



Q. When should an agency rescind or modify an action taken under Chapter 12?

A. When it realizes it has made a procedural or a substantive mistake in the action.

Q. What procedural mistakes require rescission of the action?

A. Lack of appointing authority, lack of notice of proposed action/opportunity to respond, lack of timely written notice, lack of detailed reasons.

Q. What substantive mistakes require rescission or modification of the action?

A. Lack of cause: conduct did not occur as described, lack of impairment, penalty too severe for infraction.

Q. Can an agency modify or rescind a letter or an action on its own initiative?

A. Only before the effective date of the action.

Q. After the effective date of the action, whose approval is required to rescind or modify the action?

A. The Director of State Civil Service if the employee has not appealed the action; the Commission's or Referee's approval is needed if the employee has appealed the action.

Q. How does an agency seek approval to rescind or modify a disciplinary action or removal that has already become effective?

A. Send a written request to rescind/modify the action to the Department of State Civil Service. The Department of State Civil Service will determine whether the employee has appealed the action and will route the request accordingly.

Q. What should the agency include in this request?

A. The name of the employee, the action, the effective date of the action, and the reason for the request to rescind or modify the action. A copy of the removal/disciplinary letter is helpful, as is the docket number of the appeal if the employee has appealed the action.

Q. Who should be copied on this request?

A. The same people who were copied on the original notice of action.

Q. Why should an agency correct defective actions?

A. The Civil Service Article and Rules give employees certain rights. Defective actions violate these rights. If the employee appeals the action, the Commission, Referee, or Court of Appeal will eventually notice the defect. If back pay is running (dismissals, removals, demotions, and some pay reductions), the longer the agency waits to rescind/modify the action, the higher the back pay and attorney's fee award will be. Finally, the person who takes an action in violation of the rules can be subject to a public investigation by the Commission.

Q. Can an agency rescind an action to take a more severe action based on the same conduct?

A. Not after the effective date of the action.

Q. What is the effect of rescission?

A. The agency must provide the employee all benefits, as though the agency had not taken the action, including back pay, annual and sick leave the employee would have earned, any mandatory pay increases the employee would have received, any regularly scheduled overtime, etc.

Q. If an agency rescinds an action, may it use the same grounds to re-take the action?

A. Yes, as long as it does not take a more severe action for the same conduct.

Q. When an agency rescinds a dismissal, what is the employee's payroll status?

A. The employee is in duty status (no leave coded). The employee remains in duty status until the agency takes some other action. That action may include prospectively placing the employee on forced annual leave (Rule 11.9) or prospectively placing the employee on forced compensatory leave [Rule 21.6(c)] to prevent the employee from actually returning to the premises. The agency cannot retroactively change the employee's status.