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ADS Chapter 446

Termination During Probation - Civil Service

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 ADS 446 – Termination During Probation – Civil Service
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ADS 446 – Termination During Probation – Civil Service

446.1 OVERVIEW

This chapter provides policies and essential procedures regarding termination of Civil Service employees during the one year probationary period commencing upon initial unlimited appointment, (i.e., an appointment to the Civil Service without time limit) (See [5 CFR 2.4](#)) and also to employees initially appointed to supervisory or managerial positions. (See [5 USC Sec. 3321 \(a\)\(2\)](#))

This chapter applies only to Civil Service employees who are required to serve a probationary period as defined by 5 CFR 315.801.

Actions taken to terminate Civil Service employees during probation for either poor performance occurring after appointment, misconduct occurring before or after appointment, or a combination of poor performance and misconduct, are based on the application of existing policy, essential procedures, legislation, and external regulations contained in the following ADS chapters and mandatory references. In addition, the Agency follows all applicable external statutes, regulations, and procedures in the event that probationary employees are subject to a Reduction in Force. It is essential that these materials be consulted when referenced herein:

- ADS 452 – Reduction in Force – Civil Service
- ADS 462 – Employee Evaluation Program
- ADS 489 – Performance Based Actions – Civil Service
- ADS 487 – Disciplinary and Adverse Actions Based on Misconduct – Civil Service

446.2 PRIMARY RESPONSIBILITIES

a. The Office of Human Capital and Talent Management, Labor, Employee Relations and Performance Management Division (HCTM/LER/PM)

- (1) Reviews investigation report or inquiry and/or the basis for the recommendation of the supervisor and head of office and determine appropriateness and feasibility of reassignment, disciplinary action, or termination.
- (2) Confers with the administrative officer and/or head of office involved and prepares a letter for the signature of the Chief, Office of Human Capital and Talent Management, Personnel Operations Division (HCTM/POD) or Deputy Assistant Administrator for the Office of Human Capital and Talent Management, as appropriate.

b. Chief, Office of Human Capital and Talent Management, Personnel Operations Division, (HCTM/POD)

- (1) Decides cases based solely on performance or conduct occurring after appointment.
- (2) Proposes termination action in those cases based in whole or in part on conduct occurring before appointment.

c. Deputy Assistant Administrator for Office of Human Capital and Talent Management, (HCTM/OD)

- (1) Decides cases based in whole or in part on conduct occurring before appointment.
- (2) Extends in writing the time limit for the employee's reply when circumstances warrant.

446.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

The statements contained within the .3 section of this ADS chapter are the official Agency policies and corresponding essential procedures.

446.3.1 Termination During Probation

An employee who is on probation while serving on initial appointment to the federal service may be terminated for any of the following or combination of the following:

- a. For unsatisfactory performance or conduct after appointment, based upon deficiency in duty performance, lack of aptitude or cooperativeness or undesirable suitability characteristics evidenced by the employee's activities during or outside official working hours;
- b. For unsatisfactory performance or conduct before appointment, based in whole or in part of an employee's conduct before employment, e.g., intentional falsification of application forms; or
- c. At the direction of the U.S. Office of Personnel Management.

For employees on probation while serving on initial appointment:

- a. For unsatisfactory performance or conduct after appointment, the Agency notifies in writing the probationer the reason for the termination action, the effective date of the action, and the Agency's conclusions on the employee's inadequacies of performance or conduct. The notice also includes the specific

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bases upon which the probationer may appeal the action to the Merit Systems Protection Board (MSPB). The probationer has no right of reply prior to termination.

b. For conduct before appointment, the probationer is entitled to a notice of proposed termination, the reasons for the proposal, the right to reply in writing within 10 calendar days of receipt of the notice, and consideration of the employee's reply in reaching a decision. If the decision is to effect the termination action, the employee is given a written decision which includes the reasons for the termination, the effective date of the termination, and information on the specific bases upon which the probationer may appeal the action to the MSPB.

c. Timing of Termination. For employees separated for unsatisfactory performance or conduct after appointment or for conduct before appointment, the employee's termination must be effected before the employee has completed their one-year probationary or period. Otherwise, adherence to the established essential procedures applicable to the removal of a career-conditional employee who has completed their probationary period is mandatory.

446.3.2 Failure of a Supervisor or Management Official to Successfully Complete Probation

An employee may be required to serve two concurrent probationary periods, one for an initial appointment to the competitive service and one for initial appointment to a supervisory or managerial position. If an employee's conduct or performance is deemed unsatisfactory while serving two such probationary periods, their appeal rights to the MSPB are limited to post-appointment allegations that the termination was based on partisan political reasons or marital status.

446.3.3 Appeal Rights

Appeal rights to the Merit Systems Protection Board (MSPB) differ depending on whether termination is based on unsatisfactory performance or conduct after employment, or conduct which occurred prior to employment with the Agency. Regardless of the basis for termination, probationers have 30 calendar days after the effective date of the termination action to file an appeal with MSPB.

446.3.3.1 Right of Appeal to MSPB if Termination is Based on Unsatisfactory Performance or Conduct After Appointment

An employee may appeal to the MSPB a termination based on unsatisfactory performance or conduct after appointment which they allege was based on (i) partisan political reasons (political affiliation) or marital status; or (ii) race, color, religion, sex, national origin, physical disability, or age (provided that at the time of the alleged discriminatory action, the employee was at least 40 years of age) if such discrimination

is raised in addition to (i) above. (Appeals of discrimination based solely on race, color, religion, sex, national origin, physical disability, or age are to be processed under the discrimination complaint procedures administered by the USAID Office of Equal Opportunity Programs.)

446.3.3.2 Right of Appeal to MSPB if Terminated Based on Conditions Arising Before Appointment

A termination for reasons based in whole or in part on conduct which occurred before appointment (such as falsification of application forms or other pre-appointment documents) may be appealed to the MSPB based on allegations (i) that procedures by which the employee was terminated were improper; (ii) that the employee was discriminated against because of partisan political reasons (political affiliation) or marital status; (iii) or that the employee was discriminated against because of race, color, religion, sex, national origin, physical disability or age if such discrimination is raised in addition to partisan political reasons or marital status. (Appeals of discrimination based solely on race, color, religion, sex, national origin, physical disability or age are to be processed under the discrimination complaint procedures administered by the USAID Office of Equal Opportunity Programs.)

The probationer is not entitled to an examination of witnesses nor to a trial or hearing. Should the U.S. Office of Personnel Management direct the separation of a probationer, the above entitlements are not required.

446.3.4 Agency Records

The Agency's policy is to follow 5 CFR 432.107, 5 CFR 752.406, and 5 USC Sec. 7513 (e) as applicable. (See 5 CFR 432.107, 5 CFR 752.406, and 5 USC Sec. 7513 (e))

446.4 MANDATORY REFERENCES

446.4.1 External Mandatory References

- a. [5 CFR 2.4, Probationary period](#)
- b. [5 CFR 315, Career and Career-Conditional Employment](#)
- c. [5 USC 3321, Competitive service; probationary period](#)

446.4.2 Internal Mandatory References

- a. [ADS 452, Reduction in Force – Civil Service](#)
- b. [ADS 462, Employee Evaluation Program, Civil Service](#)
- c. [ADS 487, Disciplinary and Adverse Actions Based Upon Employee](#)

Text highlighted in yellow indicates that the adjacent material is new or substantively revised.

Misconduct – Civil Service

d. ADS 489, Performance Based Actions – Civil Service

446.5 ADDITIONAL HELP

There are no Additional Help documents for this chapter.

446.6 DEFINITIONS

The terms and definitions listed below have been incorporated into the ADS Glossary. See the ADS Glossary for all ADS terms and definitions.

Probationary Period

One year from the date of the employee's initial appointment to the competitive service. The probationary period is a part of the examining process to determine an employee's eligibility and suitability for retention in the competitive service. In the case of supervisors, one year from the date of the employee's initial appointment to a supervisory or managerial position, regardless of when the employee was appointed to the competitive service. (**Chapters 423 and 446**)

Probationer

An employee or supervisor who has not completed the probationary period. (**Chapter 446**)

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