

*Use this guide to support your coworkers through Disciplinary Investigations.  
Check off each box as you go through this process.*

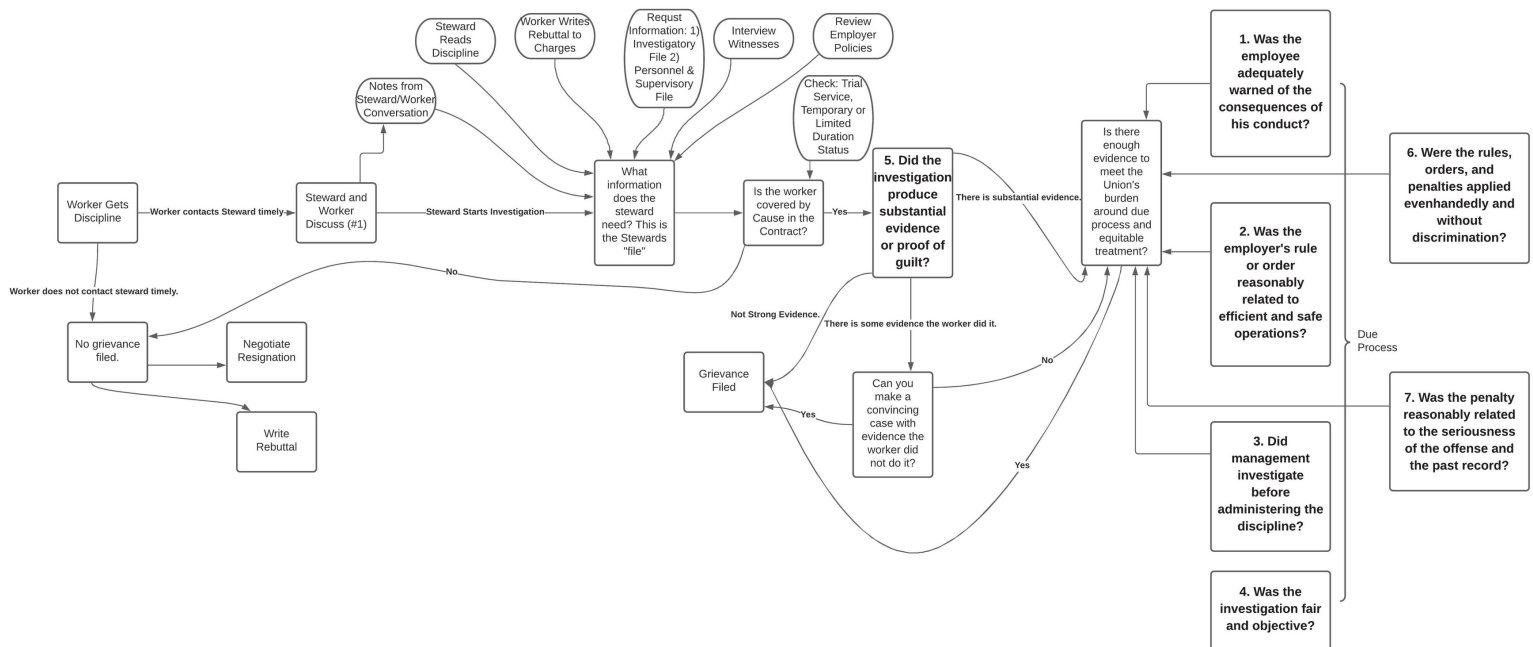
- ☐ **I've read the disciplinary letter.**  
*Before you hear the workers response, it is important you understand the charges and the facts a grievance would be responding to. This will also help you ask the worker questions while you're talking to them.*
- ☐ **I've talked to the worker and heard their reaction to the discipline.**  
*Ask them lots of questions and take notes. They will often talk about things that don't really get at what you're after, which is: can I show Management doesn't have cause for this disciplinary action?*
- ☐ **I've asked the worker to write a rebuttal to the parts of the charges that they think are inaccurate, or missing context, and have asked them what evidence there may be to support their claims.**  
*You may need to give them some explanation of this assignment and why it's so crucial to assess whether a grievance is appropriate, or not. If we have evidence for our case, this rebuttal will effectively be our road map, and you won't know how to help unless they share with you where Management got it wrong.*
- ☐ **If needed, I have the worker's permission to review their personnel file.**  
*If you file a grievance for the worker, they'll be signing to give you permission - it's on the grievance form - but you often will want to complete your investigation before filing the grievance.*
- ☐ **I've requested the investigatory file from Management using the Request for Information form.**

# Steward's Guide to Disciplinary Investigations

- ☐ **I've requested to review the personnel and supervisory file from Management.**  
*If it's not digital, you likely won't need copies of the entire file. Tag the parts you want copies of and specifically request those. You can put this on the same request form as the investigatory file.*
- ☐ **I've got copies of the parts of the personnel file and supervisory file that may be needed for my grievance assessment.**  
*Check out page 5 for Request for Information best practices*
- ☐ **I've used non-work email for communication with the worker and with Union staff about the case details. I've only used my work email for scheduling meetings with management or the worker.**  
*Do not use states' systems to get around information requests. Using the States email system for communication on a case is a bad idea because the State has access to your work email.*
- ☐ **I've looked over any policies referenced in the discipline and made notes on where the facts from the workers rebuttal and the discipline aren't aligned with policy.**
- ☐ **I've talked to any witnesses that could affirm the workers response.**  
*Depending on the type of discipline, this may or may not be relevant, but when you look over the rebuttal ask yourself if anybody besides the worker can be helpful in challenging the assertions Management made. You'll want to take notes on any interviews you conduct with witnesses.*
- ☐ **I've started to assess what the theory of my case is if I decide a grievance is appropriate.**  
*Using your Just Cause and Progressive Discipline Resource Guide, use the information you've gathered from your investigation and see what kind of case you have. Outline your arguments. Consider the just cause considerations.*

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- ☐ **I've checked my timeline to see when I would need to file a grievance by.**  
*For State Workers, it is 30 days from the discipline. If the deadline is approaching, you can file to preserve your deadline, or get an extension from Management to finish your investigation. Just make sure to do it in writing/by email and take note of your next deadline.*
- ☐ **I've reached out to other Stewards, Contract Specialists, or Union staff to see if I've missed any important considerations in my investigation.**
- ☐ **I've decided on whether to file a grievance or not.**  
*If you've decided it isn't a strong case that we could overturn the discipline, you'll want to explain to the worker why. It's best to do this by phone and follow up with an email. If you do decide to file the grievance, let the worker know when you're filing it and find out when they'll be available to meet with Management. Check the Resource Guide on Grievance Filing.*

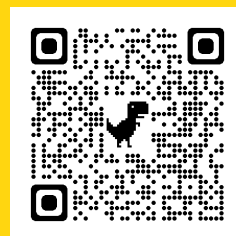


# Steward's Guide to Disciplinary Investigations

## Disciplinary Information Request Tips

- **Put your request for information in as soon as possible.**
- **The request for information for a discipline will typically include the full investigatory file, the workers personnel file and their supervisory file, applicable personnel policies, and in some cases things like attendance records, or witness statements.** You can usually get most of the request in prior to filing a grievance or concluding your investigation but nothing prohibits you from requesting additional information at any point in the process.
- **Be very specific on what information you need.** *If you request attendance records give the dates of your request, which days the worker has used sick leave, which days the worker was late, copies of any current FMLA or OFLA paperwork they have on file, etc.*
- **When you are investigating you will want to review the investigatory file as soon as possible. You have the right to all the information management used in making the decision to discipline.**
- **Make sure to have your Request for Information sent to the appropriate person and follow up if needed.** They have an obligation to get you the information in a timely manner. If they need extra time you can offer extensions but make sure you have them documented in writing/email.

Request for Information Form



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## Info Request Example



### INFORMATION REQUEST FORM

Name of Member(s): Mark Shaw Job Classification: Parks Ranger  
Name of Group (if applicable): \_\_\_\_\_  
Name of Agency: OPRD Work Location: Mclver  
Name of Supervisor: John Smith Date Filed: 5/19/21  
Filed with: (If other than supervisor) Karen Jones (HR)

Steward for this Information Request: Susie Seiu  
Name Work Phone  
Steward's Home Address: 1730 Commercial St SE Salem OR 97301  
Street City Zip

As a Steward representing the member above, I am requesting the information listed below. This is information necessary for the union's investigation:

- ☒ Personnel file
- ☐ Payroll Records for \_\_\_\_\_
- ☐ Time Clock Records from \_\_\_\_\_ to \_\_\_\_\_
- ☐ Injury Reports
- ☒ Copies of any notes, statements, or documents used or written as part of any investigation
- ☒ Copies of any supervisor's file that exists on this member
- ☒ Witness Statements
- ☒ Any other documents related to Mark's pay reduction discipline from 5/18/21
- ☐ Other information \_\_\_\_\_

This information should be provided to the Steward as soon as possible, but no later than the end of the day on 5/26/21.

Signature of Steward: \_\_\_\_\_ Date: 5/19/21

# Steward's Guide to Disciplinary Investigations

## Just Cause & Progressive Discipline

### Just Cause

A basic principle in most SEIU Local 503 collective bargaining agreements is that management must have *just cause* for imposing discipline. The tests of just cause fall into three main categories:

The first and most important is **Evidence of Guilt**. Did the management investigation produce substantial evidence or proof of guilt?

The second category is about the **process** that was used and contains the following considerations:

- **Forewarning:** Did management give the worker forewarning of possible disciplinary consequences of workers conduct?
- **Reasonable Rule:** Was management's rule or order reasonably related to an orderly, efficient and safe operation?
- **Discovery:** Did management make an effort to discover what happened before disciplining the worker? Did management investigate before administering the discipline?
- **Fair Investigation:** Was management's investigation fair and objective?
- **Evenhanded Application:** Did management apply its rules, orders and penalties evenhandedly and without discrimination?

The third and final category addresses the question of "whether the punishment fits the crime":

- **Fair Punishment:** Was the degree of discipline reasonably related to the seriousness of the offense and the record of the worker's service to the employer?

Generally, arbitrators have held that discipline and termination cases have two parts: 1) Was the employee guilty as charged? And 2) If so, what is the appropriate punishment and was the employer correct in its assessment?

In the first part, the employer has the "burden of proof" to show that the employee was guilty. However, the standards of proof are not as strict as in court. How strongly the employer must prove guilt depends on how severe the charge is. If it is also a termination, for instance, it must be proved more fully than a letter of reprimand.

In the second part, the "burden of proof" shifts to the union, which must prove that the employer acted wrongly and assessed too serious a punishment even if the employee was guilty. This is much harder to do. Once guilt is proved, most discipline decisions fall within the rights of management. *However*, if management was grossly unfair or acted unreasonably, the union has a chance of overturning or reducing the discipline.

## Progressive Discipline

**Discipline** is a formal penalty imposed by management. It can include verbal counseling, written reprimands, suspensions without pay, demotions, forced transfers and, finally, termination. These are common disciplines included but you will want to look up in your contract to see what disciplines are included. For example some contracts include letters of expectations and some do not. If a letter of expectation is not in the contract it is not considered discipline and you would not be able to file a just cause grievance.

Management usually cites one of two reasons for taking disciplinary action:

- 1) it believes the employee is guilty of misconduct – that is, not following legitimate management orders, rules or policies; or
- 2) it believes the employee is failing to perform job functions to the standards of the workplace.

**Progressive Discipline** The general theory of discipline is that it should not be punitive in nature but rather corrective – that is, designed to correct behavior with the goal of encouraging an employee to carry out their assigned job duties. This means that for the first offense in a given subject (attendance, for example), the discipline will be mild (e.g., verbal counseling or a written reprimand); for subsequent offenses on the same subject the discipline will become progressively more severe (e.g., a short suspension, a longer suspension, termination). The intent of progressive discipline is to provide the employee the opportunity to improve performance or correct unacceptable behavior. If management does not follow progressive discipline, the union may make this failure part of its grievance case.

The major exceptions to the concept of progressive discipline are those instances where an employee's conduct is so severe or unacceptable that management feels justified in escalating quickly toward termination. Examples would be theft, drug or alcohol use on the job, or threatening or using physical violence.

### Advice for Stewards

- Disciplinary cases can be complex. Set up a consultation once you have gathered all the information from the guide with a Chief Steward or a Union Staff Enforcement Organizer
- It is your decision on whether to file a grievance after evaluating all the facts of the case. The worker does not get to decide, you do, but only after completing your own investigation.
- If you need to say no to the worker, make sure to both talk to them, and document in an email or written communication why you did not think we have a strong case and why the employer would be successful in showing they have just cause.