

USFS/LE&I Briefing Papers



USDA Forest Service Work Environment Update Law Enforcement and Investigations

Date: May 12, 2014

The following bullets describe the results of a recent review of Law Enforcement and Investigations (LEI) disciplinary actions and Equal Employment Opportunity (EEO) complaints which occurred in the past three years.

Disciplinary Actions

1. In the past three years, there have been a total of 27 formal disciplinary actions taken in LEI. This averages out to about 9 per year. This is a relatively low number based on a unit of approximately 750 employees.
2. There was a slightly higher number of disciplinary actions taken in 2012 (14 total) than in 2013 (9 total). For the first 6-months of 2014, there have been fewer cases than expected (2 total). Again these numbers are nothing out of the ordinary for a unit of this size.
3. The most prevalent types of misconduct relate to Unacceptable Conduct, Absent With-Out Leave, Failure to Follow Instructions, and Misuse of Government Property/Vehicles. This is consistent with what we are seeing across the Agency.
4. The types of disciplinary actions taken were typical in nature for what we are seeing across the Agency in that there were 5 Reprimands, 14 Suspensions, and 8 Removals. Although fewer Reprimands are typical for the Agency, we would like and expect to see Reprimands higher than the other types of actions. This would indicate supervisors are intervening earlier and correcting misconduct before more serious actions are needed.
5. There were no specific trends or patterns identified relating to where the formal disciplinary actions were taken or with specific deciding officials. The actions were pretty evenly distributed across the Regional Special Agents' units: Region 1 (3 cases); Region 3 (4 cases); Region 4 (2 cases); Region 5 (6 cases); Region 6 (4 cases); Region 8 (3 cases); Region 9 (4 cases); and WO (1 case).

Equal Employment Opportunity Complaints

1. There were 21 formal complaints filed (approximately 7 per year). This is not an unusually high number for a unit with approximately 750 employees and in fact is about average for a unit of this size in the Agency and Department.
2. There was a higher formal complaint filing rate in 2013 (11 total), but it has declined sharply in 2014 with only 2 filed so far.

3. The number of issues always exceeds the number of cases/complaints, as Complainants typically raise multiple issues. That said, the most prevalent issue is alleged nonsexual harassment – a catch-all and very popular category that does not really tell us much. 14 cases alleged non-sexual harassment. Other issues (with 3 or less cases) were duties, time and attendance, and performance appraisal. There are no significant trends indicated such that one could point to a possible problem, other than the high number of non-sexual harassment allegations.
4. The number of bases named, always exceed the total number of complaints. The leading bases cited are sex (12), reprisal (10), and race (6). The numbers for age (4) and disability (3) are below average for Forest Service and the government. The number of sex allegations is unusually high. The reprisal number is pretty typical of what we see in other units of this size.
5. There is no significant trend in the Responding Management Officials (RMO).
6. There were also no significant trends identified by Region: Region 1 leads with 5 cases; Region 9 had 4 cases; Regions 5, 6, and 8 all had 3 cases; and the WO had 2 cases. Regions 2, 3, 4, and 10 had none.



**U.S. Forest Service
Briefing Paper
Position Management for Law Enforcement & Investigations**

Date: May 6, 2014

Topic: No career ladders for law enforcement personnel in the Forest Service (FS)

Background: The current Law Enforcement & Investigations (LEI) organization consists of the following positions:

Law Enforcement Officer

- Law Enforcement Officer (LEO), GL-1801-5/7/9 (non-supervisory)
- Patrol Captain, GS-1801 -11/12 (supervisory)
- Commanders, GS-1801 –13 (supervisory)
- Commanders, GS-1801-13 (few non-supervisory positions)

Criminal Investigator

- Criminal Investigators (CI), GS-1811 - 9/11/12 (non-supervisory)
- CI, GS-1811-9 (trainee)*
- Supervisory CI, GS-1811–13 or 14

Leadership

- Assistant Directors, GS-1811-14
- LEO, GS-1801-13/14 (FLETC)
- Assistant Special Agent in Charge (ASAC), GS-1811-13
- Special Agent in Charge (SAC), GS-1811-14/15

Administrative

These positions are still being analyzed by leadership.

FS LEO positions are classified in the GL pay plan. The GL was established as a special base rate for Law Enforcement officers at grades 03 through 10.

FS LEOs have several avenues available for career advancement which are outlined in Options 1 & 2 below.

- Option 1: LEOs can continue in the 1801 series where they can move up to the GS-14 level.
- Option 2: LEOs can transfer (after competition) into the GS-1811 series, where they can move up to the SES level.

Criminal Investigators in the GS-1811 series at the higher grade levels can compete for leadership positions up to the SES level.

Prior to the establishment of the current organization, the LEI also had Lead GS-10 positions. When the Patrol Caption positions were changed to the GS-12 level, there was no place in the organization for a Lead position. The changes were made based on the scope and span of the FS organization being supported.

*This position is available but has not been used in some time.

Comparison to other National Resource Agencies: We are still in the process of reviewing comparators but initial results indicate the following.

National Park Service (NPS)

Park Service has their Law Enforcement (LE) positions classified as Park Rangers, GS-0025. There appears to be no non-supervisory Park Ranger position at the GS-11 level. Given the series, they are not classified in the GL pay plan; therefore, not entitled to the additional pay prescribed. The majority of park rangers do not receive AUO.

Typical NPS LE positions

Park Service	Park Ranger	GS-0025-05	These positions are usually 1039s or one year not-to-exceed appointments
Park Service	Park Ranger	GS-0025-07/9	These positions are usually permanent

Park Service	Supervisory Park Ranger	GS-0025-11/12	These positions can either be straight supervisory at the 11 or 12, or the supervisory 11 will report to the Chief Ranger who holds the 12. Very few Chief Rangers area at the GS-13 level
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Bureau of Land Management (BLM)

BLM has positions classified in the 1801 series and in the GL pay plans. They also have non-supervisory GS-1801-11 positions. However, the non-supervisory work performed is administrative and program management in nature and is dependent on the line official (non-LEO) they support. For the FS, this work is normally found in the Patrol Captain positions, which not only supervise, but also serve as the lead LE official for the specific FS organization. Lastly, the BLM supervisor determines which positions are entitled to AUO and which ones are not.

Typical BLM LE positions

BLM	LE Ranger	GL-1801-5/7/9	
BLM	Field Staff LE Ranger	GS-1801-11/12	Supervisory (most positions are GS-11, but there are approx. 20-GS-12)
BLM	Field Staff LE Ranger	GS-1801-11	Non-Supervisory

Recommendations: The current LEI organization for the FS appears to afford career ladder opportunities in both the law enforcement and investigation areas, and appears to afford more career advancement potential than other natural resources agencies.

- Review scope and complexity of the LEI organization to assess if non-supervisory LEO positions are supported in the current organizational structure
- Provide more detail opportunities for LEO personnel into LEO supervisory positions
- Explore use of the CI trainee position

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U.S. Forest Service
Business Operations Deputy Area
Briefing Paper
04/28/14

Subject: Policy and Use of Administratively Uncontrollable Overtime (AUO)

Key Issue: Concerns about use, consistency of AUO were raised during a recent Law Enforcement & Investigations (LEI) engagement session with Chief Tidwell.

Background:

5 United States Code, section 5545(c)(2), grants authority to the Secretary of Agriculture to authorize eligible Law Enforcement Officers (LEO) to receive premium pay for Administratively Uncontrollable Overtime (AUO) when they are required to perform substantial amounts of irregular overtime; and they must be responsible for recognizing, without supervision, circumstances which require them to remain on duty. The authority to authorize AUO was further delegated the Chief of the Forest Service in 1991.

AUO was enacted by Congress as a cost savings to agencies, meaning, an Agency may only authorize the payment of AUO if it costs less than paying straight overtime. The cost effectiveness of AUO must be reviewed each year to substantiate the need for continued authorization. We found no evidence this comparison has ever been performed.

Forest Service AUO policy was issued in 1995, and a draft AUO & Law Enforcement and Availability Pay (LEAP) policy is currently with LEI leadership (they have issued Article 11 with the Local Union). According to current policy, each LEO must keep a daily AUO log, Form FS-6100-31, *Record of Administratively Uncontrollable Overtime*, and accurately report all AUO hours (case, activity performed, and number of hours). On a quarterly basis, each LEO must complete and submit Form FS-6100-32, *Quarterly Computation for Administratively Uncontrollable Overtime (AUO) Pay Rate*, to their supervisor. The daily AUO hours are applied to the quarterly computation form to determine their AUO percentage for the next quarter. Following is a chart detailing the number of hours equating to the individual AUO percentages:

Average AUO Hours per Week	AUO Percentage
<3	None
3-5	10%
5-7	15%
7-9	20%
9+	25%

Regional Special Agents in Charge have the responsibility to ensure the accuracy of records concerning AUO hours worked by subordinate employees are correct. They must review and approve AUO rates for those individual employees who claim AUO. This review must take place on a quarterly basis, and recorded on the Form FS-6100-32.



U.S. Forest Service
Business Operations Deputy Area
Briefing Paper
04/28/14

Current Status:

During a recent Law Enforcement & Investigations (LEI) engagement session with Chief Tidwell, employees expressed concern about the use and understanding of Administratively Uncontrollable Overtime (AUO). Specifically, how management may interpret and apply policies regarding to AUO.

A report pulled detailing receipt of AUO in 2013 revealed over 70 percent of LEOs received the maximum 25 percent AUO rate. An audit of AUO records and procedures will be required to fully evaluate and determine the validity of the employees' concerns.

Although a full audit of AUO records would be an effective means of identifying potential issues and inconsistencies, it would be very labor intensive. We could instead focus on the first quarter of 2014, and take a sample of 10 percent of LEOs in each region who received 25 percent AUO during that period. By reviewing the associated documents (daily logs, time and attendance records, and quarterly computation sheets), we could identify potential trends (e.g., if the LEOs received the correct AUO percentage rate etc.). Based on the initial findings, a decision could be made to inquire further, or not.

Independent of any AUO audit, the Agency must ensure its use of AUO is cost effective. A cost analysis comparing AUO, versus the alternative payment of straight overtime, should be considered in conjunction with audit results.

Recommendations:

1. Human Resources Management (HRM) conduct an initial audit of documentation for 10 percent of LEOs receiving 25 percent AUO for the first quarter of 2014 to identify potential inconsistencies. If inconsistencies are identified, consider widening the scope of the audit.
2. LEI leadership initiate an annual review of the cost effectiveness of using AUO compared to the cost of paying straight overtime. Provide the annual report to Chief's Office, HRM, and to USDA.
3. In the long-term, LEI leadership form a task group to randomly audit AUO records annually to ensure consistent and accurate use of the authority.

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**U.S. Forest Service
Briefing Paper
Reassignment Process for Law Enforcement & Investigations**

Date: May 6, 2014

Topic: The process for handling reassignments of Law Enforcement & Investigations (LEI) personnel

Background: The LEI organization utilizes a few options in reassigning personnel. These options are outlined below.

Competitive Process

The most common option is reassignments made through the competitive process. Merit Promotion Plan procedures are followed which include the issuance of a non-competitive referral list identifying candidates eligible for reassignment actions and the proper clearances for displaced employees under the Career Transition Assistance Program (CTAP) and Workforce Restructure Assistance Program (WRAP). In addition:

- Per Article 16 of the Master Agreement between NFFE and the Forest Service (FS), Outreach is conducted for a minimum of 21 days prior to the issuance of any certificate and before subsequent selection can be made.
- Approval of reassignment actions currently rests with the FS Chief of Staff.
- If the reassignment is to a location outside the local commuting area, Transfer of Station (TOS) may be applicable.

Non-Competitive Process

Per Article 16, Section (2)(c) of the Master Agreement between the Forest Service and NFFE, Outreach is conducted for a minimum of 21 days prior any selection being made for a reassignment action. In addition:

- The proper clearances for displaced employees under the CTAP and WRAP regulations are followed to prior to finalizing any selection.
- Approval of reassignment actions currently rest with the FS Chief of Staff.
- If the reassignment is to a location outside the local commuting area, TOS may be applicable.

Hardship Transfer

Procedures outlined in Article 42 of the Master Agreement between Forest Service and NFFE are followed in processing requests for hardship transfers, regardless if the employee is a BUE or non-BUE employee. Once a hardship is certified and a reassignment is found to be the appropriate, the Agency moves forward in finalizing the reassignment action.

All options follow the regulations prescribed for handling these types of requests. No additional processes have been identified for FS LEI.

Recommendations: No procedural changes are recommended; however, more communication of the reassignment process may be warranted.

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