



Sample Proposal Notice

This sample notice is provided as a guide for supervisors but is not to be considered a model or even a suggested version for final use. The names used in this sample are fictional. Actual notices will include more specific information about the performance deficiencies and must include any additional statements or referrals required by agency policy or collective bargaining agreements that may exist. Supervisors should contact their human resources offices for technical assistance and review of actual notices.

**SUBJECT: PROPOSAL TO REMOVE FOR
 UNACCEPTABLE PERFORMANCE**

**FROM: MARIA SANCHEZ, CHIEF
 EMPLOYEE RELATIONS DIVISION**

**TO: JOHN BROOME
 EMPLOYEE RELATIONS SPECIALIST**

This is to inform you that I propose to remove you from your position as Employee Relations Specialist, GS-201-13, and from the Federal Service, for unacceptable performance under the provisions of 5 CFR Part 432. This proposal is based upon your unacceptable performance in the following critical element: Providing Technical Assistance to Managers. This action, if taken, will be effected no sooner than thirty (30) calendar days from your receipt of this proposal.

On June 10th, after several months of informal counseling about your performance problems, I issued you a memorandum stating my determination that your performance was at an unacceptable level in the critical element of Providing Technical Assistance to Managers and provided you with an opportunity to demonstrate acceptable performance. Attached you will find a copy of your performance elements and standards as well as the opportunity notice that further clarified your performance standards. During the 90-calendar-day opportunity period (from date _____ to date _____), you failed to achieve the required level of performance in the element listed above. The specific reasons for this proposal follow.

During the opportunity period, I met with you every Thursday with the exception of two dates (July 17th and August 21st) when I was on annual leave and official training, respectively. During those weeks, you were encouraged to contact the Director of Human Resources with

any significant cases that came up and I met with you on the Monday following my absences to cover any issues that needed further attention. One purpose of these meetings was for you to demonstrate that you were researching current case law prior to issuing any draft notices to supervisors or providing them with verbal guidance on how to proceed in certain circumstances. As indicated in my summary notes from those weekly meetings (a copy of which you received each week), your performance in this activity was spotty at best. On several occasions, you simply failed to present any research, while at other times you submitted copies of cases dating from the mid-to-late 1990s, which, although relevant to the topic, could not be considered current by any means. I was forced routinely to inform you of specific cases that I knew conveyed the current legal holdings of the Merit Systems Protection Board (MSPB) and the Equal Employment Opportunity Commission (EEOC) that were relevant to the cases you were handling. In several cases this caused rewrites of the draft notices you had prepared, and, in two cases (Montague and Tyrone), you needed to meet with the supervisors and restructure the advice you had given regarding responding to their employees about their appeal rights, if adverse actions were taken against them.

[An actual proposal notice would include more specific examples and documentation of the unacceptable performance.]

By far, the most egregious mistake occurred because you failed to research the current case law on the issue of *ex parte* communications. A deciding official, Dr. Hamlet, requested your guidance on his examination of a removal case for misconduct. During his deliberations, the proposing official shared with him that the employee was a poor performer. Even though the proposing official did not refer to the employee's poor performance in the proposal notice, you informed the deciding official that he could consider the poor performance as an aggravating factor and take into account the employee's performance and productivity issues in making his decision to remove.

You went on to prepare the decision notice referring to this performance information and Dr. Hamlet's consideration of it in arriving at his decision to remove, and, until we reviewed the matter in our weekly meeting of August 28th, you were unaware of the implications to the integrity of the action. Your failure to properly research resulted in delays and the re-issuance of an appropriate proposal notice to the employee. Additionally, you had to go back to the deciding official and admit that you had given him erroneous advice regarding the appropriateness of considering such *ex parte* communication. Clearly, your performance has fallen far short of routinely providing accurate technical advice to the management of this agency, and I find you to be unacceptable in this aspect of your performance.

Addressing and Resolving Poor Performance

Step Three – Taking Action

Proposing an Action

The second aspect of your performance standard for this critical element involves the timeliness of advice given to supervisors. As I indicated in your notice of an opportunity to improve, I expected you to respond to supervisors in a timely manner by establishing reasonable deadlines for yourself and keeping supervisors apprised of your progress. As an employee at the grade 13 level, I expected you to carry out this assignment with minimal assistance from me. However, I reviewed all of your pending work during our first meeting and established priorities and deadlines for those assignments. Additionally, I asked you to maintain a telephone log for the duration of the opportunity period so I could monitor who was calling and when you were responding to them. On several occasions (dates), when I questioned you, you were unwilling to discuss your own decisions on deadlines for new cases you received during the opportunity period. Finally, as stated in my summary notes from our August 7th meeting, I worked closely with you to set deadlines for all of the work you brought to the meeting. An audit of all of your work submitted during the opportunity period indicates that you met your established deadlines in only 78% of your assignments. This number does not include the three cases (Bottsworth, Carey, and Lucas) where we agreed to extend the deadline due to unusual circumstances beyond your control. Further, I continued to receive a large number of complaints from supervisors that you simply would not return their calls and I was forced to provide them with a status report in the cases where I had that information. Discounting the calls I received during the first 2 weeks of the opportunity period (as stated in the opportunity period notice), I received 12 complaints from supervisors where you were unable to provide me with a supportable reason for your failure to respond to their calls. At this time, I have determined that you continue to be unacceptable under the timeliness aspect of your performance standard.

Conclusion

During the opportunity period, you were given every opportunity to improve to the Fully Successful level but failed to do so. It is my conviction, based on your unacceptable performance, that you are unable to handle all the aspects of the position you hold. Therefore, based on your unacceptable performance in the critical element, Providing Technical Assistance to Managers, as described above, I am proposing your removal from your current position and from the Federal Service.

Request for Reasonable Accommodation

In our weekly meeting on June 26th, you presented medical documentation stating that you were suffering from diabetes and would need accommodation on the job due to your disabling condition. I requested clarification regarding the impact of the diabetes on your ability to work as well as your accommodation request. You responded that you would need sick leave for doctor's visits while you are getting your medication program established and that you would need to store insulin in the agency's health unit and administer that medication once a day. As I stated at the time you submitted this information, I am extremely sorry to hear that you have diabetes, but there didn't appear to be any reason to alter the conditions of the opportunity period except to handle your work myself or assign it to other staff members during your sick leave absences. This was done on each occasion when you were absent, and there were no instances when you were denied use of sick leave.

Additionally, given the brief nature of the absence, I excused your absence without charge to leave each day when you went to the health unit to take your medicine. I have determined that your medical condition has not had any negative impact on your ability to perform because none of the medical documentation you submitted would support that position.

[Always contact your human resources office when an employee raises a medical issue that may be disabling.]

You have the right to respond to this notice both orally and in writing, to prepare and present your response, and to present affidavits of other documentary evidence in support of your response if you elect to make one. You have the right to represent yourself, or to be represented by an attorney or other individual. Designation of your representative must be made in writing to the Human Resources Director within () calendar days of your receipt of this memorandum. You will have () calendar days to present your oral and/or written response to Mr. Taylor, the Assistant Director for Administration. Consideration will be given to extending the ()-day answer period if you submit a written request to Mr. Taylor stating your reasons for desiring more time. If you choose to make an oral reply, either in lieu of or in addition to a written response, you should contact Mr. Taylor and he will schedule an appointment for you to make your response.

You will be allowed a reasonable amount of official time, not to exceed () hours, to review the evidence in support of the reasons advanced in this proposal, and to prepare your written reply. Documentary evidence relied on to substantiate the reason for this proposal is available for your review. Please contact me to if you wish to schedule the use of official time or to review the documentation.

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You will receive a written notice of Mr. Taylor’s decision as soon as possible after all the evidence in your case, including your written and/or oral reply and all associated documents, has been reviewed and considered. If you do not respond, the decision will be issued after the time allotted for your response has elapsed. If it is determined that your removal is warranted due to an unacceptable level of performance, the decision notice will explain applicable grievance and appeal procedures and how to exercise them.

You will remain in a duty status during the notice period of this memorandum. If you do not understand the reasons given for proposing to remove you, you may contact me for further explanation. Please sign and date the attached copy of this memorandum, which serves only to acknowledge the date on which you received it.

Receipt Acknowledged

Signature

Date