



Human Resources Professionals' Meeting June 15, 2011

Skelly Dos and Don'ts

Jennifer Johnston, DHR Chief of Policy

Note that the information provided in this presentation is intended to be a general guide and should not be relied upon for legal advice. Please consult with your Deputy City Attorney or the Employee Relations Division if you have any questions about a specific case. AND BE SURE TO REFER TO THE APPLICABLE MOU!

Due Process Rights under *Skelly* and the *Skelly* Notice

- *Skelly* (due process) rights are implicated any time the property interests in the job of an employee with just cause rights is significantly impacted.
- Before imposing such discipline, the employer must provide the employee with a “*Skelly* notice,” which informs the employee of:
 - the proposed discipline;
 - the charge(s) for which the discipline is being proposed;
 - the bases for the charge(s); and
 - his or her opportunity to respond to the charges and discipline in writing or at a *Skelly* hearing.
- Departments should provide the employee with sufficient notice of the *Skelly* hearing and allow for a postponement if reasonable.
- You should also give the *Skelly* packet to the *Skelly* officer as soon as possible so that he/she has time to review it.

The *Skelly* Notice

- The *Skelly* packet must be comprehensive – it must include:
 - All possible charges you want to assert (new charges will likely require a new *Skelly* notice); and
 - All relevant information, documents and evidence to support each charge.
- All documents cited in the *Skelly* notice should be included.
 - Generally, departments are not required to provide investigative reports, raw notes, or tape recordings or transcripts of witness interviews.
- Remember that each element of the charge(s) must be established in the *Skelly* notice.
- Try to include information on why the infraction/violation/conduct was so egregious (supports the level and type of discipline proposed).
- Address any anticipated defenses if possible and appropriate.

Overview on the *Skelly* Meeting

- The *Skelly* meeting is intended to provide the employee with notice of the charges and an opportunity to respond to the charges.
- The purpose of the *Skelly* meeting is to serve as an initial check against mistaken and/or unjustified decisions.
- Although often referred to as a *Skelly* “hearing,” it is not intended to be a formal legal proceeding or a full evidentiary hearing—no witness testimony and no cross examination (although the employee can submit a written witness statement or any other materials that are relevant to the charges).

Overview on the *Skelly* Meeting

- The employee is entitled to have a union representative attend the meeting.
 - It is up to the employee to request it, and the employee is generally not entitled to a specific union representative, particularly if it would cause unreasonable delays.
 - Participation of union representatives is generally limited to observing and privately advising the employee (though the *Skelly* Officer can choose to be more flexible on this).
- A department manager should attend, and it is recommended that the HR Representative attend as well.
- **Refer to the MOU for other requirements.**

The *Skelly* Officer

- The role of the *Skelly* Officer is to ensure that to determine whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action based on the evidence provided.
- The *Skelly* Officer can be anyone who is authorized to effectively recommend discipline; ideally, the individual should not be the person who made the initial recommendation for discipline.
- The *Skelly* Officer should generally not second-guess the proposed discipline (e.g., 4 day versus 5 day suspension) if it is reasonably supported by the charges.

The *Skelly* Officer

- The *Skelly* Officer is responsible for leading the meeting.
- The *Skelly* Officer should not allow any of the following during the *Skelly* meeting:
 - Any back-and-forth or cross-examination between the department representative(s), employee or the employee's union representative.
 - Any belligerence or abuse by any of the attendees.
 - The union representative to interject any facts on behalf of the employee (again, their role is to serve as an advisor to the employee; however, the *Skelly* Officer can choose to be more flexible on this).
- Upon concluding the meeting, the *Skelly* Officer should inform the employee of timetable for the remainder of the process.

Questions

- What happens if the employee lies during the *Skelly* meeting?
 - The department may choose to charge the employee with untruthfulness as well, but it will require a new *Skelly* notice and another *Skelly* hearing.
- Is it okay if the employee wants their attorney to attend the meeting instead of their union representative?
 - Yes. Note that the union does not have an independent right to attend a *Skelly* hearing if the employee prefers his or her attorney; either way, the employee is entitled to one representative at the meeting.

Questions

- Is a *Skelly* hearing required for any of the following:
 - Demotion, unpaid suspension or termination– Yes.
 - Layoff, lateral transfer (same pay), reassignment, reprimand or negative performance evaluation– Generally not (there are exceptions for safety officers).

- Do “at-will” (exempt) employees have *Skelly* rights?
 - Generally not (see the applicable MOU, and there is a limited exception for “liberty interests”).

- Additional Points:
 - **Always refer to the MOU.**
 - Remember that the information in this presentation is intended to provide **general guidance** only.
 - Check with your Deputy City Attorney or the Employee Relations Division if you have any questions or need guidance in a specific matter.

Brief Comments on *Weingarten*

Rights

- Employees are entitled to have a union representative present during an investigatory interview, which occurs when:
 1. The employer questions an employee to obtain information; and
 2. The employee has a *reasonable belief* that discipline or other adverse consequence may result from what he or she says.
- Not every discussion with management is an investigatory interview.
- The employer is not required to notify the employee of his or her right to such representation.
- The union is generally not entitled to know the subject matter of the investigation in advance of the meeting.

Additional Questions on *Weingarten* Rights?

- *Weingarten* Rights will be covered at the next HR Group Meeting– please email any questions to me beforehand to ensure that I cover all issues of interest.
- You can also contact ERD or me with any questions about *Skelly* or *Weingarten* Rights at any time.

Jennifer.Johnston@sfgov.org or (415) 557-4932