

JUST CAUSE TO DISCIPLINE OR DISCHARGE UNIONIZED EMPLOYEES

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THE SEVEN FACTORS OF JUST CAUSE

Most nonunionized employers operate under an at-will employment relationship, meaning either the employer or the employee may end the employment relationship with no notice or reason. However, employers with unionized workforces have collective bargaining agreements that usually proscribe that discharge or discipline of employees can only occur if the employer can establish “just cause” for doing so. When analyzing and judging the employer’s evidence supporting just cause in discharge and discipline cases, arbitrators typically apply the so-called “Seven Tests of Just Cause” which were originally developed by an arbitrator in a 1966 grievance arbitration. A negative response to any of the following seven questions may lead an arbitrator to invalidate the employer’s disciplinary action:

(1) NOTICE. Did the Employer give the Employee forewarning for or foreknowledge of the possible or probable disciplinary consequences of the Employee’s conduct?

(2) REASONABLE RULE AND ORDER. Was the Employer’s rule (which the Employee was forewarned of) reasonably related to (a) the orderly, efficient, and safe operation of the Employer’s business and (b) performances that the Employer might expect of the Employee?

(3) INVESTIGATION. Did the Employer, before administering discipline to an Employee, make an effort to conduct an investigation and discover whether the Employee did in fact violate or disregard a rule or order of the Employer?

(4) FAIR INVESTIGATION. Was the Employer’s investigation conducted fairly and objectively?

(5) PROOF. Did the Employer obtain substantial evidence or proof that the Employee was guilty as charged?

(6) EQUAL TREATMENT. Has the Employer applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?

(7) PENALTY. Was the degree of discipline administered by the Employer in this case reasonably related to (a) the seriousness of the Employee’s proven offense and (b) the record of the Employee in his service with the Employer?

Unionized employers must be able to demonstrate these important considerations to prove their case to an arbitrator. Employers should consider whether they have such evidence before discharging or disciplining an employee who has “just cause” protection. Employers should consider creating instructions that set out these different considerations and ensure that decision makers address these items before making a disciplinary decision.

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