

**COUNTY OF SAN DIEGO
ADMINISTRATIVE MANUAL**

SUBJECT: LIBERTY INTEREST

ITEM
NUMBER **0080-04-05**

DATE: AUGUST 29, 2011

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Purpose

To explain the meaning of liberty interest and how it relates to termination of employment during a probationary period.

Background

Civil Service Rule 4.2.5 states in part "A probationer dismissed at any time within the probationary period shall have no right to appeal to the Commission in regard to his/her separation or performance appraisal. A probationer who alleges facts showing a violation of his/her liberty interest shall be entitled to a hearing in accordance with rules, procedures or policies implemented by the Commission and/or Director." A definition of Liberty Interest is as follows: "liberty interest emanates from the Fourteenth Amendment to the Constitution which provides that no State shall deprive any person of liberty without due process of law."

Policy

1. In *Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300, 304–305 the California Supreme Court states that "it is well established that an at-will [public] employee's liberty interests are deprived when his discharge is accompanied by charges that might seriously damage his standing and associations in his community or impose on him a stigma or other disability that forecloses his freedom to take advantage of other employment opportunities.' " ([81 Cal. Rptr. 2d 174], quoting Board of Regents v. Roth (1972) 408 U.S. 564, 573 [33 L. Ed. 2d 548, 92 S. Ct. 2701] (Roth).) When such a liberty deprivation occurs, a party has a right to a 'name-clearing hearing.'" (Quoting *Holmes v. Hallinan* (1998) 68 Cal.App.4th 1523, 1530.)Where there is a deprivation of a 'liberty interest' the employee's remedy mandated by the Due Process Clause of the Fourteenth Amendment is 'an opportunity to refute the charge' (and)'to clear his name'".
2. *Stretten v. Wadsworth Veterans Hospital* (9th Cir. 1976) 537 F2d. 361 states in part "... a charge which infringes one's liberty can be characterized as an accusation or label given the individual by his employer which belittles his worth and dignity as an individual, and, as a consequence is likely to have severe repercussions outside of professional life..."
3. Liberty interest is not violated if an employee is terminated for incompetence or inefficiency.
4. If a hearing is granted by the Commission, the hearing will be for name clearing purposes only. The Commission does not have the authority to reinstate an individual who has failed his/her probationary period.

Procedure

1. Any individual who is terminated during the probationary period and who alleges violation of liberty interest must file an appeal to the Commission within 60 calendar days after receipt of a copy of termination notice.
2. The appeal must include specific reasons as to why the individual feels a liberty interest has been violated.

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3. The Commission's Executive Officer will administratively review the request for appeal and will place it on the Commission's agenda with a recommendation to grant or deny a hearing. A hearing shall be granted if the appeal alleges facts showing a violation of the individual's liberty interest.
4. If the Commission assigns one of its members to hear the appeal, the Executive Officer will, within five calendar days of the Commission's action, notify the appointing authority to furnish the appellant and Commission with the charges and/or reasons for termination within five calendar days from receipt of notice from the Executive Officer. Such action is necessary because probationary employees do not have Skelly rights, which is a pre-disciplinary safeguard for employees who have completed their probationary periods.
5. Once the charges and/or reasons for termination are received by the appellant and Commission, all other appropriate sections in Rule VII will be followed such as Rules 7.7, 7.7.1, 7.7.2, 7.7.4, 7.12 and 7.13.

Approved:



Walter F. Ekard
Chief Administrative Officer

Responsible Department(s):

Civil Service Commission (Approved 8/3/2011)

Concurring Department(s):

Department of Human Resources