



NFFE-FSC Support Circular 02: Additional Guidance for Terminated Probationary Employees

24 February 2025

Options for Terminated Employees

There are several options for appealing a wrongful termination, including:

- 1) A grievance through the Union;
- 2) A Merit Systems Protections Board (MSPB) complaint;
- 3) An Office of Special Counsel (OSC) complaint;
- 4) Joining a class action lawsuit; and,
- 5) Equal Employment Opportunity (EEO) complaint.

Generally, you can only appeal a wrongful termination through a single venue, meaning that you will have to elect a single forum for appeal.

Each of these options has advantages and disadvantages, and there are no guarantees as to the outcome of any of these options. This document is an attempt to give terminated employees the best information possible to decide which appeal option is right for you.

Note: Terminated probationary employees who accepted the initial opt-in for the “Fork in the Road” deferred resignation program are being asked to reconfirm their desire to participate in the program. **NFFE believes individuals who participate in the deferred resignation program are not eligible for any of the NFFE-driven appeal actions.**

Only individuals who were bargaining unit employees (BUEs) with the USFS on the date of their termination are eligible to participate in the NFFE national grievance Option #1.

Option #1-NFFE National Grievance

IN A NUTSHELL: *No outcome is guaranteed, but if you are a terminated bargaining-unit-eligible probationary employee with the USFS, NFFE believes participating in the NFFE national grievance is probably your best bet at this time. A grievance offers all the legal advantages of an MSPB appeal as well as additional advantages from the language in our Collective Bargaining Agreement. Make sure to fill out both surveys being circulated to ensure you are able to participate in the national grievance.*

General Information

A grievance is a formal complaint issued by the Union on behalf of an employee or group of employees toward the employing agency. In this case, the grievance will be issued by the Union at the national level against the Forest Service and will include all eligible terminated probationary employees who were in the bargaining unit at the time of termination and wish to participate.

In the national grievance, NFFE will request remedies for the affected employees, including a return to their previous employment, correction of personnel records, and payment of applicable damages related to employment such as back-pay and lost benefits. Management must respond to the grievance within 30 days of receiving it, and may agree to comply with the Union's requested remedies. If Management denies the requested remedies the Union will likely take the case to arbitration, where the case may be heard before a third-party arbitrator. See [Master Agreement](#) Articles 9 and 10 for additional information on the grievance and arbitration processes.

Who can Participate

Terminated probationary employees who are part of the USFS bargaining unit at the time of their termination can participate in the national grievance. If you are unsure of your status as a bargaining unit employee, you can look at Box 37 on your latest SF-50. Bargaining unit employees will be coded “2009.”

BLM employees who are organized under NFFE will not be able to participate in this national grievance since it relies on elements of the Forest Service Master Agreement. NFFE plans to assist terminated BLM employees in a separate effort.

How to Participate

NFFE is collecting names and information to submit a national-level grievance on behalf of terminated probationary bargaining unit employees (BUEs). Preliminary information for the national grievance is being collected in two google surveys. [Here is the link to the first survey](#). We will follow up with respondents to the first survey by email and provide you with a link to the second survey. (You may also receive a link to the second survey directly from your local union official.) It is critical that you fill out the second survey ASAP if you are interested in participating in the NFFE national-level grievance.

Note: Filling out the second survey does not commit you to participating in the NFFE national grievance. We will reach out to you directly before filing the grievance to ensure that you still want to be included. Please fill out the survey if you are eligible to participate in the grievance but have not decided on your forum.

Terminated BUEs will be asked to attach a signed SF-1187 to the survey (regardless of whether you are already a member) as a demonstration of your willingness to have dues deducted if/when you are reinstated to your position in the Forest Service. (No dues will be deducted until your reinstatement, and we will not charge back dues to individuals.)

We encourage terminated BUEs to fill out the survey even if you don't yet have all the requested supporting documentation. As long as you have a google account (or create one) you will be able to return to the survey to add additional documentation.

What to Expect

In the next week or two we will reach out directly to those who completed the second survey. We will confirm your interest in participating in the national grievance, and we may ask you to answer additional questions or submit additional documents as needed.

Grievances must be submitted within 30 days of the date of your termination, and we plan to submit our grievance as soon as we can confirm the list of individuals participating in this action.

Pros/Cons/Additional Considerations

Pros

- Grievances are typically faster than appealing through another avenue such as MSPB or OSC. For those who want their jobs back as soon as possible, NFFE believes participating in the grievance is your most likely and fastest route to getting your job back.
- Requests for a grievance resolution can be granted directly by Management. If Management refuses to grant the desired resolution, the Union will most likely take the case to arbitration. An arbitrator could decide the case in favor of the Union and instruct Management to comply with the Union's requested resolution. The decision is binding on both parties. Arbitrators are selected from a list by mutual agreement of Management and the Union.

Cons

This option is only available to terminated employees who were USFS bargaining unit employees at the time of their termination.

Additional Considerations

- Once the grievance is at the arbitration stage, you may be contacted to participate in the hearing as a witness. Only employees who want to be called to testify will be named as witnesses and will prepare with NFFE's attorney. We will need a few grievants to testify about their own circumstances from each of the different categories of grievants included in the NFFE grievance.
 - For example, grievants who have proof that they had completed probation before their termination will likely be called to testify first and have the highest likelihood of receiving a make-whole remedy.
 - Grievants who are truly probationary may be called to testify in support of other claims in the grievance.
 - Most grievants will not ultimately be called to testify, but all grievants do need to fill out the second survey as completely as possible so that NFFE can put forth the most complete evidence and have the best chance of winning the grievance.
- NFFE will only be filing the national grievance described above, not individual grievances. Employees have a right to file a grievance through the Union's grievance procedure on their own, but employees do not have a right to take the case to arbitration. We do not recommend any employee file a grievance on their own.

- NFFE encourages you to continue to look for a new job while the grievance is in process. If you do get another job or collect any income from the date of your termination until the end of our litigation of the grievance, we may need you to provide information about that income. Please keep records of new income for purposes of calculating damages.
- NFFE encourages you to proceed with filing for unemployment benefits on your own if you haven't done so already. If you are denied unemployment benefits, we recommend you seek legal assistance and appeal the decision with the assistance of attorneys who specialize in unemployment insurance. You can find a lawyer experienced in unemployment claims on NELA.org.

Option #2-MSPB Complaint

IN A NUTSHELL: *An MSPB complaint is a good option for those who are ineligible to participate in the NFFE national-level grievance. The MSPB process can be very complicated so we do not recommend anyone file an MSPB complaint without representation by an attorney. NFFE is actively working with AFL-CIO to establish an attorney referral system as soon as possible to connect members with lawyers at no cost to terminated employees. We will provide you with additional information on this program as soon as it becomes available. You are welcome to contact private attorneys on your own in the days ahead. However, if you wish to take advantage of your union membership benefits, NFFE recommends holding off on filing with the MSPB until you can get into the union referral program.*

General Information

The MSPB is one avenue to file an appeal on a termination while on probation. The MSPB makes decisions on whether a personnel action against a federal employee violated Merit Systems Principles, and has the authority to award damages to terminated employees if the Board determines that the termination involved a violation of law or regulation.

MSPB appeals must be filed within 30 days from the date you were terminated. Probationary employees typically have limited MSPB appeal rights. Most probationers can only appeal their termination if they allege that the termination “was based on partisan political reasons or marital status.”

Employees with full MSPB appeal rights will have a much stronger case to appeal their terminations. Here are a few circumstances where probationary employees likely have full MSPB appeal rights:

- If you were terminated as a probationary employee, but the agency calculated your probationary status incorrectly, you may have full MSPB appeal rights.
- If you have prior federal service, you may have full MSPB appeal rights if you are either: 1) in the competitive service; or 2) a veteran appointed under the Veterans Readjustment Act into the excepted service.
 - For most in this category, prior service must either be: 1) permanent service with the same agency, in a similar position with similar duties; or 2) temporary service with the same agency, in a similar position with similar duties, without a break of service of more than 30 days between appointments.
- There are also some exceptions for former military service and for appointments under the Land Management Workforce Flexibility Act (LMWFA).
- If you were serving an excepted appointment pending conversion to the competitive service, you may have full MSPB rights.
- If you were hired under Schedule A Persons With Disabilities, and previously held a non-temporary competitive service position and completed an initial probationary period, you may have full MSPB rights.

How to File

You can familiarize yourself with **the MSPB appeals process**. Although Union officials can provide some guidance and advice in your MSPB process, you will likely have to go through this process alone or with the help of an attorney. In normal circumstances the Union can represent individuals in MSPB appeals, but we do not have the resources or capacity at the moment to represent every terminated employee in an MSPB appeal. This is why we will be recommending all our members who choose not to participate in the national grievance to take full advantage of the lawyer referral service once it is up and running.

What to Expect

MSPB complaints can take years to resolve, and the process can be slowed down further if board positions are left unfilled and if the independent agency of the MSPB is understaffed. Currently all three board positions are filled, but this could change.

Pros/Cons/Additional Considerations

Pros

- May be the best option available to terminated probationary employees who are outside the bargaining unit or ineligible to participate in the NFFE national-level grievance.
- You can include EEO violations in your MSPB complaint. This is called a “mixed case”.

Cons

- MSPB decisions typically take a long time, and the high volume of MSPB appeals being filed at the moment will likely increase timeframes for decisions.
- Vacant Board members positions may mean the Board does not have a quorum, which could further slow down or halt the MSPB decision process.

Additional Considerations

- BLM employees who are BUEs with NFFE should contact their local to discuss options and consider holding off on filing an individual MSPB complaint until they can gain access to the lawyer referral service, as described above.

Option #3-Office of Special Counsel (OSC) Complaint

IN A NUTSHELL: *NFFE believes an OSC complaint is likely to take more time than a grievance or MSPB complaint, but it is an option for any federal employee who wants to challenge their termination as Prohibited Personnel Practice.*

General Information

The OSC is a federal investigative and prosecutorial agency tasked with investigating alleged violations of Prohibited Personnel Practices (PPPs). The OSC examines allegations of PPP violations and has authority to seek corrective action for those violations.

How to File

Complaints to the OSC [can be filed through their online portal](#).

What to Expect

The OSC will review your case and either determine that it merits further investigation or close the case.

The OSC may bring your case to the MSPB to request a stay on your termination. It can also send a letter to the agency requesting corrective action. If the agency refuses to comply with the requested corrective action, the OSC may bring your case to the MSPB.

Pros/Cons

Pros

- The OSC attorneys can help you with an appeal if they decide your case has merit.

Cons

- The OSC is already a small body, and is suffering from staffing shortages, which could lead to delays in processing your complaint. The Special Counsel position is currently occupied but there is a chance it could be vacant again before OSC has an opportunity to resolve your complaint.
- A complaint filed with the OSC is likely to end up in front of the MSPB, with all the associated downsides of that venue.

Option #4: Joining a Class Action Lawsuit

IN A NUTSHELL: Several law firms have initiated class action lawsuits on behalf of terminated probationary employees.

NFFE is not referring employees to any law firm at this time. NFFE is aware of James & Hoffman, one law firm that is currently collecting information from terminated probationary employees in preparation for a possible class action lawsuit. NFFE is not involved in that action at this time. NFFE is aware this firm is primarily looking to represent those who are not represented by a Union.

NFFE continues to explore all options for our members. If at some point we do join a private law firm in a class action that you may be eligible to join, we will certainly be in contact with you about it.

Option #5: Equal Employment Opportunity Complaint

IN A NUTSHELL: *Any federal employee may file an EEO complaint if they believe their termination was motivated by discrimination.*

Employees who wish to file an EEO complaint must first contact the Office of Civil Rights at their agency within 45 days of the personnel action. Forest Service employees should call the Equal Employment Opportunity Pre-Complaints Branch at 404-347-1908 if they are interested in filing an EEO complaint.

Employees can represent themselves or hire a private attorney to represent them. NFFE can consider whether to represent employees before the EEOC and/or provide employees the names of reputable attorneys to contact about possible representation, but NFFE does not provide formal referrals or joint representation. Claims that could be brought in a stand-alone EEO complaint can be included in an MSPB appeal. This is called a “mixed case”.

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