

(c) Document the Case

During the disciplinary process, it is the responsibility of all managers to maintain clear and concise documentation. The manager must record the time and nature of the misconduct and all relevant evidence obtained. Proper documentation will be particularly useful if a disciplinary interview is conducted. During a disciplinary interview, the employee will be provided an opportunity to explain his actions which may substantiate or refute the evidence which has been gathered.

Proper documentation is particularly important if the final disciplinary determination is challenged. Grievances arising from disciplinary action may ultimately involve third-party adjudication. In these instances, management records will be required to justify the disciplinary action taken. The manager who initiates disciplinary action is quite often the prime witness in an adjudication proceeding and must be able to produce or have reference to documentation which substantiates his action. Since the onus of proof in disciplinary situations is the responsibility of the employer, each case should be treated as if it may be referred ultimately to adjudication.

(d) Disciplinary Interview

- (i) In the interests of fairness and natural justice, a manager should afford the employee the opportunity of explaining and/or defending his actions prior to taking disciplinary action. It should be noted that the onus is on the employee to justify or explain his actions. If the employee decides not to exercise this option, a disciplinary determination may be rendered on the basis of the available information gathered through the investigation.

The employee has a right to representation (i.e., union, legal) at a disciplinary interview. The manager must inform the employee of this right when a disciplinary interview is being arranged. The interview should be conducted in the privacy of an office to ensure that the conversation remains confidential. The employee should be told what misconduct he is considered to have committed and that disciplinary action is being considered. The employee will then be afforded the opportunity to explain his actions. The manager conducting the interview should not enter into an argument on any matter which is raised and should assure the employee that the information he has provided will be given consideration before a final determination is made.

- (ii) An account of the interview and the statements made by the employee and/or his representative should be documented factually and objectively. It is advisable that another management representative be present at the time of the interview in order that the proceedings may be corroborated. This is particularly important in cases which deal with serious misconduct.