



MEMORANDUM

TO: HONORABLE MAYOR &
CITY COUNCIL

FROM: Sabrina B. Landreth

SUBJECT: Unpaid Leave Questions

DATE: July 29, 2016

City Administrator

Date

Approval

/s/

8/1/16

INFORMATION

A member of the public requested information on the question listed below.

Can the City place Oakland police officers on leave without pay immediately following uses of lethal force against unarmed persons?

The City has a longstanding practice of placing permanent public employees on administrative leave *with* pay following serious incidents while the City investigates. The City's practice results from the 1975 California Supreme Court decision in *Skelly v. State Personnel Board*, and subsequent court cases and is memorialized in the Administration Instruction No. 521 ("AI 521"). This policy and practice extends to all of the City's permanent employees, not just police officers.

AI 521, which has been in place since 1989, provides the due process procedure the City takes before taking serious disciplinary action against permanent employees such as suspension or termination, when warranted. Under AI 521, the City's permanent employees have the right to dispute proposed disciplinary action prior to the actual implementation of the discipline. This is commonly known as a *Skelly* meeting.

Accordingly, AI 521 only allows employees to be involuntarily sent home without pay for a single shift and only in limited situations. If, for example, an employee is unfit for duty due to intoxication, he or she can be sent home without pay for that shift. Under AI 521, any termination or disciplinary suspension that might subsequently result from the incident is subject to the *Skelly* procedure. Accordingly, after the shift in question, the City would place the employee on paid leave if the City determined the employee should not return to work pending the investigation and discipline process. The City does not

place permanent employees, including police officers, in an ongoing no-pay status except as a result of a suspension or termination, both of which occur after the *Skelly* meeting.

Respectfully submitted,

/s/

SABRINA B. LANDRETH
City Administrator

For questions, please contact Chantal Cotton Gaines, Assistant to the City Administrator, at 510-238- 3301.

CITY OF OAKLAND



ADMINISTRATIVE INSTRUCTION

SUBJECT	Employee Discipline - Due Process Requirements	NUMBER	521
REFERENCE	None	EFFECTIVE	January 1, 1989
SUPERSEDE	AI 521 Dated April 29, 1976		

I. PURPOSE

This instruction states the legal basis and City procedures for compliance with due process requirements in employee disciplinary cases.

II. POLICY

As a result of the 1975 California Supreme Court decision in Skelly vs. State Personnel Board, and subsequent court cases, the City must comply with the following due process procedures before taking any serious disciplinary action against permanent employees in order to safeguard the employee's constitutional rights.

- A. Employees must be given prior written notice by their employing department of the proposed action stating the grounds and particular facts upon which the action will be taken before any serious proposed disciplinary measure can be implemented.
- B. Employees must have access to all materials supporting the proposed action and be provided with copies at their request.
- C. Prior to implementation of the proposed disciplinary action, employees have the right to respond either orally or in writing or both, to a manager who has the authority to effectively recommend whether the proposed action should be taken.

III. IMPLEMENTATION RULES

The specific rules for implementing the above due process procedures in disciplinary actions are as follows:

- A. The Skelly case applies only to permanent employees, i.e., those employees who have successfully completed their probationary periods. Actions against all other employees are unaffected, including terminations of part time/temporary employees, discharges of first time probationers, and reductions in class or demotions of permanent employees serving subsequent probationary periods.

- B. Disciplinary actions directly affected by this case are discharges, demotions, and any disciplinary suspensions. Warnings, reprimands, and "improvement-needed" performance evaluations may be administered according to present City practice. In addition, due process procedures are not required in cases of layoff, reclassification or resignation.
- C. A significant requirement of the Skelly decision is that the department give an employee written notice of the proposed disciplinary action to be taken against him/her. The notice letter must indicate the circumstances upon which the proposed disciplinary action is based, relevant disciplinary history, if appropriate (i.e., previous disciplinary action from which the current disciplinary action is progressive for the preceding one to three years), a statement of the proposed disciplinary action, and a statement of the employee's rights appropriate to this preliminary notice. In addition, the department must inform the employee of his/her right to access and review all written materials supporting the proposed disciplinary action and, at the employee's request, furnish copies of such written materials.
- D. The Skelly decision does not always prohibit a department from taking non-disciplinary suspension action without prior notice. On a case-by-case basis, an employee may be removed from the work place prior to receiving his/her "Skelly" rights for the following types of situations:
1. The employee's conduct endangers the health and safety to members of the public, other employees, or to himself/herself, e.g. physical violence.
 2. Arriving late without prior notice after work crews have left the central work location.
 3. Unfitness for duty as a result of alcohol or drugs.
 4. Continued and repetitive refusal to perform job duties.

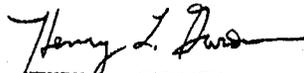
In such cases employees may be sent home for the remainder of the work shift as a result of not being available for work. The no pay status is not regarded as disciplinary for that work shift. Disciplinary actions such as suspension for subsequent work shifts which results from the employee's unavailability for work during that first shift are subject to "Skelly" procedures.

If the non-disciplinary suspension to remove from the work place for investigation of the circumstances is subsequently determined not to be warranted as a part or all of a disciplinary suspension or termination (with appropriate "Skelly" process) the City will then make restitution of any lost income to the employee.

Whenever the circumstances permit, the suspension to remove from the work place or for investigation should be discussed with the Employee Relations Department, Office of Personnel Resource Management, before action is taken.

- E. The court did not establish a clear time frame within which an employee must exercise his/her right to respond in writing, orally, or both to the preliminary notice of disciplinary action. In each case, the employee must receive a reasonable period of time for review of the matter. In the ordinary case it appears that three to four days from the time the employee receives the notice would be an appropriate length of time. However, in a complex case in which the facts were obscure or time is needed for research or review by the employee, a longer period would be appropriate. In any event, request for extension of time by an employee should be granted if the justification for the request is reasonable.
- F. Although there is not a fixed standard as to what level of manager should be appointed to review the employee responses, the manager should be someone other than the person recommending the action and be appropriate to the level of the employee responding. Thus, it would probably be appropriate in most cases to use a manager who is one or two levels above the employee's immediate supervisor. In all cases, that manager should have sufficient authority in the organization to make an effective recommendation on the proposed disciplinary action.
- G. The employee should be given the opportunity to respond during the employee's normal work hours and is entitled to representation by the union or other representative of his/her selection at the meeting.
- H. It should be clear that the notice and the opportunity to respond on the part of the affected employee is separate from and has no relationship to the normal grievance procedure which still must be followed if invoked by the employee.
- I. If an employee is suspended pending investigation, and the investigation reveals additional information which may result in the employee's demotion or discharge, the employee is entitled to receive copies of this material. He/she should also be granted additional time to respond to the new information.
- J. Sworn members of the Police Department, Jailers, and Park Rangers, are subject to the provision of AB 301, Police Officers' Bill of Rights, with respect to employee discipline. The application of AB 301 is covered in departmental rules.

Should you have any questions regarding these procedures or proposed disciplinary action, please contact the Employee Relations Department at extension 3423.


HENRY L. GARDNER
City Manager

LOCAL 790 UNION STEWARDS

CITY HALL CHAPTER

Jessica Brooks - Traffic Engineering
Josephine Camacho - Office of Personnel Resource Management
Dorothy Evans - Office of Community Development
Ray Feeley - Housing Conservation
Beverly Garcia - Office of Economic Development & Employment
Sherry Green - Data Processing
Aram Hodess - Inspectional Services
Fred Ladao - Finance
Bret McElroy - Fire Dispatch
Gary Needles - Housing Conservation
Janice Patten - Traffic Engineering
Gwen Pittman - Traffic Engineering
Barbara Proctor - Social Services
Elizabeth Sharp - Finance
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Barbara Lawson - Main
Pat Haggerty - West Oak.

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Donald Brooks
Al King
Kenneth Collins
Ether Davis
Robert Green
Donnell Satterfield
Michael Sharick
Thomas McElroy

POLICE

Joanne Atherton - Aides & Techs.
Sylvia Carmine - Abandoned Auto
Ronald Deans - Cooks
Betty Dedmon - Jailers
Patricia Fuller - Aides & Techs.

POLICE (cont.)

Jo Smith - Aides & Techs.
Thurman Strickland - Jailers
Ruth Sudds - Clerical
Brent Tolliver - Animal Control
Steven Bristow - Jailers
Hubert Clancy - Jailers
Iona Gage - Aides & Techs.
Buford Thompson - Jailers
Richard Gholke - Dispatchers
Wayne King - Property
Jennie Pace - Jailers
Willie McIntyre - Jail Utility
Jenny Summers - Police Radio
Alma Padill - Clerical
Eve Locke - VDT Coordinator