

QUICK START

Firing a government employee can be very complicated and time-consuming if you do not know what you are doing. Much of this text is devoted to helping you understand those complexities and dealing with them in a straightforward efficient manner. However, with the many permutations and options aside, there is a single direct way that any government employee can be fired.

In some ways, we hesitate to present this section to you because a supervisor really needs to know the theory of discipline and the various tools that are available for dealing with a problem employee that make up the bulk of this text. At the same time, we realize that many of you will benefit from knowing a guaranteed simplified approach for dealing with a problem employee that will withstand review in any forum (as long as your motives are above reproach and your heart is pure). You may have grievances and complaints filed against you, but just consider them as the slings and arrows you must endure to clear the hurdles that lie before you. Although we highly recommend you study and understand the substantive chapters of this book before embarking on a course to remove a government employee, here is the most direct path to dealing with a problem employee that will always result in a successful termination. Some might call this the chapter the “Keys to the Kingdom,” but we steal a concept from the computer world and just call it Quick Start:

Step One: Give the employee an order. Put it in writing, be specific, and set a time for performance.

Step Two: If the employee obeys the order in the time specified, you don’t have a problem employee, at least not as far as this order is concerned. Go find something else to do with your leadership skills. Assuming that this guy really is a loser, he will not comply within the time frame you established, so Step Two is: Issue a Letter of Reprimand for “Failing to comply with an order.”

Step Three: Give the employee another order with a time frame for compliance. When the employee does not obey, propose a one to five work day suspension for “Failure to comply with an order—second offense.” The length of the suspension will be determined by the harm the agency suffered because of the failure to comply. Consult your management advisers and utilize the *Douglas* Factors you will find discussed in [Chapter Two](#) to select an appropriate suspension length.

Step Four: Give the employee a third order. When the employee does not obey, propose a 10 work day suspension. If the harm suffered by the agency is significant, a proposed removal may be warranted instead. However, a second suspension at this stage will demonstrate your sincere intent to correct the employee’s behavior and perhaps save the employee from being removed. Most importantly, it gives an appellate body little room to mitigate a subsequent termination.

Step Five: Give the employee a fourth order. When the employee does not comply, propose his termination. His pattern of disrespect for authority coupled with your patience and your pattern of progressive discipline will be viewed with

respect and admiration by most any arbitrator or administrative judge who hears the appeal of the termination, and the removal will be sustained.

My gosh, this is a lot of steps isn't it? Can't a government employee be fired without having to go through all these reprimands and suspensions? Oh yes, yes he can. To make it stick on appeal, however, you will have to convince an arbitrator or other impartial adjudicator that the harm caused by just one or two incidents of misconduct warrants removal from government service. Removals based on only one or two incidents are affirmed all the time. However, they also are occasionally mitigated to a lower level of discipline because the reviewing judge decides that removal just isn't warranted based on the misconduct.

Take that risk if you must and the chances are decent that you will be sustained if the single incident of misconduct is serious. If you have the patience and perseverance, following the five step Quick Start will avoid you having to convince some third party that the misconduct is serious enough to warrant a first-offense-termination because the very pattern of misconduct itself warrants removal regardless of what the actual harm to the agency might be.

See the [Appendix](#) for a collection of sample documents to implement a misconduct termination.

As for employees who engage in unacceptable performance rather than misconduct, a Quick Start guide would look just like a full service guide as performance actions are extremely expedient and efficient, if you know what you are doing. You will know what you are doing by the time you finish that chapter later in this book.

Now that you know the basic approach to misconduct, the next chapters will give you the procedural and philosophical details and some recommended strategies for dealing with a variety of complicated situations.

A Note on Personal Pronouns

The English language lacks a third person singular pronoun universally interpreted to be sex neutral. Although we are not comfortable with the convention, this text will default to using "he" and related pronouns as other options are often distracting, and because that is the convention currently used by many courts and administrative bodies. We welcome suggestions regarding pronoun use for future editions.

And, no, we will not use an unmarked plural pronoun with a singular antecedent. Some things just are not right.

CHAPTER ONE

GETTING STARTED

If just showing up is half the battle, the other half is getting started. In this chapter, we will take you through the steps you should consider, in the order in which you should consider them, when first coming to realize that you have a problem civil servant on your hands.

I. TRY EVERYTHING ELSE FIRST

Although this is a book on how to fire employees who do bad things, we hope that you will never have to fire anyone. That is because the removal of a career government employee takes time, resources, and emotional involvement that would be better spent on other endeavors. When you fire someone, you adversely affect his employability perhaps for the rest of his life, plus you have to go through the trouble and expense of hiring a replacement. Frankly, we hope you never have to fire anybody. So before you start the disciplinary process in earnest, we suggest that you try everything else first. It is easier on you and perhaps you will be able to convert an unacceptable employee into an employee who is at least doing a minimally adequate job. Of course, some misconduct or poor performance is so bad that a single incident warrants immediate termination. The guy who leaves the door open to the safe with all the secret documents and highly explosive materials probably warrants a quick goodbye. For most situations, once you realize that you have a problem employee, you will want to consider one or more of the following options to termination:

Coaching. Periodic informal instruction and feedback given by you or a seasoned coworker (a mentor) may help a minimal performer improve without having to resort to formal procedures.

Counseling. While coaching can work with poor performers, misconduct warrants a little more direct discussion between you and the miscreant. Tell him what he did wrong and that you want him to do it right.

Training. Sometimes, low performance can be improved through formal classroom or on-line training. Although the government usually does not have an obligation to train its employees, a three-day course in computer maintenance that helps your information resources technician improve to a point where he is being productive is a trivial expense compared to having to fire him for poor performance. Sometimes just asking the employee what training would be helpful gives valuable insight.

Reassignment. Every job is made up of three components: the employee, the supervisor, and the work itself. If the employee is not working satisfactorily on a particular assignment, perhaps reassigning him to a new supervisor and/or a new work assignment will allow him the opportunity to become productive.

Although we could spend many pages devoted to discussing these techniques, doing

so would be beyond the purpose of this book. Our objective is to help you to know what to do when all of your best leadership skills are unsuccessful, and you have reached the point of asking yourself, "What do I do next?"

II. ASK YOURSELF: QUESTION ONE

The answer is to ask yourself a series of questions:

Question One: What is the employment status of the problem employee (e.g., has the employee just barely begun working for the organization or is he in for the long haul)?

Most government agencies have more than one category of worker. When confronted with a problem employee, the first thing to do is to determine the employee's status in order to establish what procedures and rights apply.

A. TYPICAL CATEGORIES OF EMPLOYEE STATUS

Here are some typical categories of employment and how to handle a problem employee who falls into each category:

Probationer—Most organizations, both government and non-government, have a probationary period for new employees to observe the employee in the work setting and to make a final determination as to employability. During probation, it is easier to summarily terminate an employee for poor performance or misconduct without a lot of procedures and without a lot of proof.

In the private sector, probationary periods usually are measured in weeks or months. In the federal government, by comparison, the standard probationary period is one year from the first day of employment. If your problem employee is a probationer, the most you will need to do is to give the employee a letter stating that you have decided to terminate him and give the effective date (usually at the close of business the day of the letter). Local policy will determine the exact wording and timing of the letter, but the bottom line is that this is a very simple process, at least compared to what you will encounter with a career employee.

There are three traps to avoid when terminating a probationary employee.

1. A federal probationary period is over at the end of the last scheduled work shift that precedes the one-year anniversary of initial employment. Removals are effective on the day stated in the notification letter at midnight. If today is the last day before the one-year anniversary of initial employment, and the employee's shift is over at 4:30 this afternoon, your probationary termination letter dated today will be effective at midnight, several hours after the employee's probationary period is over. A summary termination letter under these circumstances would be defective and set aside because the employee is now entitled to the full notice and appeal rights of a career employee. So either make the termination effective on a date prior to the last day of the probationary period, or set a specific time for the removal to be effective on the last day, a time that is earlier than the end of the shift.

2. An employee who occupies a position identified as “probationary” may still have rights to file an appeal with the Merit Systems Protection Board if that employee has completed a year of current continuous employment with the government in any positions other than temporary positions limited to one year or less. So be careful of the “probationary” employee who has come to work for you directly from employment with another component of the government without any break in service. That person might well be entitled to the full protections of a non-probationary employee.

3. Employees in the federal civil service have a variety of ways that they can challenge a management action, that they can “push back” against their supervisor. When that happens, you will want to be ready to defend yourself, to prove that you have valid reasons for doing what you have done.

The law does not demand any proof for you to terminate an employee during probation. Because a terminated probationer can challenge you through the discrimination complaint process (or in some other manner), always have a legitimate, *bona fide*, business-related reason for the removal. At a minimum, write down, date, and sign your rationale for the termination, and store that piece of paper somewhere you can retrieve it if needed. Be as specific as possible about your reasons, with dates and witnesses, if relevant. A statement that says, “I terminated him because he turned in the Smith report a week late on September 9, 201X” is much better than a statement that says, “He was always late with reports.” Always have a *bona fide* reason for doing what you do.

As a side note, although it is permissible to reprimand or suspend a probationary employee (and a temporary employee) few agencies do. That’s because if a probationary employee has engaged in misconduct that warrants any discipline, most managers would agree that it is better simply to remove and replace the employee rather than get involved in the complaints, grievances, and appeals that might result if you were to impose lesser discipline.

Supervisory probationer—In the federal government, first-time supervisors have to undergo a supervisory probationary period during which they are evaluated on their ability to supervise. If your problem employee is a supervisor within the first year of appointment to a supervisory position, you can demote the supervisor back to the last nonsupervisory position held prior to promotion without having to use a lot of procedures or giving formal appeal rights. If the problem with the employee is misconduct or if it is not convenient for you to demote the employee to a nonsupervisory position, then you can still use the full procedures for disciplining career employees that we will discuss later.

Temporary employee—Temporary employees can be terminated in much the same manner as probationers. It just takes a letter from the supervisor that says that the temporary appointment is being terminated effective such-and-such date. But remember to have a *bona fide* reason articulated so you can defend yourself if that becomes necessary.

Contractor—More and more people who work for the government work as contractors rather than as true civil servants. The termination of a contract employee is controlled by the provisions of the master contract between the government and the private