



Tips and Tidbits
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Question: Can an employee be disciplined at work for incidents that occur when off duty? What type off duty misconduct could bring about such action?

Notwithstanding the fact that Federal managers are regularly confronted with issues of misconduct that occur while employees are *at* work, misconduct can become even more problematic when bad behavior occurs off duty. Government employees' off-duty conduct becomes an issue whenever that behavior results negatively upon the employee, the Service, or it compromises the trust the Agency holds in the employee. When a nexus, a connection between the off-duty misconduct and the employees' position exists, disciplinary action may be taken

Federal employee behavior is subject to a high [standard of official conduct](#) because of the nature of work Government employees perform. Accordingly, employees are expected to carry out the Agency's mission with the utmost integrity and honesty, and to ensure that employees do not violate the public trust, adhere to the principles of the Code of Ethics. Misconduct occurs when an employee, unconsciously or deliberately, violates this Code. The Code requires employees:

1. Put loyalty to the highest moral principles to self and Country;
2. Uphold the Constitution, laws and legal regulations of the United States;
3. Give a full day's labor for a full day's pay;
4. Find and employ efficient and economical ways to accomplish tasks;
5. Never discriminate unfairly by giving special favors or privileges to anyone;
6. Make no promises of any kind binding upon the duties of the office they hold;
7. Engage in business with the Government, directly or indirectly;
8. Never use confidential information gained in the performance of duties to make a private profit;
9. Expose corruption; and,
10. Uphold these principles and be conscious that their position is one of public trust

To establish a nexus the Agency must: (1) be able to prove that there is a connection between the seriousness of the off-duty misconduct and the continued efficiency of the service; (2) show how the misconduct itself affected the employee's performance and/or trust and the Agency's confidence in the employee's performance; and (3) show that the misconduct interfered with its mission. When the Agency is able to prove off-duty behavior conflicts with its mission, a nexus may be found even if there was no publicity surrounding the incident and/or the employee's job performance was not affected. While there are notable exceptions, off-duty misconduct of this nature sufficiently diminish the employee's ability to properly model the values required of Federal employees and probably constitute "just cause" for discipline up to and including termination. A presumption of nexus can be made if the off-duty conduct was so egregious, that the nexus "speaks for itself". For example, employees who work with children or the public in

general, are held to a higher standard when it comes to their off-duty activity. In this instance, school employees will likely be disciplined for any misconduct occurring off-duty which involves illegal drugs. Similarly employees in safety-sensitive positions might also be more closely scrutinized and penalized for any off-duty matters involving illegal drugs. On the other hand, employees who obtain personal confidential information (including social security numbers and financial information) from the general public are expected to have unimpeachable integrity and character; therefore, any off-duty misconduct involving fraud or falsification of records will likely to result in discipline as well.

The level of an employee's position can also have an impact on the degree or weight of the penalty placed on the off-duty misconduct. Stricter penalties should be imposed on employees occupying supervisory, managerial, or law enforcement positions because of the higher degree of public trust and independence expected of them. When misconduct occurs with these types of positions, when that conduct is highly visible and is widely known, higher penalties would also be appropriate.

The commission of lesser crimes can make it more difficult to establish the link between an employee's off-duty misconduct and its affect on the efficiency of the service. In these instances, the employee's entire record/employment history should be considered, along with any mitigating factors.

Penalties for off-duty misconduct run the full gambit from written reprimands to removals and should be taken promptly. The Merit Systems Protection Board (MSPB) has established criteria that supervisors are required to utilize when determining an appropriate penalty to impose. These decision points, commonly referred to as the "[Douglas Factors](#)", are relevant factors that must be considered in determining the severity of the discipline.

For additional information, please contact your servicing MER Human Resources Specialist at the Civilian Personnel Advisory Center.

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