EMPLOYEE/MANAGEMENT RELATIONS

1. **REASON FOR ISSUE:** To issue Department of Veterans Affairs (VA) policy regarding employee/management relations.

2. **SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook sets forth mandatory procedures previously contained in numerous other issuances. The pages in this issuance replace the corresponding page numbers in VA Handbook 5021. Revised text is contained in [brackets]. These changes will be incorporated into the electronic version of VA Handbook 5021 that is maintained on the Office of Human Resources Management Web site. The revision establishes aggravating and mitigating factors for consideration applicable to Title 38 disciplinary and adverse actions.

3. **RESPONSIBLE OFFICE:** The Human Resources Management Employee Relations and Performance Management Service (051), Office of the Deputy Assistant Secretary for Human Resources and Labor Relations.

4. **RELATED HANDBOOK:** VA Directive 5021, “Employee/Management Relations.”

5. **RESCISSIONS:** Refer to the Transmittal Sheet for VA Directive 5001, “General Introduction and Administration.”

**CERTIFIED BY:**

/s/
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**BY DIRECTION OF THE SECRETARY OF VETERANS AFFAIRS:**

/s/
Peter J. Shelby
Acting Assistant Secretary for Human Resources and Administration
accordance with the requirements of confidentiality provided in 38 U.S.C. 5701, 5705, and 7332; and the Privacy Act at 5 U.S.C. 552a.

7. DETERMINING APPROPRIATE ACTION

a. General. After determining the facts in a case, the responsible official authorized to initiate action should consider the Table of Penalties contained in appendix A of this part. Any extenuating or mitigating circumstances or the contributing factors which may have some bearing on the situation should be considered in determining the action to be taken. [Applicable mitigating and aggravating factors for consideration are contained in appendix A of this part.] The initiating official will consult with the Human Resources Management office regarding the propriety of the disciplinary or major adverse action being considered.

b. Progressive Discipline

(1) The level or type of discipline which, in the supervisor's judgment, is commensurate with the employee's misconduct and will most likely correct the misconduct, is a commonly applied principle.

(a) It is most applicable in repeated infractions of a minor nature (e.g., brief tardiness). It does not prohibit issuance of a more severe penalty (e.g., suspension or discharge) prior to issuance of each and every lesser penalty.

(b) For example, it is not always appropriate to issue an admonishment and/or a reprimand prior to issuance of a suspension or discharge.

(c) Sound supervisory discretion and judgment must be applied in all cases when fully considering the nature of the offense and any aggravating and/or mitigating circumstances.

(d) The concept of progressive discipline and the recommended guidance provided by the Table of Penalties (see appendix A of this part) are not intended to preclude the exercise of discretion in determining appropriate action, but rather to serve as aids to maintaining consistency.

(2) Examples of reasons that may warrant considering a more severe disciplinary action (e.g., suspension without prior reprimand) are:

(a) The facts of the case,

(b) Degree of willfulness of the employee's violation of VA conduct rules,

(c) The seriousness of the misconduct or deficiency in competence, and

(d) The resultant impact on VA operations.

8. DISCIPLINARY ACTIONS

a. Types of Disciplinary Actions. This paragraph applies to admonishments and reprimands, based on conduct or performance (refer to paragraph 4 of this chapter for definitions).
APPENDIX A. TITLE 38 - TABLE OF PENALTIES

1. INSTRUCTIONS FOR USE OF TABLE

   a. General. This appendix will be used as a guide in the administration of disciplinary and major adverse actions to help ensure that like actions are taken for like offenses. The table is designed to be sufficiently broad to include most types of offenses, but is not intended to be an exhaustive listing of all offenses. For other offenses, appropriate penalties may be prescribed by decision officials for application within their jurisdiction, consistent with the range of penalties for comparable offenses listed in the table. Disciplinary penalties will generally fall between the ranges indicated in the guide, but in unusual circumstances greater or lesser penalties may be imposed. [The following] mitigating and aggravating factors [will] be considered [ ] in determining the appropriate penalty. [Each relevant factor must be addressed.]

   (1) The mitigating and aggravating factors for Title 38 employees are as follows:

   (a) The nature and seriousness of the offense, and its relation to the employee’s duties, position, and responsibilities. Facts to be considered may include:

   1. Was the offense intentional or a result of negligence?
   2. Was the offense important, meaningful, or considerable?
   3. Was the offense committed maliciously or for gain?
   4. Did the offense result in serious injury or death?
   5. Was the offense repeated?

   (b) The employee’s job level and type of employment. Facts to be considered may include:

   1. Does the employee have frequent contact with patients or the public?
   2. Is the employee a supervisor or manager?
   3. How prominent is the employee’s position? What makes it a prominent position?

   (c) The employee’s past disciplinary record.

   (d) The employee’s work record. Facts to be considered may include:

   1. What is the employee’s length of VA service, length of overall total federal service (including military), and length of service in the position/role currently occupied?
   2. What was the employee’s performance on the job before the offense?
   3. What is the employee’s performance on the job since the offense?
   4. Is the employee dependable?

   (e) Management’s confidence in the employee’s ability to successfully perform and behave in the future. Facts to be considered may include:

   1. Did the offense involve a breach of integrity or character flaw that significantly impacts management’s confidence?
2. Can the employee’s supervisor rely on the employee to successfully perform in the future?
3. Can the employee’s supervisor rely on the employee to refrain from misconduct in the future?

(f) Consistency of the penalty. Facts to be considered may include:

1. Using the Table of Penalties as a guideline only, is the penalty within the range for similar offenses as outlined in the Table?
2. What penalty was imposed on other employee(s), for the same or similar offenses, in the same organizational work unit doing similar work?

(g) The impact of the offense upon the reputation of the agency. Facts to be considered may include:

1. What is the notoriety or the potential notoriety of the offense outside the VA, e.g. media, Congress?
2. How and to what extent does the offense violate the agency’s core values?
3. Has the offense impacted the veterans’ or public’s trust in the agency?

(h) The degree to which the employee either knew or should have known that the conduct in question was improper or that the standard of care was not met. Facts to be considered may include:

1. Are there any laws, regulations, directives or agency policies addressing the offense?
2. Was the employee trained or informed about the laws, regulations, directives or agency policies addressing the offense?
3. Would a reasonable person know that the offense was wrong without any special training?
4. Is it contrary to commonly accepted clinical practices?

(i) The potential for the employee’s rehabilitation. Facts to be considered may include:

1. Has the employee accepted responsibility for the offense?
2. Has the employee shown remorse for the offense?
3. Has the employee taken any action to give the agency a reasonable belief that the offense will not recur?
4. Is there training or assistance available to prevent recurrence?

(j) Any mitigating circumstances surrounding the offense. Facts to be considered may include:

1. Were there any unusual job tension, personality problems, harassment, or other workplace stressors in the employee’s work unit?
2. Was the employee provoked by others?
3. Was management made aware of any workplace stressors or provocations? If yes, what was management’s response?
(k) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future. Facts to be considered may include:

1. Were other sanctions considered before determining that this penalty was appropriate?

b. Application of Table

(1) **Progressive Discipline.** Offenses need not be identical in order to support progressively more severe adverse action against an employee. For example, an employee who has received an admonishment for being absent without leave (AWOL) can receive a reprimand for sleeping on duty, and possibly be suspended or discharged for a third offense unrelated to the two previous infractions.

(2) **Combination of Offenses.** When an employee has committed a combination or series of offenses, a greater penalty than is listed for a single offense may be appropriate.

(3) This guide does not cover all offenses for which adverse penalties are expressly provided by law or Civil Service regulation. A further listing of penalties prescribed by statute, regulation, or Executive Order is contained in 5 CFR, part 735.

(4) Where appropriate, alternate penalties may be used in place of discharge as provided in this chapter, except as noted for the offense described in item 28 of the table. Alternate penalties include reduction in grade, reduction in basic pay, and transfer.

(5) Discharge action will be taken whenever required by law or regulation or whenever warranted by the facts in the individual case. Usually progressively more severe penalties will be administered before discharge action is initiated, unless the offense is so serious that it warrants discharge action.

**NOTE:** Although oral or written counselings of employees are not considered disciplinary actions, such counselings may be considered when assessing the appropriate penalty for a particular offense.

2. **RANGE OF PENALTIES FOR STATED OFFENSES**

**NOTE:** ['Days' specified in this table refer to calendar days for suspension actions.