

Basic Employee Rights

What is Due Process and Progressive Discipline?

Your right to be represented in a meeting with management is not only part of our contract, it is also a legal right based on the [Weingarten](#) decision issued by the United States Supreme Court in 1975. The [Weingarten](#) decision says that an employee may be represented by the union at an investigatory interview with the employer when the employee believes that the interview may lead to disciplinary action. The employee must request that a union representative be called into the meeting with management, and there must be a reasonable belief that discipline may result from the meeting. The right to representation exists even in cases where no discipline does result from the meeting, only that the employee has reasonable belief that it may happen.

Your Right to Due Process!

Article XXII of our contract, Due Process for Discipline, outlines a procedure for due process in cases involving discipline and dismissal. These rights are further guaranteed by an important legal case, the 1975 California Supreme Court decision known as the Skelly Decision. This case guarantees due process for employees faced with discipline or dismissal. First of all, the Skelly case states that all permanent public employees have a property interest in their job, and therefore, that job cannot be taken from them without the due process guaranteed by the United States Constitution. The decision lists the steps the public employer must take including notices of the proposed action, reasons for the proposed discipline, a copy of the charges and the material upon which the action is based, and the right to respond to the charges.

Progressive Discipline

An important concept related to due process is the principle of progressive discipline. Progressive discipline means that an employer attempts to correct an employee's problem with a process of notification, education, and discipline, if necessary, that starts less severe, moving to more severe if the problem is not corrected. When an employee is dismissed the employer must show that the discipline reflected the principle of progressive discipline. For example, if an employee is late he/she cannot be fired the first time this happens. The employee must be notified of the problem with discipline resulting if the lateness continues. The discipline must at first be of a type that is less severe, with additional warnings, using dismissal as a last resort. Cases of severe misconduct are exempt from this rule.

Things to Remember when you are Called into a Meeting

When called into a meeting that turns into something that is disciplinary, you should request that a representative be present. If they insist to continue, don't say anything, but instead listen and take notes. Try your best to stay calm, don't show how upset you may be and don't answer any questions or make any comments. Just politely tell them that you will be happy to respond to their questions, accusations or whatever, when your union rep is present.

Request that you would like to continue the meeting another time after you had an opportunity to contact your MEA Site Representative.