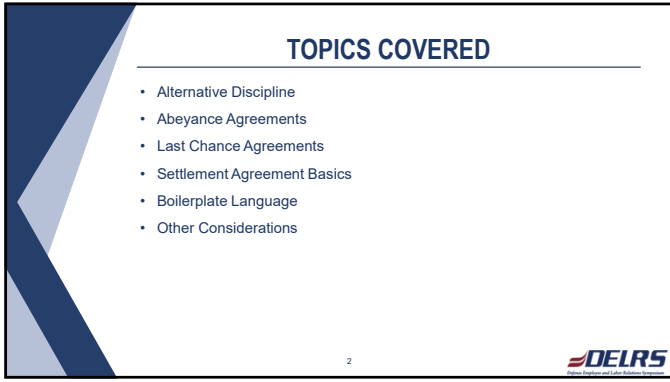
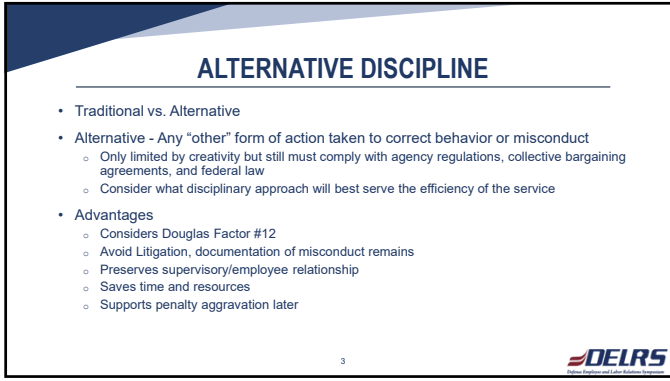




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ALTERNATIVE DISCIPLINE TYPES


- When it is NOT Recommended
 - Probationary or Trial Periods
 - If penalty is required by Statute (misuse of gov. vehicle, removal of LEOs)
 - Serious workplace misconduct (workplace violence or discrimination)
 - Antithetical to agency mission (fraud, waste, abuse)
 - Repeat offender (already received alternative discipline)
- Paper Suspensions - no loss of duties and pay but can be cited in the future for purposes of progressive discipline (Over Weekend)
- Break Up Suspension Over Multiple Pay Periods
- Other Scenarios
 - Employee donates annual leave to leave bank/transfer program equal to amount of time they would have spent on suspension
 - Employee performs community service equal to time they would have spent on suspension
 - Employee attends specific program offered by EAP (deb/anger management)
 - Employee performs research on misconduct then provides training/briefing



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ABEYANCE AGREEMENTS


- Abeyance Agreements are agreements for which the agency agrees to forego a planned disciplinary/adverse action in exchange for the employee's agreement to meet certain conduct or performance requirements
 - Holds the imposed suspension, or a portion of, in abeyance for a specified time. If the employee commits future misconduct, the employee not only serves the discipline being held in abeyance, but also may be disciplined for the new misconduct
 - An employee who does not breach an abeyance agreement gets a clean slate or the agreed upon reduced penalty
 - CBAs should be reviewed to ensure compliance with any related provisions for settlement agreements (abeyance or last chance) or for union representative involvement for BUEs



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LAST CHANCE AGREEMENTS


- A last chance agreement (LCA) is a form of alternative discipline between the employer, employee and union representative if applicable
- The LCA may be agreed upon after a proposed removal has been issued
 - The LCA is cited in the decision to the proposed removal with the effective date of removal put into abeyance until the expiration or non-compliance of the LCA
- The LCA gives the employee a last opportunity to retain employment
- NOTE: Employees cannot waive discriminatory claims arising from the execution of the LCA because such waivers would violate public policy



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LAST CHANCE AGREEMENTS (cont.)

- LCAs typically contain the following but are not limited to:
 - Detailed outline of employee's history of employment problems
 - Detailed outline of employer's efforts to correct problems
 - Unambiguous assertion that the employer is conditionally retaining the employee, who otherwise would be discharged/removed pursuant to agency rules and or the labor agreement
 - A list of conditions to retaining employment
 - Consequences of a violation of the LCA (e.g., automatic discharge)
 - Waiver of employee's right to grieve or appeal a violation of the LCA
 - Period in which LCA is in effect
 - Date and signatures of the parties: Agency Representative, Employee, and Union Representative (if applicable)



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SETTLEMENT AGREEMENT BASICS

- Alternative Discipline Agreement, Abeyance, Last Chance Settlement, Negotiated Settlement, Mediated Settlement, etc. → ALL are Settlement Agreements
- Legally binding written contract between the parties that incorporates the specific terms and conditions of their resolution
 - Traditional contract law principles govern validity
 - Authority of parties to bind themselves/principals
 - Mutual understanding
 - Consideration
 - Freedom from undue influence, coercion, etc.
 - "Rules of Construction" to determine intent



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SETTLEMENT AGREEMENT BASICS: CONSTRUCTION


<ul style="list-style-type: none"> • Use complete sentences <ul style="list-style-type: none"> ◦ Use everyday language, if possible ◦ Avoid jargon and legalese ◦ Define technical or special meaning terms • Spell out acronyms the first time • If you have to read it two or three times to understand it – it's not clear enough • Understand and apply special templates when indicated (e.g., age discrimination) 	<ul style="list-style-type: none"> • Be specific, but not TOO specific • Carry out the intent of the parties • Employ the assistance of parties/representatives • Coordinate terms with Legal before finalizing • Ask clarifying questions if needed • Spell out contingency arrangements • Avoid open-ended commitments
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SETTLEMENT AGREEMENT BASICS: QUESTIONS


- Does the agency representative have sufficient authority to bind the principal by signing?
- How will others read the agreement?
- Can the parties deliver what they've promised? (May need technical guidance)
- What's the impact on non-parties?
- Is the agreement supported by consideration?
- Are the agreement's terms legally enforceable?
- Is a settlement agreement even appropriate?

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COMMON "BOILERPLATE" CLAUSES

- Waiver and release of agency and personnel
- Global nature of settlement
- Merger of all claims (complete agreement)
- Non-admission of fault/liability
- Confidentiality of terms
- Non-precedential effect
- Severability
- Voluntary agreement
- Notice of Breach and Opportunity to Cure


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SPECIFIC RIGHTS: WAIVER LANGUAGE

- I have read and understand the conditions and restrictions set forth in the above agreement
- I am mentally and physically fit so as to be able to understand this agreement in its entirety
- I know and understand that should an action have been taken, I may have had appeal rights to the U.S. Merit Systems Protection Board, the grievance arbitration procedure, the Federal Labor Relations Authority, and through the discrimination complaint process with respect to any removal action taken against me

Rhett v. US Postal Service, 113 MSPR 178 (MSPB 2010)

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BREACH OF SETTLEMENT AGREEMENT


- Remedies for non-compliance
 - EEO complaints: EEOC breach procedure in 29 CFR Part 1614
 - Negotiated grievance: Specified in NGP or in settlement agreement itself
 - Admin grievance: No breach procedure
 - Appeals, ULPs: Compliance with an LCA/NSA is handled like any other order of MSPB or FLRA
- Notice of Breach and Opportunity to Cure

*Pursuant to the terms of our negotiated settlement agreement titled "[CONTRACT TITLE]" and dated [DATE], hereinafter referred to as "Agreement," a copy of which is attached hereto, you have conducted yourself in such a way that has breached the Agreement due to the following actions:

*Unless the breach is resolved and evidence of the cure provided to [AGENCY] not later than [DATE], this letter formally places you on notice that:

 1. You are in breach of our agreement, as set forth above;
 2. [THE AGENCY] has a right to take all appropriate action to enforce the terms of our agreement, including litigation;
 3. You must abide by the legal requirements concerning document retention and maintain and preserve any and all documents, materials, and information, in any form whatsoever, that may be potentially relevant to the subject matter, or discoverable in any potential action arising from this breach; and ...if a cure has not been effected by [DATE], we must pursue any and all available legal and equitable remedies by instituting formal proceeding in accordance with [the terms of our settlement agreement; pertinent regulations of the MSPB, EEOC, etc.]

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COORDINATION IS THE KEY

- Legal
- HR
- Comptroller
- EEO
- Union
- Others as dictated by circumstances

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CONCLUSION

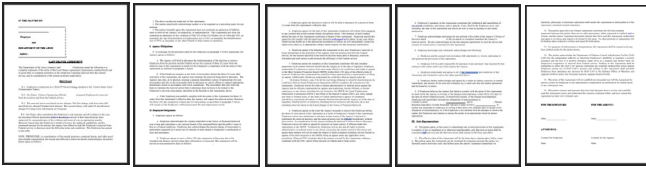
- Traditional vs Alternative Discipline
- An effective settlement agreement:
 - Clearly and specifically sets forth the terms of the parties' understanding
 - Accurately reflects the parties' intent
 - Is supported by adequate consideration
 - Is entered into by persons with authority
 - Can be legally and logistically accomplished in the manner and time specified
 - Includes adequate compliance measures and remedial procedures for termination of contractual obligations and breach; and
 - Meets applicable procedural requirements

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SAMPLE LAST CHANCE AGREEMENT



Full Sample LCA is Provided in Your DELRS Materials

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ANY QUESTIONS

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THANK YOU
FOR ATTENDING

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