

# Supervising in State Government - Labor Relations

## Introduction to Contract Principles

Department of Human Resources, Labor Relations Division

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## Schedule and Introductions

- Breaks and lunch
- Please introduce yourself
  - Are you a supervisor now? If yes, how long have you supervised?
  - Where do you work?



# Course Objectives

- Introduction to Contract Principles and the Labor Relations environment.
- Right of Representation: what is it, when is it required and what happens when I have questions?
- Performance vs. Misconduct: how will I know the difference and what does the process look like?
- Understanding the grievance process and your role in it.
  - Provide a foundation of knowledge and ability to distinguish a situation requiring notification to and/or assistance from your Human Resources Representative.
- Our goal is to **demytstify** everything we talk to you about today.

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# Relevant Documents

- Relevant State of Vermont Policies and Collective Bargaining Agreement Articles (“CBA”):
  - **State of Vermont, Policies**
    - 3.3 - Discrimination Complaints
    - 5.6 - Employee Conduct
    - 8.0 - Disciplinary Action and Corrective Action
    - 8.1 - Due Process Requirements (Loudermill Process)
    - 17.0 - Employment Related Investigations
  - **From the Non-Management CBA**
    - Article 2 - Management Rights
    - Article 12 - Performance Evaluation
    - Article 14 - Disciplinary Action
    - Article 15 - Grievance Procedure
    - Article 17 - Agency, Department and Institution Work Rules

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# Hierarchy of the Labor Relations Environment

Order of hierarchy – (nothing at a lower level can provide less of a benefit than a higher level provides):

- Federal and State Statute
- Collective Bargaining Agreements (“CBA”) (“Contract”)
- State Policies
- Departmental Policies and Procedures
- Local Procedure

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## Labor Relations Environment: Department of Human Resources

- Administers the Contracts between the State of Vermont, the Vermont State Employees Association (VSEA) and Vermont Troopers Association, Inc. (VTA) while ensuring compliance with Department of Human Resources policies and procedures and all Federal and State employment rules and regulations.
- Sets policies that guide agencies and departments in carrying out the work of Vermont State Government and support the accomplishment of their missions.
- Provide support and guidance to Human Resources Representative, Field Operations Teams.

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## Labor Relations Environment: Bargaining Agents (Unions)

- The **Vermont State Employees' Association, Inc. (VSEA)** is the exclusive bargaining agent for employees of the Executive, Judiciary, Defender General, the Vermont Housing Authority, and portions of the Vermont State Colleges.
- The **Vermont Troopers' Association (VTA)** is the exclusive bargaining agent for employees of the Vermont State Police at the rank of Sergeant and below.
- The Executive Branch unionized State workforce is divided into four bargaining units:
  - Non-Management
  - Supervisory (including State Police Lieutenants)
  - Corrections
  - State Police

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## Purpose of the Labor Contracts

- The law requires collective bargaining for wages, benefits, expenses, working conditions, overtime, leave, grievances.
- Defines the legitimate rights of management and employees.
- Defines our operating parameters.
- Has the force and effect of law.

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## Department of Human Resources: Field Operations

- The Field Operations Division serves as the front-line human resources support and services to the employees of most agencies and departments throughout State Government.
- This Division also provides initial and primary contact for employees, supervisors and senior managers who require guidance on human resources matters.
- The Field Operations Division works closely with other Divisions of the Department of Human Resources, whether through seeking subject matter expert guidance, or through disseminating regular communications and/or implementing new initiatives.
- Your HR Representative can be located on the DHR website [http://humanresources.vermont.gov/contact\\_us/hr\\_representative\\_locator](http://humanresources.vermont.gov/contact_us/hr_representative_locator)

## Definitions of a Supervisor

- An employee determined by the **VLRB** as having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

## Supervisor Responsibilities

- Manage daily activities of assigned staff.
- Familiarity with the applicable Contract.
- Refer to the Contract, Personnel Policies & Procedures.
- Know when to contact your Human Resources Representative with questions.
  - Always contact your Human Resources Representative whenever you believe you have a performance or misconduct issue with an employee.

### **Lead by good example**

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## Supervisor Rights and Expectations

- Approve or deny leave
- Provide supervisory feedback
- Manage performance
- Manage and direct the workforce
- Take disciplinary action

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# Progressive Corrective Action And Progressive Discipline



## Employee Rights

- Right to representation in a union setting.
- Loudermill: A pre-termination hearing.
- Garrity: Protect public employees from being compelled to incriminate themselves during investigatory interviews conducted by their employers.

## Notice of Right of Representation

- Contract requires it
- When to give notice:
  - Whenever an employee is required (by a supervisor or management) to provide oral or written statements which may lead to their discipline
  - Whenever an employee is called to a meeting to impose discipline
  - When presenting an employee with an unsatisfactory evaluation and imposing a prescriptive period of remediation (PPR), warning period or dismissal

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## Notice of Right of Representation (cont.)

- What does the communication process look like?
  - Template letters are used to ensure correct language is included
    - *Notice of Investigation* (bargained)
    - Loudermill
    - Unsatisfactory Evaluations
    - Disciplinary Action
- The employee can choose to be represented by their respective Union, hire outside counsel or decline representation.

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## Notice of Right of Representation (cont.)

- Reminder that management has the authority to decide the type of meeting they will have with employees but be aware that circumstances may change during the meeting.
- Notice is **NOT** required
  - For Supervisory feedback
  - If the supervisor or manager does not reasonably believe the circumstances may lead to discipline
  - If the employee is only a witness to the alleged wrongdoing and is not suspected of any misbehavior

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## Just Cause

- “Just cause” is the primary standard against which all discipline will be judged. It contains two distinct elements.
  - *Notice*
  - *Reasonableness*

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# Just Cause Notice

- May not be disciplined unless they had notice that their conduct was prohibited by the employer
  - Notice may be expressed or implied
  - Prohibited conduct by rule, training, directive, policies and procedures and/or contract



# Just Cause Notice (cont.)

- Absent a written document a reasonable employee would understand such conduct is prohibited
  - Dishonesty
  - Violence in the workplace
  - Theft
  - Sleeping on the job
  - Child pornography
  - Off duty conduct if a nexus to job



## Just Cause Reasonableness

- Employer acted reasonably in the administration of the discipline or corrective action.
- Reasonable to discipline an employee because of certain conduct.

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## Timeliness of Corrective Action or Discipline

- Act promptly to impose corrective action or discipline within the contractually mandated or reasonable time of the offense or knowledge of the offense
- Take into account individual circumstances
- Appointing Authorities must be reasonably diligent in conducting investigations and taking disciplinary action

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## Uniformity and Consistency of Discipline

- State will apply corrective action or discipline with a view toward uniformity and consistency
- Take into consideration what action was taken against other employees in similar circumstances
- Utilize the support from your HR Representative for making such decisions.

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## Activity



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## Performance Cases Vs. Misconduct Cases

- Contract provides for different procedures to be followed

Performance → “progressive corrective action”

Misconduct → “progressive discipline”



## Performance

- Lack of ability (satisfaction of employer)
- Shortcoming of judgment (satisfaction of employer)
- Employee falls short of performance expectations



## Corrective Action Process

- Performance Expectations:
  - Reasonable
  - Unambiguous
  - Job-related
  - Objectively verifiable
- 1. Fair opportunity to improve
- 2. Review progress
- 3. Review by management & HR

## Order of Progressive Corrective Action

- Oral or written notice of performance deficiency
- Written unsatisfactory performance evaluation, special or annual
- A prescriptive period for remediation (PPR) from 3 to 6 months
- Warning period of 30 days to 6 months
  - *May be extended for a period of up to 6 months (commissioner of Human Resources approval)*
- Prior notice before being placed in a Prescriptive Period of Remediation (“PPR”) or warning period
- Comply with pre-termination process in disciplinary article (Loudermill)
- Dismissal (Loudermill)

# Misconduct

- Has not complied with rules of the workplace
- Actions need not have been intentional violation of a rule
- Negligence in the workplace
- Failure to act as a reasonably prudent person would to carry out the job
- Indifferent in carrying out job duties
- Indifferent to or does not satisfy important work deadlines
- Absenteeism and tardiness are generally considered misconduct

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# Progressive Discipline Process

- Fair, reasonable, and impartial
- Correct actions rather than to punish
- Consider the nature and severity of the offense
- Responsibility of each supervisor, HR Representative, appointing authority to evaluate the circumstances and facts objectively

## Order of Progressive Discipline

- Oral reprimand
- Written reprimand
- Suspension without pay
- Disciplinary demotion
  - \*May be used as an alternative form of discipline*
- Dismissal

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## Gross Misconduct

- Gross neglect of duty
- Most serious incidents
- Refusal to obey lawful and reasonable orders given by a supervisor (insubordination)
- Conviction of a felony
- Conduct which places in jeopardy the life or health of co-workers or of a person under the employee's care

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## The Twelve Factors (Colleran and Britt)

- Refer to the personnel policies and procedures number 8
- Under case law, each disciplinary action is considered in the context of the twelve factors
- Relevant to evaluating the appropriateness of a penalty
- Supervisors should review the twelve factors before imposing disciplinary action

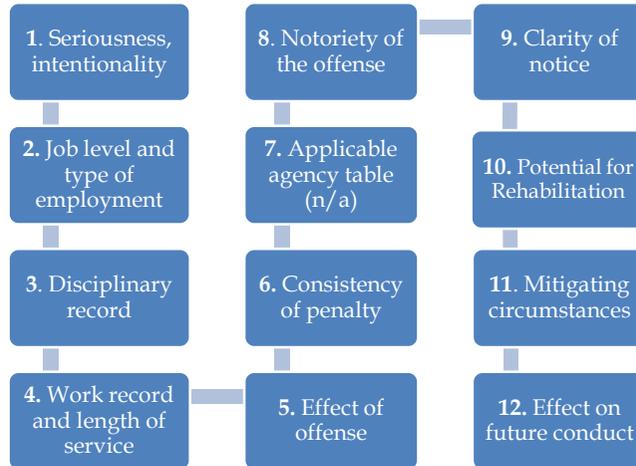
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## The Twelve Factors

- Under the case law, each disciplinary action is considered in the context of twelve factors which are typically relevant to evaluating the appropriateness of a penalty. Since such factors will be used to evaluate the propriety of an action which is the subject of a grievance, it is helpful for the employer to take them into consideration before a disciplinary action is imposed. Such factors duplicate some issues already discussed, but can serve as a reminder of matters which should be considered.

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# The Twelve Factors



## Case Scenario

- In your groups:
  - Please choose a spokesperson and someone to write down responses to the questions.
  - You will have 30 minutes to review the case scenario exercise, comment on the 12 factors analysis and answer a couple of questions.
  - When you are finished, we will come back together to discuss as a group.

# Grievance Procedure

- Purpose:
  - Method of resolving differences as quickly as possible and at the lowest possible level.



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## Examples of Common Grievances

- Types of Grievances:
  - Personal - Misconduct, performance evaluation
  - Contract - Pay, contract interpretations, violation of contract
  - Institutional - Rights of one party violated under the contract (Ex: State refused to provide list of employees to VSEA)

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# Grievance Meeting



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## Grievance Procedure: Step I

- Step I - Immediate Supervisor
  - **Complaint** (*may be verbal or informally written*) must be filed within 15 work days of occurrence with immediate supervisor or at Step II as a grievance within the same 15 day period. Step I is not a required step in the grievance process
  - Immediate supervisor may elect not to meet and must notify the employee of that decision within 2 work days of receipt of the complaint
  - If the supervisor does agree to meet, the issue is discussed informally with the employee, supervisor, and representative

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## Grievance Procedure: Step II

- Step II – Department Level
  - Shall be reduced to writing and contain specific information.
  - Filed directly to department within 15 work days of the event which gave rise to the grievance; or
  - Within 10 work days of receipt of notice that immediate supervisor elects not to meet; or
  - Within 10 work days after receipt of the Step I decision, but in no event later than 30 work days from when the employee first gave notice of the complaint to his/her supervisor
  - Discussed informally, in person, or on the telephone, within 10 days of receipt
  - Decision within five work days of discussion

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## Grievance Procedure: Step III

- Step III – Department of Human Resources
  - File within 10 work days of Step II decision to the Department of Human Resources (copy to agency/department). May be decided without a hearing at the employee's request. If so, decision is due within 10 work days of receipt of the grievance
  - Formal hearing within 10 work days of receipt
  - Written decision within 5 work days after hearing
  - Request to reconsider filed within 30 calendar days of receipt of decision

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## Grievance Procedure: Step IV

- Step IV – Vermont Labor Relations Board (“VLRB”)
  - Appeal filed within 30 calendar days of receipt of Step III decision
  - Employment dismissal appeals filed directly to the VLRB
  - Rules of Procedure and hearing schedule of the VLRB dictate timing of decision
  - Public record

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## Grievance Procedure: Last Step

- Vermont Supreme Court
  - File appeal within 30 calendar days of Step IV decision
  - Rules of Procedure and hearing schedule of Court dictate timing of decision

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## Grievance Procedure: When to Bypass

- Bypassing Lower Steps:
  - If the matter is clearly beyond the control of the immediate supervisor or Department Head, the grievance may be filed initially at Step II or III, respectively. Must be filed within 15 days of date of occurrence.
  - Dismissals are filed directly to the VLRB.

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## Grievance Procedure: Helpful Hints

- Meet the timelines
- Prepare outline of facts and arguments
- Realize that the process can be used to resolve problems
- Get advice, consider decision (Human Resources Representative, your Supervisor or Manager)
- Realize that as a Supervisor, you represent management
- Control your emotions

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## Grievance Procedure: Helpful Hints (cont.)

- What to Avoid:
  - Do not take the grievance personally
  - Do not presume the hearing officer knows anything about the facts.
  - Do not persist if you are wrong.
  - Do not hold back pertinent information or facts.
  - Do not let the grievance impact your day-to-day operations and interactions.

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## Contact Information

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