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What should I do if I face disciplinary Action?

A notice of disciplinary action normally comes as a surprise to most employees. Everyone believes and you probably are doing a good job. It is important not to become paralyzed by the notice and to respond promptly.

Your first contact should be with Ray Wilson who can begin to guide you through the process. You do have a means to challenge the discipline through the Civil Service Commission.

At the outset, I would recommend you discuss the matter only with Ray and not with co-employees. Ray will let you know when and how to respond. He will also involve, as necessary, legal counsel. You should not attempt to confront the supervisor from whom you have received the complaint, nor discuss the matter in the office.

I have set forth a brief outline of the civil service process, steps you can expect to follow with respect to your appeal, and more detailed answers to questions you may have regarding the process.

Civil Service Commissions

Question: How many civil service commissioners are there?

Answer: Not less than 5 but not more than 7. In Des Moines the Commissioners are Tiffany Allison, Susan Bolte, Alec Quijano, Marvin Alexander, Joseph Quinn, Corey McAnelly and Linda Carter-Lewis.

Question: Who appoints the civil service commissioners?

Answer: The mayor with approval of the Council. The Mayor of Des Moines is Connie Boesen.

Question: How long does the civil service commissioners serve?

Answer: Initially terms are staggered but successors serve for a term of 4 years.

Who can Discipline me and Why can I be Disciplined

Question: For what reasons may I be disciplined, discharged, etc.?

Answer Section 400.18 provides: A person holding civil service rights as provided in this chapter shall only be removed, discharged, demoted, with just cause and upon a finding by a preponderance of the evidence that an act or failure to act by the employee is in violation of law, city policies, rules or that the employee is mentally unfit as determined under the guidelines established pursuant to Section 400.8A.

Question: Who has the power within the City to appoint and discipline?

Answer: Iowa Code Sec. 400.15 provides:

1. All appointments or promotions to positions within the scope of this chapter other than those of chief of police and chief of fire department shall be made:
 - a. In cities under the commission form of government, by the superintendents of the respective departments, with the approval of the city council.
 - b. In cities under the city manager plan, by the city manager. The City Manager is Scott Sanders.
 - c. In all other cities, with the approval of the city council.

Burden of Proof

Questions: Who has the burden of proof in discipline cases?

Answer: The City shall have the burden to prove that the punishment imposed upon the employee is proportionate, reasonable, and just in the totality of the circumstances.

Question: What is the burden of proof?



Answer: The City has to establish grounds for your discipline by a preponderance of the evidence.

Question: What is preponderance of the evidence?

Answer: Preponderance of the evidence means that more than 50% of the evidence supports the grounds for discipline. Preponderance of the evidence differs from substantial evidence. Substantial evidence means there only needs to be some evidence even less than 50% that there were grounds to impose discipline. If there is only substantial evidence then the City cannot meet its burden.

Question: How much discipline can the City impose.

Answer: The City has to prove that the punishment imposed upon the employee is proportionate, reasonable and just in the totality of circumstances.

The Discipline Process & Appeal

Question: If I were to be disciplined, how would I receive notice and would it be in writing?

Answer: Iowa Code Section 400.19 provides: The person having the appointing power as provided in this chapter, or the chief of police or chief of the fire department, may, upon presentation of grounds for such action to the subordinate in writing, peremptorily remove, discharge, demote, or suspend a subordinate then under the person's or chief's direction due to any act or failure to act by the employee that is in contravention of law, city policies, or standard operating procedures, or that in the judgment of the person or chief is sufficient to show that the employee is unsuitable or unfit for employment.

Question: How may I challenge the written disciplinary notice that I receive?

Answer: Iowa Code Sec. 400.20 provides: The removal, discharge, demotion, or suspension of a person holding civil service rights may be appealed to the civil service commission within **fourteen calendar days** after the removal, discharge, demotion, or suspension.

Question: Who do I notify that I want to appeal?

Pursuant to Iowa Code Sec. 400.21 the appeal should be writing, specify the ruling appealed from and filed with the Clerk of the Civil Service Commission. The Clerk of the Civil Service Commission is Heather Redenius.

Question: What happens then?

Answer: Pursuant to Iowa Code Sec. 400.22 within 14 calendar days from the service of the notice of appeal the person or body making the ruling appealed from shall file with the body to which the appeal is taken a written specification of the charges and grounds upon which the ruling was based.

Question: What happens if the City fails to timely file the written specification of charges?

Answer: Pursuant to Sec. 400.22 the charges would then be dismissed.

The Appeal Hearing

Question: When is a hearing held?

Answer: Pursuant to Sec. 400.23 within 10 days after specification of charges are filed the Commission shall affix the time for hearing which shall be not less than 5 and more than 20 days thereafter and place for hearing the appeal and shall notify the parties in writing of the time and place so fixed, and the notice shall contain a copy of the specifications so filed. The hearing will generally be held during normal business hours and a commission may grant a continuance or stay of the hearing date which generally happens in most cases.

Question: Can I subpoena witnesses and documents?

Answer: Yes, pursuant to Sec. 400.24(2).

Question: Is my hearing open to the public?

Answer: Yes, generally, however, if you are in a city with a population of less than 200,000 you can request it be held in closed session. **Des Moines has a population of more than 200,000.**

Question: Who proceeds first at hearing?

Answer: The City has the burden and therefore proceeds first. You or your attorney can cross-examine their witnesses. Then you would call your own witnesses and introduce your evidence.

The Civil Service Commission Powers

Question: What power does the Civil Service Commission have?

Answer: The Commission may affirm, modify or reverse any case on its merits. Caveat, generally, the Civil Service Commission will not make minor adjustments, such as for example, reducing an 8 day suspension to 4 days.

Question: What factors does the Commission consider in making its decision?

Answer: The standard at its core just cause but 400.27(10)(1)(b) does add a host of factors: ...the commission shall consider factors including the nature of the conduct at issue in the circumstances, the proportionality of the punishment to the conduct at issue, the employee's work history, whether the employee reasonably could comply with the policy or rule in the circumstances and whether the employee's conduct was objectively reasonable in the circumstances, the employee's defenses or justifications, any mitigating or



aggravating factors, whether the punishment is reasonably calculated to correct the employee's behavior or conduct, if the punishment is necessary to protect the public interest, whether the city, its employees, or the appointing authority acted in accordance with the law, city policies, department rules, or standard operating procedures, or if the policy failed in the circumstances.

Generally, if the City is going to move for termination they must show that progressive discipline has been tried before moving for termination. Progressive discipline usually includes an oral warning before a written reprimand, and a written reprimand before a suspension. If these steps, along with additional training have failed to correct the performance or behavior issue then the City can move for termination. There are certain cases where the City can move for termination even for a first because a very egregious violation, for example, stealing from the City would likely result in recommendation for termination and generally would be enough to excuse compliance with progressive discipline.

Your past record is important, in other words, you want to show that you have had at least satisfactory evaluations, no prior disciplinary actions and good attendance. Your length of service is also important. Finally, if you have awards, letters of recognition, etc. those are all helpful and should be introduced. If there is a medical reason for an inappropriate action that the City is challenging then it is important to have your mental health care records.

Question: How will I be notified of the decision?

Answer: Sec. 400.27(10)(1)(d) provides that the Commission decision shall be by a majority vote in writing include findings of facts and conclusions, decision shall be served on all parties including yourself by certified mail within 30 days of the close of the record unless the parties have consented to a later date. Caveat: If either party wants to file a post hearing brief then the time for decision will be extended. You should consult with your attorney as to whether a post hearing brief would be helpful to your case.

District Court Appeal

Question: If I lose, can I appeal?

Answer: Yes, pursuant to Sec. 400.27(10)(3) you can take an appeal to District Court within 30 days from the service of the formal decision of the Commission.

Question: How would the trial in District Court proceed?

Answer: In essence a brand new hearing. The City again would have to present its evidence through witnesses and documents and thereafter you would have an opportunity through your attorney to cross-examine and present your own evidence and witnesses.

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Question: If I succeed in District Court can I recover my attorney fees and if so under what circumstances?

Answer: If you prevail in District Court you may recover your attorney fees and other costs but only if:

- a. The employee is fully reinstated from a termination without discipline imposed.
- b. The employee's suspension has been reduced by over fifty percent.
- c. The employee's demotion was reversed.

Question: What else should I know?

Answer: Either the employer or you can appeal from an adverse District Court decision to the Iowa Supreme Court.

Question: How long would each step of the proceeding take?

Answer: Each case is different but in general, civil service process would take 3-6 months; the District Court proceeding 1-1.5 years; and the Supreme Court proceeding another 1-1.5 year.