

The background features abstract, overlapping green geometric shapes in various shades, including light lime green, medium green, and dark forest green. These shapes are primarily located on the left and right sides of the slide, framing the central white area.

De-Mystifying the Employee Investigation and Disciplinary Process

May 2018

What Triggers an Investigation?

- ▶ Violation of the law
- ▶ Violation of College or State policy
- ▶ Misconduct
- ▶ Unacceptable job performance
- ▶ Insubordination
- ▶ Excessive absenteeism or tardiness
- ▶ Student complaint
- ▶ Supervisor or colleague complaint

How Is an Investigation Conducted?

- ▶ Data collected from supervisor or person making the report or complaint
- ▶ Interview witnesses and collect statements
- ▶ Collect and review any physical or testimonial evidence
- ▶ Review email or other electronic evidence
- ▶ Review law or policy being violated

Alternate Assignments

- ▶ To facilitate the investigation, the employee may be placed on an Alternate Assignment while the investigation is being conducted
- ▶ Employee remains on the payroll
- ▶ Employee is given a project to work on at home or another non-campus location
- ▶ Employee may be barred from coming on campus

What is an Interrogation?

- ▶ An interrogation is a fact finding meeting conducted by HR with the employee being investigated
- ▶ Advance notice is provided
- ▶ The employee may have union representation or legal representation
 - ▶ Private attorney is at the employee's expense
- ▶ A Statement of Rights is provided to the employee
- ▶ The employee is informed that failure to tell the truth may be grounds for disciplinary action
- ▶ CSEA interrogations are recorded
 - ▶ Copy given to the employee/union representative
- ▶ UUP and PBA interrogations are not recorded
- ▶ A list of questions is prepared in advance
- ▶ Employee has an opportunity at the end to advocate for him/herself
- ▶ Employee is told that any form of retaliation against someone who has filed a report, or is thought to have filed a report, is grounds for disciplinary action in and of itself

What are Possible Outcomes?

- ▶ No finding of guilt (no action taken)
- ▶ Counseling memo (non-disciplinary)
- ▶ Notice of Discipline and penalty
 - ▶ Reprimand
 - ▶ Suspension
 - ▶ Monetary fine
 - ▶ Termination of employment
- ▶ What actions are taken are based on the severity of the misconduct and prior disciplinary history

What is a Notice of Discipline?

- ▶ A Notice of Discipline is a written document provided to the employee stating the charges and the penalty that is being recommended
 - ▶ Separate charge for each incident and violation of policy and law
- ▶ The penalty does not take effect for 10 days (UUP), 14 days (PBA), or 21 days (*new* - CSEA), which allows the employee to request a grievance hearing if he/she wishes
- ▶ If a grievance hearing is requested, the penalty does not take effect until the grievance process has been completed

Grievances

- ▶ Step 2 - SUNY System Administration Employee Relations
- ▶ Step 3 - Arbitration
- ▶ Can be a lengthy wait for these hearings to be scheduled
- ▶ Hearings may be expedited if suspension or termination was recommended
- ▶ Note: Different process for CSEA Time and Attendance Grievances

Settlements

- ▶ Sometimes an employee may decide that he/she would prefer to resign as opposed to proceeding with an investigation and/or the grievance process
- ▶ A settlement agreement is drafted, and signed by the employee, union and management

Can Someone Be Terminated Even If They Are Permanent?

- ▶ Yes! Serious misconduct is grounds for termination, even when an employee has received continuing appointment, tenure or permanency

Can Someone Be Arrested for Misconduct at Work?

- ▶ Yes! UPD will investigate criminal misconduct
 - ▶ Individual may be subject to disciplinary charges AND criminal charges

Confidentiality

- ▶ Results of disciplinary investigations and grievances are not shared publicly
 - ▶ This sometimes leads to the false impression that “nothing is being done”

Relevant Union Contract Language

- ▶ CSEA
 - ▶ Article 33, Discipline
 - ▶ Article 34, Grievance and Arbitration Procedure
- ▶ UUP
 - ▶ Article 7, Grievance Procedure
 - ▶ Article 19, Discipline
- ▶ PBA
 - ▶ Article 7, Grievances and Arbitration
 - ▶ Article 8, Discipline
- ▶ NYS Collective Bargaining State-Union Contracts
 - ▶ www.goer.ny.gov/Labor_Relations/Contracts

Questions?

