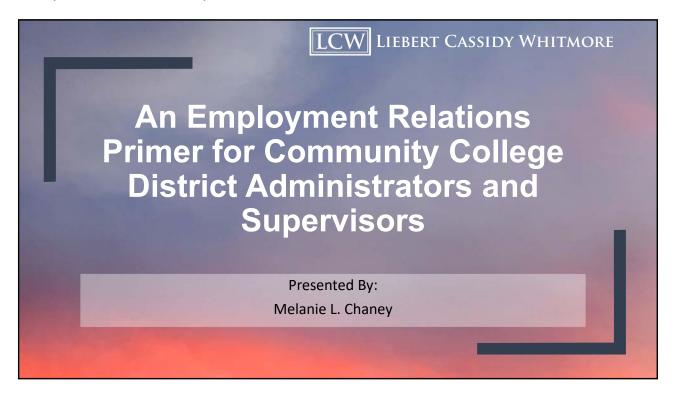
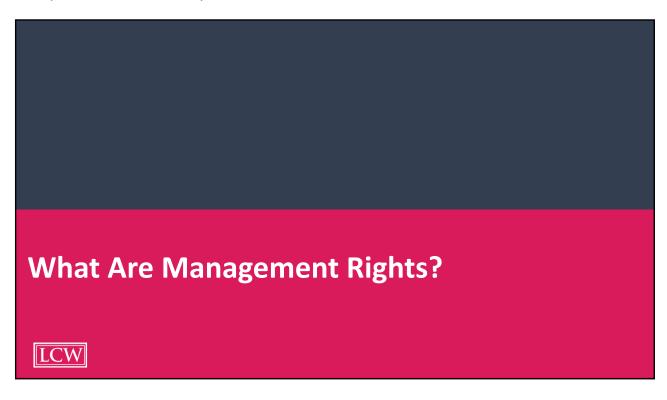
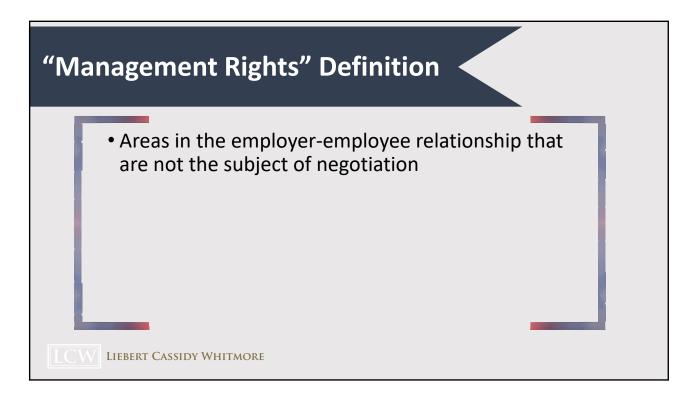
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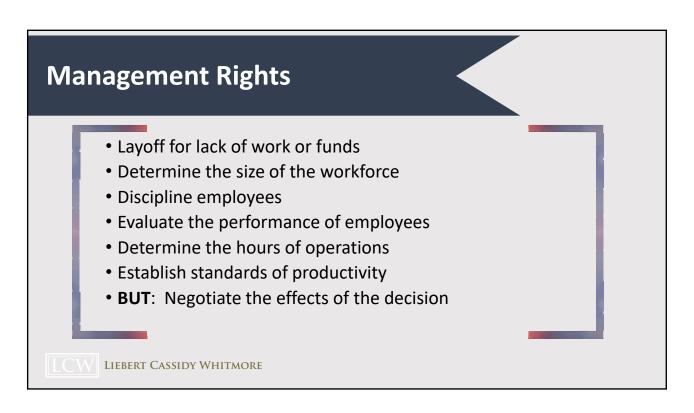
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Management Rights are Subject to Challenge

- Employee groups may seek to gain as much advantage as possible at table
- Management rights and discretion should be well known
- Management rights should be regarded as more of a shield than a sword

LCW LIEBERT CASSIDY WHITMORE

First Line Supervisor's Role

- Ensure implementation and protection of management rights
- Know contents of collective bargaining agreements
- Failure to exercise rights of management may establish a past practice



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Participatory Governance

- Interplay between organizational rights and participatory governance obligations
- Ed. Code §§ 70901 subd. (b)(1)(E) and 70902 subd. (b)(7): Faculty, staff, and students participate in CCD's governance
- Ed. Code § 70901.2 classified employees to task forces, committees, and governance

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Participatory Governance (Cont.) ◀

- Distinction between matters that are and are not
 mandatory subjects of bargaining under EERA
- Participatory governance should not intrude on collective bargaining relationships

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Presented by: Melanie L. Chanev

Case Study: Management Rights

The District has decided its campus police force is not providing the level of security and protection the District strives for on its campus. It wants to contract out these services to the Local City.

The District provides its classified Association notice of its intention to contract with the Local City for these services, and in that same notice, states that it will not negotiate its decision or the effects.



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Case Study: Management Rights

The District proceeds to enter into contract with the Local City but then receives an unfair practice charge from the Association, alleging violations of the Educational Employment Relations Act (EERA). The District responds that it was within its management rights to contract out. The management rights clause of the classified Collective Bargaining Agreement states, in pertinent part:



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Case Study: Management Rights

2.1 Powers and Authority

It is understood and agreed that the District retains all of its powers and authority to direct, manage and control to the full extent of the law. Included in but not limited to those duties and powers are the exclusive right to: determine its organization; direct the work of its employees; determine the times and hours of operation;



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Case Study: Management Rights

determine the kinds and levels of services to be provided, and the methods and means of providing them; establish its educational policies, goals and objectives; insure the rights and educational opportunities of students; determine staffing patterns; determine the number and kinds of personnel required; maintain the efficiency of District operations; determine the curriculum;





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Case Study: Management Rights

build, move or modify facilities; establish budget procedures and determine budgetary allocation; determine the methods of raising revenue; and contract out work. In addition, the District retains the right to hire, classify, assign, transfer, evaluate, promote, demote, terminate, and discipline employees, and all other rights and privileges not expressly waived by this Agreement or requirements of the law.



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Case Study: Management Rights

Limitation by Agreement

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the District, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith,



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shall be limited only by the specific and express terms of this Agreement, and then only to the extent such specific and express terms are in conformance with the law.

<u>Question</u>: Was the decision to contract out police services a matter within the scope of representation?

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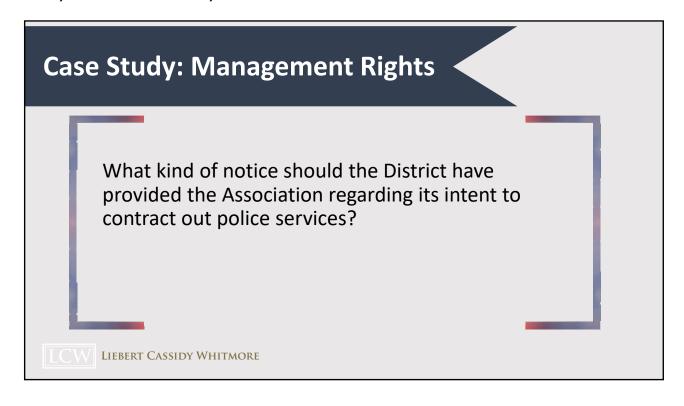
Case Study: Management Rights

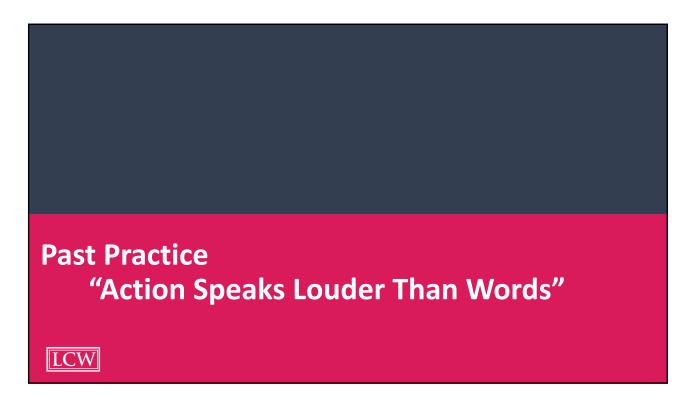
Was the District within its management right by entering into a contract with the Local City for police services?

Did the District violate the EERA by not negotiating with the Association the "effects" of the District's decision to contract out police services?

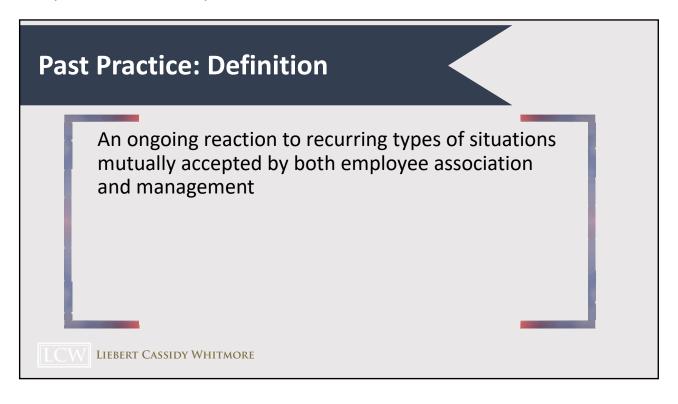


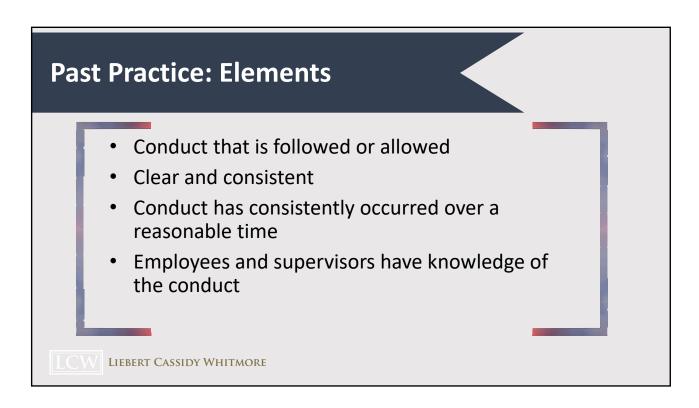
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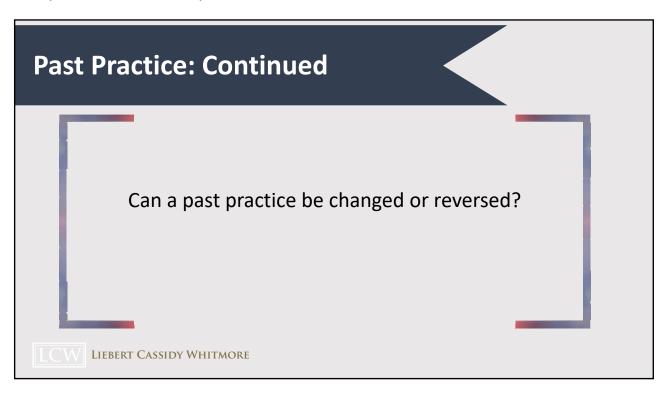


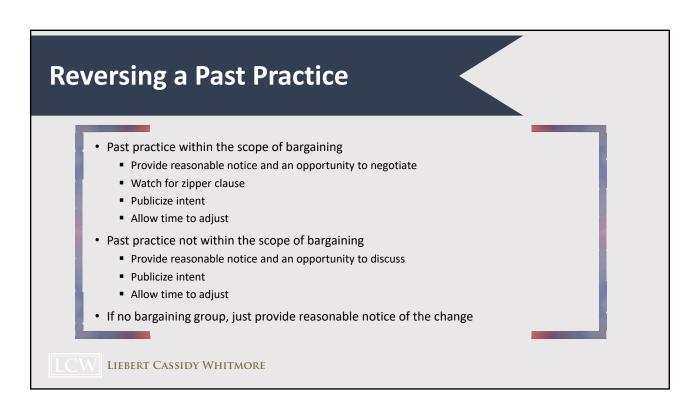
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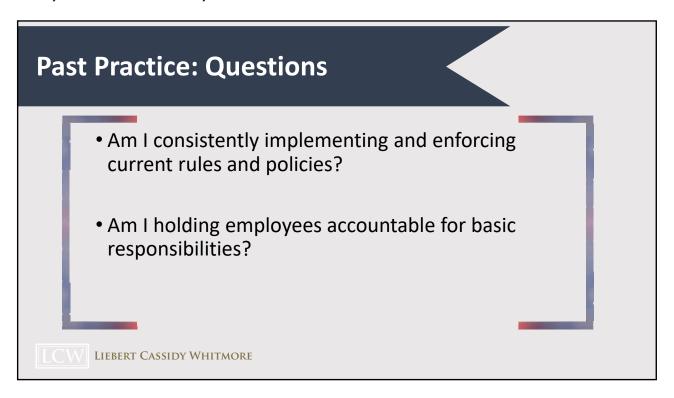


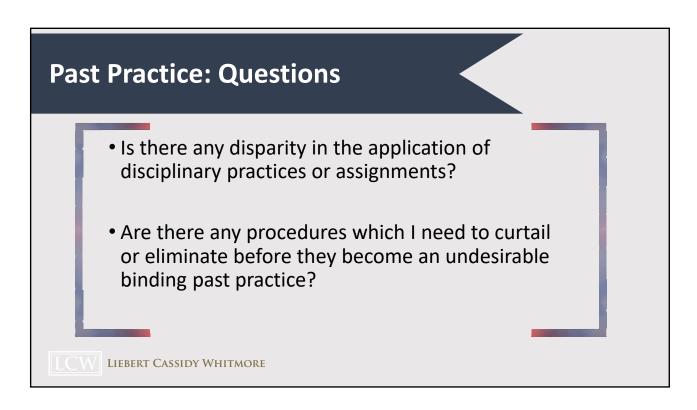
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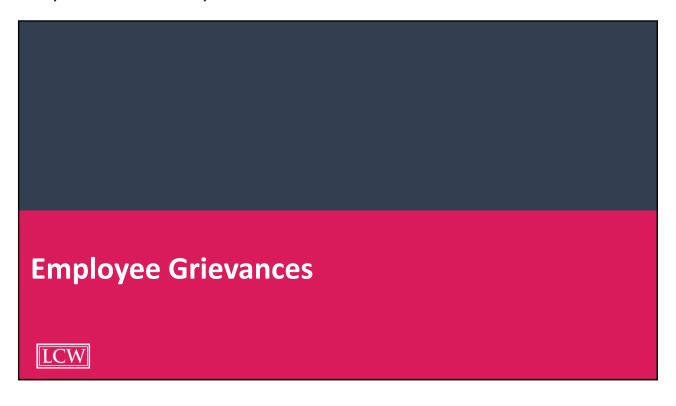


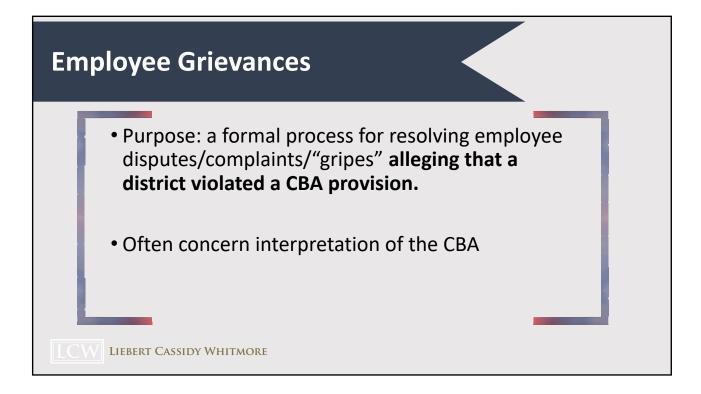
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Presented by: Melanie L. Chaney

Employee Grievances

PRACTICAL ADVICE

- · Prepare for meeting
- Listen carefully at the meeting
- Get the facts/investigate
- After meeting issue response/answer
- Follow-up: has the problem been solved?

DO NOT SETTLE A GRIEVANCE WITHOUT FIRST **NOTIFYING HR**



LIEBERT CASSIDY WHITMORE

Case Study: Past Practice & **Grievances**

Sally Brown is an Administrative Assistant at the Hill-Crest Community College District, which is comprised of two campuses, the Hills and the Crest. The two campuses are 40 miles apart. Sally is also the job steward for the classified association at the District, as well as the chair of the bargaining team. Sally has been very active in the Union,



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participating in negotiations and meetings with District officials, representing unit members, investigating grievances and participating in arbitration hearings and PERB proceedings.

In 2020, President Smith began working at the Hills campus. On September 4, 2020, President Smith gave Sally a memo concerning her use of release time. The memo stated, in part:



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Case Study: Past Practice & Grievances

"In order to insure that we have a successful year, it is important that you understand the protocol for leaving our campus, and my expectations. This is important for you because I am aware that you hold a position with the local classified union chapter. Therefore, I am informing you of the following:



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Case Study: Past Practice & Grievances

- Union-related calls and business should be limited to before or after the instructional day, your breaks, and your lunch hour.
- Job steward responsibility shall be carried out consistent with Article 5.2.1 of the collective bargaining agreement; in short, prior notification and approval are required if you feel you need to

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Case Study: Past Practice & Grievances

leave our campus during the workday to carry out your role as job steward.

• It is your responsibility to complete the necessary forms if you are fulfilling your role as job steward."



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Case Study: Past Practice & **Grievances**

On January 29, 2021, Sally verbally requested release time. President Smith denied the request. The union did not complain.

On May 7, Sally was contacted at home by a bargaining unit member and asked to serve as a union representative at a disciplinary meeting the next morning. On May 8, Sally verbally notified President Smith that she needed to attend the



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Case Study: Past Practice & **Grievances**

disciplinary meeting. Smith denied the request for release time.

Val, the classified union labor relations representative, called Smith that same day regarding the denial of release time. President Smith stated that release time had been denied by the Vice Chancellor of Human Resources, Victor.





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Val pursued the matter and asked Victor in an email message dated May 11, for further clarification regarding the denial of release time. Victor responded by e-mail on May 12, affirming that the District would follow the provisions of the parties' collective bargaining agreement.



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Case Study: Past Practice & Grievances

Article 5.2.1 of the collective bargaining agreement, regarding job steward release time, states, in part:

A job steward shall be granted a reasonable amount of time to participate in the investigation, preparation, writing, and presentation of grievances.





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The job steward shall arrange with the grievant's supervisor for a mutually agreeable suitable time to conduct such business. The leave utilization form shall be submitted upon return to the worksite when verbal approval is granted. Prior notification to the immediate supervisor/manager/ administrator shall be in writing.



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Case Study: Past Practice & **Grievances – Question 1**

The Association contends that the District violated the Educational Employment Relations Act (EERA) by unilaterally changing the release time policy for job stewards in May 2021, contending that the District's practice consisted of granting release time in response to verbal requests for release time. Did the District commit an unfair practice?



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Case Study: Past Practice & **Grievances**

The District determined the need to layoff the least senior administrative assistant. Although it would not be laying off Sally, it determined the need to transfer her because of a lack of funds or lack of work.

In an August 13 letter, the District formally notified Sally that she would be involuntarily transferred to Crest. Sally was instructed to report for the new academic year on August 25.



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Case Study: Past Practice & **Grievances**

The letter explained that the involuntary transfer resulted from the elimination of administrative assistant positions due to a lack of funds or lack of work for the upcoming academic year.

Sally did not want to work at Crest because the remaining bargaining team members worked at the Hills campus, and she would not then be able to meet with the rest of the bargaining team during breaks and lunch.





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Case Study: Past Practice & **Grievances**

Article 13.6 of the parties' CBA states:

13.6.1 An involuntary transfer may be initiated by the District and shall be based exclusively on the work-related needs of the District and will not be for disciplinary or capricious reasons. A bargaining unit member shall not have his/her assigned hours reduced, or shift changed, as result of the District-initiated transfer, but shall be constituted only by mutual agreement with the Association and concurrence of the bargaining unit member.



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Case Study: Past Practice & **Grievances**

13.6.2 In the event that circumstances require that a bargaining unit member be transferred on an involuntary basis, the bargaining unit member and the Association shall be informed of the reason(s) in writing prior to such action and shall be afforded an opportunity to meet with Human Resources regarding the proposed transfer.



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Case Study: Past Practice & **Grievances – Question 2**

The Association contends that the District's past practice limited "involuntary transfers" to situations where the District would transfer an employee in lieu of layoff or transfer the employee in lieu of discipline. Is the District's decision to transfer Sally for a third reason, because of a lack of funds/lack of work a violation of the EERA?



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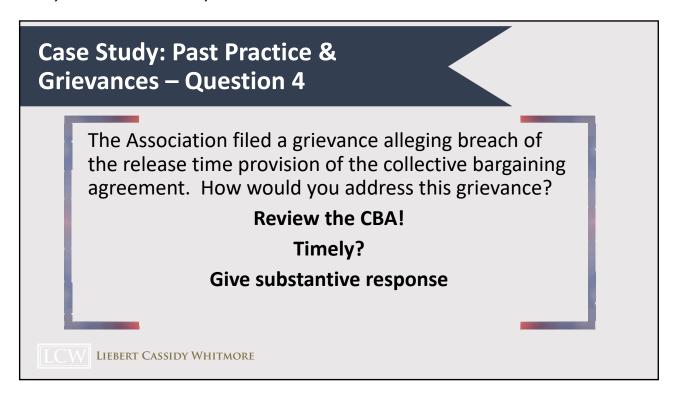
Case Study: Past Practice & **Grievances – Question 3**

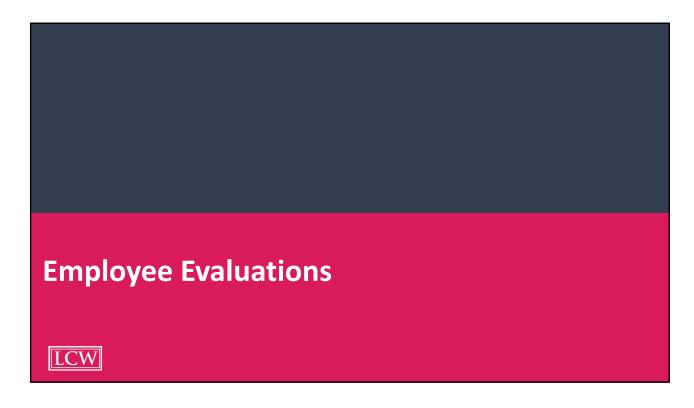
The Association contends that the District retaliated and discriminated against Sally for performing her duties as a job steward, arguing that the District's involuntary transfer of Sally to the Crest campus violated the EERA. Did the District retaliate or discriminate against Sally for her exercise of protected activity?





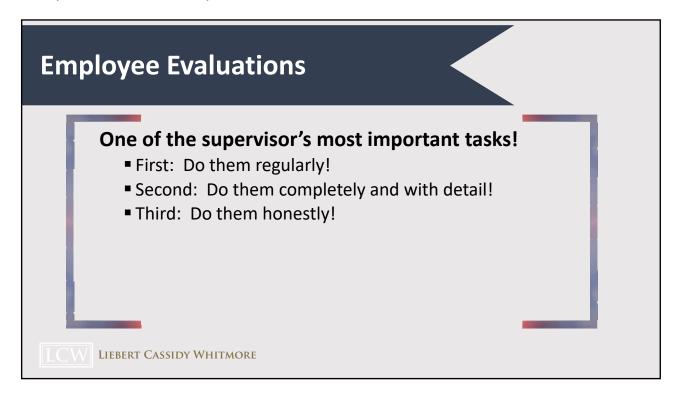
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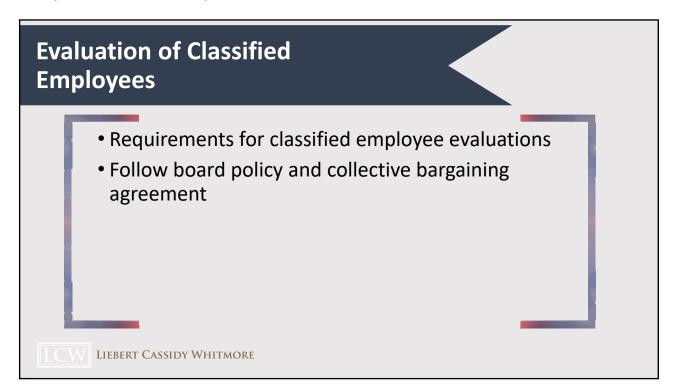
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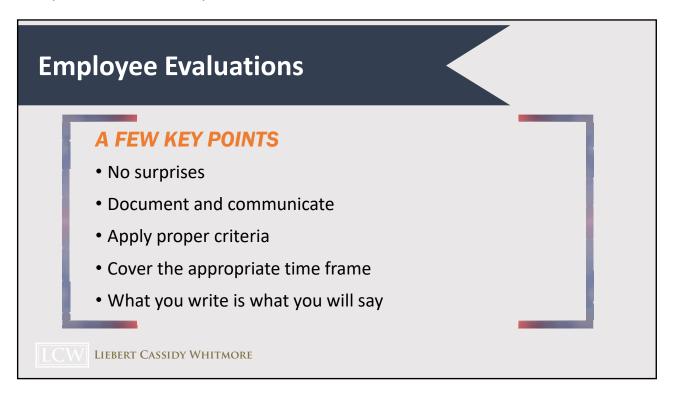
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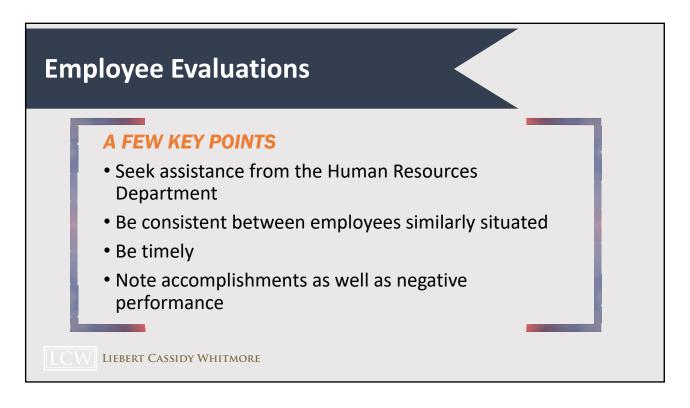


How to Provide an Effective Evaluation

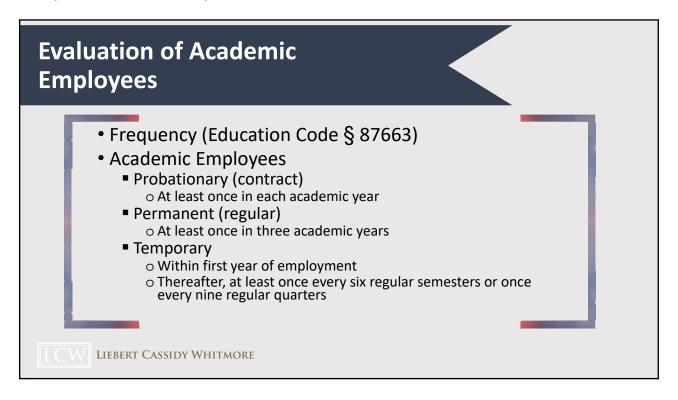
- Establish the criteria to be evaluated
- Gather and document your observations "Supervisor's file"
- Prepare the written evaluation
- The face-to-face meeting
- Discuss and set an action plan of goals and objectives
- Provide coaching and follow-up

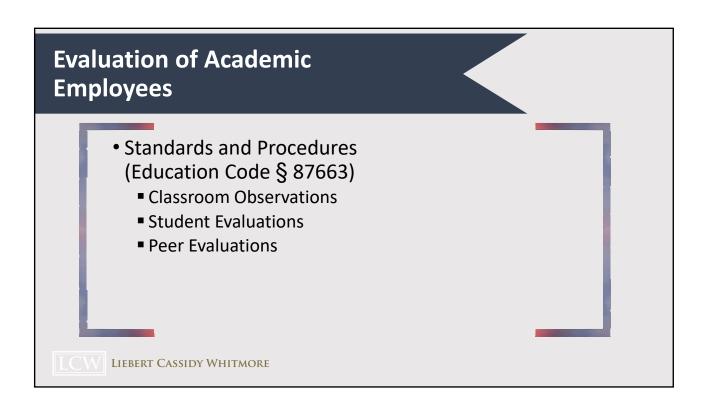
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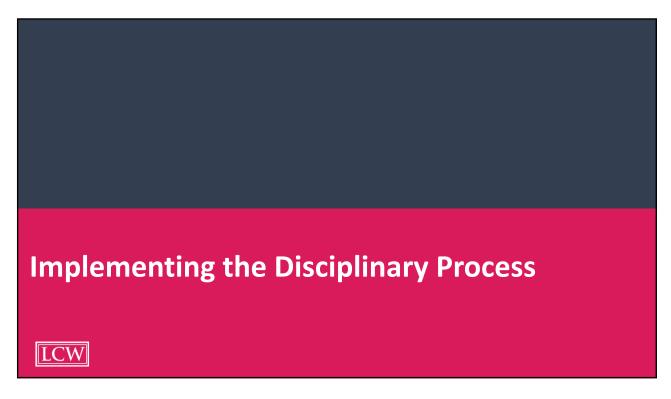


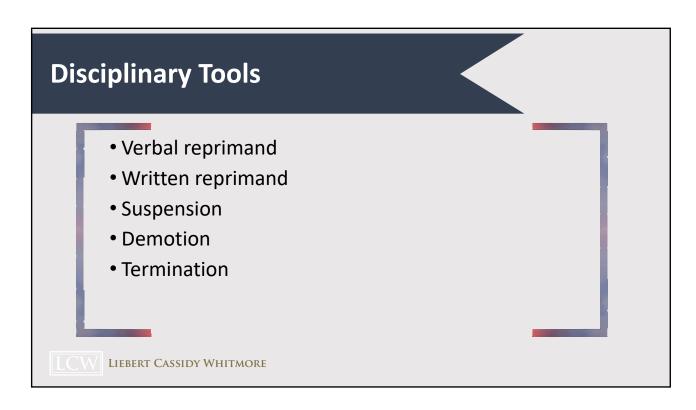
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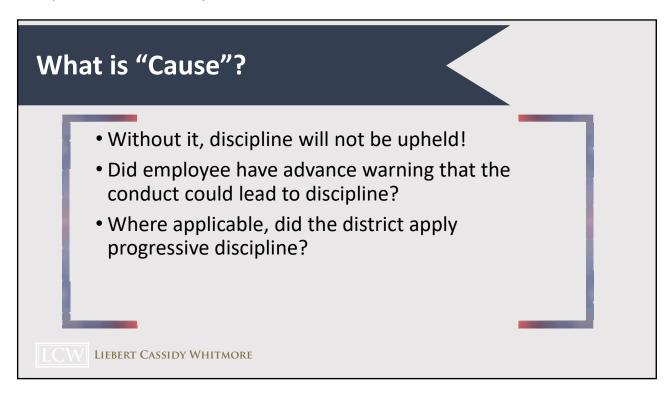


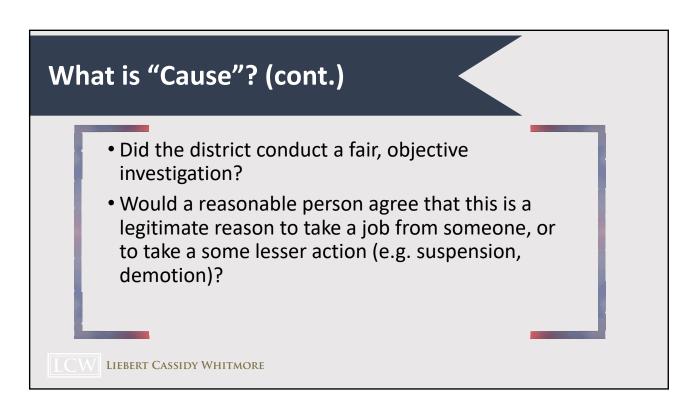
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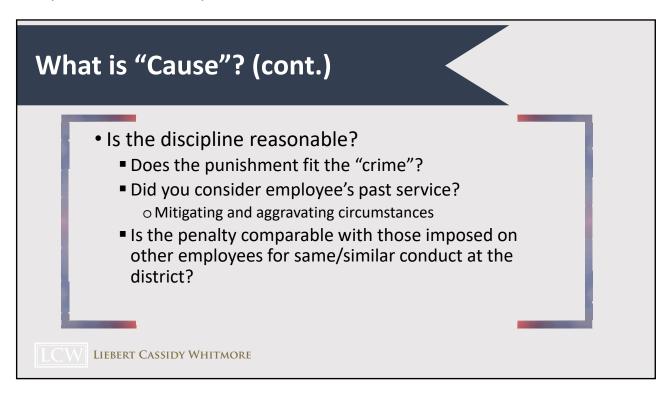


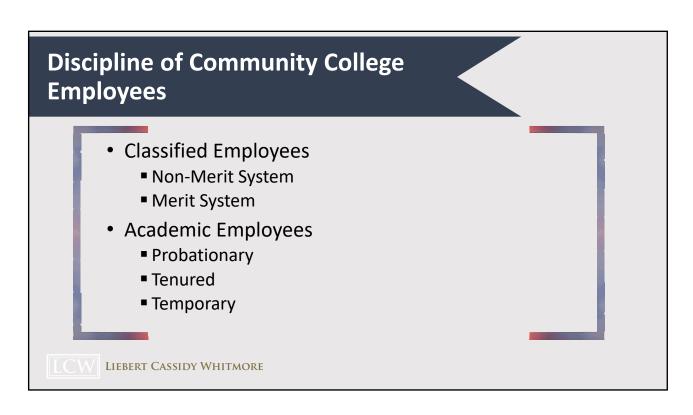
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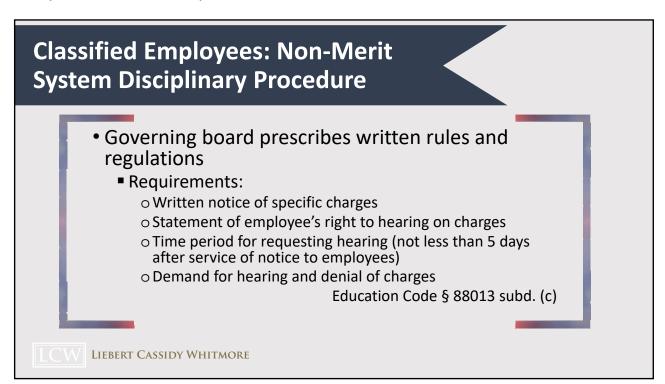


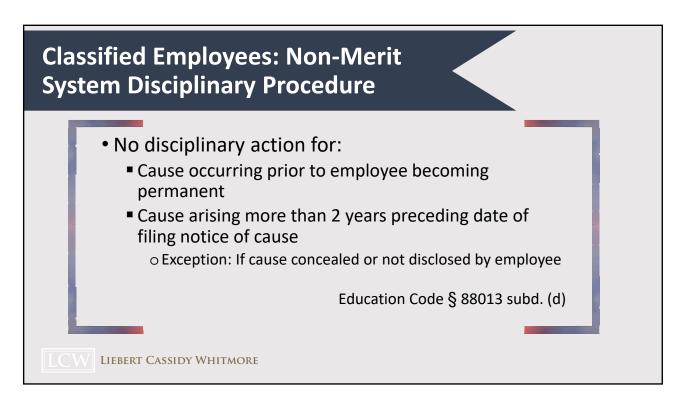
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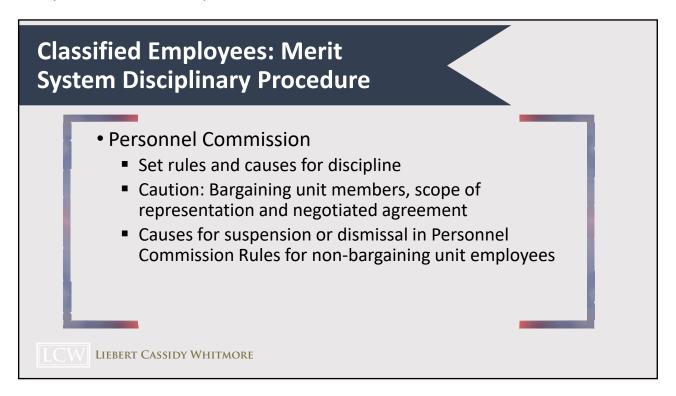


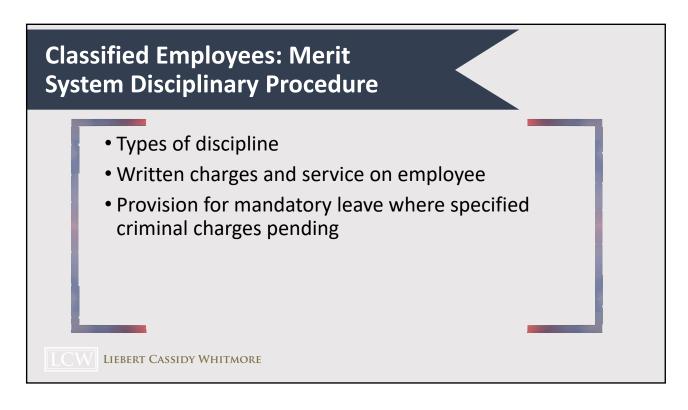
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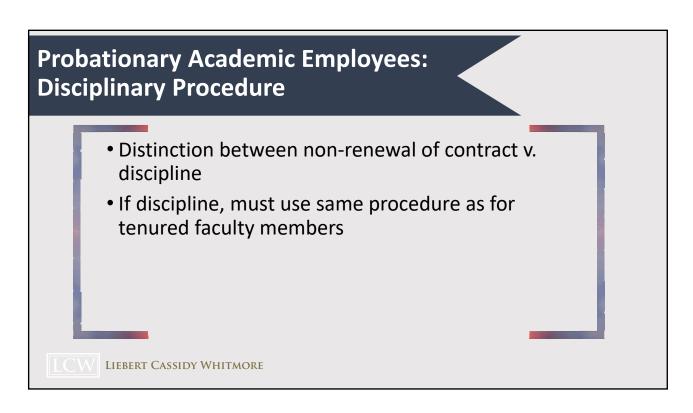
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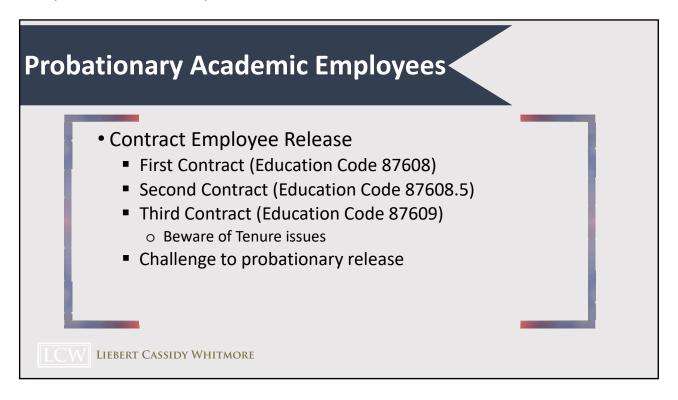


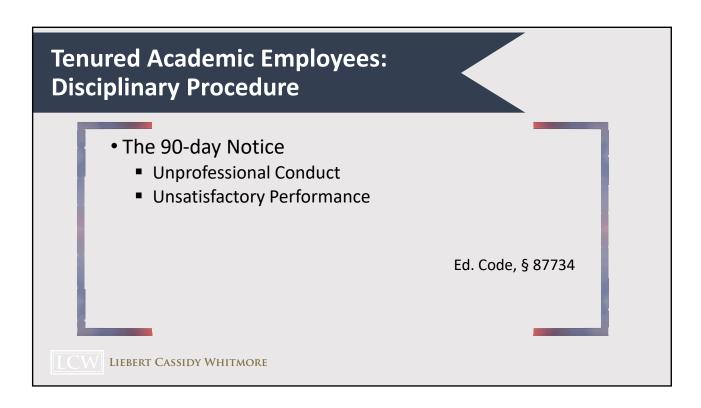
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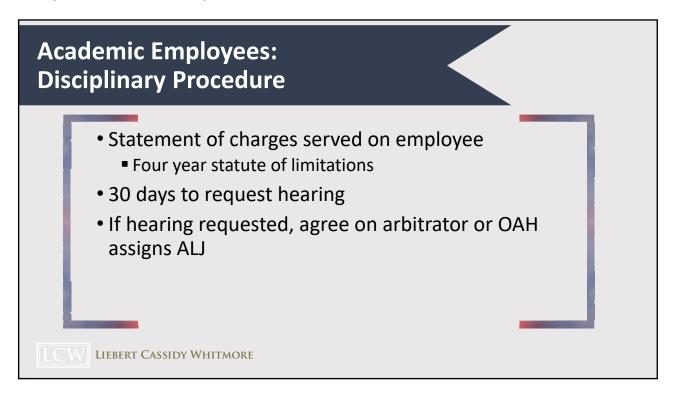


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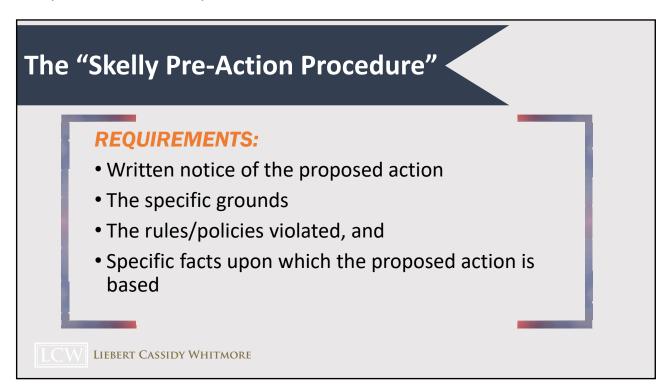


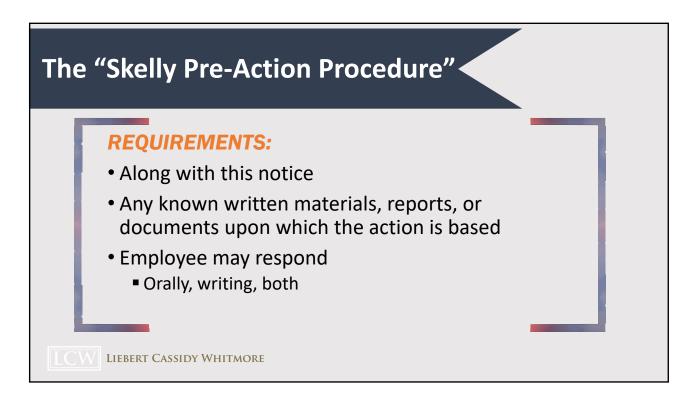
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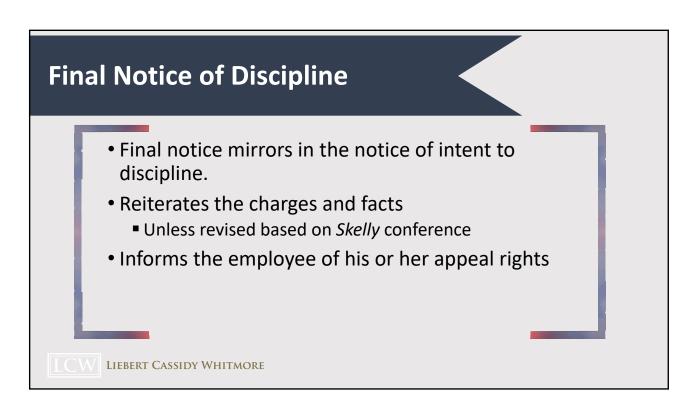
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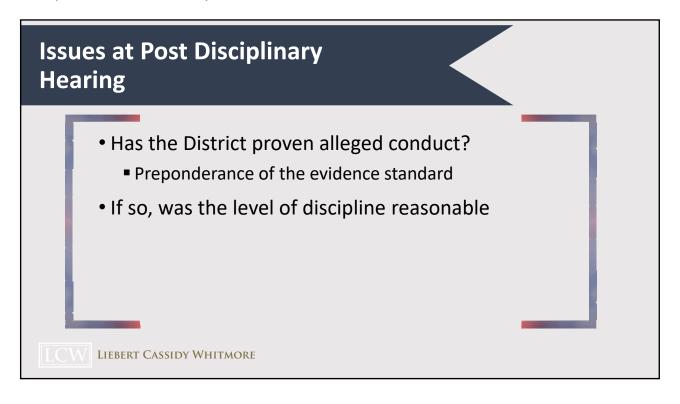


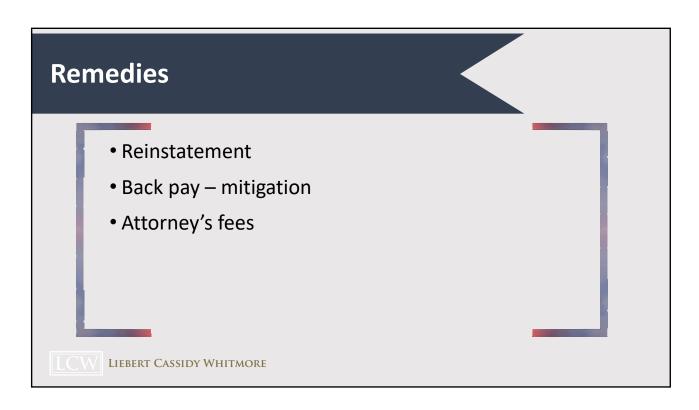
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Presented by: Melanie L. Chaney

Case Study: Implementing Discipline

Carrie and Marcie work as administrative assistants in your office. You are the new Human Resources Director at the District. Marcie produces good quality reports and finishes complex assignments well before the assigned deadlines. You have been giving her additional assignments since she always completes them without working overtime. On occasion during the past five weeks, you have heard



LIEBERT CASSIDY WHITMORE

Case Study: Implementing Discipline

Marcie yelling at Carrie. You did not do anything about this since Marcie is a good performer and you are new to the District.

Recently, Carrie came to you to complain about Marcie's yelling, contending the yelling is inappropriate and demeaning.





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Presented by: Melanie L. Chaney

Case Study: Implementing Discipline

Carrie told you Marcie is yelling at her to pick up the pace and claiming that Carrie is always missing deadlines. You have been slowly learning this about Carrie as well. Carrie's missing deadlines is another reason you have been giving Marcie additional assignments; these assignments should have been assigned to Carrie to balance the workloads.



LIEBERT CASSIDY WHITMORE

Case Study: Implementing Discipline

You review both Marcie's and Carrie's personnel files. You find that the previous Human Resources Director had issued Marcie a reprimand for yelling at an applicant who asked questions Marcie told the applicant were stupid. There is no prior discipline in Carrie's file but there is a negative performance evaluation for Carrie's high level of absenteeism. Since you have been there, Carrie has had great attendance.





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Presented by: Melanie L. Chaney

Case Study: **Implementing Discipline**

- 1. Should you address Marcie's yelling?
- 2. Should you discipline Marcie for her yelling at Carrie? If so, what should be the level of discipline?
- 3. What, if any, issues do you need to address with Carrie?



LIEBERT CASSIDY WHITMORE

Case Study: **Discipline Gone Wrong**

You have decided to discipline Tom with a 5 day suspension for sleeping on the job. Tracy witnessed Tom's misconduct. You did not interview Tom as part of an investigation. You recognize that the discipline will depend upon one witness' testimony against another, Tom. Tracy will be leaving in a couple weeks to move to New York.



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Presented by: Melanie L. Chaney

Case Study: Discipline Gone Wrong

You conduct a *Skelly* meeting with Tom and the classified association representative. During the meeting, Tom does not speak but his representative denies that Tom was sleeping. You issue the final notice of discipline, and also charge Tom with dishonesty for his representative's denying Tom was sleeping. Tom files an appeal.



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Case Study: Discipline Gone Wrong

The matter proceeds to a hearing before a neutral hearing officer. You are trying to get Tracy to return from New York but she cannot leave New York and her new job.

You testify based upon your conversations with Tracy to support the discipline.





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For the first time, you also produce pictures of Tom asleep at work from Tracy's work cell phone that she had given you as part of the investigative interview. Tom testified that he was not sleeping but had closed his eyes for a brief moment while waiting for a phone call from his supervisor. Tom works the evening shift.



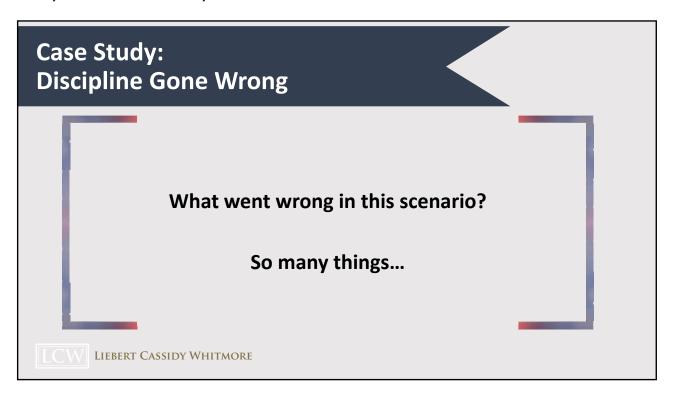
LIEBERT CASSIDY WHITMORE

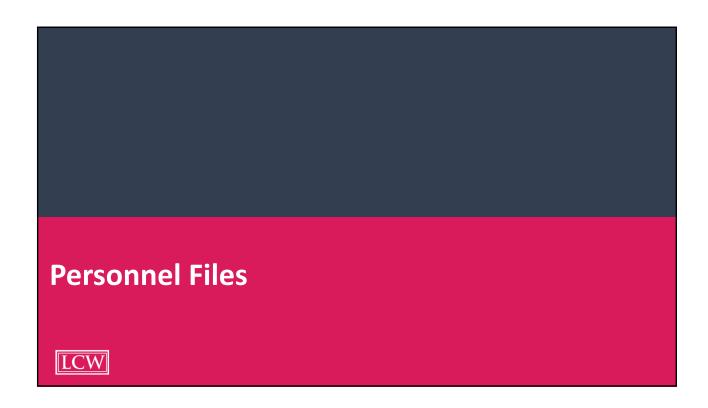
Case Study: Discipline Gone Wrong

His supervisor testified that he did in fact call Tom and Tom answered and responded to the call immediately. Tom completed all his tasks that day. The hearing officer found no cause for discipline and finds in favor of Tom.



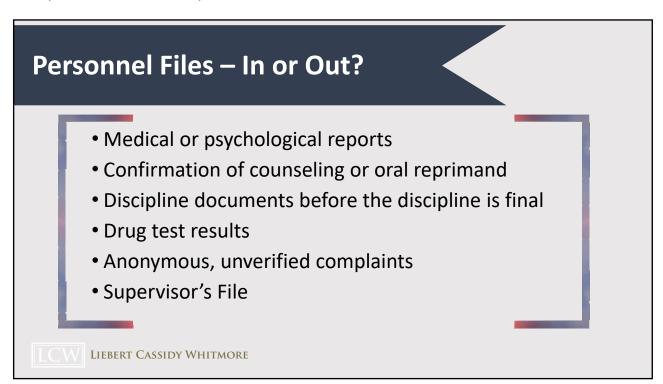
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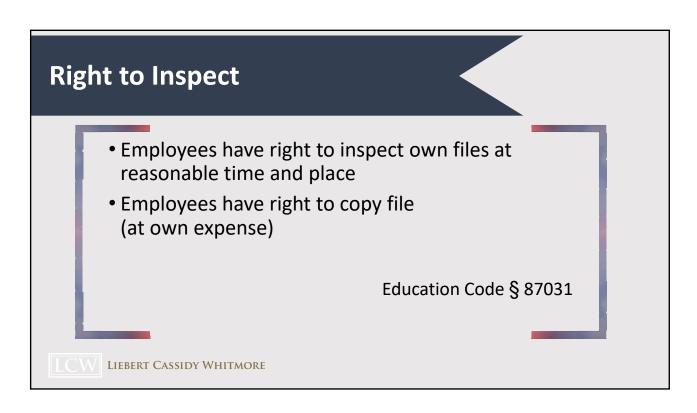






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