

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
ICE Policy System**

**OFFICE OF PRIMARY INTEREST: OFFICE OF HUMAN CAPITAL**

<b>DISTRIBUTION:</b>	ICE
<b>DIRECTIVE NO.:</b>	1-15.0
<b>ISSUE DATE:</b>	December 8, 2006
<b>EFFECTIVE DATE:</b>	December 8, 2006
<b>REVIEW DATE:</b>	December 8, 2009
<b>SUPERSEDES:</b>	See Section 3 below.

**DIRECTIVE TITLE: Table of Offenses and Penalties (TOP)**

1. **PURPOSE and SCOPE.** This Directive establishes the attached TOP as the standard resource when considering any discipline or adverse action relating to ICE employees. This Directive applies to all ICE employees.
2. **AUTHORITIES/REFERENCES.**
  - 2.1. Title 5 of the United States Code (U.S.C), Chapter 71, Labor-Management Relations.
  - 2.2. 5 U.S.C. § 75, Adverse Actions.
  - 2.3. 5 U.S.C. § 301, Departmental Regulations.
  - 2.4. 5 U.S.C. § 552a, The Privacy Act of 1974, as amended.
  - 2.5. 5 U.S.C. § 2105, Employee.
  - 2.6. 5 U.S.C. § 2302, Prohibited Personnel Practices.
  - 2.7. 5 U.S.C. § 7323, Political Activities Authorized.
  - 2.8. 5 U.S.C. § 7324, Prohibitions.
  - 2.9. 5 U.S.C. § 7351, Gifts to Superiors.
  - 2.10. 18 U.S.C. § 201, Bribery of Public Officials and Witnesses.
  - 2.11. 18 U.S.C. § 205, Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government.
  - 2.12. 18 U.S.C. § 641, Public Money, Property, or Records.

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- 2.13. 18 U.S.C. § 701, Official Badges, Identification Cards, Other Insignia.
- 2.14. 18 U.S.C. § 1001, Statements or Entries Generally.
- 2.15. 18 U.S.C. § 1030, Fraud and Related Activity in Connection with Computers.
- 2.16. 18 U.S.C. § 1621, Perjury Generally.
- 2.17. 18 U.S.C. § 1622, Subornation of Perjury.
- 2.18. 18 U.S.C. § 2071, Concealment, Removal, or Mutilation Generally.
- 2.19. 21 U.S.C. § 844, Penalty for Simple Possession.
- 2.20. 31 U.S.C. § 1349, Adverse Personnel Actions.
- 2.21. Rule 6(e), Federal Rules of Criminal Procedures.
- 2.22. Title 5 of the Code of Federal Regulations (CFR), Part 735, Employee Responsibilities and Conduct.
- 2.23. 5 CFR 752, Adverse Actions.
- 2.24. 5 CFR 2635, Standards of Ethical Conduct for Employees of the Executive Branch.
- 2.25. 5 CFR 3101, Supplement Standards of Ethical Conduct for Employees of the Department of Treasury.
- 2.26. Interim Table of Offenses and Penalties for Non-Bargaining Unit Employees Memorandum dated April 18, 2005.
- 2.27. Discipline and Adverse Action Operating Procedures (DAAP).
- 3. **SUPERSEDED/CANCELLED POLICY/SUMMARY OF CHANGES.** This directive supersedes the Interim Table of Offenses and Penalties (TOP) for non-bargaining unit employees, as well as all previously recognized legacy tables of offenses and penalty guides.
- 4. **BACKGROUND.** By memorandum in April 2005, former Assistant Secretary Michael Garcia issued the Interim TOP for all ICE non-bargaining unit employees. The memorandum advised that the TOP would serve as a guide to employees regarding unacceptable behavior, and the consequences for that behavior. With this Directive, the TOP continues to be a reference tool used as a resource to bring fairness and consistency for all ICE employees as matters relating to unacceptable behavior are resolved.

The TOP does not cover the full range of possible offenses that employees may commit, nor does it cover the full range of penalties the agency may impose for unacceptable behavior.

## **5. DEFINITIONS.**

- 5.1. An adverse action is a removal, suspension of fifteen (15) days or more, demotion, or a reduction in grade or pay, for any administrative action or penalty imposed on an ICE employee for violation(s) of any rules/regulations or standards of employee conduct, or a furlough of 30 days or less.**
- 5.2. A disciplinary action is a suspension of fourteen (14) days or less, or any written reprimand, for any administrative action or penalty imposed on an ICE employee for violation(s) of any rules/regulations or standards of employee conduct.**
- 5.3. An offense is an act of misconduct that violates the standards of employee conduct as found in the authorities cited above.**
- 5.4. A non-bargaining unit employee is any employee who holds a position identified as one that is not eligible to be represented by a labor organization that is officially recognized by the Federal Labor Relations Authority (FLRA) pursuant to the Federal Labor Management Relations Act (FLMRA).**
- 5.5. A bargaining unit employee is any employee who holds a position identified as one that is eligible to be represented by a labor organization that is officially recognized by the FLRA pursuant to the FLMRA.**

## **6. POLICY.**

- 6.1. The attached TOP will serve as the ICE guide for resolving misconduct matters involving ICE employees under the circumstances outlined in the TOP.**
- 6.2. The days shown in the TOP refer to calendar days.**

## **7. RESPONSIBILITIES.**

- 7.1. ICE Employees. All ICE employees are responsible for conducting themselves in a manner that avoids application of the TOP and its guiding principles. All ICE employees must continue to uphold the standards of conduct as established by the authorities above.**
- 7.2. Supervisors and Managers. All ICE supervisors and managers must ensure that subordinate employees are notified of and have access to the TOP and its guiding principles. In addition, all ICE supervisors and managers must be familiar with the TOP.**
- 7.3. Proposing and Deciding Officials. All ICE proposing and deciding officials must consider the TOP's provisions when administering or recommending the administration of penalties regarding ICE employees.**
- 7.4. The Director, Office of Human Capital, including the Office of Employee and Labor Relations (ELR) and its Servicing Programs. All ELR specialists**

and ELR supervisors must be familiar with the TOP and provide advice on the application of the TOP and its features to relevant proposing and deciding officials. ELR specialists and supervisors may work with representatives of the Office of Professional Responsibility (OPR), the Office of the Principal Legal Advisor (OPLA), the OPLA Office of Ethics, or other Department of Homeland Security (DHS) officials concerning discipline and adverse actions relating to the TOP.

- 7.5. Office of the Principal Legal Advisor (OPLA).** All relevant ICE attorneys assigned to adverse action work must be familiar with the TOP and provide advice on its application and features to relevant proposing and deciding officials. Attorneys work in conjunction with ELR specialists and ELR supervisors on adverse action matters with representatives of the Office of Professional Responsibility (OPR), the OPLA Office of Ethics, and other DHS officials as necessary.
- 8. PROCEDURES.**
- 8.1. Scheduling.** When applying the TOP, the appropriate ICE official must include sufficient workdays to ensure a corrective effect.
- 9. ATTACHMENT.** ICE Table of Offenses and Penalties for ICE Employees.
- 10. NO PRIVATE RIGHT STATEMENT.** This Directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.

Approved



Julie L. Myers  
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