

Time and Attendance: The Hearing Process

Participant's Workbook 2019 Edition

AGENDA

SESSION 1: Welcome/ Introductions/ Workshop Objectives

SESSION 2: The Hearing Process

SESSION 3: Case Study Examples

SESSION 4: Summary & Evaluation

SESSION 1

Workshop Objectives

Welcome back!

In Part One of the Time and Attendance Process you learned the fundamental application of the disciplinary process including:

1. Recognizing and defining time and attendance issues.
2. The Article 33.3 (a) Disciplinary Procedure for the Notice of Discipline as it relates to Article 33.5 Time and Attendance Disciplinary Grievances
3. Your role in assisting members during the Time and Attendance process prior to the hearing day.
4. Analyzing the Notice of Discipline to develop and mitigate a fair settlement.
5. Meet with member to review documentation that could be relevant for the hearing day.
6. Your role to assist in representing members with a Contract Administration Specialist in hearings before a Permanent Umpire.

In Part Two of the Time and Attendance Process, the focus is solely on the Hearing Day. Upon completion of this workshop, participants will have an overview of the structure of the process to know what to expect, how to prepare the member, and what your role and the role of the Contract Administration Specialist is during the Hearing Day.

In the Case Study portion of the training, we will work with real cases in which the employer is seeking termination. Participants will have the opportunity to analyze and apply the principles learned in Part One to develop a Union Position and compare to that in the actual decision of the case for small and large group discussion.

SESSION 2

THE HEARING PROCESS

The actual hearing process is not prescribed by Article 33.5, but the general provisions and philosophy of Article 33 makes it clear that a due process hearing is required. Due process requires that the Grievant (or his/her CSEA representative) has a fair opportunity to respond to the charges contained in the NOD, and to offer any documentation or other explanation for the time and attendance abuse, or to support the claim is not guilty of the charges.

Once the NOD is appealed, a hearing is scheduled. The Time and Attendance Panel Administrator notifies the grievant, the CSEA Local and CSEA's State Operations Department of the date, time and location of the hearing. It should be noted that the grievant does have the right to be represented by a privately retained attorney, in which case the Contract Administration Specialist will not be present on the his/her behalf at the hearing. Unless private counsel is elected, any relevant documentation should be sent to the assigned Contract Administration Specialist in advance.

On the day of the hearing, the grievant and the Local representative will meet with the CSEA Contract Administration Specialist to review the case and any documentation that the grievant or the Local has provided. The Contract Administration Specialist may be able to have another opportunity to discuss settlement options with management before the hearing.

If a settlement is offered and the grievant accepts, then the Permanent Umpire may review the terms of the settlement with the grievant. If management is not receptive to a settlement offer, or if the parties cannot agree on the proposed settlement, then a hearing is conducted. The Contract Administration Specialist will present the case on behalf of the grievant.

The Permanent Umpire explains the proceedings to the grievant: the charges and penalty sought are stated. The hearing is informal and orderly as only one side at a time speak and present their case. The hearing is an expedited process; therefore, the Permanent Umpire strives to have the parties stay on point.

The State has the burden of proof and they present their case first. Management is usually represented by an Agency Labor Relations Representative or a Facility Personnel Officer, and an employee's supervisor may attend as well.

SESSION 2

THE HEARING PROCESS

In addition to stating the current charges and providing the documentation to support the charges, the management representative will provide the Permanent Umpire with:

- The dates, type of charges, and penalties received in prior T&A NODs, if there are any.
- Any counseling memos and/or medical documentation requirements prior to the issuance of the NOD.
- Performance Evaluations
- Years of service
- Employee's entire record of employment

The Union will then have an opportunity to present its case on behalf of the Grievant. Any documentation, medical or other, should be presented to the Permanent Umpire at this time. It is important for the grievant to bring copies of any documentation to the hearing as this is the only opportunity to offer justification and/or explanations for the absence or lateness which is charged in the NOD.

The Permanent Umpire may speak directly to the grievant, asking questions to clarify management's and/or CSEA's assertions and offering the grievant the opportunity to add anything they feel will support their appeal. The Permanent Umpire may question management as to their knowledge of the employee's situation or ask if they have received documentation pertaining to any medical or other treatments, whether the grievant has FMLA coverage, etc.

During the hearing, Management and CSEA may be able to reach agreement as to a penalty. The Permanent Umpire will facilitate the settlement, review its terms and issue a Consent Award which lays out the terms of the settlement.

OR

The Permanent Umpire will advise that all the information presented in the hearing will be taken into consideration and a written decision will be issued within a reasonable time-period. The decision of the Permanent Umpire is the final and binding determination.

SESSION 3

CASE STUDIES

- **Case Study 1- Mary May**
- **Case Study 2- Yolanda York**
- **Case Study 3- Steven Smith**
- **Case Study 4- Jane Jones**

Case Study 1- Mary May

Facts of the case:

- Mary May is an employee for the Office for People with Developmental Disabilities with seven years of service.
- She has been issued a second Notice of Discipline (NOD) dated February 23, 2017, charged for absences of 8 consecutive workdays or more and is seeking termination from State services.
- A previous NOD dated August 4, 2016 for absences resulted in a Consent Award. The Consent Award provides for a 2 week fine held in abeyance subject to a twelve (12) month monitoring period effective October 14, 2016 – October 14, 2017.
- In the Consent Award, provision 3b states, “Any and all subsequent unscheduled/ unauthorized absences that occurred after the last specifications listed in the charges (6/22/16) shall be made part of this penalty.”
- Documentation was not provided for the following absence occurrences: (November 30 – December 11), (December 19) and (December 25-27).

Union Position:

**ATTACHMENT TO TIME AND ATTENDANCE
NOTICE OF DISCIPLINE**

STATEMENT OF CHARGES

Name: Mary May **Date:** January 23, 2017
Address: 123 My Street
 Anywhere, NY 12345-6789
Title/ Salary Grade: Direct Support Assistant, Grade 9
Worksite/ Shift/ Pass Days: Daisy Day Hab/ Days/ Monday/ Tuesday
Bargaining Unit: CSEA, 04- Institutional Services Unit

The charge of misconduct or incompetence is preferred against you for UNAUTHORIZED ABSENCE INCLUDING IMPROPER USE OF SICK LEAVE/ UNSCHEDULED ABSENCE OF 8 CONSECUTIVE WORKDAYS OR MORE

Dates	Dates	Dates	Dates
1/23/16- 8 HRS	7/22/16- 8 HRS	9/02/16- 8 HRS	12/19/17- 8 HRS
1/24/16- 8 HRS		9/03/16- 8 HRS	
	8/10/16- 8 HRS	9/04/16- 8 HRS	12/25/16- 8 HRS
1/29/16- 8 HRS	8/11/16- 8 HRS	9/07/16- 8 HRS	12/26/19- 8 HRS
	8/12/16- 8 HRS	9/08/16- 8 HRS	12/27/16- 8 HRS
3/02/16- 8 HRS	8/13/16- 8 HRS	9/09/16- 8 HRS	
3/03/16- 8 HRS	8/14/16- 8 HRS	9/10/16- 8 HRS	
3/04/16- 8 HRS	8/17/16- 8 HRS	9/11/16- 8 HRS	
	8/18/16- 8 HRS	9/14/16- 8 HRS	
3/30/16- 8 HRS	8/19/16- 8 HRS		
3/31/16- 8 HRS	8/20/16- 8 HRS	11/30/16- 8 HRS	
4/01/16- 8 HRS	8/21/16- 8 HRS	12/01/16- 8 HRS	
4/02/16- 8 HRS	8/24/16- 8 HRS	12/02/16- 8 HRS	
4/03/16- 8 HRS	8/25/16- 8 HRS	12/03/16- 8 HRS	
	8/26/16- 8 HRS	12/04/16- 8 HRS	
5/25/16- 8 HRS	8/27/16- 8 HRS	12/07/16- 8 HRS	
5/26/16- 8 HRS	8/28/16- 8 HRS	12/08/16- 8 HRS	
	8/31/16- 8 HRS	12/11/16- 8 HRS	
6/22/16- 8 HRS	9/01/16- 8 HRS		

In arriving at an appropriate penalty, your entire work record has been taken into consideration:

Dates(s) of Notice(s) of Discipline	Type	Penalty Assessed
8/04/16	UA	4 weeks' pay

In accordance with the schedule of penalties for this type of infraction set forth in Article 33.5 of your Employee Agreement, the proposed penalty for this Notice of Discipline is:

TERMINATION

Case Study 2- Yolanda York

Facts of the case:

- Yolanda York is an employee for the Office for People with Developmental Disabilities with fifteen years of service.
- She has been issued a first Notice of Discipline (NOD) dated March 8, 2017, charged for absences of 8 consecutive workdays or more and is seeking termination from State services.
- Ms. York suffers from a medical condition known to Employer. FMLA was approved in April 2016 for intermittent leave for up to five days per episode, with one for two episodes per month.
- Ms. York was not subject to a medical documentation requirement for time and attendance abuse and followed proper call-in procedures for all absences charged within the NOD.
- Medical documentation was supplied for the five-day absence in March (March 10-14, 2016) and the thirteen-day absence in November (November 10-26, 2016).
- Ms. York was not subject a medical documentation requirement for three absence occurrences: (March 24-25, April 4, 7-8, 2016).

Union Position:

**ATTACHMENT TO TIME AND ATTENDANCE
NOTICE OF DISCIPLINE**

STATEMENT OF CHARGES

Name: Yolanda York **Date:** March 8, 2017
Address: 123 My Street
 Anywhere, NY 12345-6789
Title/ Salary Grade: Direct Support Assistant, Grade 9
Worksite/ Shift/ Pass Days: Sunflower IRA/ Nights/ Tuesday/ Wednesday
Bargaining Unit: CSEA, 04- Institutional Services Unit

The charge of misconduct or incompetence is preferred against you for **UNAUTHORIZED ABSENCE INCLUDING IMPROPER USE OF SICK LEAVE/ UNSCHEDULED ABSENCE OF 8 CONSECUTIVE WORKDAYS OR MORE**

Dates	Dates	Dates	Dates
2/11/16- 8 HRS	3/24/16- 8 HRS	11/10/16- 8 HRS	1/19/17- 8 HRS
2/12/16- 8 HRS	3/25/16- 8 HRS	11/11/16- 8 HRS	
2/13/16- 8 HRS		11/12/16- 8 HRS	
2/14/16- 8 HRS	4/04/16- 8 HRS	11/13/16- 8 HRS	
2/15/16- 8 HRS	4/07/16- 8 HRS	11/14/16- 8 HRS	
	4/08/16- 8 HRS	11/17/16- 8 HRS	
3/07/16- 8 HRS		11/18/16- 8 HRS	
		11/19/16- 8 HRS	
3/10/16- 8 HRS		11/20/16- 8 HRS	
3/11/16- 8 HRS		11/21/16- 8 HRS	
3/12/16- 8 HRS		11/24/16- 8 HRS	
3/13/16- 8 HRS		11/25/16- 8 HRS	
3/14/16- 8 HRS		11/26/16- 8 HRS	

In arriving at an appropriate penalty, your entire work record has been taken into consideration:

Dates(s) of Notice(s) of Discipline	Type	Penalty Assessed
None		

In accordance with the schedule of penalties for this type of infraction set forth in Article 33.5 of your Employee Agreement, the proposed penalty for this Notice of Discipline is:

TERMINATION

Case Study 3- Steven Smith

Facts of the case:

- Steven Smith is an employee for the Office for People with Developmental Disabilities with nine years of service.
- He has been issued a fourth Notice of Discipline (NOD) dated October 25, 2016, charged for absences of 3 consecutive workdays or less and is seeking termination from State services.
- Mr. Smith previously had approved FMLA for his own medical condition. He was in the application process to renew for himself and now also for his son.
- The October 27, 2015 absence was related to his son's serious health condition. The November 16-17, 2015 absences was due to episode with his own medical condition which had served as the basis for earlier FMLA approval. A medical documentation requirement was not in place for either absence occurrences.
- For the February 6-7, 2016 absence, documentation was provided as required.
- The March 13, 2016 absences was due to a vehicle accident, documentation from the insurance company confirming was provided as required.
- Mr. Smith was not under a medical documentation requirement for the June 12-14, 2016 absence.
- The July 17, 2016 absence was FMLA related.
- The Employer's Guidelines for Attendance is eight unscheduled absences in a twelve-month period to warrant discipline.

Union Position:

**ATTACHMENT TO TIME AND ATTENDANCE
NOTICE OF DISCIPLINE**

STATEMENT OF CHARGES

Name: Steven Smith **Date:** October 25, 2016
Address: 123 My Street
Anywhere, NY 12345-6789
Title/ Salary Grade: Direct Support Assistant, Grade 9
Worksite/ Shift/ Pass Days: Daffodil IRA/ Nights/ Thursday/ Friday
Bargaining Unit: CSEA, 04- Institutional Services Unit

The charge of misconduct or incompetence is preferred against you for **UNAUTHORIZED ABSENCE INCLUDING IMPROPER USE OF SICK LEAVE/ UNSCHEDULED ABSENCE OF 3 CONSECUTIVE WORKDAYS OR LESS**

Dates

10/27/15	Unscheduled Absence	8 HRS Accruals
11/15/15-11/16/15	Unscheduled Absence	16 HRS Accruals
2/06/16-2/07/16	Unscheduled Absence	16 HRS Accruals
3/13/16	Unscheduled Absence	8 HRS Accruals
6/12/16-6/14/16	Unscheduled Absence	24 HRS Accruals
7/17/16	Unscheduled Absence	8 HRS Accruals

***In conjunction with pass days**

In arriving at an appropriate penalty, your entire work record has been taken into consideration:

Dates(s) of Notice(s) of Discipline	Type	Penalty Assessed
3/26/15	T&A/ UA	\$500 fine
6/19/14	T&A/ UA	\$150 fine
11/04/13	T&A/ UA	Letter of Reprimand

In accordance with the schedule of penalties for this type of infraction set forth in Article 33.5 of your Employee Agreement, the proposed penalty for this Notice of Discipline is:

TERMINATION

Case Study 4- Jane Jones

Facts of the case:

- Jane Jones is an employee for the Office of Parks, Recreation and Historic Preservation with ten years of permanent service.
- She has been issued a first Notice of Discipline (NOD) dated May 18, 2017, charged for absences of 8 consecutive workdays or more and is seeking termination from State services.
- The NOD cites one unauthorized absence occurrence of 20 consecutive workdays from April 20, 2017- May 17, 2017.
- Grievant has not been to work since April 15, 2017 when, after working from 6:30am – 11:15am, she cleaned out her locker and left work without approval. She left a leave slip for that Saturday and for the following two days scheduled to work.
- Prior to April 15, 2017, Grievant had repeatedly expressed to management her dissatisfaction with her assignment for what she believed to be mistreatment on the job, age and gender discrimination, and a hostile work environment. The employer was aware of her complaints for over three years and her desire to be reassigned elsewhere.
- In March 2017, Grievant was offered an opportunity for a lateral transfer to work with a journeyman crew alongside the agency’s carpenter, with the goal of gaining the experience needed for a Grade 12 Carpenter title. This offer was contingent upon the Employer finding a seasonal replacement for her.
- On April 13, Grievant wrote an extensive email to her employer expressing concern with the amount of time it was taking to be transferred. She wrote that prior to receiving the transfer offer she had set a “walk off” date for herself which Grievant still considered “active” given the delay in her being transferred by April 20.
- On April 14, 2017, Grievant met with her employer and was informed the reasons for the further delay. Upon finding out the delay would continue, she later sent an email stating, “I’m sorry but I’m done,” followed by “...if you want and need me then I can start on the 20th. Other than that I will have to decline your offer...”
- On April 25, 2017, Grievant emailed a three page letter to parties in the Agency and outside relaying the list of reasons why she would not return to her assignment, concluding with the statement “You go ahead and do what you have to do.”
- The Employer sent Grievant a letter dated May 3, 2017 regarding her continuous absences since April 20. The letter stated: “If it is your intention to resign from

State service, you must send us a signed letter formally resigning your position. If it is not your intention to resign, you must report to work at the Tree Tops Historic Site at your normal starting time. **You must take one of these actions by Monday, May 8, 2017.** Failure to act will subject you to disciplinary action which may result in a penalty up to and including dismissal from Sate service”

- Grievant did not respond to the May 3 letter. An interrogation was scheduled for May 18 in which grievant appeared for with union representation. She did not deny the absences or her failures to call in commencing April 20 nor did she provide medical documentation covering the absences.

Union Position:

**ATTACHMENT TO TIME AND ATTENDANCE
NOTICE OF DISCIPLINE**

STATEMENT OF CHARGES

Name: Jane Jones **Date:** May 18, 2017
Address: 123 My Street
Anywhere, NY 12345-6789
Title/ Salary Grade: Park Worker 3, Grade 9
Worksite/ Shift/ Pass Days: Tree Top Historic Site/ Day / Sunday/Monday
Bargaining Unit: CSEA, 03- Operational Services Unit

The charge of misconduct or incompetence is preferred against you for **UNAUTHORIZED ABSENCE INCLUDING IMPROPER USE OF SICK LEAVE/ UNSCHEDULED ABSENCE OF 8 CONSECUTIVE WORKDAYS OR MORE**

Dates	Dates	Dates	Dates
4/20/17- 8 HRS*	5/09/17- 8 HRS*		
4/21/17- 8 HRS*	5/10/17- 8 HRS*		
4/22/17- 8 HRS*	5/11/17- 8 HRS*		
4/25/17- 8 HRS*	5/12/17- 8 HRS*		
4/26/17- 8 HRS*	5/13/17- 8 HRS*		
4/27/17- 8 HRS*	5/16/17- 8 HRS*		
4/28/17- 8 HRS*	5/17/17- 8 HRS*		
4/29/17- 8 HRS*			
5/02/17- 8 HRS*			
5/03/17- 8 HRS*			
5/04/17- 8 HRS*			
5/05/17- 8 HRS*			
5/06/17- 8 HRS*			

***Unauthorized Absence**

In arriving at an appropriate penalty, your entire work record has been taken into consideration:

Dates(s) of Notice(s) of Discipline	Type	Penalty Assessed
None		

In accordance with the schedule of penalties for this type of infraction set forth in Article 33.5 of your Employee Agreement, the proposed penalty for this Notice of Discipline is:

TERMINATION

SESSION 4

SUMMARY & EVALUATION

Thank you for attending and participating in this workshop. We hope that your experience has been positive and what you have learned will assist you in representing our members in the Time and Attendance Disciplinary Process.

Remember to contact the Contract Administration Specialists in the CSEA State Operations Department with questions regarding any aspect of this process. Contract Administration Specialists can advise on settlement offers and evaluate whether the matter should go to a hearing.

Please take a moment to complete the Workshop Evaluation Form and return it to the Instructor.

Again, thank you for attending the Time and Attendance Part Two: The Hearing Process workshop conducted by the CSEA Education & Training Department.
