



U.S. Department of Justice

Federal Bureau of Prisons

PROGRAM STATEMENT

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Employee and Labor Management Relations

/s/

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1. PURPOSE AND SCOPE

This Program Statement covers a broad range of areas related to employee and labor management relations within the Federal Bureau of Prisons.

a. Summary of Changes

Policy Rescinded

P3000.03 Human Resource Management Manual, Sections 711.1, 711.3

- Updated References.
- Updated actions excluded from the Agency Grievance Procedures.
- Removed reference to additional reviews after the agency's deciding official notifies the grievant of a decision.
- Updated office references from Labor Management Relations to Labor Relations Office.
- Added Grand Prairie to the Proposing Officials and Deciding Officials sections.
- Added Deputy Director to list of proposing officials for Central Office.
- Updated the approving office for discipline and adverse actions from Labor Management Relations to Employment Law Branch (ELB).
- Removed paragraph on performance warning letters from the approval of proposal and decision letters section.

b. **Program Objectives.** The expected results of this program are:

- Communicate the grievance procedures applicable to non-bargaining unit employees.
- Identify procedures involved in effectively processing grievances, unfair labor practices, discipline, and adverse actions.

a. **Institution Supplement.** None required. Should local facilities make any changes outside the required changes in the national policy or establish any additional local procedures to implement the national policy, the local Union may invoke to negotiate procedures or appropriate arrangements.

REFERENCES

Americans With Disabilities Act of 1990 (42 U.S.C. 12101, *et seq.*)

Rehabilitation Act of 1973 (29 U.S.C. 701, *et seq.*)

5 U.S.C. Part III., Subpart F, Chapter 75

5 CFR part 752

5 CFR part 771.01

DOJ Order 1200 Part 3, Chapter 1, Discipline and Adverse Actions

DOJ Order 1200 Part 3, Chapter 2, Agency Grievance Procedure

Master Agreement

ACA Standards

(see the Program Statement Directives Management Manual, sections 2.5 and 10.3)

- American Correctional Association Standards for Adult Correctional Institutions, 4th Edition: 4-4064, 4-4048
- American Correctional Association Performance Based Standards for Adult Local Detention Facilities, 4th Edition: 4-ALDF-7E-01
- American Correctional Association Standards for Administration of Correctional Agencies, 2nd Edition: 2-CO-1C-01, 2-CO-1C-02, 2-CO-1C-03, 2-CO-1C-21
- American Correctional Association Standards for Correctional Training Academies: 1-CTA-1C-01

Records Retention

Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) on Sallyport.

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Section 1. Agency Grievance Procedure

1. PURPOSE AND SCOPE

This section provides a grievance procedure applicable to all non-bargaining unit Federal Bureau of Prisons employees to aid in the resolution of matters of employee dissatisfaction.

2. EMPLOYEES COVERED

These procedures only apply to all non-bargaining unit employees of the Federal Bureau of Prisons. Bargaining unit employee grievance procedures are covered under the Master Agreement.

3. POLICY

The Bureau of Prisons strongly endorses the concept that issues be resolved informally between the employee and supervisor, if possible. If not, grievances should be resolved at the earliest possible step of the grievance procedure. Any employee covered by this section is entitled to present a grievance under this procedure.

4. ACTIONS COVERED

This procedure applies to any matter of employee concern or dissatisfaction subject to the control of management officials of the Department of Justice, except for the following:

- a. The content of established agency regulations and policy.
- b. A matter that the employee is, or was, entitled to grieve under a negotiated grievance procedure established under 5 U.S.C. 7121.
- c. Matters in which the employee is entitled to file an appeal or other formal challenge for which the following organizations have authority to grant a remedy: The U.S. Merit Systems Protection Board (MSPB), the Equal Employment Opportunity Commission (EEOC), the U.S. Office of Personnel Management (OPM), or the Federal Labor Relations Authority (FLRA).
- d. Non-selection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion.
- e. A preliminary warning notice of an action that, if effected, would be covered under the grievance system or excluded by paragraph b and c. of this subsection.

- f. The performance evaluation of a Senior Executive Service (SES) appointee under 5 U.S.C., Part III, Subpart C, chapter 43, subchapter II; the reassignment of an SES appointee following the appointee's receipt of an unsatisfactory rating under 5 U.S.C. 4314; the return of an SES career appointee to the General Schedule or another pay system during the one-year period of probation or for less than fully successful executive performance under 5 U.S.C. 3592, or for failure to be recertified under 5 U.S.C. 3393; the conditional recertification of an SES career appointee under 5 U.S.C. 3393; or the termination of an SES career appointee during probation for unacceptable performance under 5 CFR, part 359, Subpart D.
- g. A termination of a probationer in accordance with 5 CFR, part 315, Subpart H; a return of an employee serving supervisory or managerial probation to a nonsupervisory or non-managerial position in accordance with 5 CFR, part 315, Subpart I; or a separation or termination of an employee during a trial period.
- h. The substance of elements and performance standards.
- i. The granting of, failure to grant, or amount of an award granted under 5 CFR part 451; the adoption of, or failure to adopt, an employee suggestion or invention under 5 CFR part 451; the granting of, or failure to grant, an award of the rank of meritorious or distinguished executive to an SES career appointee under 5 U.S.C. 4507, and 5 CFR, part 451, Subpart B; the granting of, failure to grant, or amount of a performance award for an SES career appointee under 5 U.S.C. 5384, and 5 CFR, part 534, Subpart D; or the receipt of or failure to receive an additional step increase under 5 U.S.C. 5336.
- j. A decision to grant, or not to grant, a Senior Executive Service pay rate increase; a decision to grant, or not to grant, a pay rate increase under 5 U.S.C. 5376, and 5 CFR, part 534, Subpart E; or a decision to grant, or not to grant, a pay adjustment under an administratively determined pay system.
- k. The payment of, failure to pay, or amount of a recruitment bonus, a relocation bonus, a retention allowance, or a supervisory differential under 5 CFR part 575; the payment of, failure to pay, or amount of critical position pay under 5 U.S.C. 5377; or the failure to request or grant an exception to the dual compensation restrictions under 5 CFR part 553.
- l. The termination or expiration of a time-limited excepted appointment, a temporary or term appointment or promotion, or a Senior Executive Service limited emergency or limited term appointment, on the date specified as a condition of employment at the time the appointment or promotion was made; or the termination of a temporary or term promotion at any other time, provided the employee was informed in advance of the temporary nature of the promotion and was returned to his/her former position from which temporarily promoted, or to a different position of equivalent grade and pay.

m. Any matter excluded by law, rule, or regulation.

5. PROCEDURES

a. **General.** Each step of the procedure must be completed before proceeding to the next step.

An employee alleging a grievance must present the grievance no later than 15 days after the date of the act or occurrence or not later than 15 days after the date on which the employee knew, or had reason to know, of the act or occurrence. An employee is entitled to a representative of his/her choice in pursuing a grievance, subject to the conditions noted in DOJ Order 1200 Part 3, Chapter 2, Agency Grievance Procedure.

A grievance will be rejected for any of the following reasons: the employee fails to complete the informal procedure; the grievance is not filed in a timely manner; it consists of a matter or matters excluded from coverage under this procedure; no specific personal relief is requested; or the grievance does not contain sufficient detail to identify and clarify its basis. Any rejection of a grievance must be in writing, stating the reason(s) for the rejection.

b. **Informal Procedure.** An employee must complete action under the informal procedure before a grievance will be accepted under the formal procedure, except that a grievance about a disciplinary action subject to this procedure may be initiated at a higher level if the supervisor does not have the authority to grant the relief sought by the grievant.

An employee alleging a grievance as specified in this section must present the matter in writing to his/her immediate supervisor, either alone or with a representative.

The immediate supervisor will consider all available facts and notify the employee of the disposition of the grievance as soon as practicable, but no later than five calendar days following the date the grievance was presented.

c. **Formal Procedure.** If the grievance is not satisfactorily resolved informally, the employee, directly or through a representative, may present it in writing to the agency's deciding official (the Warden or designee) within five calendar days following the informal decision. For Regional Office employees, the agency's deciding official is the Regional Director or designee. For Central Office, training centers, Human Resource Servicing Center (HRSC), and Designation and Sentence Computation Center (DSCC) employees, the agency's deciding official is the Assistant Director of his/her division or designee. The grievance must include the specific nature of the grievance, the personal relief requested by the grievant, and the signature of the grievant or the grievant's representative.

The agency's deciding official must review the grievance and notify the grievant of a decision within 10 calendar days following receipt of the grievance. The decision is final and there is no further right of administrative appeal.

d. Performance Rating Grievances. A grievance contesting a performance rating or any part of a performance rating will be resolved by a Performance Rating Grievance Committee (PRGC), which is the sole administrative procedure for contesting a performance rating. This procedure does not apply to attorneys or members of the Senior Executive Service.

An employee must present a performance rating grievance to his/her servicing HRM office within 15 calendar days of receiving an official rating.

An employee is entitled to be represented at any stage of a performance rating grievance; however, neither the employee nor the representative has the right to be present at PRGC meetings or deliberations, and there is no right to an oral presentation before the PRGC.

Upon receipt of a performance rating grievance, the PRGC will be convened on an ad hoc basis and will consist of three members: (1) The Human Resource Manager, who will chair the committee; (2) a member designated by the grievant; and (3) a member designated by the Chief Executive Officer. The grievant's and agency's members must be current Department of Justice employees who were not involved in the performance rating in question and who live within the commuting area of the facility in which the grievance arose.

The PRGC is empowered to provide an impartial review of employee requests for review of overall performance ratings or individual element ratings or remarks that are part of the official rating. The purpose of the PRGC is to make an impartial determination based upon the facts presented for review. The committee's review extends only to evidence that relates directly to the employee's performance and is based on a review of the written record. The official record consists of the employee's comprehensive statement, the rating official's reply, the employee's final statement, and the attachments to these submissions. The committee is authorized to:

- Increase an overall rating.
- Increase an element rating.
- Remove remarks.
- Leave the rating unchanged.
- Return the rating to the rating or reviewing official for further consideration, in which case the PRGC renders a final decision following such further consideration.

The PRGC settles all issues by majority vote and will issue a written decision that includes a summary of the facts considered and the corrective action, if any, to be taken. Except as described below, the written decision of the PRGC is final and binding and is not subject to further

administrative review. The local HRM Office will coordinate with the Consolidated Processing Unit (CPU) to update necessary systems of record in instances where the PRGC:

- Increased the overall rating.
- Increased an element rating.
- Removed remarks.

Section 2. Labor Management Relations Reports

1. PURPOSE AND SCOPE

To establish procedures for providing bargaining unit position information to Union officials.

2. PROCEDURES

Upon request and not more than biannually, the Workforce Systems and Evaluation Section, HRMD, will provide reports via electronic mail, listing the numbers of bargaining unit staff by location to the applicable Council of Prison Locals Regional Vice President. In addition, a list of all bargaining unit staff will be provided to the Council of Prison Locals National Secretary/Treasurer annually upon request.

This information is necessary to complete reports and forms to meet requirements imposed by Federal agencies (e.g., Department of Labor and Internal Revenue Service) upon the Union to disclose certain information about its operations. As such the union will normally provide this information to their respective locals. Refer to the Master Agreement, article 11, section c. 10.

Section 3. Negotiated Grievances Procedures and Unfair Labor Practices

1. PURPOSE AND SCOPE

To establish procedures for processing grievances for bargaining unit employees and Unfair Labor Practices (ULP).

2. PROCEDURES

a. **Grievances.** In the case of grievances, the respective Human Resource Office must process responses to grievances filed locally or at the Regional Office under negotiated procedures up to the step immediately prior to arbitration or hearing. The local Human Resource Manager (HRM) must secure technical review of the final response from the Regional Human Resource Administrator before issuing the response. Central Office, HRSC, DSCC, and training centers must secure technical review of the final response from the Labor Relations Office (LRO) or Employment Law Branch (ELB), Office of General Counsel, before issuing the response.

If the union pursues arbitration, the HRM must contact LRO or ELB. Upon selection of an arbitrator, the HRM sends a copy of the grievance file to LRO or ELB. The date for the hearing, if any, is determined through consultation between the respective HR office and the assigned agency representative.

For national grievances, refer to the Master Agreement.

b. **Unfair Labor Practices.** In the case of unfair labor practices, the local HRM must notify LRO upon receipt of a charge of an Unfair Labor Practice (ULP) and send a copy of the charge to LRO. LRO coordinates, with the assistance of the local HRM, any communication between the facility and the Federal Labor Relations Authority (FLRA). This communication may include interviews, responses, and settlement discussions. If the FLRA files a complaint, the institution immediately notifies the Regional HRA and LRO. LRO forwards the file to ELB, which prepares the response to the complaint.

National ULPs are filed with LRO.

Section 4. Processing Discipline and Adverse Actions

1. PURPOSE AND SCOPE

To establish procedures for processing discipline and adverse actions. This includes Public Health Service officers assigned to the Bureau of Prisons to the extent applicable.

2. CONSIDERATIONS

The agency must ensure actions taken will be in compliance with provisions of the Americans With Disabilities Act and the Rehabilitation Act of 1973, and other applicable laws, rules, and regulations.

3. PROPOSING OFFICIALS

Normally, the following officials are the proposing officials for disciplinary and adverse actions unless circumstances warrant otherwise. Variations to fit unique circumstances are permitted; nothing in this section precludes the proposing official being at a higher or lower level than specified.

a. Institutions

- Department Heads are the proposing officials for subordinate staff in their departments.
- Associate Wardens and Camp Administrators are the proposing officials for subordinate department heads.
- Chief Executive Officers are the proposing officials for Associate Wardens, Camp Administrators, and any other staff members who report directly to the Chief Executive Officer.

b. Regional Offices

- Regional Administrators are the proposing officials for subordinate Regional Office staff.
- Deputy Regional Directors are the proposing officials for regional administrators.
- Regional Directors are the proposing officials for Deputy Regional Directors, institution Chief Executive Officers, and any other staff members who report directly to the Regional Director.

c. Staff Training Centers. The respective supervisor is the proposing official for staff training center personnel.

d. **Grand Prairie**

- The Chiefs, Field Acquisition Office (FAO) and HRSC, are the proposing officials for all FAO and HRSC staff.
- Supervisors are the proposing officials for subordinate staff at the DSCC.

e. **Central Office**

- Branch Chiefs or UNICOR Division Managers are the proposing officials for subordinate staff in their branches or divisions.
- Deputy Assistant Directors are the proposing officials for Branch Chiefs in their divisions.
- Assistant Directors are the proposing officials for Deputy Assistant Directors and other staff who report directly to an Assistant Director in their divisions.
- The Deputy Director is the proposing official for Assistant Directors and Regional Directors.

f. **National Institute of Corrections.** The respective supervisor is the proposing official for NIC personnel.

4. **DECIDING OFFICIALS**

Normally, the following officials are the deciding officials for discipline and adverse actions unless circumstances warrant otherwise. Variations to fit unique circumstances are permitted; nothing in this section precludes the deciding official being at a higher level than specified.

- a. **Institutions.** The Chief Executive Officer is the deciding official for all cases proposed by a subordinate.
- b. **Regional Offices.** The Regional Director is the deciding official for all cases proposed by a Regional Administrator, Deputy Regional Director, or institution Chief Executive Officer.
- c. **Staff Training Centers.** The Director, Management and Specialty Training Center, or the Director, Staff Training Academy, is the deciding official for all cases proposed by a subordinate.

d. **Grand Prairie**

- The Deputy Assistant Directors, Administration and Human Resource Management, are the deciding officials for all cases proposed by the Chiefs, FAO and HRSC.
- The Chief, DSCC, is the deciding official for all cases proposed by subordinate supervisors.

e. **Central Office**

- The Director is the deciding official for all cases proposed by the Deputy Director.

- The Deputy Director is the deciding official for all cases proposed by an Assistant or Regional Director.
 - The appropriate Assistant Director is the deciding official for all cases proposed by a Deputy Assistant Director.
 - The appropriate Deputy Assistant Director is the deciding official for all cases proposed by a subordinate.
- f. **National Institute of Corrections.** The Director, NIC, is the deciding official for all cases proposed by a subordinate. The Director is the deciding official for all cases proposed by the Director of NIC.

5. APPROVAL OF PROPOSAL AND DECISION LETTERS

a. **Disciplinary Actions.** Institution HRM offices secure technical assistance and advice from the Regional HRM office and approval from the Employment Law Branch (ELB), Office of General Counsel, prior to issuing any disciplinary action proposal or decision letter. Institutions may obtain technical assistance from Regional HRM offices regarding appropriate charges, supporting evidence, penalties, and other aspects of the case. Regional HRM offices, Central Office, HRSC, DSCC, and training centers should obtain advice or assistance from ELB as needed in making these determinations.

When the facility HRM forwards a copy of the draft proposal letter, the HRM office should also include a copy of the disciplinary action file. When the facility HRM forwards a draft decision letter for review, the HRM office should forward a copy of the signed proposal letter and any oral response, meeting minutes, and written responses or submissions provided by the employee.

b. **Adverse Actions.** Institution HRM offices secure technical assistance and advice from the Regional HRM office and approval from ELB prior to issuing any adverse action proposal or decision letter. Institutions should obtain technical assistance from Regional HRM offices regarding appropriate charges, supporting evidence, penalties, and other aspects of the case. Regional HRM offices, Central Office, HRSC, DSCC, and training centers should obtain advice or assistance from ELB as needed in making these determinations.

When the facility HRM forwards a copy of the draft proposal letter, the HRM office should also include a copy of the adverse action file. When the facility HRM forwards a draft decision letter for review, the HRM office should forward a copy of the signed proposal letter and any oral response, meeting minutes, and written responses or submissions provided by the employee.

c. **Clearance from Office of Internal Affairs (OIA).** Facility HRM offices must verify that the proper clearance for initiating an action has been received from the Office of Internal Affairs. The required verification includes:

- **Local investigations.** The investigation was authorized and the investigator's final report was approved by OIA.
- **Other investigations.** The final report was received from OIA.

6. GRIEVANCES AND MSPB APPEALS

Upon receipt of a request for arbitration of a disciplinary action or an adverse action, the HRM immediately notifies the Regional HRM, as applicable, and ELB and forwards a copy of the grievance file to ELB.

Upon receipt of notice of an MSPB appeal from the MSPB, ELB assigns a representative and notifies the HRM. The HRM responds to the MSPB order for documents and prepares an identical tabbed case file for ELB and MSPB. The HRM consults with ELB in preparing the response. The Associate General Counsel for ELB will be designated as the representative for the Agency.