PROBLEM AREAS
TO AVOID

INVESTIGATIVE INTERVIEWS

THIS IS AN ADMINISTRATIVE MATTER

No right to remain silent unless the investigation could lead to criminal action and the employee is in a custodial situation. Typically, questions asked relate to job-related misconduct and not criminal conduct.

CRIMINAL MATTERS

You have the right to remain silent.

MIRANDA-KALKINES-GARRITY WARNINGS

MIRANDA: Interview relates to own potential criminal misconduct – remain silent (5th and 6th Amendments). DO NOT INCRIMINATE YOURSELF.

KALKINES: Usually criminal prosecution has been removed and the employee is required to answer questions concerning performance of his/her duties or be **subject to Disciplinary Action.**

GARRITY: Required to give information on a voluntary basis in connection with his/her own administrative misconduct and answers may be used in future criminal proceedings.

NOTE: EMPLOYEE MUST BE TOLD OF THE RIGHT TO REMAIN SILENT IF ANSWERS MAY TEND TO INCRIMINATE HIM/HER IN EITHER CRIMINAL OR ADMINISTRATIVE PROCEEDING, AND HE/SHE CANNOT BE DISCIPLINED FOR REMAINING SILENT.

When in doubt, always ask if what you say could be used against you in any Criminal or Administrative Action. **DON'T BE INTIMIDATED.**

If you are guaranteed immunity, **GET IT IN WRITING.**

You can be disciplined for lying during an investigation. This would be a separate charge from the matter being investigated.

Lie detector exam: **YOU ARE NOT REQUIRED TO TAKE ONE.**

COMMON OFFENSES

SEXUAL HARASSMENT

Any touching is unacceptable

NO means NO

Not limited to sex: any attempt to establish a relationship that is

Unacceptable is Sexual Harassment.

Sexual Harassment is viewed from the perspective of the victim, not from the individual who engaged in the conduct.

Read the PMG's policy on Sexual Harassment.

AVOIDING SEXUAL HARASSMENT CHARGES

Maintain a business relationship
Consensual could lead to Sexual Harassment

Ask yourself: "Does this involve moving the mail?"

Limit "one on one" with the opposite sex

If you are told of harassment,
STOP ALL UNWELCOME CONDUCT IMMEDIATELY

Don't ask to see "dog bites"

"NO" means "NO"

If accused, report it to the Manager – it will not go away

FALSIFICATION

The Agency must show intent to mislead or deceive
Incorrect information – NOT falsification

EXAMPLES OF FALSIFICATION:

Mail condition report – reporting "delayed" as "on hand"
TACS – falsifying own time and/or employee's time
Supervisor using own badge to delete legitimate entries on craft employee's time records; i.e. "deleting ET to comply with 1700 rule", "Deleting OT to avoid penalty overtime
Carriers out past 1700 reporting as "returned"
Telling carriers to work without clocking in
Falsifying CSDRS Reports
Box mail up by cut-off
Misreporting carrier mail volume on DOIS
PM Supervisor entering missing clock ring entries-
Inconsistent with MSP (Managed Service Point)
Carriers told to MV (move) to street time (721) while remaining performing office duties (722)
Falsifying Travel Vouchers

AVOIDING FALSIFICATION CHARGES

Report accurately on all reports

If mail is delayed – REPORT IT

Better to report plan failure than face falsification charges

If carrier is out after 1700: REPORT IT and take corrective action with carrier as needed

Don't change employee's TACS unless authorized to do so – i.e., lost badge, leave, forgot to swipe

Have forms 1260 on file to justify entries

Use Form 1017-A-B when required

Never falsify TACS to cover using OT or Penalty OT

If carrier works OT/PENALTY OT, you pay him/her – don't pay him/her another day
Don't protect the employee

If you are the PM supervisor and are required to enter missing clock rings before you leave, follow up the next day to make sure entries you made are not inconsistent with MSP scans. If so, make sure any incorrect entries are deleted and take corrective action with the carrier as needed

IMPORTANT: IF YOU DISCOVER YOU MADE AN INCORRECT ENTRY INTO CSDRS, DOIS OR ANY OTHER REPORT, CORRECT IT YOURSELF BEFORE SOMEONE ELSE DOES. DO NOT BELIEVE IT WILL GO UNDISCOVERED
CAUTION: OIG AUDITS, TIMEKEEPING RECORDS, AND CHANGES WITHOUT VALID REASONS AND WITHOUT PROPER DOCUMENTATION IS ILLEGAL AND CAUSE FOR DISCIPLINARY ACTION, UP TO AND INCLUDING REMOVAL.

EXCESSIVE ABSENCES/AWOL

HELPFUL TIPS

EXCESSIVE ABSENCES: Supervisor can be disciplined for failure to maintain satisfactory attendance record, whether leave is approved or not.

For the Agency to prevail, they must show:

Absence was for compelling reasons; approval or disapproval irrelevant, AND
Supervisor was warned that failure to return to duty could result in adverse action, i.e., removal, AND

Supervisor's position is needed to be filled

AVOID LEAVE ISSUES

Monitor your sick leave balance

If sick leave hours not deducted, tell your Supervisor/Manager

ABUSE OF SICK LEAVE: Working part-time position while on SL and/or OWCP rolls. Both are serious charges and generally upheld. Presumption is you are sick and unable to do Postal work or any other work.

ELM 513.32: "An employee in sick leave status may not engage in any gainful employment unless prior approval has been granted by appropriate authority".

Whether outside employment overlaps with Postal hours – not a defense.

Whether FMLA or Regular Sick Leave – not a defense.

AVOIDING AWOL

Request leave in advance and obtain approval **IN ADVANCE**

If sick leave – request in advance if possible and provide acceptable evidence of incapacitation

LWOP – no automatic right to grant

Incarcerated – No defense for AWOL – should request leave

FMLA – If eligible, no basis for denial

AL: Right to use, however the Agency may deny based on the needs of the Service

Advanced Sick Leave: MSPB Board has ruled that Agency can deny even if administratively acceptable evidence is submitted

If leave denied and Supervisor charged AWOL, MSPB will look to see whether the Agency abused their discretion in denial (what impact on efficiency and was there a foreseeable end to the leave?)

PERFORMANCE ISSUES

CSDRS incomplete data, untimely

Failure to scan Collection Boxes

City carriers casing DPS mail

Efficiency: Carriers out after 1700

Customer experience failures (Wait Time in Line)

Failure to report/investigate accidents

Financial audits, shortage/overage not conducted/documented

Not verifying stamp stock shipments

Failure to report Delayed Mail

PROOF REQUIRED BY THE AGENCY

Supervisor aware of what is expected

Performance must be unacceptable

Agency's measurement of Poor Performance was accurate and reasonable

DEFENSES AGAINST PERFORMANCE CHARGES

Was Supervisor on notice of what is expected?

Was performance satisfactory?

Was failure beyond the Supervisor's control?

Was lack of training a factor?

Was unsatisfactory performance based on higher-level detail position?

HOW TO AVOID PERFORMANCE CHARGES

New Programs – insist on training

Communicate with MGR before a problem arises, i.e., additional hours needed, late arriving mail requiring OT, lack of personnel

Verify receipt of stamp shipments

Witness stock returned to SDC

Insist on financial training, i.e., when issued Unit Reserve (in writing if necessary)

Report accurately on all reports

Don't assume you will not be disciplined

Consult with local NAPS officer before you have a problem

REMEMBER: BETTER TO HAVE PLAN FAILURE THAN FACE REMOVAL FOR NOT REPORTING THE FAILURE

INSUBORDINATION/ FAILURE TO FOLLOW INSTRUCTIONS

INSUBORDINATION: Agency must prove willful and intentional refusal to obey a legitimate order

FAILURE TO FOLLOW INSTRUCTIONS: Agency only needs to prove instruction was given and the Supervisor did not follow;
Example: using penalty overtime despite a directive not to use.

HOW TO AVOID INSUBORDINATION/FAILURE TO FOLLOW INSTRUCTION CHARGE

Obey now and grieve later

Don't disobey an order simply because you don't believe the order is proper

Comply fully if told no penalty overtime, even if it means violation of Article 8

Tell your Manager that complying with the directive will result in grievances (in writing, if necessary)

Better to defend Art 8 grievances than face removal for "Failure to Follow Instructions"

If the order is confusing, SEEK CLARIFICATION

THREATS/ASSAULTS

Serious charge – can be verbal or physical

HOW TO AVOID THREATS/ASSAULTS:

Avoid emotional confrontations, i.e., with Union Steward

Meet with employee after gaining composure

Keep dialogue to business matters

NEVER, EVER TOUCH ANOTHER EMPLOYEE

Make no threats, even jokingly

Don't be provoked into an incident

HOW TO AVOID MISUSE OR UNAUTHORIZED REMOVAL OF GOV'T EQUIPMENT CHARGES

Use computer for official use; don't check personal e-mail, book vacations, etc

Never use computer to view sexually explicit material

If Agency has policy on personal use of computer, comply fully

Never use government credit card for personal use (including family members). Whether you pay for personal charges is not a defense.

Reimbursement for use of government property is Immaterial…not a defense

Never remove government property from premises or for personal use **EVEN WITH SUPERVISOR'S PERMISSION**

FAILURE TO COMPENSATE EMPLOYEES FOR TIME WORKED

Employees must be paid for all work performed

Make clock adjustments only when justified with supporting documentation

If disallowance, support with 1017-A

If denying, meet with employee and give reason, i.e., extended lunch, failure to use badge, working OT without authorization, support with 1017-B as appropriate

Take corrective action with employee as appropriate

CONSTRUCTIVE SUSPENSION – DEFINED

Supervisor told to leave – no charges issued – not paid – no ADMIN leave

Supervisor returns from illness and told no work available within his/her medical restrictions – Agency does not issue adverse action

AFTER 14 CALENDAR DAYS – This is constructive suspension appealable to MSPB. If given ADMIN Leave, then not appealable

IMPORTANT: SUPERVISOR SHOULD ADVISE LOCAL NAPS OFFICER IF THEY ARE NOT ALLOWED TO REPORT AND NO ADVERSE ACTION ISSUED. AFTER 14 DAYS, FILE APPEAL THROUGH SCIALLA ASSOCIATES

ENFORCED LEAVE DEFINED

Agency placed Supervisor on leave (not ADMIN Leave); no adverse action issued

AFTER 14 days, appealable to MSPB

The issue to be decided by the Board is:

Who initiated the Leave, Agency or Supervisor

Was Supervisor provided due process Procedural protections? If Supervisor Initiated the leave – not appealable to MSPB. REMEMBER: If paid ADMIN Leave, NOT appealable to MSPB

If 14 days or less, appeal through Part 650 of the ELM

CONSTRUCTIVE DEMOTION

Supervisor coerced into taking a downgrade

Told he/she is facing discipline unless they accept downgrade

HOW TO AVOID
CONSTRUCTION ACTIONS

Do not resign/retire/or accept downgrade unless you want to

Don't be coerced, threatened or make any decisions while under duress, or in poor mental state

Don't sign written request for downgrade, unless voluntary on Supervisor's part

CONSULT WITH LOCAL NAPS OFFICER

EMERGENCY PLACEMENT IN OFF-DUTY STATUS WITHOUT PAY

Examples of what constitutes emergency placement:

Supervisor intoxicated
Not obeying safety rules
Failure to obey a direct order
Disrupting day-to-day Postal Operations

PURPOSE

To get employee off premises immediately
Remain off for short period only, until emergency is over
Not a substitute for utilizing regular suspension or Indefinite Suspension – Crime
If Agency feels employee should remain out after emergency is over, the ADMIN Leave should be granted
After 14 days without pay – constructive suspension

SETTLEMENT AGREEMENTS – LOCALLY

Your goal should be to restore Supervisor to his/her position
Settle current issue only. NEVER WAIVE FUTURE APPEAL RIGHTS
Never enter into under duress, coercion or threats
Avoid waiving right to return to supervisory position

MOST IMPORTANT: The supervisor you are representing should be fully aware of the terms of the agreement and want to sign

Seek guidance if you are not sure of terms of agreement

Agreements entered into locally are not enforceable by MSPB

LAST CHANCE AGREEMENTS LOCALLY

Typically, where charge is serious, Supervisor is clearly guilty and/or has admitted to in writing

Never agree that any type of discipline in the future will result in breach of agreement

Make sure Supervisor fully understands the agreement and ramifications of a breach of agreement

Seek guidance if necessary