

Due process procedures for the removal of or other disciplinary action against an employee charged with incompetence or misconduct as set forth in Civil Service Law, or in a negotiated collective bargaining agreement.

FREQUENTLY ASKED QUESTIONS ON DISCIPLINARY PROCEEDINGS

What is due process?

Due process is the ability of an agency to initiate disciplinary proceedings and for those being charged to defend themselves against the charges and have a representative.

Who is entitled to due process?

An employee who is a permanent civil servant in the competitive class or non-competitive class has due process rights. Provisional employees do not have due process rights until they have served two years, and probationary employees do not have due process rights at all.

What is a disciplinary action?

A disciplinary action is when an employee is brought up on written charges and specifications for violations of state, city, or agency policy/command discipline/rules and regulations.

What action(s) by the employee initiates disciplinary action?

Incompetence or misconduct that could include time and leave, insubordination, theft of time, violence in the workplace, misuse of agency equipment/resources, sleeping on duty, conducting personal business while on City time, sexual harassment, bullying, or disruptive behavior, to name a few.

What is the procedure for disciplinary action?

The agency must serve written detailed notice of charges and specifications citing alleged occurrences, offenses, and violations. The date of the offense must have taken place within 18 months of the date of the service of charges.

What are the penalties that can be accessed?

Official reprimand, pay fine, suspension, demotion, or termination.

What is the appeal process based on civil service status?

After the serving of charges, employees have the first hearing (STEP 1) and the

hearing officer recommends a penalty. Permanent competitive employees can appeal through the grievance process or Section 75 of Civil Service Law at OATH (Office of Administrative Trials and Hearing). Members then decide what appeal process they wish to take. Provisional employees with at least two years of service can only go through the grievance process.

For non-competitive employees with less than five years of service, the penalty can be implemented after the first hearing. Only non-competitive employees with five years or more have the right to go to OATH. Both can use the grievance process.

What is the grievance process?

There will be a STEP 2 Hearing with the agency's Office of Labor Relations (OLR). At the conclusion of the STEP 2 Hearing, the hearing officer either upholds the penalty or recommends something else. The penalty determination made at STEP 2 is what will be implemented.

STEP 3 is when the Union makes an appeal to the City's Office of Labor Relations to review the case. If the penalty is upheld at the conclusion of the STEP 3 Hearing, the Union makes a request to CWA District One for the case to go to arbitration. If the case does go to arbitration, the arbitrator's decision is final and irrevocable.

What is the process at OATH?

A Case Conference is set up at Administrative Trials & Hearing in front of an Administrative Law Judge (ALJ) who acts as a mediator to try to get the two parties to reach an agreement that the member is willing to accept.

If the member does not want to accept the decision at the OATH Case Conference, the case is scheduled for an OATH trial. During the OATH process, the penalty will not be implemented.

At the conclusion of the trial, the ALJ completes a report rendering a decision to either uphold the penalty or enter a different recommendation. The ALJ's decision is not binding. The report goes to the Agency Commissioner who can accept or reject the ALJ's decision. If the decision is rejected, the Union can file an Article 78 appeal with the Civil Service Commission, depending on the facts of the case.

If I am found guilty of the disciplinary charges initiated against me, am I allowed to enter the work site and go back to work?

Yes, unless the penalty is termination or suspension, in which case you cannot even enter the work site.

Do I have to surrender my ID if I am found guilty of the disciplinary charges?

Yes, if you are terminated.

If I fulfilled all the terms/charges of my disciplinary action, will this prevent me from being promoted if I took and passed the promotional examination?

Possibly. The agency may take that into consideration since it has the option of using the 1-in-3 Rule in making promotions from a list.

Do I still accrue time while disciplinary charges are pending against me?

Yes.

Does my medical coverage continue while disciplinary charges are pending against me?

Yes, as long as you are not terminated.

Does my medical coverage continue if I am found guilty?

It depends on the penalty. If you are terminated, then your medical coverage will be terminated.