

Imposition of Disciplinary Action – Consultation, EAP Referral, and Notification

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PURPOSE

An employee may be disciplined by the appointing authority for any of the causes set forth in King County Code 3.12.270, the Personnel Guidelines Section 16.3, or for any other justifiable cause. Disciplinary action shall be the primary responsibility of the appointing authority and may include but is not limited to reduction in rank or pay, suspension without pay, or discharge of the employee from county employment. Consultation, referral and notification procedures for the imposition of disciplinary action are set forth below.

This HR Bulletin revises and supersedes “Imposition of Disciplinary Action – Consultation, EAP Referral and Notification” HR Bulletin 2010-0006 (December 7, 2010).

PROCEDURES

A. Consultation — procedures for proposed disciplinary reductions in rank or pay, suspensions or discharges:

1. The appointing authority shall consult with the department’s Human Resources Service Delivery Manager and/or the Labor Negotiator, if appropriate, to review the facts and proposed discipline for inappropriate conduct/performance issues.
2. In cases where the hiring authority has been put on notice that the subject employee has a disability and that the disability may be associated with the conduct/performance issue, the Human Resources Division’s Disability Services Section should also be consulted.
3. The Human Resources Division Director requires a review of a proposed disciplinary reduction in rank or pay, suspension or discharge before any disciplinary action may be taken. The review is conducted via a written and verbal presentation by the department Human Resources Service Delivery Manager and/or appointing authority to the Pre-Disciplinary Review Committee (PDRC). The Human Resources Division Director may waive the PDRC process based upon the appropriate facts and circumstances.

B. Loudermill or Name Clearing due process procedures:

1. *Loudermill* meetings apply to all career service employees. Career service employees have a constitutionally protected property right in continued employment. This means that prior to the deprivation of employment (e.g., termination) or compensation (e.g., reduction in rank or pay, suspension) career service employees are entitled to certain due process rights.

The fundamental requirement of due process is that an individual be given an opportunity to be heard by the decision maker *before* being deprived of any significant property interest.

Accordingly, the essential *Loudermill* due process elements are:

- a. Notification (see attached letter) of the proposed discipline together with a summary explanation of the evidence; and notification of the employee’s opportunity to be heard on the matter.
- b. An opportunity to respond to the proposed action and its factual basis. An employee is not entitled to a full evidentiary hearing *provided* that the required

steps are followed before discipline is imposed. The purpose of the *Loudermill* meeting is to allow the employee to present his or her side of the story and any mitigating or previously unknown circumstances prior to the imposition of proposed discipline.

The period between the notice and the scheduled meeting should be of sufficient duration to enable an employee a reasonable period of time to prepare for the meeting. The employee must be given the opportunity to have the meeting and notified that if he or she fails to attend, a decision will be made and imposed based upon the current available information.

2. Public sector employees who are subject to discipline accompanied by the disclosure of stigmatizing information¹ have a constitutionally protected liberty interest in protecting their reputation. This means that, prior to the publication of stigmatizing information; all employees are entitled to certain due process rights and must be given an opportunity for a Name Clearing hearing.

The employee should be given a Name Clearing hearing opportunity before being deprived of any significant liberty interest. If an employee is already being provided a *Loudermill* hearing, a separate Name-Clearing meeting is not required because a single meeting will satisfy the due process requirement for both. Accordingly, the essential Name-Clearing due process elements are:

- a. Notice (see attached letter) describing the information that is proposed to be placed in the employee's personnel file; and notification of the employee's opportunity to be heard on the matter.
- b. An opportunity to respond to the proposed action. An employee is not entitled to a full evidentiary hearing *provided* that the required steps are followed before the information is placed in the employee's personnel file. The purpose of the meeting is to allow the employee to present his or her side of the story and any mitigating or previously unknown circumstances prior to the insertion of the stigmatizing information in the employee's personnel file.

The period between the notice and the scheduled meeting should be of sufficient duration to enable an employee a reasonable period of time to prepare for the meeting. The employee must be given the opportunity to have the meeting and notified that if he or she fails to attend, a document outlining the disciplinary action will be placed in the employee's personnel file.

- c. Stigmatizing information is that which impairs the employee's reputation for honesty or morality. Simply placing a document in the employee's personnel file² amounts to publication of stigmatizing information if the document includes information as to the employee's misconduct.

¹ Examples of what "stigmatizing information" include lying on an employment form; dishonesty, including theft and lying; taking or selling illegal drugs; prostitution; sexual harassment; accepting kickbacks or favors as a public employee. Examples of what "stigmatizing information" does *not* include are attendance issues; tardiness; horseplay; disputing supervisory authority; performance issues, including incompetence.

² Pursuant to WAC 296-126-050(3), within ten working days of a written request from the former employee, the county must provide a statement of the reasons for the employee's termination. A copy of that letter stating such reasons will be kept by the county. Therefore, even if stigmatizing information is not placed in the employee's personnel file to date, if that letter includes stigmatizing information the employee must be offered a Name-Clearing meeting.

C. EAP referral -- procedure applicable to career service employees before imposition of disciplinary reduction in rank or pay, suspension or discharge:

Prior to the imposition of any disciplinary reduction in rank or pay, suspension or discharge, a career service employee shall be advised of his/her right to seek assistance through the county's Employee Assistance Program (EAP). EAP is a county resource for all employees (regardless of benefit eligibility or career service status) for counseling, consultation, and recommendations regarding problems affecting the workplace or work performance. Referral is usually made at the time that the employee is notified that his or her reduction in rank or pay, suspension or discharge is proposed. Referral does not suspend nor defer the disciplinary action. (The referral information is provided for in the attached *Loudermill* notification letter.)

The employee may be referred to EAP at 206-684-2103 or 206-263-4572 and may obtain additional information at:

<http://www.kingcounty.gov/employees/HumanResources/services/eap.aspx>

D. Notification of disciplinary decision – procedure for career service employees:

Once *any* disciplinary decision has been made for a career service employee, it is implemented in accordance with the following codified procedures. Pertinent information should be reduced to written form (see attached letter) by the appointing authority and provided to the employee and to the Human Resources Division Director, or designee. Such written notice should state:

1. The reason for discipline;
2. The facts supporting the discipline;
3. The form of discipline to be imposed;
4. The effective date of the discipline;
5. Unless otherwise provided in an applicable collective bargaining agreement, the right of the employee to appeal the following disciplinary action to the personnel board:
 - a. Suspension of more than sixty days,
 - b. Reduction in rank or pay, or
 - c. Discharge;
6. Unless otherwise provided in an applicable collective bargaining agreement, the right of the employee to appeal any disciplinary action to appropriate authorities through the initiation of grievance procedures.

E. Notification of disciplinary decision – procedure for at-will employees:

Once a disciplinary decision for an at-will employee has been made by the appointing authority, it may be implemented following consultation by the Human Resources Division Director. The PDRC process may be utilized for this purpose and departments should work with their Human Resources Service Delivery Manager to determine if the PDRC process is appropriate before implementing disciplinary measures. Pertinent information should be reduced to written form by the appointing authority and provided to the employee and to the Human Resources Division Director, or designee. Such written notice may include similar information as that set forth in Subsection C above.



Loudermill Notice



Name Clearing Notice



Post-Loudermill
Letter

QUESTIONS/COMMENTS

Refer all questions or comments to the Human Resources Division Director's Office or Office of Labor Relations.

In the event that any provision of this Human Resources Bulletin conflicts with an applicable provision of a collective bargaining agreement or binding past practices thereunder, the latter shall prevail.