

Elements of Due Process or Fair Process (as commonly recognized in the United States)

I. Due process may be seen as a matter of specific elements of process prescribed by various laws, statutes or policies, for example:

- Notice to the defendant; right to know the charges or all the major elements of the charges. In some cases the right to know the rules and policies that are relevant; in some cases the right to know who is the accuser;
- Timeliness of the process and of each step of the process;
- Right to present one's own evidence; in some cases the right to question the evidence brought by the other side; in some cases the right to face or meet with the accuser; the right to respond to the concerns that are raised;
- Right to accompaniment and someone to advise; in some cases the right to legal counsel;
- A fair and impartial fact-finding; a fair and impartial hearing;
- Right to a decision that is not capricious, unreasonable or arbitrary in nature;
- Notice of the decision; in some cases the right to a written decision with a statement of the reasons for the decision;
- In some cases the right to an appeals process;
- Freedom from retaliation, especially when raising a complaint in a responsible manner and in good faith;
- In some cases the right to have one's case treated the same way as similar cases;
- In some cases the right of privacy, as far as possible, for all concerned.

II. Due process may also be seen as "that which is due under the circumstances." Sometimes people use the term just to mean "the process I think I deserve" whether as a matter of law, employer policy, or just what the individual thinks is "fair."

Because of the considerable ambiguity of the term "due process," a prudent manager may prefer the term "fairness" — or speak only of specific elements of procedure — rather than risk serious miscommunication. In particular, one does not wish to appear to have promised any specific element of procedure which an employer does not necessarily guarantee, such as an open hearing or right of cross-examination.