

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

https://twitter.com/kem_law

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

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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.

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