

Taking the Mystery out of *Loudermill* Meetings

March 1, 2012 by [Janice Corbin and Janet May](#)
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In our consultations with public employers we often find that the actual process of conducting a *Loudermill* meeting is still very much a mystery. In reality, *Loudermill* meetings should not be a source of frustration or concern as they generally are fairly simple to conduct. So, for this month's "HR Advisor" we thought we would discuss some of the Do's and Don'ts for conducting a *Loudermill* meeting.

What is a *Loudermill* meeting?

In *Cleveland Board of Education v. Loudermill*, (1985), the Supreme Court held that employees with a property interest in their jobs are entitled to certain **due process rights** prior to termination. These rights include oral or written notice of the charges against them, an explanation of the employer's evidence, and an opportunity to be heard in response to the proposed action. *Loudermill* rights are applicable in instances when the employee may have a loss of pay, such as suspension, termination, or demotion.

An arbitrator and the courts will require that the *Loudermill* meeting provide the employee with a true opportunity to be heard. In other words, the meeting is **not just a pro forma exercise**. Use these guidelines to help ensure that you meet your *Loudermill* requirements, while avoiding practices that can weaken the integrity of the discipline process:

Do's and Don'ts for *Loudermill* Meetings

- Notify the employee well in advance of the date and time of the meeting so he/she may have sufficient time to have a representative present. The notice should include the reasons the proposed disciplinary action is being recommended, the range of discipline being considered, and the fact that this is the employee's opportunity to provide any information as to why the proposed discipline should not occur.
- With rare exceptions, don't let the *Loudermill* meeting be the first time the employer has heard the accused employee's side of the story. Before proposing any disciplinary action, conduct a thorough investigation, which generally should include an interview with the accused. You may not want to interview the employee when the employee is under investigation for a criminal matter and should seek help prior to doing any questioning of the employee in those situations.
- Do read the investigative file carefully prior to the *Loudermill* meeting. By reading the file in advance, you will be better prepared to identify inconsistencies in statements made by the employee during the meeting, and to clarify those inconsistencies prior to making the disciplinary decision.
- Do make the employee feel comfortable. Explain the process to the employee at the beginning of the meeting and make eye contact with the employee while the employee talks.

- Do keep emotions in check. Discussing the specifics about the alleged misconduct, the investigation, and the proposed discipline can bring about a range of emotions both on the behalf of the employee and the employer. Don't take what is said in the discussion as a personal affront, practice good listening skills and take notes. Remain professional and business like.
- Do ask clarifying questions as a follow-up to the employee's information or presentation if you believe the clarification is necessary to make an informed decision. The clarifying questions should be asked respectfully and in a manner that does not convey disbelief or disagreement. If it is a criminal situation, get advice before asking the employee any questions.
- Don't interrogate or cross-examine the employee. The employee is not on trial and this not a formal hearing.
- Don't engage in behavior that indicates either agreement or disagreement with the employee's position. This includes nodding, frowning, smirking, etc.
- Do understand that the union representative has a duty to represent the employee, even if the representative personally believes that the misconduct warrants disciplinary action.
- If a union representative is present, listen to the union's perspective regarding the discipline, but avoid engaging in bargaining with the union over the proper discipline to be imposed.
- Don't feel compelled to allow witnesses, unless you are required to allow witnesses pursuant to your collective bargaining agreement. In most collective bargaining agreements, witnesses are only allowed by mutual agreement. Instead of agreeing to witnesses, ask the employee what information the witnesses can offer. If the information is relevant to the proposed disciplinary action, suspend the *Loudermill* meeting and conduct additional witness interviews in the same manner you interviewed other witnesses.
- Do follow-up on information presented by the employee that is new and could be considered material to the case, prior to making the final disciplinary decision.
- Do take the time to make the best final disciplinary decision. There is no obligation to make a disciplinary decision on the day of the meeting, nor is there an obligation to lessen the discipline if the original recommendation continues to be appropriate.

About Janice Corbin and Janet May

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