

# **DUE PROCESS RIGHTS FOR PUBLIC EMPLOYEES**

**Prepared by:**

**Kainen, Escalera & McHale, P.C.**

**21 Oak Street, Suite 601**

**Hartford, CT 06106**

**Telephone: (860) 493-0870**

**Facsimile: (860) 493-0871**

**[www.kemlaw.com](http://www.kemlaw.com)**

**[https://twitter.com/kem\\_law](https://twitter.com/kem_law)**

**<https://www.facebook.com/kainenescaleramchale>**

**© 2015 Kainen, Escalera & McHale, P.C.  
ALL RIGHTS RESERVED**

---

The information provided above is made available by Kainen, Escalera & McHale, P.C. for educational purposes only and should not be considered legal advice. This information should not be used as a substitute for seeking counsel from a licensed professional attorney in your state nor is it provided for the specific purpose of soliciting your business on any particular matter. It is not intended to provide specific advice or answers to your individual circumstances or legal questions. Reproduction or redistribution is permitted only with attribution to the source.

## **DUE PROCESS RIGHTS FOR PUBLIC EMPLOYEES DURING THE DISCIPLINARY PROCESS**

- A. Public employers must provide public employees with notice of an opportunity to be heard when considering the imposition of discipline that would deprive them of a property interest. (*Cleveland Board Of Education V. Loudermill*). The following should be provided to the employee:
  - 1. Oral or written notice of the charges;
  - 2. An explanation of the employer's evidence;
  - 3. An opportunity for the employee to present his/her side of the story.
- B. Public employees with "just cause", "for cause" or other similar protections through a collective bargaining agreement have a property interest in their public employment. *Loudermill* applies to disciplinary suspensions (unpaid) as well as termination of employment.
- C. How much notice is sufficient? The answer to that question may be established by the collective bargaining agreement. If not, notice is generally deemed sufficient where the employee was adequately apprised of the disputed issue and given a meaningful opportunity to prepare a defense. Notice of less than one day in advance has been deemed adequate by the courts in particular situations, but generally more sufficient notice is recommended. It is the quality, not the quantity, of the notice that determines whether the due process requirements of *Loudermill* have been met.
- D. The notice should describe the charges against the employee, provide a summary explanation of the employer's evidence, indicate that dismissal or suspension is contemplated and not simply that the dispute will be reviewed and include a description of all charges levied, with reference to applicable rules violations.
- E. The manner in which the pre-disciplinary hearing is conducted may be established by contract or practice. The pre-disciplinary hearing may combine investigatory and adjudicatory functions. An employer should read the charges and summary of the evidence at the outset. The employer should permit the employee or the employee's Union representative to question witnesses when it would constructively help illustrate "the other side of the story." However, an employer should not allow the employee or the union representative to take advantage of this opportunity. The Employer should remain in control of this process; if the questions are irrelevant, overly burdensome or repetitive, the employee should be instructed to return to the issues at hand.

The information provided above is made available by Kainen, Escalera & McHale, P.C. for educational purposes only. It is not intended to provide specific legal advice to your individual circumstances or legal questions. You acknowledge that neither your reading of, nor posting on, this site establishes an attorney-client relationship between you and our law firm, or any of our attorneys. This information should not be used as a substitute for seeking competent legal advice from a licensed professional attorney in your state nor is it provided for the specific purpose of soliciting your business on any particular matter. Readers of this information should not act upon anything communicated in it without seeking professional counsel.