


Approved for Release
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Date

**DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT**

HUMAN RESOURCES (HR) BULLETIN #207, FY16

SUBJECT: Administrative Leave Related to Performance-Based and Adverse Actions

EFFECTIVE DATE: Upon release of this HR Bulletin

EXPIRATION DATE: Effective until canceled or superseded

SUPERSEDES: Not applicable

BACKGROUND: Administrative leave (also referred to as “excused absence”) is an administratively authorized absence from duty without loss of pay or charge to leave. Administrative leave is not expressly referenced in Title 5, United States Code (U.S.C.). The authority to grant an excused absence derives from the inherent authority that heads of agencies may prescribe regulations for governing their organization under Title 5, U.S.C. §§ 301-302. Administrative leave is **not** an entitlement, and agencies are not required to grant it. Each agency has the authority and discretion to excuse employees from duty without loss of pay or charge to leave in appropriate circumstances. As a general rule, administrative leave should not be used for an extended or indefinite period or on a recurring basis.

PURPOSE: This HR Bulletin provides Department of Commerce-wide guidance on administrative leave used either before or after proposing performance-based or conduct-based adverse actions under Title 5, Code of Federal Regulations (CFR), Part 752, in order to provide a structured approval process and broader consistent accountability throughout the Department of Commerce (Department). This bulletin provides clarity, broader accountability, and structure to the approval process.

Guidance on the use of administrative leave for other situations can be found at:
http://hr.commerce.gov/Practitioners/CompensationAndLeave/DEV01_006141

COVERAGE: This bulletin pertains to all Federal employees in the Department except for those in the Office of the Inspector General.

POLICY: The use of administrative leave related to unacceptable performance and misconduct should be limited to situations involving brief absences. Supervisors/managers **cannot** grant administrative leave under any circumstance for unacceptable performance and misconduct without consulting with an Employee Relations (ER) Specialist in their servicing human resources office (SHRO) and their bureau/operating unit Chief Financial Officer (CFO) or designee. If a servicing ER Specialist cannot be contacted during an emergency, managers may directly contact the Office of General Counsel (OGC), Employment and Labor Law Division (ELLD)¹ for guidance and advice.

Administrative leave can be used before proposing performance-based or conduct-based adverse actions as well as after proposing such actions. In either case, administrative leave should only be used on a temporary basis. It is the policy of the Department that the period of administrative leave granted in these situations will not typically exceed 30 calendar days. It is recognized, however, that under some limited circumstances—brought about by the complexities of finalizing particularly complex investigations or other administrative actions—the use of administrative leave beyond 30 calendar days is warranted.

Initial Time Limit and Subsequent Extensions:

Initial placement of an employee on administrative leave must limit the period of administrative leave to no more than 30 calendar days. Extensions beyond the initial 30-day period may be granted in increments of no more than 30 additional calendar days. After consultation with the servicing ER Specialist and the OGC/ELLD, extensions beyond the initial 30-day period must be fully justified by bureau/operating unit management (i.e., immediate supervisor, higher level supervisor) and must be approved by the bureau/operating unit CFO or designee. When the situation necessitates the use of administrative leave beyond a 120-day period, notification from the bureau/operating unit CFO or designee to the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA) is required.

Prior to granting administrative leave (including extensions of existing administrative leave), the following options must be considered regardless of the length of time for which the period of administrative leave is contemplated:

- A detail to another office/supervisor
- To remain in the same office and report to a different supervisor
- Telework
- An indefinite suspension and enforced leave

Prior to Proposing Performance-Based or Adverse Actions:

Administrative leave should be an immediate, temporary solution, lasting no more than 30 calendar days, for situations when an employee should be kept away from the worksite. For example, an employee may be placed on administrative leave during an investigation when it is believed that he or she poses a threat to his/her own safety or the safety of others, to the

¹ In the case of employees of the Office of the Inspector General (OIG), pursuant to the Inspector General Act of 1978, as amended, OIG Human Resources Management Division and OIG Office of Counsel will act in lieu of the SHRO and ELLD in this bulletin.

agency/bureau/operating unit mission, or to Government systems or property while the investigation is pending. The situation should be monitored and re-assessed within the first 2 weeks of administrative leave, while a longer-term solution is developed. A longer-term solution could include assigning the employee to duties where he or she is no longer a threat to safety, to the agency/bureau/operating unit mission, or to Government property.

After Proposing Performance-Based or Adverse Actions:

In rare circumstances, administrative leave may be used for an employee while suspension or removal adverse actions procedures have been proposed. In this situation, administrative leave should only be used for the time necessary to effect the adverse action, and when a determination that the employee's continued presence on the job during the notice period may: (1) pose a threat to the employee or others; (2) result in loss or damage to Government property; or (3) jeopardize legitimate Government interests (Title 5, CFR § 752.404(b)(3)(iv)).

The following options must be considered before granting administrative leave in this situation:

- Assign the employee to duties where he or she is no longer a threat to safety, to the agency/bureau/operating unit mission, or to Government property;
- Allow the employee to take leave;
- Place the employee on enforced leave (i.e., required to absent him or herself from duty) in specific situations as designated in Department Administrative Order 202-752, "Discipline." The supervisor/manager and ER Specialist must discuss this with the OGC/ELLD before taking this action to ensure specific regulatory requirements have been met; or
- Propose to place the employee on an indefinite suspension until a decision is made in the original, proposed adverse action. The supervisor/manager can curtail the advance notice period for this proposed adverse action when the supervisor/manager has reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension. (This is known as the "crime provision" under Title 5, U.S.C. § 7513(b).) The supervisor/manager and ER Specialist must discuss this alternative with the OGC/ELLD before taking this action to ensure specific regulatory requirements have been met.

STANDARD OPERATING PROCEDURES:

- 1) Prior to placing an employee on administrative leave or extending existing leave, the supervisor/manager **MUST** contact an ER Specialist in their SHRO. If an ER Specialist cannot be contacted during an emergency, managers may directly contact the OGC/ELLD for advice and guidance.
- 2) Upon being contacted by the supervisor/manager, the ER Specialist **MUST** contact the OGC/ELLD for guidance.
- 3) All decisions to place an employee on administrative leave or extend existing leave must meet all the criteria of this bulletin, and all options stated in this bulletin must be considered.

- 4) After collaboration with the ER Specialist and the OGC/ELLD, the supervisor/manager must notify his/her bureau/operating unit CFO or designee² about the recommendation to place the employee on administrative leave.
- 5) Once a decision is made, and concurred with by the bureau/operating unit CFO or designee, to place an employee on administrative leave, the supervisor/manager in collaboration with the ER Specialist needs to monitor and re-assess the situation within the first 2 weeks of administrative leave while a longer term solution is developed.
- 6) During the initial 30-day period, the supervisor/manager—in collaboration with the ER Specialist—must explore/consider other options for the employee in case the situation is not resolved within the 30-day period.
- 7) If administrative leave is still needed after the initial 30-day period, the supervisor, in consultation with the ER Specialist and the OGC/ELLD, needs to provide written documentation to their bureau/operating unit CFO or designee as to why the 30-day initial administrative leave period was exceeded as well as alternate options that were explored/considered, and the results thereof. This documentation must be maintained in the ER case file and provided to the OGC/ELLD.
- 8) When it is believed that administrative leave is needed beyond 4 months, the CFO/ASA needs to be notified in writing by the bureau/operating unit CFO or designee 30 days in advance of the fourth month. The notification must include a detailed description of the situation (including the original explanation) of why administrative leave was needed beyond the original 30 days; the alternate options considered and results thereof; an explanation of why administrative leave is still needed; and the approximate duration of the leave.

REFERENCES:

- Office of Personnel Management, Memorandum for Heads of Executive Departments and Agencies, CPM 2015-04, “Administrative Leave,” May 29, 2015
- 5 U.S.C. §§ 301-302

OFFICE OF POLICY AND BENEFITS: OPBservices@doc.gov

² For OIG employees, the Principal Assistant Inspector General of the employee’s office will act in lieu of the bureau CFO and the Inspector General will act in lieu of the CFO/ASA for any reporting requirements in this bulletin.