

Due Process Summary

Disclaimer

The material contained in this document has been prepared for general reference purposes only and is not intended nor implied to be a substitute for professional legal advice. It is recommended that you contact your Human Resource Department or Deputy Attorney General for agency-specific situations.

Reference

- Idaho Code: 67-5315 ESTABLISHMENT AND ADOPTION OF EMPLOYEE PROBLEM SOLVING AND DUE PROCESS PROCEDURES
- IDAPA 15.04.01.200.06 PROBLEM-SOLVING AND DUE PROCESS PROCEDURES

Purpose

To provide the employee with notice and an opportunity to be heard with regard to disciplinary dismissal, suspension or demotion, or an involuntary transfer as set forth in Idaho Code Section 67-5315(2).

Important note: Retaliation against an employee for participating in or asserting his or her rights with respect to the due process procedure is expressly prohibited.

General Overview

Agencies must provide all classified employees having permanent status (satisfactory completion of the probationary period) due process before the agency makes any decision regarding:

- Disciplinary dismissal;
- Disciplinary demotion;
- Disciplinary suspension without pay; or
- Involuntary transfer of an employee.

Classified employees with permanent status are entitled to due process, which consists of notice of the basis or reasons upon which the agency is contemplating disciplinary action and the opportunity for the employee to respond to the allegations. No disciplinary action against an eligible employee may occur until due process has been completed, as set forth below.

Due Process Procedures for Agency Management

Notice to Employee

- **Notice of the Contemplated Action.** The agency shall provide the employee with notice of the contemplated action(s). For example, the notice may state that dismissal is the contemplated action. It may also set forth alternative forms of discipline such as demotion or suspension without pay.

- **Notice of the Basis for the Contemplated Action.** The agency shall provide the basis or reasons for the contemplated action. The reasons for taking disciplinary action are listed in Idaho Code § 67-5309(n) and in DHR Rule 190.01.
- **Explanation of the Evidence.** The agency shall provide an explanation of the information or evidence relied upon for the contemplated action. This may include an explanation of statements made by other employees, an explanation of documents, and/or an explanation of events leading to the notice.
- **Representation.** The agency must inform the employee of his or her right to be represented by a person of the employee's own choosing during the opportunity to respond.
- **Set a Time to Respond.** The agency will set a time period within which the employee may respond to the allegations. **The time period should not exceed ten (10) working days** after the employee has received notice unless both the agency and the employee agree otherwise in writing. For example, the notice might state: "You have an opportunity to respond no later than five (5) working days after the date of this notice." While there is no minimum requirement, it is recommended that the employee should be provided at least three (3) working days to provide his or her response to the notice of contemplated action and agencies are encouraged to grant extensions of time as necessary.

The Notice of Contemplated Action must be sent or delivered to the employee. The agency should not maintain the notice in the employee's personnel file, it should be placed in a file reserved for such notices and not made public or part of the employee permanent record. However, once the Letter of Disciplinary Action (final agency action) has been received by the employee, both the Notice of Contemplated Action and the Letter of Disciplinary Action may be placed in the employee's personnel file. (Situations may vary, please consult with your agency HR staff and/or agency Deputy Attorney General.)

A copy of the Notice of Contemplated Action and Letter of Disciplinary Action must be forwarded to the Idaho Division of Human Resources. Please send via email to: idhr@dhr.idaho.gov.

Due Process for Employees

- **Opportunity to Respond.** A permanent classified employee who receives a Notice of Contemplated Action is entitled to an opportunity to respond in person or in writing. The opportunity to respond to the notice is the employee's opportunity to present his or her reason(s) why the contemplated action should not be taken. The employee may respond in person or in writing within the time period defined in the Notice of Contemplated Action. In the event the employee does not respond to the Notice of Contemplated Action, agency representatives will make their final determinations based on the information before them.
- **Representation.** The employee has the right to be represented by a person of the employee's own choosing during the opportunity to respond.

Mediation

The due process procedure also provides for the use of an impartial mediator if both the employee and the appointing authority agree. The appointing authority is not required to utilize a mediator, but may choose to do so if the employee agrees.

Decision Process

The due process procedure is complete when the appointing authority, or designee, mails or delivers a decision to the employee. The agency will notify the employee of its decision **no later than ten (10) working days** (excluding days the appointing authority, or designee, is out of the office) after the employee has responded, failed to respond, or otherwise waived his or her right to respond.

Exceptions to the 10-day requirement may be made if both the employee and agency agree to the exceptions in writing.

If a disciplinary sanction is imposed, the employee may appeal the decision to the Idaho Personnel Commission **within thirty-five (35) calendar days of written notice of the final agency decision.**

A copy of the decision must be forwarded to the Idaho Division of Human Resources. Please send via email to: idhr@dhr.idaho.gov.