

ATTACHMENT 2

SAMPLE ALTERNATIVE DISCIPLINE AGREEMENT (PRIOR TO INITIATION OF TRADITIONAL DISCIPLINE)

ALTERNATIVE DISCIPLINE AGREEMENT BETWEEN [EMPLOYEE'S NAME] AND [DIVISION/OFFICE]

The PARTIES to this Agreement are [Employee's Name, title, duty station] (hereafter referred to as the EMPLOYEE) and the [Division/Office] (hereafter referred to as USGS).

This Agreement is entered into as an alternative to the initiation of a proposal to [suspend the EMPLOYEE without pay for 3 calendar days based on the EMPLOYEE'S misconduct.] Under the terms of this Agreement, the EMPLOYEE acknowledges that:

[He/she was absent without approved leave (AWOL) for a total of 20 hours during pay periods 21 and 22 of 2000.]

Based on the above, and in consideration of other factors, the USGS has concluded that the issuance of a [proposal to suspend the EMPLOYEE from duty without pay for 3 calendar days is warranted.] Formal disciplinary action procedures include: [the issuance of a letter of proposed suspension; the EMPLOYEE'S opportunity to reply orally and/or in writing to the charges set forth in the proposal; the issuance of a decision based on the proposal and the EMPLOYEE'S oral and/or written response to the charges (including any mitigating factors presented by the EMPLOYEE); and the EMPLOYEE'S right to file a negotiated/administrative grievance regarding the action taken by the USGS.]

However, the PARTIES have agreed to the following as an alternative to the USGS initiating formal disciplinary action procedures:

1. The EMPLOYEE admits that he/she committed the misconduct cited above, recognizes the misconduct was unacceptable, and promises that these acts will not occur in the future;
2. The EMPLOYEE agrees to [donate 24 hours of annual leave to an approved leave donor recipient within 30 days of the date of the last signature on this Agreement and to provide his/her supervisor, [name], with proof that such a donation was made, no later than 10 days after making the donation;]
3. The EMPLOYEE acknowledges that his/her failure to comply with #2 above will result in the automatic imposition of [a 3 calendar day suspension without pay] without [the issuance of a proposal to suspend letter,] an opportunity to reply, [a written decision letter] and the right to grieve the USGS action.

4. The USGS agrees that if the EMPLOYEE fully complies with the condition specified in #2 above, the USGS will not impose the [3 calendar day suspension;]
5. The EMPLOYEE understands that an additional offense of this nature, or any other misconduct on his/her part, may result in a proposal for a more severe disciplinary action, up to and including a proposal to remove the EMPLOYEE from the Federal service. The EMPLOYEE further understands that the misconduct cited in this Agreement may be considered a first offense for purposes of determining any future disciplinary action.
6. The EMPLOYEE understands that this Agreement does not preclude the USGS from initiating and/or taking appropriate action regarding any other misconduct not covered by this Agreement.
7. The EMPLOYEE agrees to waive any and all rights to appeal, grieve, complain of, or otherwise contest actions relating to or arising out of the misconduct addressed in this alternative discipline agreement. The EMPLOYEE may not in any way contest the imposition of traditional discipline arising from a breach of this Agreement; however, he/she may contest a determination that one or more terms of this Agreement has been breached. The EMPLOYEE cannot waive prospective EEO complaint rights.*
8. The EMPLOYEE understands that this Agreement will be maintained with the disciplinary files in the USGS personnel office for a period of 5 years from the date of the last signature on this Agreement in compliance with Employee Relations record-keeping requirements.
9. The PARTIES understand that this Agreement is not confidential and will be used in any manner necessary to carry out the terms. However, it will be shared only with those who have an official need to know.
10. The PARTIES understand that the terms and conditions of this Agreement are nonprecedential, meaning they are specific to the EMPLOYEE, and may not be cited for comparison to another employee's alternative discipline agreement or traditional disciplinary action.
11. There are no other terms to this Agreement other than those expressly written here.
12. The EMPLOYEE agrees that he/she has had an opportunity to consult with a representative on the terms and conditions of this Agreement and has had an opportunity to clarify any terms or conditions which were not understood by him/her.
13. The EMPLOYEE understands that he/she is fully responsible for any and all attorney's fees related to his/her representation in any part of this matter.

14. The PARTIES understand the terms of this Agreement and willingly enter into it. This Agreement becomes effective upon the date of the last signature of the PARTIES involved.

Employee's Signature

Supervisor's Signature

Date

Date

FINAL DISPOSITION:

The terms and conditions of this Agreement were:

Met

Not Met (see attached violation notice)

Supervisor's Signature

Date

* Note: Where an employee is covered by the Age Discrimination in Employment Act of 1967 (ADEA), as amended, this term should contain an explicit waiver of an ADEA claim under the Older Workers Benefit Protection Act, as outlined in *Oubre v. Entergy Operations, Inc.*, 117 S. Ct. 1466 (1998), regardless of whether the employee has raised the issue. (Although the EEOC has stopped short of requiring this language in agreements where an employee has NOT raised an age discrimination claim, we believe it is prudent based on the wording in *Oubre*.) The following language may be used for this waiver:

Under the Age Discrimination in Employment Act and the Older Workers Benefit Protection Act, the EMPLOYEE has had 21 days in which to consider the terms and conditions of this Agreement and the right to consult with legal counsel. The EMPLOYEE acknowledges that he/she has been advised by the USGS that he/she should consult with an attorney. The EMPLOYEE has 7 days from the signing of this Agreement to rescind it. If the EMPLOYEE wishes to rescind the Agreement, he/she must notify his/her supervisor of this decision in writing.