 1-6. The undisputed evidence shows that John Doe failed to submit leave upon returning to work, in violation of DOTM Policy 1, Workplace Professionalism Policy and DOTM Policy 10, Timekeeping. DOTM's Disciplinary Policy (Policy 21) notes that a proper punishment for a first offense of these actions is anywhere from a written warning to a one-day suspension. A one-day suspension without pay is within these guidelines and I believe addresses the seriousness of the issues involved, given the two reminders issued to Mr. Doe before the pay period closed.

7. **Next Steps**: The TAG will be the Deciding Official for this Action. Because the TAG is the Deciding Official, a Reviewing Official will be used. I am submitting a copy of this Original Agency Decision, your response, and the completed Disciplinary Analysis Factors worksheet to DOTM Chief of Staff, who will conduct an independent review of this matter and issue a Letter of Recommendation to the TAG recommending upholding, modifying to a lesser degree, or rejecting the Original Agency Decision. You will receive a copy of the Letter or Recommendation and, should you disagree with the recommendation, you will be able to submit a response directly to the TAG within seven (7) working days. You may not raise new issues in the response to the TAG, but you may explain why you believe the Letter of Recommendation was wrong.

8. **DOTM Human Resources Assistance**: If you have questions about the procedures, you may contact the Human Resource Administrator at _____@arkansas.gov or (501) XXX-XXX, or you may visit in person at Camp JT Robinson Building 4201, North Little Rock, AR 72199. This person is only able to provide procedural guidance and is not your representative.

9. If the Final Agency Decision recommends suspension without pay, you may have appeal rights through DOTM Policy 14 – Uniform Grievance Policy. If you wish to grieve your suspension, you must submit a grievance to DOTM's Designated Grievance Officer. The DOTM Designated Grievance Officer's email address is _____@arkansas.gov and phone number is (501) XXX-XXXX. The grievance **must** be submitted using the Department of Transformation and Shared Services Office of Personnel Management Dispute Resolution Form and **must** be submitted within **five (5) business days of the effective date of suspension**.

Respectfully,

X _____

Supervisor Name
Title

I **John Doe** have received this Original Action Decision Memorandum for Agency Decisions this ____ day of October, 2023. My signing below is not agreement with the content, only acknowledgement that I have received a copy of the letter.

X _____

John Doe

APPENDIX H
Letter of Recommendation for Agency Decision Sample

January 8, 2023

[TAG NAME]
The Adjutant General
Camp Joseph T. Robinson
North Little Rock, AR 72199

Subject: Letter of Recommendation for Final Agency Decision regarding Mr. Joseph Doe

Background: On or about October 1, 2023, the Arkansas Department of the Military received complaints of alleged misuse of government internet and theft of DOTM property at the Ronald McDonald Department regarding Mr. Joseph Doe. The Deputy Adjutant General ordered a formal investigation into the validity and extent of the matters contained in the complaints. The investigation concluded in November 2023 and determined that Mr. Doe had used the government internet to advertise and sell DOTM property during work hours, including the sale of multiple DOTM-owned laptops and monitors (See Enclosure 1, page 1-5).

Based on the information contained in the report, Mr. Doe's supervisor, Ms. Jane Brown requested a roundtable to discuss disciplinary action pursuant to DOTM Employee Policy 21, the Employee Disciplinary Policy, Section VII(A). The roundtable convened on December 1, 2023, and recommended the termination of Joseph Doe.

On December 2, 2023, Ms. Brown issued a Proposed Disciplinary Action Memorandum to Joseph Doe pursuant to Policy 21, Section VII(B), proposing termination for violating DOTM Information Technology Agreement and DOTM Policy 3 Theft and Anti-Fraud Policy. (See Enclosure 2). Ms. Brown also completed a Disciplinary Factor Analysis Worksheet at this time. (See Enclosure 3).

Mr. Doe was given 10 days to respond as permitted in Policy 21, Section VII(B)(5), and informed on how to request an extension to this timeframe. Mr. Doe requested one 10-day extension, which was granted. Mr. Doe submitted his response on or about December 17, 2023. (See Enclosure 4). Ms. Susan White, the head of Mr. Doe's department, issued the Original Agency Decision on December 22, 2023, after reviewing and considering Mr. Doe's response and consulting with DOTM HR and Legal. (See Enclosure 5). The Original Agency Decision maintained the determination to terminate Mr. Doe. (See Enclosure 5, page 1).

Procedure: The TAG is the Deciding Official in this matter. Pursuant to DOTM Employee Disciplinary Procedure Policy 21, I have been named the Reviewing Official (See DOTM Policy 21, pages 3, 7, 10-11). My job is to independently review the relevant information and prepare a recommendation for the TAG regarding the Final Agency Decision.

Recommended Decision and Factors Considered: I have independently reviewed the original investigation report (See Enclosure 1), which Mr. Doe was provided the opportunity to review when drafting his response, the completed disciplinary analysis factors worksheet (See Enclosure 3), the Proposed Disciplinary Action Memorandum, including DOTM Information Technology Agreement and DOTM Policy 3 Theft and Anti-Fraud Policy (See Enclosure 2), Mr. Doe's typed response (See Enclosure 4), and the Original Agency Decision Memorandum (See Enclosure 5).

Based on my independent review of all relevant information in accordance with DOTM Policy 21, **I recommend proceeding with the termination of Mr. Doe**. I find the nature of the charges to be of a serious nature warranting a Level Two disciplinary action. I have considered Mr. Doe's written response, but do not find it necessitates or justifies a reduction in discipline for the reasons set forth below:

Charge 1: Theft of DOTM Property (See Enclosure 2, pages 1-2).

Specification 1: Making fraudulent offers of products, items, or services originating from any DOTM account.

Mr. Doe's response and my analysis: Mr. Doe concedes that he removed DOTM property, advertised and sold DOTM Dell laptops and DOTM Dell monitors while at work and while using DOTM equipment and internet

Mr. Doe stated his due to a personal matter he needed money quickly and thought he would be able to replace the missing items before anyone noticed. He regrets his actions.

While I appreciate Mr. Doe's remorse, there is no excuse for his actions. This charge warrants disciplinary action.

Summary: DOTM takes instances of misuse of government internet and theft of DOTM property seriously. These actions are harmful to DOTM's mission and directly impact the integrity of the organization, therefore Level Two discipline is appropriate. Finally, I find that termination is an appropriate and reasonable penalty under these circumstances, as contained in DOTM's Table of Penalties in Policy 21.

Directions to Employee: You may choose to provide an additional written response to the TAG to anything contained herein. You may not raise new issues or issues not addressed in your original response to the Original Agency Decision issued December 20, 2023.

You have until January 20, 2024, to provide that response. Any response you submit will be considered in the TAG's final decision, however a choice not to provide a response will in no way be held against you. You may consult DOTM HR for guidance on any procedural issues, but DOTM HR is not your representative and cannot provide personal advice on issues other than DOTM policies.

Effective Date: This action will become effective January 30, 2024, or upon final decision of TAG, whichever is later.

Grievance Information: If the TAG executes this recommendation, you may have appeal rights through DOTM Policy 14, the Uniform Grievance Policy. If you wish to grieve your suspension, you must submit a grievance to DOTM's Designated Grievance Officer. The DOTM's Designated Grievance Officer's email address is _____@arkansas.gov and phone number is (501) XXX-XXX. The grievance **must** be submitted using the Department of Transformation and Shared Services Office of Personnel Management Dispute Resolution Form and **must** be submitted within **five (5) business days of the effective date of termination**.

Respectfully,

Encls
1. AR 15-6 Investigation
2. Notice of Proposed Adverse Action
3. Disciplinary Factors Analysis
4. Rebuttal
5. Original Agency Decision

Thomas Black
Chief of Staff

I **Joseph Doe** have received this Letter of Recommendation from the Reviewing Official for Adverse Action this ____ day of January 2024. My signing below is not agreement with the content, only acknowledgement that I have received a copy of the letter.

X _____

Joseph Doe

ARKANSAS DEPARTMENT OF THE MILITARY
OFFICE OF THE ADJUTANT GENERAL
CAMP JOSEPH T. ROBINSON
NORTH LITTLE ROCK, ARKANSAS 72199-9600

SARAH HUCKABEE SANDERS
GOVERNOR

OLEN CHAD BRIDGES
BRIGADIER GENERAL
THE ADJUTANT GENERAL

APPENDIX I
Final Agency Decision Memorandum

February 13, 2023

[EMPLOYEE NAME]
[EMPLOYEE ADDRESS]

MEMORANDUM FOR [EMPLOYEE NAME]

SUBJECT: Final Agency Decision regarding [EMPLOYEE NAME]

Background: On or about October 1, 2023, the Arkansas Department of the Military (DOTM) received complaints alleging that Mr. John Doe misused and/or stole government property while working as an employee of DOTM. The Deputy Adjutant General ordered a formal investigation into the validity and extent of the matters contained in the complaints. The investigation concluded in November 2023 and determined that Mr. Doe had used the government internet to advertise and sell DOTM property during work hours, including the sale of multiple DOTM-owned laptops and monitors (See Enclosure 1, page 1-5).

Based on the report, a roundtable was convened pursuant to DOTM Policy 21, Employee Disciplinary Procedure. The roundtable convened on December 1, 2023, and recommended the termination of Joseph Doe.

On December 2, 2023, Ms. Brown issued a Proposed Disciplinary Action Memorandum to Joseph Doe pursuant to Policy 21, Section VII(B), proposing termination for violating DOTM Information Technology Agreement and DOTM Policy 3 Theft and Anti-Fraud Policy. (See Enclosure 2). Ms. Brown also completed a Disciplinary Factor Analysis Worksheet at this time. (See Enclosure 3).

Pursuant to Policy 21, Mr. Doe timely submitted a response to the Notice of Proposed Disciplinary Action. Ms. Susan White, the head of Mr. Doe's department reviewed all the information independently, including Mr. Doe's response, and concluded termination was appropriate. She issued the Original Agency Decision on December 22, 2023.

I elected to remain the Deciding Official in this matter. Pursuant to DOTM Policy 21, I

designated Chief of Staff Thomas Black as the Reviewing Official. Mr. Black independently reviewed the facts of this matter and recommended termination in a Letter of Recommendation dated January 8, 2023. Mr. Black found termination to be appropriate and reasonable penalties for the upheld charges as outlined in DOTM's Table of Penalties in Policy 21. (See Enclosure 6, page 5).

Mr. Black issued his Reviewing Official letter on January 8, 2023. (See Enclosure 6, page 1). Mr. Black's Letter of Recommendation informed Mr. Doe that he could provide an additional written response to me before I issued the Final Agency Decision in this matter. (See Enclosure 6, page 5). It informed Doe that any response had to be received by January 20, 2024. Mr. Doe did not respond to the Reviewing Official's letter. (See Enclosure 6, page 5).

Final Decision: I have independently reviewed the Letter of Recommendation for Final Agency Decision written by Mr. Black and the supporting evidence. I find that Mr. Doe more likely than not engaged in the misconduct he was charged with in Charge 1 and Charge 2.

Therefore, the Final Agency Decision in this matter is termination. I find that this penalty is justified under DOTM's Table of Penalties contained in Policy 21.

1. **Factors Considered:** In making my decision, I considered the following facts:

Charge 1: Theft of DOTM Property

Specification 1: Removing new Dell laptops and monitors from the workplace and selling for personal gain.

Mr. Doe admitted he sold government property, specifically three DOTM-owned computers, for personal profit. Mr. Doe claims he was facing financial hardship and needed money quickly, and that he planned to pay the money back.

Mr. Doe was a public servant who broke the trust of the public by stealing government-owned technology to sell for personal gain. These activities reflect poorly on the agency and inhibit the agency's efficiency and mission. Therefore, Level Two disciplinary action is warranted for this charge.

2. **Effective Date:** This action will become effective February 15, 2023.

Grievance Information for Employee: You may have appeal rights through DOTM Policy 14, the Uniform Grievance Policy related to your suspension without pay. If you wish to grieve your suspension, you must submit a grievance to DOTM's Designated

MEMORANDUM FOR John Doe

SUBJECT: Final Agency Decision regarding Mr. John Doe

Grievance Officer. The DOTM's Designated Grievance Officer's email address is _____@arkansas.gov and phone number is (501) XXX-XXX.
The grievance **must** be submitted using the Department of Transformation and Shared Services Office of Personnel Management Dispute Resolution Form and **must** be submitted within **five (5) business days of the effective date of the suspension.**

Respectfully,

[TAG NAME]
Major General
The Adjutant General

6 Encl
1. AR 15-6 Investigation
2. Notice of Proposed Adverse Action
3. Disciplinary Analysis Factors Worksheet
4. Rebuttal
5. Original Agency Decision
6. Reviewing Official Letter of Recommendation

APPENDIX J

Table of Penalties Guide. Table 1 is a guide and is not all-inclusive. The penalties are graduated in severity based on whether the alleged offense is the first, second, or third offense. While Table 1 references first, second, and third offenses, Table 1 **does not** guarantee any particular punishment for a workplace violation, as some violations will necessitate a more serious punishment on the first offense. Instead, Table 1 provides suggested penalties and should not be applied inflexibly so as to impair consideration of factors relevant to the individual case.

Conduct that was the subject of counseling or verbal warning is not an offense for purposes of this table. For example, if an employee was counseled for unexcused tardiness and verbally warned for a second instance of unexcused tardiness, and management then decides to take disciplinary action for a third instance of unexcused tardiness, this third instance is the first offense for purposes of this table. More serious offenses have a more serious suggested penalty or range of penalties for a first offense than less serious types of first offenses.

Supervisors/Managers and Deciding Officials are not required to counsel or issue a verbal warning before issuing a formal disciplinary action. The penalty for an offense should be tailored to the facts and circumstances of the individual case. If the facts and circumstances of the relevant case are not identified below, Supervisors/Managers and Deciding Officials should use their best judgment is selecting the closest offense. Supervisors/Managers and Deciding Officials must consult with DOTM Legal and DOTM HR before issuing any discipline.

Item	Nature of Offense	Subcategory	First Offense	Second Offense	Third Offense
1a	Attendance-related offenses[1]	Unexcused tardiness	Written Warning	Written Warning to 1-day suspension	2-day to 5-day suspension to removal
1b		Failure to follow established leave procedures	Written Warning to 1-day suspension	1-day to 5-day suspension	5-day suspension to removal
1c		No-call, No-show or other unsatisfactory attendance, including failure to work scheduled hours and overtime	Written Warning to 3-day suspension	Removal	

[1] These offenses include delay in reporting at the scheduled start time, returning from break periods, returning after leaving the workstation on official business, being absent without leave, and leaving the workstation without permission. The penalty depends on the length and frequency of tardiness or absence. These penalties generally do not apply to AWOL based on tardiness of one hour or less. If an employee is AWOL, it is appropriate that the time be recorded as AWOL and later changed to an approved leave category only when the approving authority determines that extenuating circumstances were such that the absence is improperly charged to AWOL.

2a	Alcohol and drug-related offenses	Reporting to work under the influence of alcohol or drugs, use of or illegal possession of alcohol or drugs at work site	Written warning to removal	14-day suspension to removal	Removal
2b		Use of tobacco, e-cigarettes, or vaporizers in a DOTM owned vehicle or building	Written Warning	Written warning to 3-day suspension	3-day suspension to removal
3a	Unsatisfactory job performance[2]	Failure to observe written rules or regulations where safety to persons or property is not involved	Written Warning to 1- day suspension	1-day to 14-day suspension	2-day suspension to removal
3b		Failure to observe written rules or regulations where safety to persons or property is involved	Written Warning to removal	14-day suspension to removal	Removal
3c		Failure to follow instructions	Written Warning to 3-day suspension	5-day suspension to removal	Removal
3d		Sleeping on duty where no danger to persons or property is involved	Written Warning to 14-day suspension	Written Warning to 14-day suspension	14-day suspension to removal
3e		Sleeping on duty where danger to persons or property is involved	Written Warning to removal	14-day suspension to removal	14-day suspension to removal
3f		Idleness, delay in carrying out instructions, failure to meet deadlines	Written Warning to 3-day suspension	Written Warning to 14-day suspension	14-day suspension to removal

[2] "Persons" as used above includes "self." The penalty depends on the seriousness of the injury or potential injury and the extent or potential extent of damages to property.

3g		Failing to report incidents, injury, or other key matters	Written Warning to 3-day suspension	Written Warning to 14-day suspension	14-day suspension to removal
4a	Unprofessional conduct[3]	Insubordination, rude or offensive behavior (non-discriminatory)	Written Warning to removal	3-day suspension to removal	14-day suspension to removal
5a	False statements[4]	Deliberate misrepresentation, exaggeration, falsification, concealment, or withholding of a material fact	Written Warning to removal	3-day suspension to removal	14-day suspension to removal
6a	Fighting; creating a disturbance[5]	Creating a disturbance resulting in an adverse effect on morale, pro-duction, or maintenance of proper discipline, hitting, other physical contact on another employee	Written Warning to 14-day suspension	14-day suspension to removal	Removal
6b		Threatening or attempting to inflict bodily harm	Written Warning to removal	14-day suspension to removal	Removal
6c		Threatening or coercing DOTM employees or individuals associated with any government agency or participating in any concerted effort with state operations	Written Warning to removal	14-day suspension to removal	Removal

[3] The charge of "Insubordination" carries the requirement to prove the willful intent to disobey an order that the supervisor or management official has the right to give in accordance with statute, regulation and agency policy. If the intent element is unclear, the charge of failure to follow instructions may be more appropriate.

[4] This offense includes perjury, making false sworn statements, and lying to the supervisor.

[5] Lawful self-defense or defense of another is not an offense. The penalty may be exceeded based on such factors as type of threat, provocation, extent of injuries, whether actions were defensive (but in excess of lawful self-defense or defense of another) or aggressive, or whether actions were directed at a supervisor.

7a	Theft	Possession of another individual or entity's property with the intent to permanently deprive the owner of the possession or use of property or without reasonable explanation	5-day suspension to removal	Removal	
8a	Misuse or abuse of Government property or personnel[6]	Negligent loss of, destruction of, or damage to Government property, including records charged with safeguarding	Written Warning to 10-day suspension	Written Warning to removal	14-day suspension to removal
8b		Deliberate loss, damage, or destruction of DOTM property or records	Written Warning to 14-day suspension	Written Warning to removal	14-day suspension to removal
8c		Using Government property or personnel for non-official purposes	Written Warning to removal	3-day suspension to removal	14-day suspension to removal
8d		Misuse of Government credentials or other abuse of authority	Written Warning to removal	5-day suspension to removal	14-day suspension to removal
8e		Deliberate or negligent travel card misuse, abuse, delinquency, or fraud	Written Warning to removal	5-day suspension to removal	10-day suspension to removal
8f		Solicitation of or accepting anything of monetary value from a person seeking contracts or other financial gain	10-day suspension to removal	Removal	
8g		Intentionally using Government communication systems[7] for other unauthorized purposes	Letter of reprimand to 14-day suspension	14-day suspension to removal	Removal

[6] The penalty for these offenses depends on such factors as the value of the property or the amounts of employee time involved and the nature of the position held by the offending employee, which may dictate a higher standard of conduct.

[7] Communications systems are the telephone, facsimile machine, pager, email, Internet, cellular phone, personal digital assistant, video camera, tape recorder, or other commercial information systems paid for by the Government.

9a	Gambling	Participating in an unauthorized gambling activity on Government premises or in a duty status	Written Warning	5-day to 14-day suspension	14-day suspension to Removal
10a	Sexual harassment[8]	Not involving a subordinate	Written Warning to removal	14-day suspension to removal	Removal
10b		Involving a subordinate	14-day suspension to removal	Removal	
11a	Discrimination because of race, color, religion, age, sex, national origin, political affiliation, handicap, or marital status[9]	Prohibited discriminatory practice in any aspect of employment, including failure to prevent or curtail discrimination of a subordinate when the supervisor knew or should have known of the discrimination	14-day suspension to removal	Removal	
12a	Reprisal	Intentional interference against exercising the right of, or reprisal against an employee for, exercising a right to grieve, appeal, or file a complaint through established procedures or providing information to EEOC or similar agency	14-day suspension to removal	Removal	

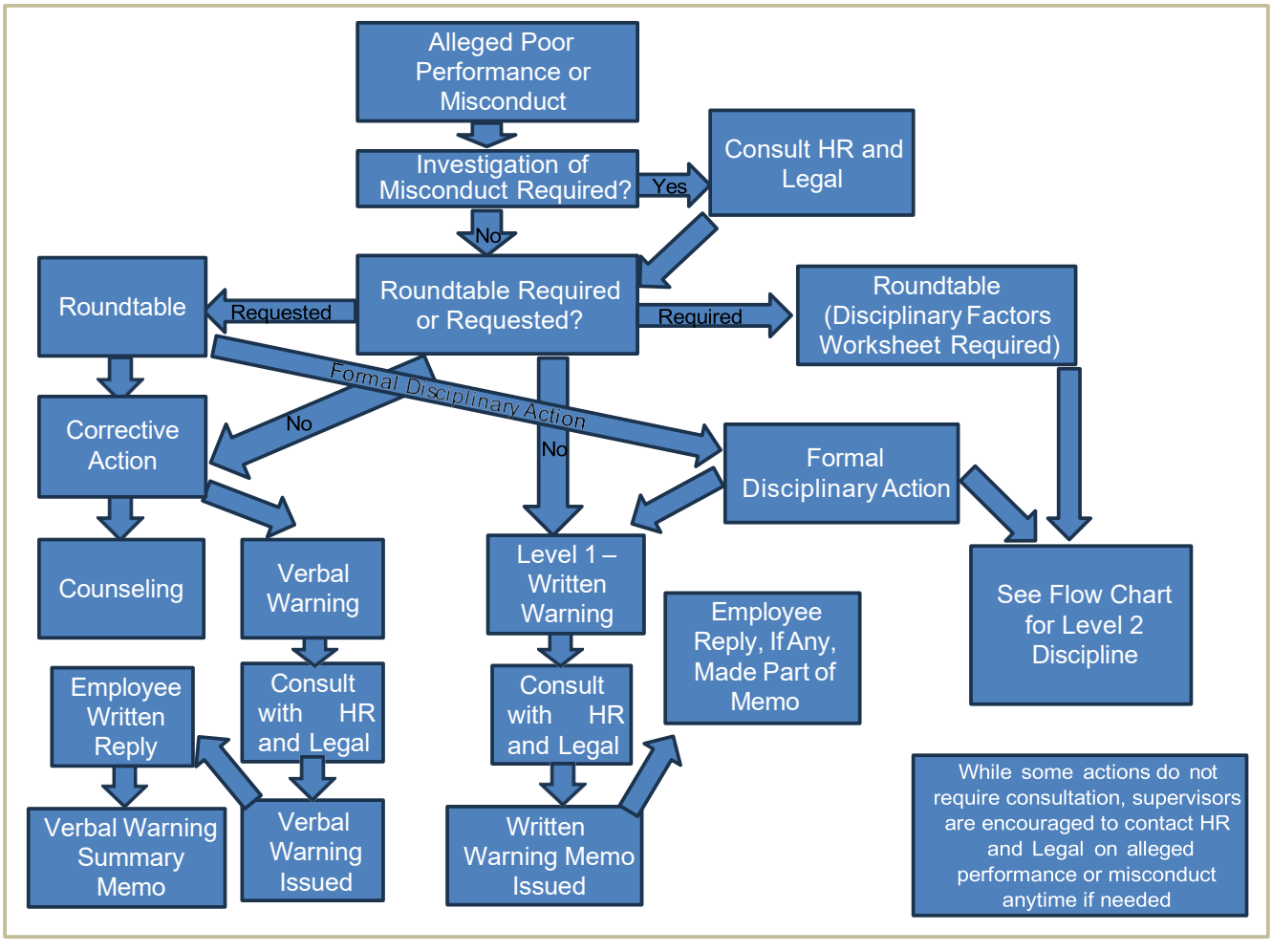
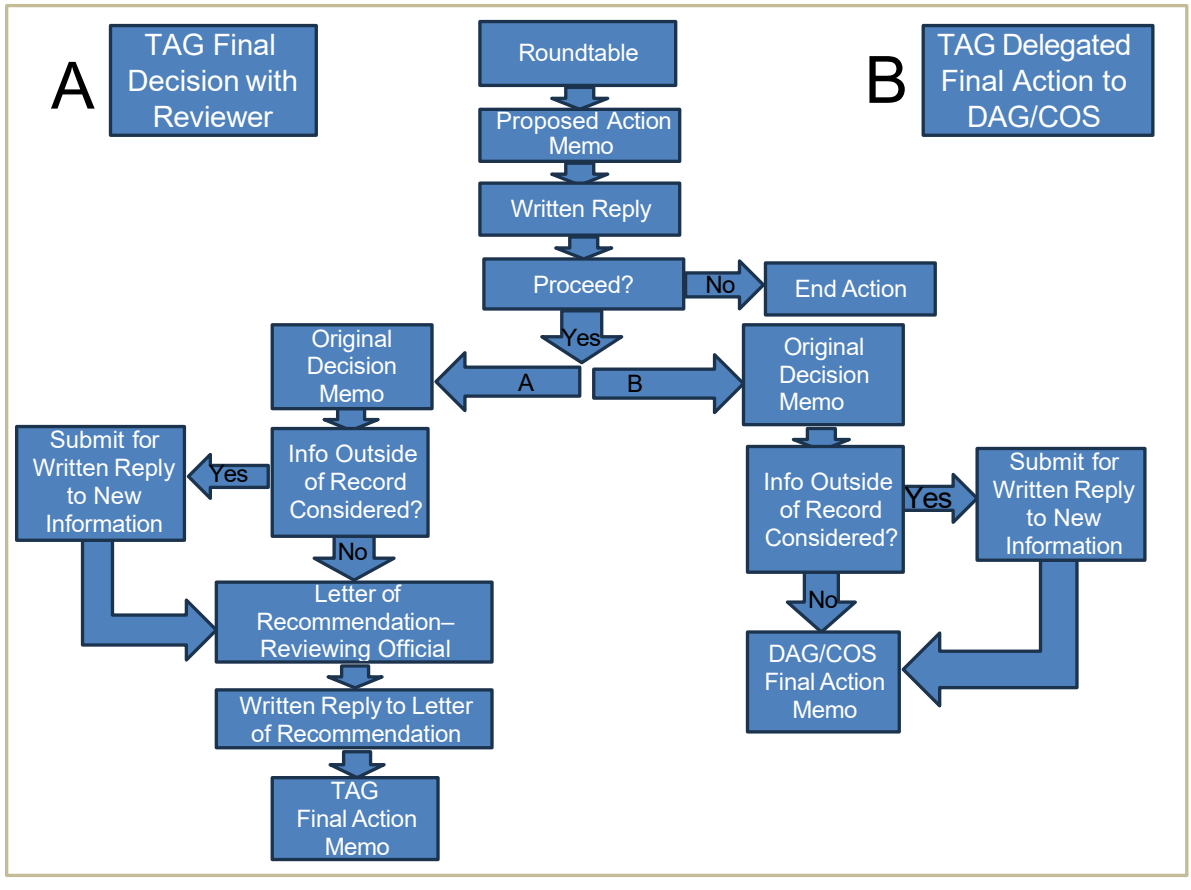
[8] The appropriate penalty for sexual harassment depends on the facts in a given case weighed against policy that sexual harassment will not be tolerated. If the conduct creates a hostile or offensive work environment, consideration of removal is warranted for a first offense. Consult with the DOTM HR and DOTM Legal Office. This category includes failure to prevent or curtail discrimination against a subordinate when the supervisor knew or should have known of the discrimination. The appropriate penalty depends on the facts given in a case weighed against policy that discrimination is prohibited.

[9] The appropriate penalty for discrimination depends on the facts in a given case weighed against policy that discrimination will not be tolerated. If the conduct creates a hostile or offensive work environment, consideration of removal is warranted for a first offense. Consult with the DOTM HR and DOTM Legal Office. This category includes failure to prevent or curtail discrimination against a subordinate when the supervisor knew or should have known of the discrimination. The appropriate penalty depends on the facts given in a case weighed against policy that discrimination is prohibited.

13a	Traffic violations	Failing to observe traffic laws or failing to report traffic violation received while operating DOTM vehicle	Written Warning	Written warning to 3-day suspension	3-day suspension to removal
14a	Solicitation	Selling or attempting to sell any goods or services during work hours or on DOTM property	Written Warning	Written warning to 3-day suspension	3-day suspension to removal
15a	Firearms	Unauthorized possession of any weapon or explosive on DOTM	5-day to 14-day suspension	Removal	
16a	Criminal Convictions	Receiving a criminal conviction, even if not work related, that impedes DOTM's mission	Written warning to removal	5-day suspension to removal	Removal
17a	Falsification[10]	Falsification of any agency record	Written Warning to removal	3-Day suspension to removal	Removal

[10] This offense includes falsifying information on a timecard, leave form, travel voucher, or other document pertaining to an entitlement. Removal is warranted when selection was based on a falsified résumé or credentials, where falsification was intentional, or where the employee occupies a position with fiduciary responsibilities.

APPENDIX K
Flowchart for Corrective Actions and Written Warnings



APPENDIX L
Flowchart for Level Two Disciplinary Actions