

NTEU Chapter 52 Steward Reference Guide

CHAPTER 4 PERFORMANCE & CONDUCT MATTERS

PERFORMANCE

Every action (formal or informal) which management takes against an employee falls into one of two broad categories: Performance or Conduct.

UNACCEPTABLE PERFORMANCE MATTERS

New stewards are sometimes surprised to learn how much authority the IRS has to remove employees for “unacceptable performance”. An employee, who has six critical elements in his/her job, and eight aspects under each element, can be removed for failing to perform at an acceptable level in just two aspects of one element. While this seems to give employees no chance of defending themselves against an accusation of unacceptable performance, such is not the case. When employees and local stewards work closely together from the beginning of a potential unacceptable performance case, often things work out well for everyone.

According to our contract (Article 40, Unacceptable Performance) and other regulations, the Agency must take several specific steps in order to take a performance-based action. (These steps do not apply to employees who have not completed their probationary period.)

1. Management must give the employee:
 - a. Written notice of the specific performance area that management considers unacceptable, including examples of the unacceptable performance,
 - b. A clear, written warning of what will happen if the specific performance does not improve (i.e., withholding of a within-grade increase or career ladder promotion; downgrade; and/or removal), and
 - c. A written notice of how long the employee has to improve the performance (usually 60 days). The letter that contains the above information is called an “Opportunity Letter”, and begins what is called the “opportunity period” (period in which improvement in performance must have already stated his/her intention to fire the employee, occur). Under our contract, we are barred from grieving such an opportunity letter (because as yet, no action has been taken against the employee, it has only been “proposed”. Rather, we concentrate our efforts on helping the employee avoid the proposed action.
 - d. As a local steward, your role in assisting the employee during the opportunity period is crucial to assuring him/her of every opportunity to improve his/her performance. This action may help the employee keep his/her job. Some of the steps you should take when an employee in your work area receives an opportunity letter are listed below:
2. Call the Chief Steward and send a copy of the opportunity letter to the Union Office;
 - a. Have the employee request regular (weekly) meetings with his/her supervisor, to go over his/her performance during the past week, and to discuss the upcoming week’s responsibilities. The employee should concentrate his/her efforts on fulfilling the assignments from the supervisor to the

best of his/her ability. Management cannot remove the employee if we can prove the employee followed the instructions, even if those instructions were erroneous;

- b. Make a written request to attend these weekly meetings yourself. If you are allowed to be present, take good notes of what the supervisor tells the employee. If you cannot attend, impress upon the employee the importance of writing down everything the manager says during the session;
- c. If you can, help the employee with his/her performance. Offer to review his/her work, if possible. If you are unable to give the needed assistance, find a senior employee who is experienced to lend a hand;
- d. Make sure the employee responds to all documents he/she receives from management during the opportunity period. If any of the instructions are ambiguous, the employee should not guess. He/she should respond in writing, asking the supervisor for clarification. For example, if the supervisor instructs the employee to work on three cases, the employee should ask (in writing), "Which one is to be worked first?", "Should it be completed before the next one is opened?", "Exactly what is to be done with the cases?" and so forth.
- e. An opportunity period may be very difficult times for an employee, and you may be called on to lend some moral support. The routine of writing memos, meeting with a supervisor who and meeting with the Union Steward can quickly drain any employee. Expect the employee to become frustrated with the process, and be ready to provide plenty of encouragement along the way.

3. Management then issues a "Proposal Letter"

After the opportunity period, management will decide whether or not the employee's performance during the opportunity period improved sufficiently to retain him/her, or if the employee is to be removed or downgraded for unacceptable performance. This information will be communicated to the employee in a "Proposal Letter" (assuming an action is being proposed).

At this point, it is **vital** to get a copy of the proposal letter to the Chief Steward or Chapter President as soon as possible; the same day it is received, if practical. An "Oral Reply" (the next step in defending the employee) has to be requested within seven (7) days of receipt of the letter by the employee. **DO NOT DELAY!** After the Oral Reply is requested, you will be involved, along with the Assistant Chief Steward, in helping prepare the case, looking at the various performance documents, and determining the best course of action for the employee. In most instances, based on the merits of the case, an Oral Reply will be assisted, usually by the Chief Steward.

4. Management then issues a "Decision Letter".

A few weeks after hearing the arguments in the Oral Reply, a Decision Letter is issued to the employee. It will state whether the original allegations of unacceptable performance are "sustained" or "not sustained". It will also advise the employee what action will be taken (i.e., removal, downgrade, etc.). If some action is taken against the employee, the Chief Steward will make a recommendation to the NTEU Attorney regarding the potential of taking the case to arbitration. If the Attorney agrees the case has merit may be invoked for arbitration. The final decision to invoke the case is made by the NTEU Attorney.

CONDUCT MATTERS

Allegations of Conduct violations can be categorized into four areas:

1. Adverse Actions, Article 39
 - a. Removals
 - b. Suspensions of 15 or more calendar days
 - c. Reductions in Grade (for conduct violations)
 - d. Reductions in Pay
 - e. Furloughs of 30 days or less, for full-time employees

2. Disciplinary Actions, Article 38
 - a. Admonishments
 - b. Written Reprimands
3. Suspensions of 14 calendar days or less
4. Sick Leave Restriction Letters (see Article 34)
5. "Counseling Memorandum"

Nowhere in the National Agreement can Counseling Memorandum be found. Technically not discipline, but often used as a prelude to a formal action against an employee. When dealing with these Conduct Matters, you should be aware of the following:

- a. The National Agreement stipulates that NTEU will receive a copy of all Disciplinary and Adverse Action letters at the same time they are issued to employees. In most cases we will not take any action until someone asks for our help; however, there are exceptions to this policy. If you receive a copy of such a letter, call the Union office.
- b. Adverse and Disciplinary Actions are serious matters. If you feel uncomfortable handling the situation, get some help. Anytime you become aware of such an action being taken against any employee you represent, contact the Chief Steward, Assistant Chief Steward or Chapter President. We are not legally required to represent non-members for removals and suspensions of one day or more.
- c. It is vital to ensure the confidentiality of the employee in these matters. DO NOT talk to other employees, managers, etc., about conduct cases you may be dealing with unless they have an absolute "need-to-know".
- d. Rebuttals for counseling memoranda alleging Conduct violations are written in the same manner as performance- type rebuttals (see the next section in this chapter). In general, DO NOT rebut formal Disciplinary or Adverse Actions. Depending on their severity, these Actions are protested either via a grievance or by conducting an Oral Reply. Again, contact the Union office for assistance with these types of Actions

EMPLOYEES AND THEIR PERFORMANCE APPRAISALS

Perhaps the single most important event marking an employee's success on the job is issuance of the performance appraisal.

This job evaluation provides the legal basis for a number of major work-related events involving money and advancement (i.e., incentive awards, competitive and career ladder promotions, within-grade increases, training). Management can use the job evaluation to harass employees, stifle career opportunities, support discharges, downgrades, furloughs, and involuntary reassignments.

In addition, many people view their jobs as a major part of their lives and attach a tremendous amount of meaning to performance appraisals as a measure of self-worth that goes beyond mere comparison to co-workers. Consequently, a performance appraisal is an influential document that can wield a significant amount of power over a person's career development and self-image.

All too often employees do not take the time to examine their appraisal as closely as they should. The employee will come to their union steward long after the appraisal has been issued to challenge their non-selection, failure to make the BQ list in a promotion, or to receive an award. Their supervisor may threaten to put them on a Performance Improvement Plan (PIP), issue an "opportunity letter", initiate 100%

workload reviews, or deny a with in-grade increase. The employee's failure to write a rebuttal or a self-appraisal will make impossible for us to prevail in a grievance as the burden of proof is on the employee to show that he/she did higher quality work. The employee trying to compare themselves with another employee in the same group, who received a higher score will not persuade the Agency to raise an appraisal score.

EMPLOYEES WRITING REBUTTALS

Employees often do not respond to incorrect and/or inappropriate performance documentation because they don't know how to write a rebuttal. In general, a rebuttal should be viewed as an opportunity to set the record straight. A rebuttal need not be long or particularly eloquent. You may wish to review the employee's rebuttal, to prevent it from being inflammatory or counter-productive. It may be curt, but should not be slanderous or accusatory.

A good rebuttal will cover three points:

1. A rebuttal should correct any errors of fact. For example, if an employee is given a negative case review, the rebuttal should first correct the facts (another employee did the work in question, the manager added the time charged to the case incorrectly, etc.)
2. A rebuttal should give mitigating circumstances. For example, in those areas where the employee has made mistakes, the rebuttal should explain any reasons behind the errors (such as not having received training in an area the manager is picking on, or having to rely on out-of-date instructions)
3. A rebuttal should defend the action taken, if appropriate. For example, if the manager says "X" should have been done on a case instead of "Y", yet "Y" is an appropriate action (especially in areas where judgment dictates the action), the rebuttal should state the facts, IRM references or other available proof. See the National Agreement, Article 12, Section 4G & H, for additional information.

Rebuttals to Annual Appraisals/Ratings of Record should follow the same general format, except these rebuttals should concentrate on the particular aspects (or standards) of the critical Element(s) that are in dispute. Use the above three steps to rebut each of the aspects that are inaccurate. If the narrative does not specify what aspects were considered "Failed", "Met", or "Exceeded" in the narrative, ask for clarification from the manager. If the manager won't provide the information, or says "Aspects?", "Elements?", or "Gee, I don't remember....", then direct the rebuttal to every aspect of the disputed element(s).

Finally, KNOW THE CONTRACT. Some of the best rebuttals are those that simply quote contract language to the supervisor. The National Agreement, Article 12, is particularly applicable to rebuttals. BE SURE TO READ THE CONTRACT. You may be surprised at what you find, and so will your manager.

EMPLOYEES WRITING SELF-APPRAISALS

It is becoming more and more necessary for employees to be more proactive in their own appraisals. Stewards should strongly encourage the members to take advantage of this tool to inform their managers of all the quality and different types of work they have accomplished in the last appraisal period.

During the final thirty days of an employee's annual appraisal period, the employee may prepare a self-assessment to submit for their manager's consideration. Employees will be allowed a reasonable amount of official time, not to exceed four hours to prepare such assessment. See the National Agreement, Article 12, Section 4B5. We recommended that the employee keep some type journal with date and possible CJE reference for each accomplishment. Employees should be reminded not to include names, SSN, EIN or other identifying information regarding the taxpayer. The employee could use a word processing program to keep a running record of the year's accomplishments. At the appropriate time, print the list and prepare a cover letter to the manager to summarize the year's events.