



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

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Administrative Leave Decisions for EPA Employee Disciplinary Actions Should Be Better Documented, and Parameters on Use of Such Leave Should Be Established

Report No. 16-P-0036

November 9, 2015

Report Contributors:

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Abbreviations

AWOL	Absent without leave (unauthorized absence)
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
GAO	U.S. Government Accountability Office
OIG	Office of Inspector General
OPM	U.S. Office of Personnel Management
OSC	U.S. Office of Special Counsel

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At a Glance

Why We Did This Audit

The purpose of this audit was to determine whether the U.S. Environmental Protection Agency (EPA) has adequate policies and procedures in place for the use of administrative leave in connection with employee conduct and disciplinary actions.

We issued an early warning report on November 19, 2014, identifying eight employees who recorded significant amounts of administrative leave. Information provided by the agency showed that the administrative leave related to disciplinary actions. We initiated this audit to assess the process used and policies followed in the decisions to grant administrative leave for these eight employees.

This report addresses the following EPA goal or cross-agency strategy:

- *Embracing EPA as a high-performing organization.*

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Administrative Leave Decisions for EPA Employee Disciplinary Actions Should Be Better Documented, and Parameters on Use of Such Leave Should Be Established

What We Found

The EPA has established policies and procedures for the use of administrative leave in connection with employee conduct and disciplinary actions. However, the policies can be improved to (1) provide better guidance for documenting administrative leave, and (2) establish parameters for how much administrative leave should be approved.

EPA's use of extended administrative leave can result in unnecessary and excessive payroll costs, and lack of documentation and justification can lead others to second guess the agency's decisions.

Our analysis shows that the EPA's use of administrative leave appears disproportionate when compared to U.S. Office of Personnel Management guidance related to unacceptable performance and misconduct. According to Office of Personnel Management guidance, administrative leave should generally be limited to situations involving brief absences and not be used for an extended period of time. The cases reviewed involved administrative leave of 4 months or more for all but one of the employees included in the audit. We do not consider 4 months or more to be a brief absence. Because of limited documentation in case files, we were unable to determine the basis for the extended periods of administrative leave. Documentation was limited because EPA guidance does not provide requirements for documentation to support the basis for extended periods of administrative leave. Also, the EPA has not established parameters on the use of administrative leave or the appropriate level of authority for approval.

Without adequate guidance, the EPA may grant more administrative leave than necessary and incur excessive payroll costs. The lack of adequate documentation and justification for the extended use of administrative leave can also lead others to second guess the agency's decisions.

Recommendations and Planned Agency Corrective Actions

We recommend that the Deputy Administrator enhance the policies and procedures for disciplinary actions to ensure that administrative leave approvals are adequately documented in the case files, and establish parameters on the use of administrative leave, along with the appropriate level of authority for approval. The agency concurred and is in the process of updating its leave administration policy covering administrative leave to address our recommendations.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

November 9, 2015

MEMORANDUM

SUBJECT: Administrative Leave Decisions for EPA Employee Disciplinary Actions
Should Be Better Documented, and Parameters on Use of Such Leave
Should Be Established
Report No. 16-P-0036

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: A. Stanley Meiburg, Acting Deputy Administrator

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position.

Action Required

In response to our discussion document, the agency provided an intended corrective action plan that addresses the recommendations and establishes planned completion dates. Therefore, a response to the final report is not required. The agency should track unimplemented corrective actions in the Management Audit Tracking System.

This report will be available at www.epa.gov/oig.

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Purpose

The purpose of this audit was to determine whether the U.S. Environmental Protection Agency (EPA) has adequate policies and procedures in place for the use of administrative leave in connection with employee conduct and disciplinary actions. We issued an early warning report¹ on November 19, 2014, identifying eight employees who recorded a significant amount of administrative leave. Information provided by the agency showed that the administrative leave related to disciplinary actions. We initiated this audit to assess the process used and policies followed in the decisions to grant administrative leave for these eight employees.

Background

According to the U.S. Government Accountability Office (GAO), there is no general statutory authority for the use of paid administrative leave, which is an excused absence without loss of pay or charge to leave. However, the U.S. Office of Personnel Management (OPM) has addressed the use of paid administrative leave in limited contexts. OPM guidance acknowledged that administrative leave is appropriate for numerous purposes, including brief absences in connection with employee disciplinary actions, which is also allowed through the Code of Federal Regulations (CFR) under 5 CFR Section 752.

According to 5 CFR §752.404, when an employee is proposed for removal or suspension for more than 14 days, he or she is entitled to at least 30 days' advance written notice. Under the crime provision, where the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed, the advance notice is reduced to a minimum of 7 days rather than 30 days. It is presumed that an employee will remain in a duty status during the advance notice period. However, in rare circumstances where the agency determines the employee's presence in the workplace may pose a threat to the employee or others, result in loss of or damage to government property, or otherwise jeopardize legitimate government interests, the agency may elect to place the employee on administrative leave for such time as necessary to effect the action.

The EPA has policies and procedures for administering leave benefits through the EPA Leave Manual 3165. Chapter 9 identifies a variety of circumstances where administrative leave can be authorized, including circumstances involving employee adverse action, consistent with 5 CFR §752.404 and OPM guidance. The EPA's adverse action policy regarding administrative leave mirrors 5 CFR § 752.404, except under the crime provision. The EPA adverse action policy added

¹ EPA OIG Report No. [15-N-0025](#), *Early Warning Report: Some EPA Employees Found to Be on Paid Administrative Leave for Years*.

a maximum limit of 10 days for administrative leave when circumstances require immediate action.

Responsible Office

The Office of Human Resources within the EPA's Office of Administration and Resources Management is responsible for providing policies and guidance on employment, pay and leave administration, and employee conduct. The Office of Human Resources also maintains data on employment, pay status, and employee disciplinary and adverse actions.

Prior Audit Reports

On October 17, 2014, GAO issued a report² on its review of paid administrative leave for federal agencies for fiscal years 2011 to 2013. GAO identified 69 EPA employees who used a month or more of administrative leave, with a total of 4,711 days of administrative leave taken.

On October 21, 2014, a member of the U.S. Senate Judiciary Committee and a member of the U.S. House Committee on Oversight and Government Reform had requested information from the EPA Administrator concerning administrative leave taken by EPA employees. The Office of Inspector General (OIG) was copied on the request. In response to the request, we gathered data and issued the previously noted report on administrative leave³ to the EPA Administrator to provide administrative leave information obtained during an audit on time and attendance. The report provided data on eight employees who had recorded significant amounts of administrative leave. Administrative leave recorded by these eight employees from January 3, 2010, to September 20, 2014, totaled 20,926⁴ hours and cost the government an estimated \$1,096,868.

Scope and Methodology

We conducted this audit from April 14, 2015, to August 20, 2015, in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the

² GAO Report No. [GAO-15-79](#), *FEDERAL PAID ADMINISTRATIVE LEAVE: Additional Guidance Needed to Improve OPM Data*, published October 17, 2014.

³ EPA OIG Report No. [15-N-0025](#).

⁴ Total administrative leave hours identified under this new audit is 15,015 hours, not 20,926. The variance was due to: (1) the November 19, 2014, early warning report including administrative leave hours that were not disciplinary-action related; (2) the cut-off date of our analysis being September 20, 2014, for the early warning report and August 20, 2015, for this new audit; and (3) administrative leave hours taken by one of the employees being excluded from this new audit due to an active investigation on the employee.

evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

To achieve our objective, we performed the following steps:

- Met with the EPA's Office of Human Resources to identify agency policies, procedures and guidance for the use of administrative leave.
- Reviewed case files for each of the employees and interviewed EPA officials involved in the conduct and disciplinary actions to obtain an understanding of the process and policies followed, and the reasons for granting administrative leave.

Our audit initially focused on the cases of the eight employees identified in the early warning report issued on November 19, 2014. However, one of the employees (referred to in this report as Case 4) was the subject of an investigation at the time of our field work. We, therefore, excluded the case from our audit.

Results of Audit

EPA has established policies and procedures for the use of administrative leave in connection with employee conduct and disciplinary actions. However, EPA's policies can be improved to:

- Provide better guidance for documentation.
- Establish parameters for administrative leave.

Our analysis show that the EPA's use of administrative leave appears disproportionate when compared to OPM guidance related to unacceptable performance and misconduct. The OPM guidance indicates administrative leave should generally be limited to situations involving brief absences and should not be used for an extended period of time. The cases reviewed involved administrative leave of 4 months or more for all but one of the employees included in the audit. We do not consider 4 months or more to be a brief absence. Because of limited documentation in the case files, we were unable to determine the basis for the extended periods of administrative leave. Documentation was limited because EPA guidance does not establish requirements for documentation to support the basis for extended periods of administrative leave. Also, the EPA has not established parameters on the use of administrative leave or the appropriate level of authority for approval. Without adequate guidance, the EPA may potentially grant more administrative leave than necessary and incur excessive payroll costs. The lack of adequate documentation and justification for the extended use of administrative leave can also lead others to second guess the agency's decisions.

A summary of what we found follows, while details on specific cases are in Appendices A through G, including a timeline of events for each case.

Administrative Leave Decisions Can Be Better Documented

The reasons for placing an employee on administrative leave are explained and documented. However, the decisions on the amount and duration of administrative leave granted, as well as the actions taken by the agency during the removal process, were not always well documented.

For example, in Case 2, documentation for several actions could be improved. The employee in Case 2 was initially placed on administrative leave on March 2, 2010. The agency issued a proposed removal notice on April 15, 2010, and removed the employee on October 30, 2010. The employee recorded 1,104 hours of administrative leave during this 8-month removal action period, but the only documentation we found in the employee's case file during this period was the March 2, 2010, memorandum noting that the employee was placed on administrative leave until further notice. We could not find copies of the proposed removal notice and decision document, nor documentation on interim actions taken during this 8-month period. An 8-month period of administrative leave is significant and, thus, the agency should document actions to explain why such an extended period was justified.

The second phase of Case 2—the time period between the arbitration decision and the start of the second removal action—also warranted better documentation. The arbitration decision was made on October 10, 2012, ordering the agency to reinstate the employee's status, including paying the employee backpay, interest and attorney fees. The agency then issued a second proposed removal action notice on January 18, 2013. During this 3-month time period (October 10, 2012, to January 18, 2013), the agency placed the employee on administrative leave pending a decision on the employee's work status after cancellation of his first removal. There was no documentation in the file justifying actions taken to decide on the employee's work status during these 3 months. Without documentation, it could give the impression that the agency granted a 3-month administrative leave without justification.

The Deciding Official issued a decision letter on December 18, 2013, sustaining all charges in the second proposed removal notice. Instead of removal, the Deciding Official offered the employee an abeyance agreement. The agreement allowed the employee to take disability retirement by July 8, 2014, and maintain his administrative leave status until the earlier of his retirement or July 8, 2014. This represents an additional 6.5 months of administrative leave after the Deciding Official's decision, in addition to the 14 months already taken during the decision process. This was a significant and costly offer, but there was no documentation in the file as to how the settlement agreement terms were arrived at. During interviews, agency officials said litigation risks and other factors were considered in the decision, but those factors were not documented.

Case 6 is another example where documentation could be improved. The employee was placed on administrative leave on March 17, 2014, after being arrested, jailed and indicted for possession of marijuana. The agency issued a 7-day notice to the employee on April 2, 2014, for a proposed indefinite suspension without pay action, consistent with the agency's adverse action policy. The policy states that if there is reasonable cause to believe the employee has committed a crime for which a sentence for imprisonment may be imposed and circumstances require immediate action, the employee may be placed on administrative leave as is necessary to effect the action, not to exceed 10 days. The proposing official stated that there was reasonable cause to believe the employee committed a crime for which a sentence for imprisonment may be imposed.

The agency entered into a separation agreement on May 20, 2014, and allowed the employee an additional 6 months of administrative leave before the employee's voluntary retirement on October 31, 2014. Instead of the 10 days of administrative leave allowed in the policy, the employee was allowed approximately 7.5 months, a significant departure from agency policy. However, there is no documentation in the file explaining the deviation from policy or how the terms of the settlement agreement were arrived at. According to the Deciding Official, the settlement for a 6-month administrative leave period was negotiated between counsel and the employee's attorney, and many factors, including litigation risks, were considered. Counsel said she was "told" to grant 9 months to a year of administrative leave as part of the settlement but only agreed to allow 6 months as a compromise.

The decisions relating to the administrative leave granted in these two examples were not documented as well as they should have been because the agency's policies do not provide adequate guidance for documentation. The leave manual does not address the documentation requirement. Under the adverse action policy, the Servicing Personnel Officer is required to maintain a complete record of any adverse action taken against an employee. The documentation specified in the policy includes:

- Notice of proposed action.
- An employee's answer to the notice of proposed action.
- A summary of the employee's answer when made orally.
- The final decision letter.
- The evidence relied on to support the reasons for the proposal and decision.

Further, the policy only requires the proposed action notice and final decision letter to state the reasons for the proposed action and explain the employee's rights. The policy does not provide guidance on the amount of details to maintain in the files. For example, the policy does not require relevant communication and negotiation information to be documented to justify actions taken and provide an adequate decision trail in case questions arise in the future.

As shown in Table 1, six of the seven cases reviewed involved 4 months or more of administrative leave. According to OPM guidance, administrative leave should generally be limited to situations involving brief absences, and we do not consider 4 months or more to be a brief absence. Therefore, the agency should require that management document actions to explain why such extended periods were justified.

Table 1: Summary of administrative leave taken⁵

Case No.	Administrative leave hours	Period when leave was taken
1	2,116	08/01/13 – 11/13/14
2	5,881	03/04/10 – 07/08/14
3	756	02/05/14 – 06/19/14
4	----	Excluded from analysis
5	3,561	01/27/12 – 12/27/13
6	1,281	03/17/14 – 10/30/14
7	300	09/12/13 – 01/08/14
8	1,120	04/15/14 – 10/31/14
Total	15,015	

Sources: OIG analysis and EPA's Compass Data Warehouse.

Agency Policies Should Establish Parameters for Administrative Leave

Administrative leave is addressed in the EPA's leave manual and adverse action policy. According to the manual, the first-line supervisors are authorized to approve leave for the employees whom they supervise unless they are notified in writing that the authority is retained at a higher organizational level. The leave manual allows administrative leave when an employee's removal or indefinite suspension is proposed and the employee's continued presence at the worksite during the notice period constitutes a threat to public property or the health and safety of others. The employee may be placed on administrative leave for such time as necessary to effect the action. This appears to give supervisors authority to approve administrative leave for as long as it takes for the suspension or removal process to be completed.

Although each federal agency has its own authority to determine circumstances in which administrative leave is appropriate, OPM guidance states that administrative leave should generally be limited to situations involving brief absences and should not be used for an extended period. Establishing parameters or thresholds for administrative leave approval authority would ensure that the amount and duration of administrative leave are reasonable. If longer than a brief period of absence is needed, proper justification and approval should be provided, and perhaps a higher

⁵ This table contains some variances from our early warning report issued November 19, 2014. The variances in the administrative leave hours taken and the duration are due to the early warning report including administrative leave hours that are not adverse-action related. In addition, the analysis for the early warning report ended on September 20, 2014, whereas the analysis for the current report is extended to July 31, 2015.

level of approval authority should be required. Establishing parameters and requiring a high level of authority for approving significant administrative leave hours and duration will also help to ensure consistency in the use of administrative leave agencywide.

Recommendations

We recommend that the Deputy Administrator:

1. Enhance the policies and procedures for disciplinary actions to ensure that administrative leave approvals—including the duration and amount of administrative leave—are adequately justified and documented in case files.
2. Establish parameters on the use of administrative leave, along with the appropriate level of authority for approval.

Agency Comments and OIG Evaluation

A discussion document was provided to the agency for comment on August 20, 2015. The agency provided us its formal response on September 11, 2015. On October 1, 2015, the agency provided additional comments on its proposed actions for documenting approvals in the case files; the agency indicated these comments were inadvertently omitted from the formal response.

The agency concurred with our recommendations and is in the process of updating its leave administration policy covering administrative leave. The revised policy will require approval from the Assistant Administrator for Administration and Resources Management for any administrative leave in excess of 10 cumulative workdays within 26 pay periods. The approval will include justification for the amount of administrative leave. The revised policy will also require that all administrative leave requests be documented in the case file.

The agency's September 11, 2015, formal response to our discussion draft is in Appendix H of this report.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	7	Enhance the policies and procedures for disciplinary actions to ensure that administrative leave approvals—including the duration and amount of administrative leave—are adequately justified and documented in case files.	O	Deputy Administrator	12/31/15		
2	7	Establish parameters on the use of administrative leave, along with the appropriate level of authority for approval.	O	Deputy Administrator	12/31/15		

¹ O = Recommendation is open with agreed-to corrective actions pending.

C = Recommendation is closed with all agreed-to actions completed.

U = Recommendation is unresolved with resolution efforts in progress.

Case 1 Details

In Case 1, the employee charged 2,116 hours of administrative leave from August 1, 2013, to November 13, 2014. The administrative leave was related to a suspension and a removal action. The suspension occurred as the result of inappropriate and disruptive behavior exhibited in the workplace. The removal action was due to the employee being absent without leave (AWOL) and failure to follow established leave procedures.

Table A-1: Timeline of Events – Case 1	
Date	Action
08/01/2013	Employee notified of being placed on administrative leave until further notice due to inappropriate, insubordinate and disruptive behavior/conduct.
08/21/2013	Notice of Proposed Suspension (10 days) issued to employee.
12/20/2013	Employee notified that the agency will not provide mediation prior to rendering a decision on the Notice of Proposed Suspension. On January 14, 2014, the Acting Deputy Regional Administrator provided a second opportunity for the employee to meet to respond to proposed suspension.
01/23/2014	Final Decision issued sustaining the proposed 10-day suspension based upon a Douglas factor analysis.
08/01/2013 – 01/28/2014	PeoplePlus timesheets show that the employee incurred approximately 6 months of administrative leave during the suspension action process. Administrative leave taken from August 1, 2013, to January 28, 2014, totaled 860 hours.
01/29/2014 – 02/07/2014	Employee suspended for 10 days.
02/10/2014	Employee scheduled to return to duty.
02/10/2014 – 02/27/2014	Employee AWOL.
02/28/2014 – 03/26/2014	Employee put on sick leave.
04/01/2014	Employee notified of being placed on administrative leave.
05/05/2014	Proposed removal due to being absent without leave and failure to follow established leave procedures.
04/07/2014 – 11/13/2014	Employee was on administrative leave for approximately 7 months for the removal action. Administrative leave taken from April 7, 2014, to November 13, 2014, totaled 1,232 hours.
11/14/2014	Employee separated from agency.

Source: OIG-generated table with information obtained from EPA employee case file.

Case 2 Details

In Case 2, the employee charged 5,881 hours of administrative leave from March 4, 2010, to July 8, 2014. According to the agency, the 5,881 hours included 1,496 hours of backpay resulting from an arbitration decision. The 1,496 hours were not administrative leave but were coded as administrative leave because there was no code in PeoplePlus for backpay. The remaining 4,385 hours were for administrative leave in connection with two removal actions and an arbitration. The two removal actions were for the same charges—making statements that cause anxiety and disruption in the workplace, making inappropriate statements, having work performance issues, failure to follow supervisor instructions on submittal of timesheets and leave requests, and being AWOL.

Table B-1: Timeline of Events – Case 2	
Date	Actions
02/17/2010 – 02/18/2010	Employee sent a hostile email and made inappropriate statements that caused anxiety and disruption in the workplace.
03/01/2010	One email recipient expressed fear for personal safety to the Proposing Official. The email recipient changed behaviors for self-protection purpose (parking elsewhere, asking co-worker to escort to the car, etc.).
03/02/2010	The Deciding Official issued a notice to place the employee on administrative leave until further notice. Employee acknowledged receipt of memo on March 3, 2010.
04/15/2010	Proposed removal notice issued to the employee.
03/04/2010 – 10/29/2010	PeoplePlus timesheets show that Employee 2 was on administrative leave for approximately 7.5 months for this removal action. Administrative leave taken from March 4, 2010, to October 29, 2010, totaled 1,104 hours.
10/30/2010	Employee removed.
11/23/2010	Union grieved the removal action.
June – July 2012	Arbitration hearings.
10/10/2012	Arbitrator sustains grievance and orders reinstatement of the employee, including paying backpay, interest and attorney fees.
10/30/2012	Employee removed from October 30, 2010, to October 10, 2012. However, PeoplePlus timesheets show that the employee took 1,496 hours of administrative leave from January 17, 2012, to October 10, 2012. According to the agency, the 1,496 was for the backpay ordered by the arbitrator and not administrative leave.
12/20/2012	Employee placed on administrative leave pending decision regarding his work status after the cancellation of his removal.
01/18/2013	New proposed removal notice issued. The Deputy Regional Administrator appointed a new deciding official.
01/31/2013	Removal action stopped pending completion of employee backpay.
06/25/2013	Proposed removal notice reissued.

Table B-1: Timeline of Events – Case 2	
Date	Actions
July – November 2013	Various communications occur between the agency and the employee's representative regarding the charges in the proposed removal notice.
12/18/2013	Deciding Official issues decision letter sustaining all charges in the proposed removal notice and the proposed removal action. However, instead of removal, the Deciding Official offers employee an abeyance agreement. Under the agreement, the agency would hold removal in abeyance until the earlier of July 8, 2014, or the approval of the employee's disability retirement. The employee would remain on administrative leave until his separation on or before July 8, 2014. The employee would file a disability retirement by March 1, 2014, and resign by July 8, 2014, if the retirement is not approved or still under review. The employee also agreed to maintain satisfactory conduct during abeyance period.
02/12/2014	Employee signs separation agreement.
10/10/2012 – 07/08/2014	PeoplePlus timesheets show that Employee 2 was on administrative leave for approximately 9 months for this second removal action. Administrative leave taken from October 10, 2012 (the date of the arbitration decision) to July 8, 2014, totaled 3,273 hours.
07/08/2014	Employee removed.

Source: OIG-generated table with information obtained from EPA employee case file.

Case 3 Details

In Case 3, the employee incurred 756 hours of administrative leave from February 5, 2014, to June 19, 2014. Employee 3 was placed on administrative leave due to concern over the employee's combative and hostile behavior.

Table C-1: Timeline of Events – Case 3	
Date	Actions
02/05/2014	Employee started charging administrative leave.
02/21/2014	Employee notified of being placed on administrative leave due to combative and hostile behavior.
04/11/2014	Letter sent to employee requesting medical documentation. The letter stated that the employee's supervisor believes that the employee's medical condition prohibits job performance. Documentation requested by April 28, 2012, or employee would be placed on enforced sick leave. The letter was returned undelivered and agency believed this was a lack of clear notice and amended the timesheets to reflect administrative leave rather than sick leave.
06/04/2014	Second request sent requesting documentation by June 19, 2014, or the employee would be placed on enforced sick leave.
06/19/2014	Employee placed on enforced sick leave.
06/25/2014	Third request for medical documentation sent via email.
07/31/2014	PeoplePlus timesheets show the employee on leave without pay.

Source: OIG-generated table with information received from the EPA employee case file.

Case 5 Details

In Case 5, the employee incurred 3,561 administrative leave hours from January 27, 2012, to December 27, 2013. The administrative leave was due to a proposed removal for the employee's lack of candor and failure to meet ethical standards.

Table D-1: Timeline of Events – Case 5	
Date	Actions
01/26/2012	Employee placed on administrative leave and issued a notice to remove for lack of candor and not meeting ethical standards. The agency noted that the lack of candor foreclosed the employee's ability to testify in criminal cases.
02/06/2012	The U.S. Office of Special Counsel (OSC) asked for an informal stay of 45 days on issuing/effecting a decision on removal because the employee alleged retaliation. OSC was to investigate the allegation. EPA Counsel agrees to initial and subsequent stays.
03/07/2012 – 05/02/2012	Employee provides three responses to the proposed removal, alleging that the proposed removal was result of retaliation for protected disclosures as defined by the Whistleblower Protection Act. Employee requests the proposed removal to be rescinded.
June 2012	OSC discusses with EPA Counsel the possibility of settling the case. OSC said this was a case for retaliation.
07/05/12	Settlement agreement was proposed by employee.
12/18/13	Settlement agreement signed after extended negotiations between EPA and the employee.
01/27/2012 – 12/27/2013	A total of 3,561 administrative leave hours were taken.
12/29/2013 – 01/10/2014	Employee received suspension of 14 calendar days as part of settlement.
01/13/14	Employee reassigned and returns to work.

Source: OIG-generated table with information obtained from EPA employee case file.

Case 6 Details

In Case 6, the employee incurred 1,281 hours of administrative leave from March 17, 2014, to October 30, 2014. The administrative leave was related to a proposed indefinite suspension because the employee was arrested and jailed for possession of marijuana.

Table E-1: Timeline of Events – Case 6	
Date	Actions
03/14/2014	Employee placed on administrative leave after being arrested, booked and jailed for possession of marijuana.
03/17/2014	Employee started charging administrative leave.
03/26/2014	Employee directed to remain on administrative leave and not to return to EPA work space unless otherwise directed by chain of command.
03/31/2014	Employee indicted for a third-degree felony for possession of marijuana.
04/02/2014	Agency proposed indefinite suspension without pay with a 7-day notice.
05/20/2014	Agency and employee sign a separation agreement. Under the agreement, the agency would retain the employee on paid administrative leave until November 15, 2014. The employee would voluntarily retire no later than November 15, 2014, waive all rights to appeal, grieve, or file an Equal Employment Opportunities claim. The employee also agreed to not reapply for any position with the agency for 5 years.
10/31/2014	Employee retires voluntarily and administrative leave ends.

Source: OIG-generated table with information obtained from EPA employee case file.

Case 7 Details

In Case 7, the employee incurred 300 hours of administrative leave from September 12, 2013, to January 8, 2014, for suspension and removal actions. The agency proposed an indefinite suspension without pay action pending resolution of judicial proceeding on the employee's probation violation. When the court discharged the employee from probation, the agency initiated a removal action for the employee's AWOL. The employee also had a history of probation violations and other misconducts.

Table F-1: Timeline of Events – Case 7	
Date	Actions
06/12/1996	Employee unlawfully engaged in sexual misconduct.
04/16/1997	Employee confessed to unlawfully, knowingly and intentionally engaging in sexual contact with a child younger than 17 years.
08/22/2013	Employee arrested for probation violation, arraigned, denied bond, and held for further legal action. Probation related to 1996 arrest and subsequent confession.
09/10/2013	Notice issued to the employee of proposed indefinite suspension without pay pending resolution of judicial proceeding on probation violation—7 day response period.
09/12/2013	Employee notified of being placed on administrative leave pending a decision regarding proposed indefinite suspension.
10/31/2013	Court discharged employee early from probation due to “procedural missteps.”
11/21/2013	Employee placed on administrative leave.
12/03/2013	Employee notified of proposed removal for AWOL from August 26 to September 11, 2013, with 15-day response.
December 2013	Agency and the employee's representative communicated regarding the proposed removal and the tentative decision. The representative disagreed with the proposed removal, stating that the agency was making a mistake that would not survive review by the Merit System Protection Board. The representative stated that the employee's absence from work was beyond their control, and that the state where the violation occurred had made a mistake in the records, which would take a while to correct. The representative contended that the agency could not use that mistake as the basis for removal action.
01/08/2014	Agency issued its final decision to remove the employee.
01/09/2014	Employee separated.
09/12-19/2013 & 11/21/2013 – 01/08/2014	PeoplePlus timesheets show that the employee incurred 300 hours of administrative leave from September 12 to 19, 2013; and from November 21, 2013, to January 8, 2014.
09/22/2014 – 01/17/2015	Employee rehired from September 22, 2014, to January 17, 2015. There was no documentation in the disciplinary action file. According to the SF-50, the interim appointment was required by Public Law 101-12, pending final decision of the Merit System Protection Board.

Source: OIG-generated table with information obtained from EPA employee case file.

Case 8 Details

In Case 8, the employee charged 1,120 hours of administrative leave from April 15, 2014, to October 31, 2014. The administrative leave was due to an OIG investigation relating to falsification of time and attendance records.

Table G-1: Timeline of Events – Employee 8	
Date	Actions
04/10/2014	Employee admitted to falsifying timecards to OIG and signs sworn statement. Management informed by OIG to proceed with any administrative action it deems warranted.
04/15/2014	Employee placed on administrative leave and notified of being the subject of an OIG investigation. The decision to put the employee on administrative leave was based on concerns about the employee's potential reaction. It was a joint decision of the employee's manager, Labor and Employee Relations, and security. The agency noted that it was a high-risk position.
08/01/2014	Notice of proposed removal issued. If the proposal is sustained, the removal would be effective no earlier than September 5, 2014.
10/23/2014	Notice of decision to remove issued.
10/31/2014	Administrative leave ends.
11/01/2014	Employee removed.

Source: OIG-generated table with information obtained from EPA employee case file.

Agency Response to Discussion Document

MEMORANDUM

SUBJECT: EPA Response to the Office of Inspector General Discussion Document, *Administrative Leave Decisions for EPA Employee Disciplinary Actions Should be Better Documented and Parameters on Use of Such Leave Should Be Established*, Project No OA-FY15-0187, dated August 20, 2015

FROM: Karl Brooks, Acting Assistant Administrator

TO: Robert Adachi, Director
Forensic Audits
Office of the Inspector General

Thank you for the opportunity to review the discussion document. Below is the agency's response to the report recommendations.

Background:

On October 21, 2014, a member of the U.S. Senate Committee on the Judiciary and a member of the U.S. House Committee on Oversight and Government Reform requested information from the EPA Administrator concerning administrative leave taken by agency employees. The OIG examined whether the agency has adequate policies and procedures in place for the use of administrative leave in connection with employee conduct and disciplinary actions.

Agency Response to Recommendations:

The agency concurs with the discussion document recommendation and provides the following corrective actions and estimated completion dates.

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
1	Enhance the policies and procedures for disciplinary actions to ensure administrative leave approvals – including the duration and amount of administrative leave – are adequately justified and documented in the case files.	<ul style="list-style-type: none"> • The Office of Human Resources is updating its leave administration policy to include a provision requiring that requests for any administrative leave for more than 10 cumulative workdays, within 26 pay periods, must be submitted in a memo to the OARM Assistant Administrator from the requesting 	Q1, FY16

		<p>office assistant administrator or regional administrator.</p> <ul style="list-style-type: none"> • The memo must include a justification and amount of time requested explaining how such leave is required for the orderly operation of the agency. • If additional time is needed after the initial approved request, an updated memo including the justification must be submitted to the OARM AA for approval. • All requests must be documented in the case file. 	
2	<p>Establish parameters on the use of administrative leave, along with the appropriate level of authority for approval.</p>	<ul style="list-style-type: none"> • OHR is updating its leave administration policy to include a provision specifying that no program or regional office may place an employee on administrative leave for more than 10 cumulative workdays within 26 pay periods, whatever the reason, without the prior approval of the OARM AA. • Requests for any administrative leave for more than 10 workdays must be submitted in a memo to the OARM AA from the requesting office AA or RA. The memo must include the amount of time requested and a justification and explaining such leave is required for the orderly operation of the agency. 	Q1, FY16

Once these corrective actions are implemented, OARM believes the agency has met the intent of the OIG recommendations and no additional follow-up actions are required.

Please contact Susan Kantrowitz, Director, Office of Human Resources, should you have any questions regarding this response. She can be reached at (202) 564-4606.

cc: Donna Vizian
Susan Kantrowitz
Angela Freeman
Ming Chang
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