

Seven Tests of Just Cause

The University's personnel policies and collective bargaining agreements refer to disciplinary or corrective action as a consequence of an employee's misconduct or failure to perform satisfactorily. They do not provide a definition of just or proper cause for taking such action. Over the years, the opinions of arbitrators in discipline cases have established a set of guidelines or criteria to be applied to the facts of each case, commonly known as the Seven Tests of Just Cause.

1. Reasonable Rule or Work Order. Is the rule or order reasonably related to the orderly, efficient, and safe operation of the business?

- Is the rule or instruction straightforward and stated in language that is easy to understand?
- Have you been consistent and unbiased in applying the rule or standard? Is it applied consistently throughout your department?
- What is your department's discipline record for violation of this rule or standard?

2. Notice. Did the employee receive adequate notice of the work rule or performance standard and the possible consequences of failure to comply?

- Is the violated work rule or performance standard published? Is it up to date and relevant to the business needs of your unit?
- How was the employee made aware of it (department orientation, bulletin board, desk manual, staff meeting notes, prior oral or written communication, employee's job description, written standards)?
- What evidence do you have that the employee is aware of it, and understands it (new employee orientation, signature on a routing slip, signoff page)?
- Have you reviewed the employee's personnel file?
- Has this issue been raised in performance appraisals or previous disciplinary actions? If so, how recently?
- Prior notice may not be necessary in cases of serious misconduct such as theft, insubordination, or job abandonment.

3. Sufficient Investigation. Did you conduct an investigation before making a decision about taking disciplinary action?

- Why do you suspect that a work rule violation or performance discrepancy occurred?
- Can the employee perform the task? Is there a history of successful performance, or could the employee need additional training?
- Are there witnesses other than you? List others who may have knowledge of the issue through involvement or as witnesses (supervisors, employees, clients). Interview them and take notes.

- Are there written records pertinent to the case in your department or elsewhere on campus? Should in-house records be secured under lock and key during the investigation?
- Are there written processes or procedures which have a bearing on the case?
- Is there equipment that should be examined by you or experts?
- Do you need to call Internal Audit or the Campus Police? If you suspect misappropriation of University resources, you should immediately contact Internal Audit and your L/ER Analyst. Your own investigation will proceed, but other offices may provide information which becomes part of your evidence.

4. Fair Investigation. Was your investigation fair and objective?

- How long ago did the alleged infraction occur? (Unnecessary delays may send a message that you don't consider the infraction to be serious.)
- If you think you already know what happened, have you looked only for evidence to support your theory?
- Should you conduct the investigation, or are you too close to what happened to be objective?
- Should the employee remain on the work site during the investigation? (Do you fear sabotage, or is the employee a threat to others?)
- Have you made every effort to reconcile conflicting statements or other conflicting evidence? Are you prepared to discard what you cannot validate?
- Have you given the employee a chance to appear (with a representative if applicable), to tell their side of the story and respond to the evidence you have gathered?

5. Proof. During your investigation, did you find proof of misconduct or of a performance discrepancy?

- What conclusions are clearly supported by the evidence you gathered?
- Remember that evidence must be truly substantial, not flimsy or slight, to form a basis for taking disciplinary action.

6. Equal Treatment. Have you dealt with your employees equally, without discrimination?

- Are work rules applied consistently?
- Are all employees held accountable for the performance standards established for their positions?
- Have similarly situated employees (similar records and infractions) received the same discipline?
- What is your department's record for taking disciplinary action for this type of infraction? What is the campus' record? (Explore this with your L/ER Analyst.)

7. Appropriate Discipline. How do you decide what's appropriate?

- Is the discipline you propose to take reasonably related to the seriousness of the problem? (Did the violation pose serious safety problems or create work flow disruptions for the department?)
- Is it reasonably related to the employee's record (length of service and overall performance)? Is this violation part of a pattern?
- Do you have the authorization to take this action, or should you have it reviewed by the next level of management?
- A minor infraction does not merit harsh discipline unless it is a repeat occurrence by the employee.
- Given the same violation for two or more employees, their respective records of service provide the only basis for administering different disciplinary actions without being subject to a charge of discrimination.
- What personnel program is the employee part of (Union contract, PPSM)?
- Consult your Local HR Employee & Labor Relations Representative.