

Talking Points on the “2023 Accountability Act” or:

Making it SO easy to fire a VA employee that even an incompetent, dishonest VA manager can do it

1. This bill is an explicit attempt to “correct” the weaknesses of the 2017 VA Accountability Act that had been largely neutralized through legal action.
2. In March 2023 the VA Secretary actually came out and abandoned the now-discredited disciplinary and performance provisions of the 2017 law.
3. We have a contract signing ceremony scheduled for August 8, and this new 2023 Accountability act EXPLICITLY “supersedes” the provisions of that collective bargaining agreement.
4. The 2023 Accountability Act does the following to “ease” firing of VA employees:
 - Reinstates the discredited “*substantial evidence*” standard for misconduct cases rather than the “*preponderance of evidence*” standard. (Preponderance = >50% while Substantial = some). A lawsuit decided in 2021 by the Federal Circuit forced VA to go back to the preponderance standard; the new bill goes back to substantial.
 - Gets rid of the Douglas factors that ensure not only progressive discipline, but also consistency and appropriateness of the penalty relative to the offense. This is another one where a provision of the 2017 bill got overturned by the Federal Circuit.
 - Eliminates PIPs for performance based actions.
 - Reduces notice and appeal processes.
 - Bargaining unit employees will still be able to go to the MSPB, but the “*substantial evidence*” rule will guide MSPB decisions.
 - SUPERSEDES our collective bargaining agreement on all of these items.
5. The bill’s terms would apply retroactively to the date when the first Accountability bill was enacted in 2017.