

In accordance with the Department of Veterans Affairs Accountability and Whistleblower Protection Act, P.L. 115-41, section 211, the Secretary of Veterans Affairs shall measure and collect information on the outcomes of disciplinary actions carried out by the Department of Veterans Affairs (VA or the Department) during the three-year period ending on the date of the enactment of this Act, June 23, 2017, and the effectiveness of such actions.

This report requires historical information not systematically gathered during the period required. In late 2014, the Office of Accountability Review (OAR), in response to the access-to-care crisis, developed an ad-hoc tracking system outside the Department's human resources information system. This ad-hoc system captures limited de-identified data points as entered by each individual facility human resources offices across the Department.

The Office of Accountability and Whistleblower Protection (OAWP) will discontinue use of the current ad-hoc system once an effective disciplinary tracking capability is in place.. The OAWP is working in partnership with HR&A to implement improvements to the HR*SMART system to create a comprehensive and effective discipline tracking capability for the Department. The improvements expect to be identified and implementation strategy developed by the fourth quarter of FY2018.

However, using the limited capacity of this current ad-hoc tracking system, the OAWP has compiled what information could be responsive to the requirement.

The specific content requirements of Section 211(b)(2) are:

(A) The information collected under subsection (a)(2).

Subsection (a)(2) sought the following data:

- (A) The average time from the initiation of an adverse action against an employee at the Department to the final resolution of that action.
- (B) The number of distinct steps and levels of review within the Department involved in the disciplinary process and the average length of time required to complete these steps.
- (C) The rate of use of alternate disciplinary procedures compared to traditional disciplinary procedures and the frequency with which employees who are subject to alternative disciplinary procedures commit additional offenses.
- (D) The number of appeals from adverse actions filed against employees of the Department, the number of appeals upheld, and the reasons for which the appeals were upheld.
- (E) The use of paid administrative leave during the disciplinary process and the length of such leave.

Regarding (a)(2)(A), for the period January 1, 2015 – June 22, 2017, the average time from issuance of a proposal of an adverse action until decision of that action was 55 days.

Regarding (a)(2)(B), the specific steps and levels for review involved in the disciplinary process within the Department varies with the specific authority being exercised (e.g. Title 5 or Title 38). Broadly the steps are: information gathering or investigation; assessment of results; development of proposed action; issuance of, and reply to, the proposed action; decision regarding the proposed action; appeal or grievance regarding the decision. There is no data available regarding the length of time for each step.

Regarding (a)(2)(C)-(E), during the three year period prior to enactment of the Act, the Department did not have systems or other capabilities to capture and analyze the requested information regarding: usage of alternative disciplinary procedures; appeals of disciplinary actions; or the use of paid administrative leave in the disciplinary process.

(B) The findings of the Secretary with respect to the measurement and collection carried out under subsection (a).

The Department's human resources information system gathers data based on the government-wide and VA-specific data needs. Current government-wide requirements do not support requests for data outside the specific data elements captured in the regular course of business.

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(C) An analysis of the disciplinary procedures and actions of the Department.

The ad-hoc tracking system does not capture responsive data to this request. Therefore, the OAWP is not able to analyze the procedures and actions. This ad-hoc system captures limited de-identified data points as entered by each individual facility human resources offices across the Department.

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capability for the Department. The improvements expect to be identified and implementation strategy developed by the fourth quarter of FY2018.

(D) Suggestions for improving the disciplinary procedures and actions of the Department.

The requirements under the Act have provided an opportunity to improve disciplinary procedures and actions of the Department.

Employees hired under 38 U.S.C. § 7401(1) (Title 38 employees) should be subject to the same burden of proof (substantial evidence) as employees covered by section 714. Changes can be made to VA policy to effect this action.

Part-time hybrid Title 38 employees appointed under 38 U.S.C. § 7405(a)(1)(B), should also be covered under section 714. Currently, these part-time hybrid employees are not covered under section 714, even though that was likely the intent. This effectively gives these part-time hybrid Title 38 employees more rights than their full-time counterparts. To ensure parity, part-time hybrid Title 38 employees should also be covered under section 714. A legislative fix is required for this change.

Finally, section 714 prevents the Merit Systems Protection Board from mitigating penalties for Title 5 and full-time Title 38 hybrid employees. However, under 38 U.S.C. § 7462(c)(2)(B), a VA Disciplinary Appeals Board (DAB) can still mitigate a penalty for a Title 38 employee. Preventing DABs from mitigating penalties for Title 38 employees would ensure parity for all VA employees. A legislative fix is required for this change.

(E) Such other matters as the Secretary considers appropriate.

The OAWP has no specific response to this paragraph.