



FACT-FINDINGS AND PSI INVESTIGATIONS

1. Before the FF/PSI interview

- Meet with the member and explain the process (request paid time). Depending on the seriousness of the allegations, the investigation could be conducted by local management, local management with PSI support, or by PSI alone.
- Put together a storyline. Who, what, why, when, where. Try to pin down what parts of the Code of Conduct are involved. Note any prior discipline or incidents in the member's work history.
- Seek clarification of the allegations if the member is uncertain. Procedural fairness requires the employer to explain exactly what the member is alleged to have done wrong. You need enough information to be able to prepare an adequate defence before the first interview.
- If the member was placed on administrative leave without pay, file a grievance (see appendix H of the collective agreement).
- The invitation to the fact-finding interview should give 48 hours notice and mention that the member has a right to union representation. If it does not, contact the CIU national office.
- Explain the union's role. A representative is not merely an "observer". You are there to ensure that the principles of natural justice and procedural fairness are followed. That means providing guidance to the member, asking for breaks if necessary, and asking clarifying questions. You cannot, however, answer questions posed to the member or speak on their behalf.
- Advise the member on how to conduct themselves during the interview. Tell the truth. Seek to display honesty, integrity, and trustworthiness. Cooperate fully but only answer the questions being asked. Be careful about volunteering information that goes beyond the scope of the question. It is always better to answer "I don't know" or "I don't remember" than risk being caught in a falsehood.
- Support your member. Assure them that the union will be there throughout the process and will support them in a grievance if discipline is forthcoming. Ensure all rights are

being protected, including language rights and any accommodation needs. Provide the EAP toll-free number and advise the member not to speak with other employees or management about the issue giving rise to the investigation.

2. During the FF/PSI interview

- Before the meeting begins, ask the employer to identify the lead manager and determine who will be taking notes.
- Ask the lead manager for a copy of the questions. If they won't provide them, advise that you will have to write down every question when it is asked, thus delaying the meeting. Ask your member not to answer until you have written down the question and noted who is asking it.
- Note all of the member's answers. Ask the interviewer to slow down if you need to catch up with your note taking.
- Ask for as many breaks as needed if you feel your member needs a time-out or you need to have a private discussion.
- If management is showing video to "prove" misconduct, question whether they are following their policy on the use of video recordings. If asked, do not give permission for the video to be used as evidence and object to its use if you believe that the employer has violated its own policy. Seek assistance from the CIU national office if you know in advance that the employer intends to use video evidence to demonstrate misconduct.

3. After the FF/PSI interview

- When the meeting concludes, the member will be asked to review and sign the notes management has taken. The member is not obligated to sign if they do not agree with the contents.
- Ask the lead manager who will be making the final decision (the manager, a Labour Relations advisor, or another third-party).
- Tell management that you will need some time to consult with the member after the meeting is over. Go over the interview with the member and ask how they are feeling. Offer the EAP number if appropriate.
- Reassure the member again that the union will be there for them and that they can reach out if they think of anything that was missed.
- Tell the member to let the union know as soon as they hear anything from management.

- Once the decision is rendered, the member should request a copy of the Investigation Report. If the employer won't provide it, contact the CIU national office as the member has a right to be provided with a copy of this document.

4. The pre-disciplinary meeting

- Meet with your member to explain the purpose of the meeting. Management has determined that the allegations were founded and are providing the member with an opportunity to present any mitigating factors. They may also be seeking clarification or asking for evidence to support any defence the member put forward during the fact-finding exercise.
- Discuss strategy. Compile a list of mitigating factors that could include the absence of previous discipline, years of service, provocation, and lack of intent. The member must demonstrate that they are forthcoming, understand the problem, and exhibit remorse.
- Ask to be provided with any aggravating factors that could increase the measure of discipline being contemplated by the employer. Go over the Investigation Report with the member and prepare to explain or provide additional information to counter its conclusions. Caution your member that being overly defensive will be interpreted as "not taking responsibility". Challenging the conclusions or issues of procedural fairness, therefore, should be done by the representative and not by the member. Serious flaws in the investigative process are usually best dealt with through the grievance procedure, and mounting a full challenge at the pre-disciplinary meeting is unlikely to help your member.
- If the member has been on administrative leave without pay, request that the member be returned to work, even at a different location or with adjusted duties if applicable.

5. The disciplinary meeting

- The purpose of this meeting is for management to deliver the quantum of discipline (or the decision not to discipline). The investigation is complete, and the disciplinary decision cannot be changed at this meeting.
- The best way to express displeasure at the outcome of this meeting is to file a grievance. Discourage the member from expressing contempt or anger. If they wish to convey a message or make a statement, suggest that you provide the commentary on their behalf. The best practice is usually to say nothing and address the quantum of discipline and any procedural issues through a grievance.

6. Final steps

- If the member has been on administrative leave without pay, ask management whether they will be reimbursing lost wages and benefits. This is particularly the case for members who were placed on administrative leave and subsequently absolved of any misconduct. If the employer does not commit to reimbursement, file a grievance.
- File a Personal Information Request if you suspect that the employer is withholding information (<https://www.canada.ca/en/treasury-board-secretariat/services/access-information-privacy/access-information/request-information/types-atip-requests.html>). This will expedite preparation of the file for a final level consultation if the member files a grievance.