



CHIEF NATIONAL GUARD BUREAU NOTICE

NGB-J1
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CNGBN 1404
18 June 2018

TECHNICIAN PERSONNEL INTERIM POST-CONVERSION LABOR RELATIONS AND PERFORMANCE APPRAISAL GUIDANCE

References: Enclosure A.

1. Purpose. This notice provides interim guidance for labor and employee relations for National Guard (NG) employees in the States, Territories, and District of Columbia in accordance with (IAW) references a through p.
2. Cancellation. None.
3. Applicability. This notice applies to the NG and to personnel performing essential human resource functions required for personnel management of Title 5 NG positions in the States, Territories, and District of Columbia.
4. Background. On 01 October 2017, all former Title 32 non-dual status technicians and select dual status technician positions converted to Title 5 IAW references c through h.
5. Action or Procedure.
 - a. Collective Bargaining Agreement (CBA). CBAs and procedures in references k through m determine coverage of Title 32 and NG Title 5 employee bargaining unit members, grievance procedures, and representation proceedings.
 - b. Agency Head Review. Human Resources Officers (HROs) will submit all CBAs to the Defense Civilian Personnel Advisory Service, Labor and Employee Relations Division, for agency head review IAW reference l.
 - c. Employee Relations/Performance Appraisal Process. Reference n, except Enclosure F, applies to the Title 5 Competitive and Excepted Service employees. When a Title 5 employee's performance does not improve after

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completing the required opportunity period, the employee may be removed based on performance IAW references o and p.

d. Reassigning, Demoting, or Removing an Employee for Unacceptable Performance. When a supervisor demotes or removes an employee:

(1) Coordinate with the Human Resources Office Employee Relations Specialist before issuing the notice.

(2) Notify the employee in writing at least 30 calendar days in advance of the proposed action.

(3) Identify specific instances of unacceptable performance justifying the proposed action.

(4) Specify the elements in each instance of unacceptable performance. (Note: The instances of unacceptable performance must have occurred during the opportunity period to demonstrate acceptable performance and within the previous one-year period ending on the date of the proposed notice.) The opportunity period is a reasonable period for the employee whose performance has been determined unacceptable in one or more elements to demonstrate acceptable performance in the element(s) at issue.

(5) Give the employee reasonable time to provide an oral or written response to the supervisor or other management official.

e. Notice Period. The notice period expires at the end of the 30 days unless the supervisor extends it for an additional 30 days IAW reference p.

(1) If the employee provides medical documentation during the notice period, consider it part of the reply to the notice. The employee must provide the documentation within the set time limit. Consider any documentation received after the time limit but before making a final decision.

(2) The management official who makes the final decision considers only the unacceptable performance specified in the proposed action notice and any replies, including medical documentation.

(3) Make the final decision within 30 calendar days after the notice period expires.

(4) The supervisor who decides to demote or remove an employee must write a narrative that specifically describes the unacceptable performance.

(5) The notice of decision must include information regarding appeal rights and whether the employee is eligible for disability or discontinued service retirement.

(6) An employee who is demoted or reassigned due to unacceptable performance retains the unacceptable rating. The employee need not serve another opportunity period on entering the new position. After serving 90 calendar days in the new position, the employee receives a new rating, which then goes to the HRO for input to the Defense Civilian Personnel Database System.

(7) If the employee's performance improves to an acceptable level during the notice period and continues to be acceptable for one year from the date of the advance notice, the NG will remove any records of less than acceptable performance from the employee's records.

(8) After demoting or removing an employee for unacceptable performance, keep all pertinent documents IAW reference q. All documents must be available for review by the employee or representative. The file must include:

(a) Copy of the notice of proposed action.

(b) Employee's written reply.

(c) Summary of any oral reply.

(d) Notice of decision and the reasons.

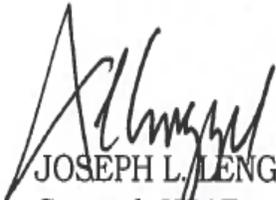
(e) Any supporting material including documentation regarding the employee's opportunity to demonstrate acceptable performance.

(f) A statement that the performance system approved by the Office of Personnel Management and the program on which it is based are on file in the local Human Resources Office, if the employee appeals the action.

f. Deciding Official. A final demotion or removal decision must properly inform the employee of the right to appeal to the Merit Systems Protection Board, reference q.

6. Releasability. This notice is approved for public release; distribution is unlimited. Copies are available through <<http://www.ngbpdc.ngb.army.mil>>.

7. Effective Date. This notice is effective upon receipt and expires one year from the date of publication unless canceled or superseded earlier.



JOSEPH L. LENGYEL
General, USAF
Chief, National Guard Bureau

Enclosure:

A -- References

ENCLOSURE A

REFERENCES

- a. CNGB Instruction 1400.25A, 10 October 2017, “National Guard Technician Personnel Program”
- b. Title 10 United States Code (U.S.C.) Section 10217, “Non-Dual Status Technicians”
- c. Public Law (P.L.) 114-328, 23 December 2016, “National Defense Authorization Act for Fiscal Year 2017”
- d. P.L. 114-92, 25 November 2015, “The National Defense Authorization Act for Fiscal Year 2016,” § 1053, “Management of Military Technicians”
- e. 32 U.S.C. § 709, “Technicians: Employment, Use, Status”
- f. CNGB Memorandum, 16 February 2017, “TAG Delegation”
- g. Office of the Under Secretary of Defense for Personnel and Readiness, 29 September 2017, email, Subject: Title 32 Conversion Policy Issue
- h. Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs Memorandum, 20 April 2017, “Guidance to Convert Dual Status and Non-Dual Status Military Technician Positions”
- i. 5 U.S.C., “Government Organization and Employees,” §§ 2103, “The Excepted Service”; 2105, “Employee”; and 3101, “General Authority to Employ”
- j. 5 Code of Federal Regulations (CFR), “Administrative Personnel”
- k. 5 CFR 2422, “Representation Proceedings”
- l. DoD Instruction 1400.25, “Civilian Personnel Management,” Vol. 711, 01 December 1996, “Labor-Management Relations”
- m. DoD Instruction 1400.25, Vol. 771, 26 December 2013, “DoD Civilian Personnel Management System: Administrative Grievance System”
- n. CNGB Instruction 1400.25, Vol. 431, 24 January 2018, “National Guard Technician Performance Appraisal Program”
- o. 5 U.S.C. § 4303, “Actions Based on Unacceptable Performance”

- p. 5 CFR Part 432, “Performance Based Reduction in Grade and Removal Actions”
- q. 5 U.S.C. Part 1201, “Practices and Procedures, Subpart B, Procedures for Appellate Cases”
- r. CNGB Instruction 5001.01, 05 December 2016, “National Guard Bureau Records Management Program”