

Number 8.1 - DUE PROCESS REQUIREMENTS (LOUDERMILL PROCESS)

Effective Date: March 1, 1996

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

Issued By: Department of Personnel

Approved By: William H. Sorrell, Secretary of Administration

PURPOSE AND POLICY STATEMENT

State employees who are protected by the Agreements between the State of Vermont and the Vermont State Employees' Association, Inc. (VSEA) or the Rules and Regulations for Personnel Administration from dismissal except for just cause (or cause) are entitled to some kind of hearing prior to their dismissal. Appointing authorities contemplating the dismissal of such an employee must provide them with both notice of the specific allegations under consideration, and an opportunity to respond to the charges, prior to imposing the dismissal.

NOTE: Managers and supervisor must contact their agency/department personnel officer for more details.

GENERAL GUIDELINES

When a tentative decision to dismiss an employee has been reached, the appointing authority, or the person delegated thereby to make or recommend such action to the appointing authority, must give employees an opportunity to respond to the specific allegations of misconduct. This generally occurs after the employer's investigation has been completed and the employee's conduct appears to justify dismissal. 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. While not required by the collective bargaining agreement, it may be appropriate in such circumstances to follow the procedures outlined in this policy. Any questions should be directed to the agency/department personnel officer, who should contact the Department of Personnel legal counsel for advise.

NOTIFICATION

1. The employer must notify the employee, in writing, that 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 by the VSEA or private counsel, if applicable, in preparing and/or delivering such response. See Attachment A, *Sample Pre-Termination Loudermill Letter*. **This letter must be forwarded to the Department of Personnel legal counsel for review prior to mailing.**

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) normally within four (4) calendar days of receipt of the written notice, unless an exception has been granted.
4. If the employee chooses to respond orally, a meeting with the appointing authority (or designee) should be held normally within four (4) calendar days of receipt of the written notice, unless an exception 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:

to give employees the opportunity to identify disagreement they have with the employer's version of the facts;
to identify witnesses who support their defense;
to identify any mitigating circumstances which should be considered;
to offer any other arguments which may be appropriate.

3. Employees have the right to have a representative of the VSEA or legal counsel, if applicable, present at any such meeting. Employees, however, must personally outline their version of the facts, and respond to any questions the appointing authority may have. This will ensure that the decision-maker will have a fair 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 employees 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, (s)he may be placed on temporary relief from duty, with pay, in accordance with the current Agreements between the State of Vermont and the VSEA. 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 agency/department personnel officer for further information.

Attachment A

SAMPLE PRE-TERMINATION LOUDERMILL LETTER

(to be mailed certified, return receipt required)

Dear **(insert employee name)**:

As a result of your behavior described below, the **(agency or department)** is contemplating your dismissal from the position of **(insert position)**. You have the right to respond to the specific allegations listed below, either orally or in writing, before the final decision is made. You have the right to be represented by VSEA, if applicable, or private counsel during proceedings connected with this action.

The reasons(s) dismissal is contemplated is as follows: **(list reasons here)**

You must notify me within twenty-four (24) hours after receiving this letter whether you wish to respond to the above allegations. You must also then indicate whether you wish to respond in writing or orally in a meeting. If you do not respond within that time frame, a decision will be finalized based on the information available.

If you wish to make your response orally, I will schedule a meeting with you and, if applicable, your representative, within four (4) days of your receipt of this letter. Your written response would likewise be due four (4) days after you received this letter. If you request and are granted an extension of your time to respond in either form, you will have to take accrued leave, or be in an off-payroll status for the duration of the extension.

You are provided this opportunity to respond so that you can present points of disagreement with what the employer believes the facts to be; to identify witnesses who

may support your defense; to identify any mitigating circumstances which should be considered; and to offer any other argument you wish to make.

You may be represented by the VSEA or private counsel, in preparing or presenting your response, whether in writing or at a meeting. It is requested that you personally present your version of the facts. Your representative may then make arguments on your behalf.

After having reviewed any new information, I will conduct further inquiry as is appropriate, and then make a prompt final decision on this action.

Sincerely,

(appointing authority or designee)

cc: Commissioner of Personnel