COURSE SYLLABUS

Adverse Conduct and Performance-Based Actions Course

Gain the skills to confidently prepare and decide adverse and performance-based actions while meeting legal and procedural standards.

> Group classes (Live Online) and onsite training are available for this course. For more information, email onsite@graduateschool.edu or visit: https://www.graduateschool.edu/courses/adverse-conduct-and-performancebased-actions



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Course Outline

Module 1: The Legal Framework

- Place adverse and performance actions within constitutional due process and appointment authority.
- Identify governing statutes (5 U.S.C. Chs. 75, 43, 77, 71, merit principles, Hatch Act, USERRA, VEOA, whistleblower).
- Apply key regulations (5 C.F.R. Parts 752, 430, 432, 1200-series, 315, 731/735) and agency policies.
- Use MSPB and court decisions to interpret requirements and standards.

Module 2: Adverse Action Jurisdiction

- Differentiate actions covered (reprimands, suspensions, removals, demotions, furloughs) from exclusions.
- Determine employee coverage under Subchapter I (≤14-day suspensions) and Subchapter II.
- Resolve jurisdictional issues: probationary removals, appointments/promotions, voluntariness, reassignment demotions, withdrawal of resignation.
- Apply practical tips to avoid back-pay exposure when in doubt.

Module 3: Adverse Action Causes

- Explain the “efficiency of the service” cause standard rooted in the Lloyd–LaFollette Act.
- Relate causes to rules, ethics, and tables of penalties without over-relying on labels.
- Analyze common causes: medical fitness, off-duty conduct, indefinite suspension, erroneous personnel actions, clearance/license failures, protected vs. non-protected activity.
- Frame charges that link facts to mission impact.

Module 4: Deciding the Penalty

- Treat penalty as a separate determination after proving the charge.
- Apply Douglas factors and other relevant considerations to ensure consistency and fairness.
- Document rationale and alignment with any table of penalties.

Module 5: Issues of Proof

- Meet management’s burden with physical, documentary, and testimonial evidence.

- Use the correct standards of proof (preponderance, substantial, clear and convincing, beyond reasonable doubt—when applicable).
- Conduct pre-action inquiries and formal investigations that withstand review.

Module 6: Adverse Action Procedures

- Follow the basic scheme: notice, reply, decision—tailored to Subchapter I vs. Subchapter II.
- Draft proposal letters (charges, relied-upon materials, penalty factors) and manage duty status.
- Hear and document replies; issue defensible decision letters and appeal rights.
- Avoid harmful procedural error and meet other procedural requirements.

Module 7: Performance-Based Actions

- Operate under Chapter 43 with OPM-approved systems and written standards.
- Plan and administer PIPs: when to issue, components, monitoring and documentation.
- Process proposals, replies, and decisions; understand coverage and evidentiary standards.
- Choose appropriately between Chapters 75 and 43 and know added requirements under 75.

Module 8: Appeals and Grievances

- Navigate MSPB appeals (burdens, mixed cases) and negotiated grievance procedures.
- Address discrimination complaints and common defenses (e.g., disparate treatment).
- Use settlement effectively to manage risk and resolve disputes.