

Contractual Disciplinary Process

What's not covered under contractual disciplinary procedures

- Probationary termination
- Loss of qualification
- Job abandonment
- Hatch Act violation - restricts the political activity of individuals principally employed by state or local executive agencies and who work in connection with programs financed in whole or in part by federal loans or grants
- Public Officers Law §30 – felony conviction for public officer
- Discipline of management/confidential employees

Tenure

- A status granting certain employees rights to continued employment
- Bestowed by the legislature through statute (Civil Service Law §75) or through collective bargaining with the unions
- Courts have interpreted tenure as a property interest protected by the Constitution (requires due process)

What the disciplinary procedures apply to

- CSL §76(4) permits CSL §75 to be supplemented or replaced by collective bargaining agreements
- Eligibility (people) - Competitive and non-competitive employees with 1 year of service or completion of probationary period
- Eligibility (offenses)
 - Discipline for Just Cause (PEF contract) OR
 - Discipline for Misconduct/Incompetence (CSEA contract)
 - Can be for on-the-job issue or off-the-job issue
 - Off-the-job issue typically requires “nexus” to job
 - Nexus is either a reasonable relationship to job (State accountant getting arrested for money laundering in local civic organization) or harms reputation of agency or unreasonably interferes with agency operations

How the disciplinary procedures work

- Agency investigates
- Agency interrogates employee
 - Contractual right to representation upon demand
 - Certain contracts provide certain additional notice rights in advance of interrogation

How the disciplinary procedures work

- Suspension
 - Probable cause - employee is deemed to be a danger to persons or property
 - Probable cause – employee continued presence would severely interfere with operations
 - Employee charged with commission of a crime
 - Suspension before NOD typically accelerates time frame for serving NOD
 - Employees in many agreements can be temporarily reassigned rather than suspended

How the disciplinary procedures work

- Agency files Notice of Discipline (within one year of conduct unless criminal; 9 months for security units)
 - Specific charges against the employee
 - Times, dates, locations, etc.
 - Penalty sought against the employee
- Employee appeals
 - Non-suspension cases, under some agreements, must go to an agency level meeting first
 - Suspension cases – employee has option to skip agency meeting and go directly to arbitration
 - CSEA only – goes to Expedited Discipline Process
- If not resolved, case is heard by independent arbitrator

How the disciplinary procedures work

- CSEA Expedited Disciplinary Arbitration
 - 6 regional arbitrators - hear all cases initially
 - Each side makes oral offers of proof
 - Arbitrator tries to narrow issues and resolve if possible
 - If not resolved, can go to one day hearing for all cases if arbitrator decides that case can be handled in one day except
 - Termination and suspension cases – employee can “opt out” and go to “full” arbitration

How the disciplinary procedures work

- Full arbitration
 - Right to representation
 - Witnesses testify and are cross-examined
 - Rules of evidence don't strictly apply
 - Arbitrator decides
 - procedural issues
 - justification for suspension
 - factual issues
 - guilt or innocence on charges
 - appropriate penalty, if the employee is found guilty

How the disciplinary procedures work

- Appeal
 - Article 75 of the CPLR
 - Limited basis for appeal
 - corruption, fraud or misconduct in procuring the award
OR
 - partiality of an arbitrator appointed as a neutral OR
 - an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made

Civil Service Law and Rules

Civil Service Law § 75

Removal and other disciplinary action. A person ... shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section.

Tenure via Civil Service Law § 75

- Grants tenure for:
 - (a) permanent appointment in competitive class
 - (b) honorably discharged war vets (Civil Service Law §85) or exempt volunteer firefighters (General Municipal Law §200)...with certain exceptions
 - Non-competitive class appointment with five years of continuous service since last entry (except positions designated as confidential or policy influencing)
 - Homemaker or Home Aide (NYC)
 - Certain police detectives

Tenure by Rule

- Probationers - 8 weeks of tenure
 - §4.5(b)(5)(ii) of Rules of Classified Service states unsatisfactory probationer can be terminated at any time after 8 weeks and before probation ends
 - No need for due process
 - Before 8 weeks (or after probation passed) disciplinary process applies
 - Note: one week notice of termination must be given by rule

Due Process = Fair procedures

- Section 75 requires a hearing on written charges
 - Right to representation
 - Hearing Officer creates a record
 - Witnesses can testify
 - Relaxed rules of evidence
 - Hearing Officer renders a Report and Recommendation to Agency
 - Appointing authority makes final determination
 - Basically same due process procedures as collective bargaining agreements

Due Process = Fair procedures

- Section 75 – appeal is possible
 - Civil Service Commission or
 - Article 78

No tenure = No protection

- Exempt class (except veterans and volunteer firefighters)
- Temporary appointments
- Provisional appointments

Remember: Part-time, hourly or per diem pay makes no difference. Tenure depends on position, not pay.