

Due Process Reference Guide

Before giving an employee a Written Notice under the Standards of Conduct policy, the agency is required to provide the employee with the appropriate due process or notice of intent to discipline. This meeting or document should address observations, facts, and investigative findings related to an employee's misconduct. This guidance is provided to ensure due process is provided in an appropriate and respectful manner.

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| Policies | 1.60 - Standards of Conduct Chapter 5 of the Code of Virginia – Law Enforcement Officers Procedural Guarantee Act Chapter 5.1 of the Code of Virginia - Correctional Officer Procedural Guarantee Act |
| Purpose | To provide employees with their rights under state policy and treat employees with respect and dignity during the disciplinary process. |
| Draft the Due Process Letter | <ul style="list-style-type: none"> • Include sufficient supporting facts for the proposed discharge. • Provide adequate time and opportunity for the employee to respond to the due process letter (<i>i.e.</i> 2-3 workdays ideally, but 24 hours minimum). • Tell employee the highest recommended Written Notice level and potential disciplinary action (<i>i.e.</i>, Group III Written Notice with termination) being considered. |
| Plan the Due Process Meeting | <ul style="list-style-type: none"> • If the employee is a law enforcement or correctional officer, ensure that all relevant provisions of Chapter 5 or 5.1 of the Code of Virginia are followed. • Conduct a preliminary violence assessment to determine what level of security is needed at the due process meeting. <ul style="list-style-type: none"> ○ Contact the employee's immediate supervisor to learn about the employee's past demeanor and conduct. ○ Review the employee's personnel file for any past history of violent behavior. ○ If potentially violent behavior is suspected, contact Capitol police, state police, or local sheriff's office to have an officer present during the due process meeting. (The officer should not be in the room during the meeting. Instead, the officer should be stationed nearby, ready to respond if needed.) • Select an appropriate location, such as: <ul style="list-style-type: none"> ○ An off-site location. ○ A conference room near an emergency exit. ○ A conference room near the agency's security desk. ○ An area with limited access to other agency employees. ○ A location that has an entry metal detector. ○ A conference room with a panic button available. ○ In the case of a serious potential for violence, send the due process notice via e-mail, certified mail, and regular mail instead of meeting. • Schedule an in-person due process meeting with the employee, ideally, at the end of the workday. • Decide who will conduct the due process meeting and who will be there as a witness. Typically, the witness should be someone in the employee's chain of command or an HR staff member. • Plan what to say. • If the employee is currently on pre-disciplinary leave, determine if the employee will remain on pre-disciplinary leave pending his/her response. If the employee is not currently on pre-disciplinary leave, determine if the leave should continue until the response is due. • If the employee is a sworn officer and issued a weapon as part of their duties, determine if the weapon needs to be retrieved prior to or at the start of the |

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| | <p>meeting – if the employee is on pre-disciplinary leave, this may have already been done. This depends on the type and level of the offense. (For instance, you may do this if the employee is accused of striking another employee, but not do it if the employee is being disciplined for being consistently late to work.) Establish a plan for retrieving the weapon prior to going into the meeting room.</p> |
| Conduct the Due Process Meeting | <ul style="list-style-type: none"> • Have supervisor/manager and witness sit nearest the door in case the employee reacts in a violent manner. • Provide the employee with the due process/notice of intent letter. • Stay calm and lead the conversation. • Treat the employee with dignity and avoid embarrassing the employee. • Except for a handshake, do not touch the employee for any reason or allow the employee to touch the supervisor/manager or the witness – this includes attempts to console the employee. • Recognize and report any warning signs displayed by the employee during the due process meeting such as: <ul style="list-style-type: none"> ○ Unusual body language ○ Any alarming behavior – i.e., banging on the table ○ Any threatening remarks made ○ Noticeably unstable, emotional responses ○ Explosive outbursts, anger or rage ○ Suicidal comments – i.e., “putting things in order” ○ Paranoid behavior – i.e., “everyone is against me” ○ Talk of severe financial problems ○ Talk of previous incidents of violence ○ Expressions of empathy with individuals committing violence ○ Increase in unsolicited comments about firearms, other dangerous weapons, and violent crimes • Inform the employee that a written response to the allegations may be submitted by the date established in the due process letter and assure the employee that agency management will consider the employee’s response before a final decision is made. • Make the discussion brief. Do not get into an argument or confrontation with the employee. • Place, or keep, the employee on pre-disciplinary leave if appropriate. If placing the employee on pre-disciplinary leave: <ul style="list-style-type: none"> ○ Request the employee immediately return his/her state badge, keys, and any other state property. ○ Immediately turn off employee’s IT and building access. • Escort the employee from the premises, if necessary and appropriate. |
| Review the Employee’s Response | <ul style="list-style-type: none"> • Review the employee’s response to the due process notice with agency management and human resources. • Consider any mitigating circumstances provided by the employee. • Make a final decision if agency management will discipline the employee, what level of discipline will be given, and any additional disciplinary action to be taken. (e.g., Group II Written Notice with 10 days suspension) • Schedule the disciplinary meeting. |