



Transportation
Security
Administration



HC | HUMAN
CAPITAL

**TUTORIAL: Guidelines for Conduct-Based
Discipline for Common Offenses
(Formerly Table of Offenses and Penalties)**

October 2018

Guidelines for Discipline



- **Effective October 11, 2018**
- Used for conduct-based actions only. These Guidelines do not apply to performance-based actions
- Use in conjunction with TSA MD 1100.75-3, Addressing Unacceptable Performance and Conduct
- Significant changes from the previous TOP
- Consult with servicing HC-ER Specialist or Professional Responsibility (PR), as appropriate, to determine the most appropriate charge and action
- Penalty Factors must still be addressed to determine aggravating and mitigating factors to explain why penalty is reasonable and appropriate
- Relevant revisions to provide managers more flexibility in addressing misconduct issues



Significant Changes

- 1st, 2nd and 3rd/subsequent offenses are the new columns
 - Mitigated, Recommended and Aggravated columns have been removed
 - Refers to the number of times the employee was previously disciplined for any misconduct
- Some nature of offense penalty ranges overlap
- Allows more flexibility in determining penalty range for offenses
- Allows management to apply progressive discipline
- All references to performance issues have been removed
- References and appropriate policies have been corrected/added for technical accuracy
- Many sections have been adjusted to more closely align and be consistent with DHS
- Providing a wider range of flexibility allows managers to address both mitigated circumstances as well as more egregious/serious matters



Section A. Attendance and Leave

- **A.1 – Was *Unexcused Absences, Tardy***
 - NOW ***Unexcused Tardiness***
- **A.3 – *AWOL from more than 1 – 5 workdays***
 - Revised so there's no overlap with A.2 – *AWOL of one work day or less*
- **A.6 – *Misuse of sick leave or other programs***
 - Possible charges column adjusted to more closely fit infraction
 - Must have specific knowledge of abuse
 - Employee called out sick and posted a photo on Facebook of them at a baseball game with the caption “Thanks TSA for the sick day!”
- **A.9 – NEW! *Failure to report for shift trade***
 - This has become a common issue that needed to be addressed appropriately



Section B. Inappropriate Comments or Conduct

- **B.3 – *Inappropriate and/or unwelcome verbal or physical conduct of a sexual nature***
 - Updated to reference TSA MD 1100.73-3, *Anti-Harassment Program*
- **B.4 – *Taking, threatening to take, or implying that official action will be taken as a result of rejection or submission to a request for sexual favors***
 - Penalty ranges adjusted to more closely align with DHS TOP
- **B.6 – *Fighting, threatening, intimidating, attempting to inflict or inflicting bodily harm on another; any violent, reckless or disorderly act, language, gestures or conduct***
 - Now aligns with DHS TOP
 - Now references TSA MD 2800.12, *Workplace Violence Prevention Program*
 - Please see note: The use of *assault* or *threat* are intent charges



Section C. Drugs and Alcohol

- Former C.2 from TOP – ***Consuming alcohol or medication which impairs ability to use firearm***
 - Moved to **0.2** in new Guidelines – Weapons charge
- ***C.2 (Former C.3) – Refusal/Interference with a TSA ordered drug or alcohol test, result or determination***
 - Adds Possible Charge: *Failure to successfully complete a drug or alcohol test with or without a valid medical explanation*
- ***C.3 - Positive drug test or admission of illegal drug use***
 - Adds Last Chance Agreement for non-TSOs
- ***C.4 – Positive alcohol test while on duty***
 - Verbiage reworded in References/Explanatory Notes Column
 - Adds Last Chance Agreement for non-TSOs



Section C. Drugs and Alcohol

- ***C.7 – Unauthorized possession, use, sale, manufacture, growth, transportation, or distribution of illegal drugs or controlled substances***
 - Added *manufacture, growth, transportation* to the description of the offense
 - See Possible Charges
 - Adds manufacturing, growing or transporting
- ***C.8 – Driving privately owned vehicle, off duty, while intoxicated or under the influence of alcohol or legally prescribed drugs that impair the ability to drive, or other intoxicants***
 - Adds legally prescribed drugs
 - See 1st and 2nd Offense columns
- Charges throughout identify required removals for TSOs
 - Please also see Appendix A of Handbook to TSA MD 1100.75-3, Addressing Unacceptable Performance and Conduct



Section D. Failure/ Refusal to Follow Instructions

- **D.3 – *Insubordination***
 - Now aligns with DHS TOP
 - Be careful with using this charge – it requires intent!
 - Example: An employee receives an instruction from their supervisor to create a spreadsheet on specific data. The employee told the supervisor it's a stupid assignment, they don't have to listen to them and they aren't their child. The employee never creates the spreadsheet.
- Please make sure the following elements can be proven when using this charge:
 - Employee was given a lawful order,
 - Employee disobeyed the order, and
 - The disobedience was willful and intentional



Section E. Falsification/Dishonesty/Misstatement



- **E.1 – *Misrepresentation with intent to mislead***
 - Now includes time and attendance fraud (former E.4)
 - Please make sure the following elements can be proven to use this charge:
 - The employee knowingly provided false information, and
 - The employee intended to defraud, deceive, or mislead the agency for their own material gain
- **E.2 – *Providing inaccurate information***
 - Lack of candor is replaced with more specific verbiage – but is still an option
 - Penalty range allows for flexibility when there are strong mitigating factors
- Former E.4 – ***Time and Attendance Fraud***
 - Now placed under E.1



Section F. Inquiries and Investigations

- **F.1 – *Failing or refusing to cooperate in connection with any official inquiry, investigation or proceeding***
- **F.2 – *Interfering with an official inquiry, investigation, or administrative or adjudicatory proceeding***
- Both are serious offenses but now allows for flexibility with selecting a penalty when there are strong mitigating factors



Section G. Integrity and Ethics

- **G.2 – Failing to promptly report an offer of a bribe or attempted bribe**
- **G.5 – Use of position or authority for other than official purposes**
 - 1st offense is 14-day suspension; previous TOP allowed for 5-day to 13-day suspension (G.2) and 7-day to 13-day suspension (G.5) for mitigated ranges
 - No room for mitigating factors with new Guidelines
 - Now aligns with DHS TOP
- **G.7 – Fraudulent or other intentional use of government charge card**
 - Reworded to show proving intent is required
 - Must show the employee deliberately used their government card for personal purchases while they were not in an approved travel status



Section G. Integrity and Ethics

- **G.14 – *Direct or indirect solicitation or acceptance of a gift from a subordinate***
 - *Adds or from another employee who receives less US Government pay, unless the employee is not the employee's subordinate and a personal relationship justifies the gift*
- **G.16 – *Knowingly working on a matter that will affect a person or organization with whom the employee has a covered relationship***
 - Serious ethics offense involving personal and business relationships
 - 1st offense is a 14-day suspension to removal; previous TOP allowed for LOR to 14-day suspension
 - No room for mitigation



Section G. Integrity and Ethics

- **G.18 – *Engaging in prohibited outside employment***
 - For 2nd or 3rd/subsequent offenses, the penalty is removal
 - Now aligns with DHS TOP
 - All employees must now report any outside employment

- **G.25 – *Inappropriate relationships in the workplace/nepotism***
 - This charge was previously G.26
 - Former G.25 – ***Taking reprisal against employees for exercising their rights*** is covered under Section B



Section H. Neglect of Duty

- Former H.1 – ***Missed mission for FAMS***
 - Should now be addressed under Section A. Attendance and Leave charges
- Although many categories appear to overlap, Section H. is consistent with the DHS TOP



Section I. Personal Appearance and Hygiene

- ***1.1 – Violation of TSO uniform and appearance requirements (TSOs only)***
- ***1.2 – Failure to maintain a neat and businesslike appearance or to comply with dress code standards while on duty (For non-TSOs)***
- Added option of removal for 3rd/subsequent offense for both charges



Section J. Property Misuse/Damage



- **J.1, J.2, J.3** = Severe infractions
 - Removed LOCs as option
- Removal is mandatory for 3rd/subsequent offense
- Now aligns with DHS TOP



Section K. Reporting Responsibilities **HC** HUMAN CAPITAL

- **K.2, K.3, K.4, K.5**
 - 3rd/Subsequent offense allows for 14-day suspension
 - Former aggravated ranges for K.2 and K.3 allowed for 15-day to removal only
 - Former aggravated range for K.4 allowed for 4-day suspension to removal
 - Former aggravated range for K.5 allowed for 3-day to 7-day suspension



Section L. Safety/Security/Health



- 3rd/Subsequent Offenses for all infractions allow for 14-day suspension to removal
- Former aggravated ranges started at 15-day suspension



Section M. Screening and Security

- **M.1 – *Failure to follow Standard Operating Procedures***
 - Former aggravated range only allowed for removal
 - Now 3rd/Subsequent offense allows for 14-day suspension to removal
- **M.2 – *Intentionally allowing persons/property to bypass screening***
 - Must prove intent!
- **M.3 – *Knowingly operating equipment that is not working***
 - Must prove the employee knew!
- **M.5 – *Sleeping on duty while engaged in security duties***
 - Be careful with this one! Includes verbiage for TSO required removal while assigned to security related activities



Section N. Unauthorized Taking/Possession

- **N.3 – Theft**
 - Now provides that removal is the only appropriate penalty
 - No room for mitigating factors
 - Theft is an intent charge and the intent must be proven, otherwise would use N1 or N2
 - Elements of this charge that must be proven include:
 - Employee took another's property;
 - Employee acted without authorization;
 - Employee acted with intent to permanently deprive the owner of possession; and
 - Employee acted with a guilty mind



Section O. Weapons - Related

- ***O.2 – Consuming alcohol or medication when carrying a TSA-issued/authorized firearm on or off-duty***
 - Moved from former Section C. – Drugs and Alcohol



Section P. Safeguarding Information

- **NEW! P.3 – *Unauthorized access or providing unauthorized access to SSI, PII or other material covered by the Privacy Act or containing sensitive information***
- **NEW! P.4 – *Careless or negligent handling of documents that is SSI***
 - Replaces former P.3 – violation of security procedures



Section Q. Mishandling of Classified National Security Information

- **Q.1 – *Mishandling of documents that are classified or sensitive***
 - Now only charge in Section Q
 - Consistent with other DHS agencies
 - Removed all criminal references



Frequently Asked Questions



Q. Why did TSA replace the former Table of Offenses and Penalties with the new Guidelines for Conduct-Based Discipline for Common Offenses?

A. To support the TSA Administrator’s vision to continually move toward a performance-based culture, TSA leadership conducted a review of the former Table of Offenses and Penalties and compared them to similar documents from other DHS components. This effort resulted in creating the new Guidelines for Conduct-Based Discipline for Common Offenses, designed to enable consistent and transparent decision making for the discipline process across the Agency, giving our workforce more opportunities to succeed, and align with the Department.



Frequently Asked Questions

Q. Whom do the Guidelines impact?

A. The Guidelines impact all TSA employees when misconduct is the issue.

Q. What are the Guidelines?

A. The Guidelines provide guidance to managers for determining the appropriate level of discipline for employee misconduct.



Frequently Asked Questions

Q. What has changed?

A. One of the most significant changes from the former Table of Offenses and Penalties is the removal of all references to “performance,” as the new Guidelines emphasize separate and distinct processes for addressing performance deficiencies and misconduct. The Guidelines only address misconduct and contain no references or recommendations for performance deficiencies.

To align with guidelines from other DHS components, the new Guidelines now have penalty ranges that are relative to previous discipline, based on first, second, or third/subsequent offenses.

Additionally, the new Guidelines contain wider penalty ranges to allow managers more flexibility to use their discretion when choosing a reasonable and appropriate penalty for each specific circumstance. The Guidelines also provide more detailed instructions for managers and supervisors regarding how to use the tool.



Frequently Asked Questions



Q. When will the Guidelines be implemented?

A. The Guidelines are effective as of October 11, 2018. For actions that have been initiated prior to this roll-out date (i.e., the proposal notice has already been issued to the employee), management officials will use the version of the Table of Offenses and Penalties effective May 15, 2014.



Frequently Asked Questions



Q. What resources are available for managers and supervisors who are considering taking an action due to employee misconduct?

A. Managers who detect performance or conduct issues with an employee should consult with their regional HC ER Specialist, PR and/or TSA's Chief Counsel (CC). The HC ER iShare page contains links to help managers find out who their HC ER Specialist is. The HC ER iShare page also provides fact sheets, decision guides, and numerous other resources.

Applicable policies include: Guidelines for Conduct-Based Discipline for Common Offenses (formerly the Table of Offenses and Penalties), *TSA MD 1100.75-3, Addressing Unacceptable Performance and Conduct* and its related Handbook



TSA Employee Relations Division



- Consultation with your assigned regional HC-ER POC is always recommended

- HC-ER provides advice and guidance on the following:

- Misconduct
 - Leave
 - Performance
 - Inquiries/Fact-Findings
 - Suitability
 - Grievance/Appeals
 - Security Clearance Issues
 - FMLA
 - Other ER related issues
 - Review, Edit, Draft of ER Actions
 - Customized Training
 - ER Integrated Database Assistance
 - Ad Hoc Reports/Data Calls

*PR is responsible for review of all misconduct allegations for senior level employees (J-M Band, FSDs, DFSDs, DAFSDs, and TSARs)

- Per **TSA MD 1100.75-8**, all adverse actions must be sent to your HC-ER POC prior to issuance!



Consultation

- The Guidelines specifically separate misconduct from performance
 - Know the difference between performance and misconduct
 - Determine the **root cause** of the incident or issue
 - Speaking to the employee is imperative
 - You must know the **WHY** before you can determine if an issue is misconduct or performance
 - Performance issues follow a **completely separate process** than those that are misconduct related and will not include this TOP
 - If you are unsure, please reach out to your HC-ER POC for assistance in making the determination



Penalty Determination Factors (PDFs)

Considerations:

- The purpose of a penalty is to correct behavior, not to punish
- PDFs are required to determine the reasonable and appropriate penalty for each specific incident of misconduct
- What is reasonable and appropriate are determined by a thorough analysis of mitigating and aggravating factors
- Both the proposing and deciding officials must provide separate and distinct analysis of the *applicable* PDFs
- Penalty must take into account the progressive discipline concept
- Management has the discretion to go outside a given range if they determine the circumstances warrant.
- ER iShare site: [Offices > Human Capital > Employee Relations](#)
 - PDF Checklist



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Thank you!



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