

Employee Investigations

When a federal employee is issued a proposed or actual disciplinary or adverse action

, nothing is more important than understanding your rights and fighting to protect them. Tully Rinckey's team of experienced federal employment attorneys are available to provide representation to federal employees who are under investigation or facing proposed disciplinary or adverse actions. In the federal government, a disciplinary action includes suspensions of 14 days or less and reprimands, while an "adverse action

" include the more severe forms of discipline including removals, suspensions of more than 14 days, and a reduction in grade or pay or demotion. **Rights During Investigations**

In most cases, the federal agency will conduct an investigation of the employee prior to proposing or taking disciplinary or adverse action. During this investigation, federal employees have important rights and protections which need to be enforced. When a federal agency investigates an employee it should interview the employee and the employee should be informed of his or her rights prior to being compelled to speak during the interview. If the employee is facing a criminal investigation the federal agents conducting the interview are required to provide the employee with Miranda

warnings informing the employee of their right to remain silent and their right to an attorney. Anything that the employee says after receiving the Miranda

warning can be used against that employee in a criminal prosecution or administrative action by the federal agency. If you are facing a criminal investigation, often the best thing you can do to protect yourself is to remain silent and ask to speak to an attorney. If the employee is facing purely an administrative misconduct investigation, the federal agents or investigators conducting the interview should provide the employee with a Garrity

or Kalkines

warnings. In recent years these warnings have merged into something closer to the Kalkines warning. The Kalkines

warning informs the employee that they are required to answer the questions but that the employee's truthful responses cannot be used against them in a criminal prosecution. In this respect, it is the reverse warning of Miranda

because the Kalkines

warning explicitly removes the right to remain silent and makes it misconduct for an employee to refuse to answer the agency's questions truthfully. It is important to remember that while an employee's truthful answers cannot be used against them in a criminal prosecution, intentionally false responses are not immune. A Garrity

warning on the other hand is more similar to the Miranda

warning. It states that the employee is being interviewed as part of an internal administrative investigation but that the employee is not being compelled to answer any questions and has the right to remain silent. If the employee voluntarily answers questions during the interview then the employee's responses can be used against the employee in both a criminal prosecution and administrative proceeding. The Garrity

warning is less likely to be issued than the Kalkines

warning for administrative misconduct investigations because, if the investigation does include potential criminal implications, then the Miranda

warning is usually used. Under 5 U.S.C. § 555(b), Federal employees are guaranteed the right to an attorney during administrative investigations. **The Disciplinary Process**

The disciplinary process usually begins when a federal employee is accused of misconduct and placed under investigation, as stated above. The investigation may result in the agency issuing the employee a proposed disciplinary or adverse action through a written notice. The notice should provide the employee with the reasons for the proposed disciplinary or adverse action, the right to review the material relied upon by the agency in proposing that action and must give the employee a reasonable opportunity to respond in writing, orally or both before the proposed disciplinary or adverse action will be declined in writing. Sustained discipline cannot be effected until 30 days after it is proposed absent emergency cases. This is a crucial step in the disciplinary process and we highly recommend that an employee immediately consult with experienced legal counsel upon receipt of any notice of proposed disciplinary or adverse actions

. Federal employees have the right to demand that the agency turn over any relevant evidence on which the agency relied in proposing the disciplinary or adverse action

. The employee then has the right to reply to the charges both orally and in writing in order to refute the charges or explain any applicable mitigating circumstances. Tully Rinckey attorneys can assist you at this stage by drafting the written response, speaking on your behalf at the oral reply or providing counsel to you directly regarding how best to present your own defense. After you reply, the deciding official will review the responses and evidence you present, and issue a written decision either sustaining or rescinding the proposed action or reducing the proposed punishment. Tully Rinckey attorneys have experience defending the rights of federal employees charged with a wide range of alleged misconduct, including: Absence without leave (AWOL) or other attendance issues

Misuse of funds

Misuse of a Government Owned Vehicle (GOV)

Violence in the workplace

Falsification

Insubordination

Negligence

Security violations

Improper use or theft of government property including computers and email

Conduct unbecoming a federal employee

Prohibited personnel practices

Lack of candor

Tully Rinckey attorneys are also available to assist federal employees who are facing allegations of poor performance and are issued performance related disciplinary or adverse action. At every stage of the process, we will work with you and your agency to find the best solution possible for your career. If the deciding official elects to issue a disciplinary action, Tully Rinckey attorneys can assist you in negotiating for a clean record or challenging the action through the EEO

, OSC, or grievance process. If the deciding official elects to issue an adverse action (removal, suspension of more than 14 days, or demotion), Tully Rinckey attorneys can assist you in appealing the decision to the Merit Systems Protection Board (MSPB)

. Before the MSPB

, you will have the right to partake in formal discovery to obtain evidence from the agency relevant to the case and the right to a hearing on the merits of your case before an administrative judge. If the employee is unsuccessful before the MSPB

, he or she may appeal to the full MSPB

, and, ultimately, to the United States Court of Appeals for the Federal Circuit in Washington, DC. While the appeals process can be stressful, you may be entitled to have the adverse action

reversed. Additionally, you could be awarded damages including full back pay, benefits, interest, and the reimbursement of attorney's fees. **Contact Us**

The timelines surrounding disciplinary and adverse actions, especially when notices of removal or suspension are issued, are often short and unforgiving. In most cases the employee will have no more than thirty days, and usually much less, to respond to the proposed disciplinary or adverse actions

. We recommend that you contact experienced legal counsel as soon as possible to determine all of the options available to protect your career. If you are a federal employee facing a misconduct investigation or disciplinary or adverse action, contact us to see how our experienced federal employment attorneys may assist you. We can be reached 24 hours a day, 7 days a week at 202-787-1900 or via email at info@fedattorney.com

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