

## **Number 8.1 - DUE PROCESS REQUIREMENTS (LOUDERMILL PROCESS)**

**Effective Date:** April 1, 2021

**Subject:** Due Process Requirements (Loudermill Process)

**Applicable To:** All classified employees within the Executive Branch of the State of Vermont.

**Issued By:** Department of Human Resources

**Approved By:** Susanne R. Young, Secretary of Administration

### **PURPOSE AND POLICY STATEMENT**

When a suspension of any length or dismissal is contemplated for any classified employee, such employee is entitled to respond to the charges of misconduct supporting the contemplated discipline prior to the imposition of discipline. Appointing authorities contemplating such discipline must provide the employee with both notice of the specific allegations under consideration, and an opportunity to respond to the charges, prior to imposing the discipline.

**NOTE: Managers and supervisors must contact the Department of Human Resources for more details.**

### **GENERAL GUIDELINES**

When suspension of any length or dismissal of a classified employee is contemplated, the appointing authority, or the person delegated thereby to make or recommend such action to the appointing authority, must give the employee an opportunity to respond to the specific allegations of misconduct. This generally occurs after the completion of the employer's investigation and the employee's conduct appears to justify the contemplated discipline. Prior to taking any disciplinary action, the appointing authority (or designee) should take the steps outlined below.

There are other management actions, disciplinary or otherwise, which may result in an employee losing an employment property right. It may be appropriate in such circumstances to follow the procedures outlined in this Policy. Any questions should be directed to the Department of Human Resources.

### **NOTIFICATION**

1. The employer must notify the employee, in writing, that suspension of any length or dismissal is contemplated as a result of certain specific charges, which must be outlined in the letter. Employees must also be told that they have the right to respond to the charges, either orally or in writing, within the time frame outlined in number (3) below, and before final action is taken. This notice should inform employees of their right to be represented, if applicable, by their union, or private counsel in preparing and/or delivering such response. **This letter must be forwarded to the Department of Human Resources for review prior to issuance.**

2. The notice should give the employee twenty-four (24) hours after receipt thereof to inform the employer whether and in what manner they wish to respond.
3. If the employee wishes to respond in writing, such response should be given to the appointing authority (or the person delegated to make the decision or recommend one to the appointing authority) within ten (10) work days of receipt of the written notice unless an extension has been granted.
4. If the employee chooses to respond orally, a meeting with the appointing authority (or designee) should be held within ten (10) work days of receipt of the written notice unless an extension has been granted.
5. For record keeping purposes, the written notice to the employee should be sent certified mail, return receipt required. If the notice is hand-delivered, employees should sign a statement acknowledging receipt.

### **THE MEETING**

1. The meeting should be held by the appointing authority or designee.
2. The purpose of the meeting is:
  - (i) to give employees the opportunity to identify disagreement they have with the employer's version of the facts;
  - (ii) to identify witnesses who support their defense;
  - (iii) to identify any mitigating circumstances which should be considered; and
  - (iv) to offer any other arguments which may be appropriate.
3. Employees have the right, if applicable, to have a representative of their union or legal counsel, present at any such meeting. Employees, however, are encouraged to personally outline their version of the facts and respond to any questions posed by appointing authority. This will ensure that the decision-maker will have a reasonable opportunity to evaluate the employee's version of events. The representative may then make such arguments as may be appropriate. The appointing authority may investigate further after the meeting, as deemed appropriate.
4. The purpose of this process is to serve as an initial check against mistaken decisions and to determine whether there are reasonable grounds to believe that the charges against employees are true and support the contemplated action. Employees do not have a right, as part of this process, to call witnesses to testify on their behalf or to cross-examine witnesses who may not support their interests.
5. The appointing authority does not need to justify the tentative decision to employees or their representative during the meeting.

## **PERFORMANCE CASES**

The employer should also use the same process in dismissals for unsatisfactory performance. In such cases, the employer must provide the employee with a copy of the final performance evaluation and any attachments thereto, and employ the process described above to afford employees the opportunity to respond to allegations of unsatisfactory performance prior to dismissal.

## **TEMPORARY RELIEF FROM DUTY**

If it would be inconsistent with the interests of the State to have the employee continue working during this process, the employee should be placed on temporary relief from duty, with pay, in accordance with the current collective bargaining agreements between the State of Vermont and the union(s). The letter notifying employees of temporary relief from duty (with reasons) must be provided in writing to employees within twenty-four hours (24) of when the employee is relieved from duty. Consult with the Department of Human Resources for further information.

**Approved:**

\_\_\_\_\_  
Susanne R. Young  
Secretary of Administration

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Date