

5. The Pre-Disciplinary Hearing Process

Background

The common law of civil service provides that a permanent public employee has a property interest in his or her job, which is protected by "due process," entitling him or her to a hearing prior to discipline. In this context, discipline includes suspensions, discipline of record, and demotions, and dismissals. The "Pre-D Process" is the mechanism for providing this required due process ([Administrative Directive # 318](#)). At a minimum, the due process afforded to these employees and safeguards must include (unless an applicable Collective Bargaining Agreement procedure is different):

1. Notice of the proposed violation(s);
2. The reasons for the proposed violation(s);
3. A copy of the charges and materials upon which the violation(s) is/are based (material relied on); and
4. The right to appear at the hearing with or without a representative to present testimony, witnesses or any evidence on his or her behalf.

[Section 6: Performance](#) and [Section 7: Conduct](#) also have sample Pre-Disciplinary Notice and Decision Letters. The Human Resources Department can assist you in all aspects of this process. Managers are strongly encouraged to consult with Human Resources prior to proposing disciplinary action.

Requirements (1) and (2) above are met by issuing an Pre-Disciplinary Notice to the employee. This letter notifies the employee of the proposed violation(s), and states the reasons for the proposed violation(s).

Requirement (3) is met by notifying the employee, in the Pre-Disciplinary Notice that "All written materials, reports and documents upon which this violation is based are available to you for your review by contacting (NAME)," and by them providing such material upon request of the employee or their designated representative.

Requirement (4) is met by affording the employee an opportunity to present his or her side of the incident(s) at the Hearing.

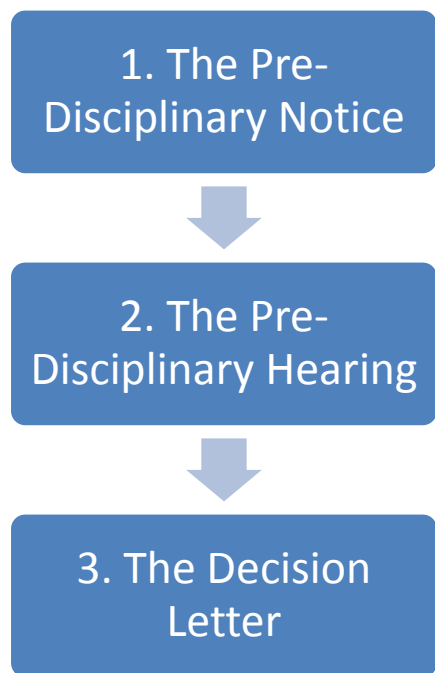


Procedures for the Pre-Disciplinary Hearing Process (Unless an Employee's Collective Bargaining Agreement mandates a differing procedure)

****This process is not applicable to probationary employees****

1. Prior to initiating any disciplinary action, the supervisor and/or manager will conduct investigatory interviews with the employee and any witnesses to determine the facts involved.
2. Should the above interviews indicate that discipline is warranted; the Pre-Disciplinary Notice will be written and signed by the Appointing Authority.
3. The Appointing Authority will set the time and place of the hearing in the Pre-Disciplinary Notice.
4. The hearing shall be informal and not controlled by rules of evidence as used in judicial proceedings.
5. The Appointing Authority shall have full control of the hearing consistent with permitting the employee a full and fair opportunity to respond to the allegations.
6. At the hearing, the employee shall present his or her evidence, if any, and the appointing authority shall have an opportunity to cross-examine all employees' witnesses.
7. At the close of testimony, the appointing authority shall, within five (5) work days (or as per applicable collective bargaining agreement), prepare and submit written findings and a disciplinary response to the employee, where appropriate, based upon the evidence presented at the hearing and a consideration of the following factors:
 - Nature of offense
 - Degree of severity and cost of the offense
 - Employee's length of service
 - Number and nature of previous offenses
 - Conferences, warnings, and other corrective actions for previous offenses
 - Employee's pattern of conduct
 - Time interval between offenses
8. The Appointing Authority will decide what, if any, disciplinary action to impose. If the decision is to impose discipline, the Appointing Authority or designee will issue a Decision Letter. **Note that this letter should also address issues raised by the employee in the hearing.**

The Pre-Disciplinary Hearing Process has three (3) distinct steps:





A. 3 Phases of the Pre-Disciplinary Hearing Process

1. The Pre-Disciplinary Notice

What is it?

This Pre-Disciplinary Notice informs the employee of the intent to take a disciplinary action. It sets forth the specific violation(s), and the facts upon which the charges are based.

The Pre-Disciplinary Notice also advises the employee of the right to review any documents upon which the violation is based (material relied on), and of the right to reply to the charges verbally, in writing, or both. The Pre-Disciplinary Notice will provide the time and date when the hearing will occur to provide the employee with notice of time in which to respond. If the employee is represented, the letter also advises him or her of the right to representation.

In the next to last paragraph of the Pre-Disciplinary Notice template, you advise the employee that "All written materials, reports and documents upon which this violation is based are available to you for your review by contacting (NAME)." These "materials, reports, and documents" are referred to as the "materials relied on" and usually consist of counseling notes, written complaints from customers or coworkers, attendance records, interview notes, and other documentation.

The material relied on is the evidence upon which you are basing the proposed discipline, and no other material may subsequently be introduced to support the disciplinary action (unless a revised Pre-Disciplinary Notice is issued to supersede the first).

Since the material relied on constitutes the evidence upon which you are proposing discipline, it is reasonable to expect that this material is in your possession and is readily accessed. In some instances, however, when the employee or his or her union has requested these materials per the Pre-Disciplinary Notice statement quoted above, the material has not been available and long delays have occurred in providing it. When this happens, the Pre-Disciplinary Hearing must be postponed to allow the employee/union time to review the material in preparation for the meeting. This delay results in a parallel delay in making a decision regarding the proposed disciplinary action.

Of more significance, the fact that the material relied upon is not available leads to the conclusion that this material was not relied on at all but was assembled after the fact to support a decision that had already been made. This is not the kind of message we want to send to employees.



To ensure you are prepared to respond to requests for material relied on, you should follow these steps prior to issuing a Pre-Disciplinary Notice:

1. Conduct a thorough, unbiased investigation of the incident(s).
2. Interview the employee(s) involved to hear his or her side of the story and take detailed notes.
3. Interview any witnesses and take detailed notes.
4. Assemble all documents, including notes from your interviews of the employee(s) and witnesses, into a file.

It may be necessary to redact material released to the employee or his or her representative to protect the identity of individuals. This requirement usually involves the release of medical or law enforcement information that can be tied to individual persons. Any questions relating to disclosure of information should be referred to Human Resources or Civil Service and Personnel.

Who does it?

Although the information upon which a disciplinary action is based usually comes from the employee's direct supervisor, the Pre-Disciplinary Notice must be signed by a Department Director/Chief.

How?

Prior to initiating disciplinary action, utilize the template for drafting the Pre-Disciplinary Notice and you may contact Human Resources for guidance on determining the appropriate level of action to propose. Once it is decided to propose disciplinary action, the signed Pre-Disciplinary Hearing Notice is delivered to the employee. Whenever possible, the letter should be hand-delivered rather than mailed to the employee. In these instances, the individual who delivers the letter to the employee should annotate a copy of the letter indicating the date and time the letter was given to the employee, and signs his or her name. If the employee is absent without leave or otherwise not available to receive the letter personally, it should be mailed to his or her home address by both regular and certified mail. The individual placing the envelope in the mail should annotate a copy of the letter indicating the date and time it was placed in the mail, and sign his or her name.

Copies of the Pre-Disciplinary Hearing Notice should be sent to the Division Supervisor if applicable, the Human Resources Director, the Civil Service and Personnel Director, the Assistant Law Director - Labor and Employment as well as filed in the employee's Civil Service and departmental personnel files (and maintained per employee's specified Collective Bargaining Agreement).



2. The Pre-Disciplinary Hearing

What is it?

An employee is given the opportunity to reply, either orally, in writing, or both, to the charges made in the Pre-Disciplinary Notice. This reply is the employee's chance to tell his or her "side of the story" before a decision is made regarding the proposed discipline. In the reply the employee may deny the charges or may explain mitigating circumstances. The employee may have a representative at this meeting. The date and time of the Pre-Disciplinary Hearing will be in the Pre-Disciplinary Notice, to provide the employee with notice.

For discipline of record actions, the Pre-Disciplinary Hearing process also affords the employee the opportunity to receive disciplinary action without the loss of pay. This process is described in [Section 7: Conduct](#).

Who does it?

The Appointing Authority is responsible for contacting the Clerk of Courts to schedule the Pre-Disciplinary hearing in the Jury Room and contacting Human Resources to ensure that there is a recording device available to record the hearing. The Appointing Authority controls the hearing and shall permit the employee to have a full and fair opportunity to respond to the allegations. Additionally, the Appointing Authority shall have an opportunity to cross-examine all of the employee's witnesses.

How?

In the written or oral reply, the employee responds to the charges and facts contained in the Pre-Disciplinary Notice. The employee may question the factual accuracy of the charges, may raise issues of inconsistency with other similar cases, or may raise mitigating circumstances which he or she feels explain or excuse his or her actions. An employee may also acknowledge the accuracy of the charges.

The Appointing Authority must consider the issues raised in the employee's reply. The Appointing Authority may need to further investigate the matter; for example, if new information is brought to light. The Appointing Authority may also consider the individual's demeanor at the hearing, considering such factors as sincerity, remorse, and the employee's acknowledgement or failure to acknowledge his or her responsibility in the matter. The Appointing Authority then makes a determination regarding discipline.



3. The Decision Letter

What is it?

A letter notifying the employee that disciplinary action is being taken. The letter states the level and effective date of the discipline being taken. The letter also repeats the charges and facts laid out in the Pre-Disciplinary Notice, with any revisions in facts resulting from the Pre-Disciplinary Hearing, as well as specific reference to the factors that must be considered regarding discipline which can be found in Administrative Directive # 318. If the Appointing Authority believes that the employee should be charged with additional violations, a subsequent pre-disciplinary hearing notice should be issued to schedule an additional pre-disciplinary hearing for those additional violations.

Who does it?

The Pre-Disciplinary Hearing Decision letter is signed and issued by the Appointing Authority (Department Director/Chief).

How?

The Pre-Disciplinary Hearing Decision letter should be hand-delivered to the employee. The manager should annotate a copy of the letter indicating the date and time the letter was given to the employee. If the employee is absent without leave or otherwise not available to receive the letter personally, it should be mailed to his or her home address by both regular and certified mail. It is essential that there be a clear record of the date the decision letter was issued in order to determine if a subsequent appeal or grievance is timely.

Copies of the Pre-Disciplinary Hearing Decision Letter should be sent to the Division Supervisor if applicable for the Departmental Personnel File, the Human Resources Director, the Assistant Law Director for Labor and Employment, and the Director of Civil Service and Personnel for the Civil Service Personnel File.