

Disciplinary Action for Privacy Violations Guidance

Privacy violations – Why violations are significant/important? The proper protection and appropriate use and disclosure of personal information entrusted to the Department of Veterans Affairs (VA) is paramount to its compliance with Federal privacy laws, regulations and VA policies. It is also critical to maintaining the trust placed in VA by our Veterans, employees and other stakeholders. VA must maintain a strong privacy culture wherein the workforce is committed to protecting personal information and only using or disclosing it for official VA business purposes. When an individual misuses or fails to safeguard personal information, it may cause personal injury to the individuals for whom the information represents, erodes everyone’s trust in VA, and undermines VA’s mission to care for those who have borne the battle and their families.

The Health Insurance Portability and Accountability Act (HIPAA) of 1996 requires that penalties, to the degree practicable, for violations in privacy should be administered consistently across the workforce. The appropriate and consistent application of penalties for the wrongful use or disclosure of personal information in violation of privacy laws and regulations will support a culture that reflects deep respect for the individuals we serve, exhibited by VA’s diligent protection of their personal information. To that end, this guidance is intended to provide a general structure for how disciplinary action for privacy violations should be handled by supervisors.

Once a supervisor has determined, after consultation with the local Privacy Officer and conducting an assessment of all available evidence, that a privacy violation has occurred, a determination regarding the appropriate level of corrective action must be made. The supervisor should work with his/her servicing Human Resources Office and the Office of General Counsel attorney to conduct an assessment of the applicable charges of misconduct and to determine an appropriate level of penalty in light of applicable mitigating and aggravating factors.

The range of penalties for offenses is found in VA Handbook 5021, Employee Management Relations, Part I and Part II, Appendix A, Table of Examples of Offenses and Penalties. The range of penalties outlined in this table is to be used as a guide in administering discipline to help ensure that like disciplinary action is taken for like offenses. The table is designed to be sufficiently broad to include most types of offenses, but is not intended to be an exhaustive list of all offenses.

Additionally, the range of penalties is not prescriptive (i.e., you do not have to follow the range listed) **as mitigating and aggravating factors must also be taken into consideration.** Privacy violations are contained within the Table of Penalties under the subheading of “Information and Security”, and are outlined in Items 11, 13, and 14.

NATURE OF OFFENSE	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE
	Minimum to Maximum	Minimum to Maximum	Minimum to Maximum
Information and Security			
11. Failure to safeguard confidential matter or access to such.	Admonishment Removal	Reprimand Removal	14 days Removal
13. Except as specifically authorized, disclosing or using direct or indirect information obtained as a result of employment in VA, which is of a confidential nature or which represents a matter of trust; or any other information so obtained of such character that its disclosure or use would be contrary to the best interests of the Government, VA, or the Veterans being served by it.	Reprimand Removal	Removal	
14. Violation of the Privacy Act, HIPAA or other laws, regulations and/or policy pertaining to information disclosure.	Reprimand Removal	14 days Removal	Removal

In addition, the following are the 12 mitigating and/or aggravating factors (commonly referred to as Douglas Factors) that should be considered when determining the appropriate level of disciplinary action to impose:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with any applicable agency table of penalties;
8. The notoriety of the offense or its impact upon the reputation of the agency;
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. Potential for the employee's rehabilitation;
11. Mitigating circumstances surrounding the offense such as unusual job tension, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Although oral or written counselings of employees are not considered disciplinary actions, such counselings may be considered when assessing the appropriate penalty for a particular offense based on the above Douglas Factors.

As in all cases in which a disciplinary action is proposed or issued, the proposing and/or deciding official must be able to articulate the reason for the level of penalty imposed. In addition, the proposing and/or deciding official should, upon request, be prepared to explain to the local Privacy Officer or VHA Privacy Office the basis for this decision.

This information is not meant to be all inclusive guidance regarding privacy violations or for taking disciplinary actions, but it is meant to serve as a reminder that privacy violations can have a significant impact upon VA and the Veterans we are responsible for serving. Additionally, managers are responsible for taking corrective action against employees when warranted, and they must be able to clearly articulate the steps taken to arrive at a particular penalty determination.

For questions or concerns regarding privacy issues, contact your local Privacy Officer or the VHA Privacy Office at VHAPrivIssues@va.gov. For questions or concerns regarding the process for taking a disciplinary action, contact your local Human Resources Office.