

CITY OF OAKLAND



ADMINISTRATIVE INSTRUCTION

SUBJECT	Employee Discipline - Due Process Requirements	NUMBER	521
REFERENCE	None	EFFECTIVE	January 1, 1989
SUPERSEDE	AI 521 Dated April 29, 1976		

I. PURPOSE

This instruction states the legal basis and City procedures for compliance with due process requirements in employee disciplinary cases.

II. POLICY

As a result of the 1975 California Supreme Court decision in Skelly vs. State Personnel Board, and subsequent court cases, the City must comply with the following due process procedures before taking any serious disciplinary action against permanent employees in order to safeguard the employee's constitutional rights.

- A. Employees must be given prior written notice by their employing department of the proposed action stating the grounds and particular facts upon which the action will be taken before any serious proposed disciplinary measure can be implemented.
- B. Employees must have access to all materials supporting the proposed action and be provided with copies at their request.
- C. Prior to implementation of the proposed disciplinary action, employees have the right to respond either orally or in writing or both, to a manager who has the authority to effectively recommend whether the proposed action should be taken.

III. IMPLEMENTATION RULES

The specific rules for implementing the above due process procedures in disciplinary actions are as follows:

- A. The Skelly case applies only to permanent employees, i.e., those employees who have successfully completed their probationary periods. Actions against all other employees are unaffected, including terminations of part time/temporary employees, discharges of first time probationers, and reductions in class or demotions of permanent employees serving subsequent probationary periods.

- B. Disciplinary actions directly affected by this case are discharges, demotions, and any disciplinary suspensions. Warnings, reprimands, and "improvement-needed" performance evaluations may be administered according to present City practice. In addition, due process procedures are not required in cases of layoff, reclassification or resignation.
- C. A significant requirement of the Skelly decision is that the department give an employee written notice of the proposed disciplinary action to be taken against him/her. The notice letter must indicate the circumstances upon which the proposed disciplinary action is based, relevant disciplinary history, if appropriate (i.e., previous disciplinary action from which the current disciplinary action is progressive for the preceding one to three years), a statement of the proposed disciplinary action, and a statement of the employee's rights appropriate to this preliminary notice. In addition, the department must inform the employee of his/her right to access and review all written materials supporting the proposed disciplinary action and, at the employee's request, furnish copies of such written materials.
- D. The Skelly decision does not always prohibit a department from taking non-disciplinary suspension action without prior notice. On a case-by-case basis, an employee may be removed from the work place prior to receiving his/her "Skelly" rights for the following types of situations:
1. The employee's conduct endangers the health and safety to members of the public, other employees, or to himself/herself, e.g. physical violence.
 2. Arriving late without prior notice after work crews have left the central work location.
 3. Unfitness for duty as a result of alcohol or drugs.
 4. Continued and repetitive refusal to perform job duties.

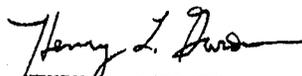
In such cases employees may be sent home for the remainder of the work shift as a result of not being available for work. The no pay status is not regarded as disciplinary for that work shift. Disciplinary actions such as suspension for subsequent work shifts which results from the employee's unavailability for work during that first shift are subject to "Skelly" procedures.

If the non-disciplinary suspension to remove from the work place for investigation of the circumstances is subsequently determined not to be warranted as a part or all of a disciplinary suspension or termination (with appropriate "Skelly" process) the City will then make restitution of any lost income to the employee.

Whenever the circumstances permit, the suspension to remove from the work place or for investigation should be discussed with the Employee Relations Department, Office of Personnel Resource Management, before action is taken.

- E. The court did not establish a clear time frame within which an employee must exercise his/her right to respond in writing, orally, or both to the preliminary notice of disciplinary action. In each case, the employee must receive a reasonable period of time for review of the matter. In the ordinary case it appears that three to four days from the time the employee receives the notice would be an appropriate length of time. However, in a complex case in which the facts were obscure or time is needed for research or review by the employee, a longer period would be appropriate. In any event, request for extension of time by an employee should be granted if the justification for the request is reasonable.
- F. Although there is not a fixed standard as to what level of manager should be appointed to review the employee responses, the manager should be someone other than the person recommending the action and be appropriate to the level of the employee responding. Thus, it would probably be appropriate in most cases to use a manager who is one or two levels above the employee's immediate supervisor. In all cases, that manager should have sufficient authority in the organization to make an effective recommendation on the proposed disciplinary action.
- G. The employee should be given the opportunity to respond during the employee's normal work hours and is entitled to representation by the union or other representative of his/her selection at the meeting.
- H. It should be clear that the notice and the opportunity to respond on the part of the affected employee is separate from and has no relationship to the normal grievance procedure which still must be followed if invoked by the employee.
- I. If an employee is suspended pending investigation, and the investigation reveals additional information which may result in the employee's demotion or discharge, the employee is entitled to receive copies of this material. He/she should also be granted additional time to respond to the new information.
- J. Sworn members of the Police Department, Jailers, and Park Rangers, are subject to the provision of AB 301, Police Officers' Bill of Rights, with respect to employee discipline. The application of AB 301 is covered in departmental rules.

Should you have any questions regarding these procedures or proposed disciplinary action, please contact the Employee Relations Department at extension 3423.


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