

**The Ultimate Guide
To
Loudermill Meetings**



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Loudermill User's Guide

Part 1

Introduction to Loudermill Meetings

In Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) the United States Supreme Court ruled that whenever a public employee has a property interest in his employment, or otherwise is protected by operation of a collective bargaining agreement, he may not be disciplined without **notice and an opportunity to respond** to the charges.

Employees with a property right in their employment are generally defined under state law as those who can only be terminated for cause and who have a right to have the decision reviewed.

All employees covered by collective bargaining agreements are included in this category.

To comply with this requirement the employer must meet with the employee prior to making a decision regarding discipline, present the employee with the information against him, and give him an opportunity to respond.

This is often referred to as a “Loudermill Hearing,” but it should actually be an informal meeting, and not a formal hearing.

If an employee can demonstrate that the employer decided to issue discipline prior to the Loudermill meeting, it is a due process violation which can (and does) negate the disciplinary action.

If a mistake is made during the Loudermill process, there *may* be an opportunity to correct it by rescinding the discipline, and holding a second (and correctly conducted) Loudermill meeting. Don't put yourself in this situation. Do it once and do it right.

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In NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1975), the Supreme Court held that employees have the right to union representation during investigatory interviews, but subsequent cases also gave employers the right to insist that employees answer their questions. That is different from *Loudermill*, where the employee may choose not to answer the employer's questions.



Personal lawyers of the employee are **never** allowed.

In general, you should not set up a Loudermill meeting before you have completed your investigation. In order to put the employee on notice, you have to know what you are talking about insofar as that is possible.

Whether you are investigating something or not, you should hold the meeting as soon as reasonably possible, after the incident occurs. This means that your investigation should be prompt.

3. Announcing the Meeting

On this point, we are watching a possible emerging trend for some prior notice, however. See e.g. Moffitt v. Tunkhannock Area School Dist., (M.D. Pa. 2013). We will keep you posted, but some courts may want to see some reasonable advance notice of the issues involved.

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The note taker should take care to document statements of the employer.

One manager should attend the meeting with the sole purpose of taking good notes.

These notes should be taken at least as good as ordinary meeting minutes, if not better.

At a minimum, this person should document the employer providing the required notice of the incident and the employees choice to have or not to have a union representative, etc.

The employer has a few statutory obligations; boxes to “check” in the meeting. Those moments should appear in the notes:

- “Bob explains that cash was missing from the register this morning.”
- “Bob explains that we have reason to believe that Jim took the money.”
- “Bob explains that this would result in discipline if it is correct.”
- “Bob asks if Jim has anything he wants to say before the decision is made.”

Special attention should also be paid to the statements of the Employee

Does the employee admit the infraction?
Deny it?

Is he angry, argumentative, disrespectful, does he use profanity?

Does he make allegations against you or other employees?

Does he apologize?

Does he state important details in a particular way?

Our good friends at the Pennsylvania Labor Relations Board think you should share your notes with the Union.

Use this rule to your advantage. The unions know about it and have begun requesting investigation and Loudermill notes from the employer. Don't shy away: Make sure your notes reflect the information you need.