

**Template for Executive Branch Agency Policies on Performance-Based and Adverse Actions for Schedule Policy/Career Employees**

**Template General Instructions**

1. The purpose of this document is to provide federal agencies with a template that they may quickly adapt to their internal federal employee policies on taking performance-based and adverse actions to align with OPM's final regulations on Schedule Policy/Career.
2. The template is presenting policy for an entire Executive agency, since the regulations affected by this rule define "agency" as an Executive agency in 5 U.S.C. 105. Executive agencies may delegate authority consistent with law, regulations, and Administration policies in implementing these changes.
3. When fulfilling any collective bargaining obligations, agencies should carefully consider whether a union proposal is negotiable.
4. In the template, text boxes are used to show template instructions or notes that would not be part of the policy document issued by the agency. Those instructions and notes are intended to assist agencies as they use the template to create an agency policy document.

## **Template Policies on Performance-Based and Adverse Actions under Schedule Policy/Career**

[Instructions: This document sets forth changes to agency policies on performance-based and adverse actions for Schedule Policy/Career employees. The policy provisions contained in this template are required to ensure compliance with law, OPM's regulation concerning the implementation of Schedule Policy/Career, Executive Orders 13957 and 14171, and Administration policy. Agencies may adapt this template to meet their mission needs.]

### **A. Applicability**

This policy applies to all positions of a policy-influencing nature placed into Schedule Policy/Career at [AGENCY NAME].

### **B. Authority**

5 U.S.C. Chapters 43 and 75.

### **C. Policy**

Schedule Policy/Career employees are called to serve at the highest levels of the federal career civil service and are critical to the execution of the President's policy agency. [AGENCY NAME] employees in Schedule Policy/Career positions must faithfully implement Administration and [AGENCY NAME] policies to the best of their ability consistent with their constitutional oath. Employees who fail to perform to this standard are subject to discipline including dismissal.

### **D. Procedures**

#### **a. Definition**

Schedule Policy/Career is a new excepted service schedule for career positions that are of a confidential, policy-determining, policy-making, or policy-advocating character (policy-influencing positions).

#### **b. At-Will Employment**

Schedule Policy/Career will be excepted from chapter 43 and 75 procedures for performance-based and adverse actions. [AGENCY NAME] policy prohibiting prohibited personnel practices against employees or applicants for Schedule Policy/Career positions, including retaliation against whistleblowers, will continue to apply.

**c. Procedures**

- i. Supervisors and managers are not required to use performance improvement plans, the [AGENCY NAME] table of penalties [IF APPLICABLE], or progressive discipline when addressing unacceptable performance or misconduct.
- ii. The Douglas Factors established in Douglas vs. Veterans Administration, 5 M.S.P.R. 280 (1981), do not apply.
- iii. An employee may be disciplined up to and including termination at any time for any reason consistent with mission of the agency. However, agencies are prohibited from taking any personnel action in violation of law, rule, regulation, or [AGENCY NAME] policy on prohibited personnel practices.
- iv. When taking an action under this policy, [AGENCY NAME] will provide notice to the employee of the action taken and provide appropriate information concerning the consequences of the action and an authorized official for receiving complaints under [AGENCY NAME] policy on prohibited personnel practices.
- v. The Offices of General Counsel and Human Resources will work with the supervisor to appropriately document any action taken against an employee.
- vi. [AGENCY NAME] officials shall not remove, demote, or take any other personnel action to circumvent reduction-in-force procedures.

**d. Collective Bargaining Agreements**

The provisions of this policy shall apply to Schedule Policy/Career employees, but do not supersede requirements contained in a collective bargaining agreement that remains applicable to such employees.