



U.S. Office of Personnel Management

# Poor Performance: Taking Action – A Supervisor’s Quick Guide

A supervisor has the authority and obligation to take action against an employee based on poor performance or when an employee’s performance cannot be improved. One way to address poor performance is in accordance with [Title 5 CFR Part 432](#) “Performance Based Reduction in Grade and Removal Actions”. Supervisors (or the agency) may also determine that taking action to address a performance deficiency is appropriate under [5 CFR Part 752](#), “Adverse Action”. Using Adverse Action procedures, which differ from Part 432, may be the more efficient and effective way to proceed. The specific facts of the case, along with the weight of evidence, will be determining factors in deciding under which authority you should take action.

There are distinct differences between these regulations. For example, Part 432 requires that you give the employee an opportunity to bring his or her performance up to an acceptable level, while Part 752 does not require such an opportunity period. Another difference between the regulations is that Part 432 requires the agency to identify the specific critical element the employee is performing unacceptably when giving an employee an opportunity to improve his or her performance and when taking an action to demote or remove the employee from his or her position and Federal service. Under Part 752, the employee can be held accountable for poor performance on a performance element or standard, project, or professional standards established for certain occupations, such as physicians. In some cases, it may be more appropriate to hold the employee to these ad hoc standards, as long as they are no more stringent than the established performance standards. As always, you should consult with your human resources staff concerning any internal agency policies regarding the use of a formal opportunity period.

To help you understand the differences in these regulations, the information below describes the procedures for taking a performance-based action under Parts 432 and 752, respectively, and compare the regulations to further clarify the differences between each authority.

## Elements of a Part 432 Action

### Demotion and Removal Based on Unacceptable Performance under 5 CFR Part 432

#### **1. Beginning of appraisal period**

Give employee the performance elements and standards in writing. Establish which elements are critical.

#### **2. Informal steps to improve performance**

Provide counseling, discussion, training, etc.

#### **3. Formal opportunity to improve**

Provide a formal period to demonstrate acceptable performance (normally 30 business days).

#### **4. Notice of proposed action**

Give employee 30 days advance written notice; only specify instances of unacceptable performance occurring in the past year and the critical elements involved.

#### **5. Employee's answer to proposal notice**

Provide a reasonable time to reply; employee has a right to representation.

#### **6. Decision issued**

Issue decision within 30 days after notice period expires; a higher-level official concurs with the decision.

#### **7. Notice of right to appeal**

Give employee appeal rights information.

## Elements of a Part 752 Action

### Suspension, Demotion, and Removal Based on Unacceptable Performance under 5 CFR Part 752, Subpart D

**1. Informal steps to improve performance deficiencies**

Provide discussion, counseling, training, etc.

**2. Notice of proposed action**

Give employee 30 days advance written notice. Notice must include the specific instances of unacceptable performance.

**3. Employee's answer to proposal notice**

Provide a reasonable time to reply, not less than 7 days.

**4. Decision issued**

No specific requirements exist but typically conducted by a higher-level official.

**5. Notice of right to appeal**

Give employee appeal rights information.

## Comparison of Part 432 vs. Part 752

### 5 CFR Parts 432 and 752 Similarities and Differences

Term	Part 432	Part 752
<b>Critical Element</b>	Agency must prove the performance deficiency is in a critical element.	Agency is not required to prove the performance deficiency is in a critical element.
<b>Establishment of Performance Expectations</b>	When substantial evidence exists that an employee's performance is unacceptable in one or more critical elements, the employee will: (1) be notified of the deficiency; (2) be offered the agency's assistance to improve; and (3) be warned that continued poor performance could lead to a change to lower grade or removal. (This is commonly referred to as the PIP, an abbreviation for both performance improvement plan and for performance improvement period.)	The extent to which an employee is on notice of the agency's expectations is a factor in determining the appropriateness of the penalty. Also, an agency cannot require that an employee perform better than the standards that have been communicated to the employee.
<b>Decline Following Improvement</b>	If the employee's performance improves during the PIP, and remains acceptable for 1 year, a new PIP is necessary before taking an action under this chapter.	There is no obligation to offer a period of improvement at any point.
<b>Efficiency of the Service</b>	Agency is not required to prove that the personnel action will promote the efficiency of the service.	Agency must prove that the personnel action will promote the efficiency of the service.

<b>Burden of Proof</b>	Action must be supported by substantial evidence: that a reasonable person might find the evidence supports the agency's findings regarding the poor performance, even though other reasonable persons might disagree.	Action must be supported by a preponderance of the evidence: that a reasonable person would find the evidence makes it more likely than not that the agency's findings regarding the poor performance are correct.
<b>Advance Notice</b>	The agency must provide a notice of proposed action 30 days before any action can be taken and must provide the employee with a reasonable opportunity to reply before a decision is made on the proposal.	
<b>Content of Advance Notice</b>	The notice must state the specific instances of unacceptable performance that are the basis for the action and also the critical performance element involved.	The notice must state the specific instances of poor performance that are the basis for the action.
<b>Deciding or Concurring Official</b>	A person higher in the supervisory chain than the person who proposed the action must concur.	The deciding official does not have to be a person higher in the supervisory chain than the person who proposed the action.
<b>Agency Decision</b>	Agency must issue a final decision within an additional 30 days of the expiration of the 30 days advance notice period.	Agency is under no particular time constraint, other than there cannot be a delay so extensive that it constitutes an error that harms the employee.
<b>Penalty Mitigation</b>	Once the agency meets the requirements to take an action, the MSPB cannot reduce the agency's penalty.	After finding that the agency meets the requirements to take a Chapter 75 action, the MSPB may reduce the agency's penalty.

<b>Douglas Factors</b>	The Douglas factors are not used.	The agency must consider the relevant Douglas factors when reaching a decision on the appropriate penalty.
<b>Time Limits</b>	Time limited to performance deficiencies occurring within the 1-year period prior to the proposal notice.	No time limit for inclusion of “incidents/charges”.
<b>Affirmative Defenses</b>	The agency action will not be sustained if the employee was harmed by the agency’s failure to follow procedures, if the agency decision was reached as a result of the commission of a prohibited personnel practice, or if the decision is otherwise not in accordance with the law.	