



UNITED STATES PATENT AND TRADEMARK OFFICE

Deputy Commissioner for Patents

MEMORANDUM

Date: October 27, 2010

To: All Patent Examiners
Technology Center Directors
Supervisory Patent Examiners

cc: Employee Relations Office

From: *Peggy Focarino*
Peggy Focarino
Deputy Commissioner for Patents

Subject: Application of Oral and Written Warnings and Statutory Performance Improvement and Maintenance Periods

This memorandum supersedes the memorandum of the same title dated October 22, 2010.

Effective October 24, 2010, the following changes to the application of oral and written warnings for performance and statutory performance improvement and maintenance periods under 5 U.S.C. Chapter 43 for Patent Examiners will take effect.

Oral Warnings

- An oral warning may be issued through discussion or e-mail, and will identify the element(s) or one or more Quality categories of the examiner's Performance Appraisal Plan for which the warning is being issued.
- Oral warnings will generally start at the beginning of a fiscal quarter, and terminate at the end of the same fiscal quarter. The oral warning period will be extended by one pay period for each 80 hours the employee is on approved absence during the oral warning period.
- The issuance of an oral warning will be followed, as quickly as possible, by a written confirmation of the oral warning. This confirmation may be delivered by hand, by email, or by mail. If the written confirmation of oral warning is not delivered to the examiner in the same pay period that the oral warning was issued, then the start of the oral warning period will be delayed until the beginning of the pay period in which the examiner receives written confirmation.

Written Warnings (Statutory Performance Improvement Periods)

- A written warning may be issued in person or by email, and will identify the element(s) or one or more Quality categories of the examiner's Performance Appraisal Plan for which the warning is being issued. The statutory Performance Improvement Period (PIP) will not begin to run until after the written warning has been issued.

- Written warnings will be seven pay periods in duration. The written warning performance improvement period will be extended by one pay period for each 80 hours the employee is on approved absence during the written warning performance improvement period.
- Determinations regarding whether an employee has passed his/her written warning performance improvement period will generally be made, and communicated in writing to the employee, during the pay period immediately following the end of the written warning performance improvement period (usually bi-week 8).

Maintenance Periods

- An employee who passes his/her written warning performance improvement period is required to maintain at least marginal performance in the critical element(s) or one or more Quality categories upon which the written warning was based for the remainder of the one-year period beginning with the start of the written warning.
- Following the written warning and the one pay period administrative period (usually bi-week 8), success or failure in the maintenance period will be determined by considering the employee's performance in the critical element(s) or one or more Quality categories upon which the written warning was based in each of three evaluation periods: pay periods 9-14, pay periods 15-20, and pay periods 21-26. No evaluation period will be shorter than 6 full pay periods.
- On a bi-weekly basis during the maintenance period, employees will be provided with reports of their performance in the critical element(s) one or more Quality categories upon which the written warning was based.
- If an employee is on approved absence for at least 80 hours during any of the three evaluation periods, the evaluation period during which the absence occurs will be extended by one bi-week for each 80 hours of approved absence and subsequent periods will be delayed. For example, if an employee is on approved absence for 160 hours during the first evaluation period, that evaluation period will run from pay periods 9-16, and the second evaluation period will be pay periods 17-22. Since these adjustments would result in a final evaluation period of less than six pay periods, the third and final evaluation period would include the second evaluation period and would run from pay periods 17-26.
- Failure to maintain at least marginal performance in any of the critical element(s) or one or more Quality categories upon which the written warning was based, during any one of the evaluation periods, may result in the Agency initiating a performance-based action.