

Disciplinary Meetings

WEINGARTEN RIGHTS

The term "Weingarten Rights" refers to a U.S. Supreme Court decision (420 US 251, 1974) which ruled that an employee has the right to a union representative in any interview the employer might hold that is intended to investigate a possible discipline charge against the employee. *The employee must ask for the representation!*

The Weingarten Rights simply put:

- The right to be informed, in advance, of the subject matter of disciplinary interviews.
- The right to union representation at such an interview.

Often these rights are also included in some form in a collective bargaining agreement in provisions related to discipline. Sometimes a contract might even require that the notice be given in writing and at least 24 hours in advance, for example.

The role of the union representative in a disciplinary meeting:

- Ask for time to talk in private before the meeting
- Take notes & record the names, dates and questions; be another set of eyes and ears
- Secure "due process" and fair treatment
- Be sure that the grievant is not railroaded
- Object to any attempts to anger or frighten the member
- Call a timeout or ask for a break to meet with the member as needed
- Ask for questions to be rephrased or explained as necessary, or ask clarifying questions
- Make no permanent agreements or decisions at that interview
- After the interview: make sure your notes are together and contact your President or UD

JUST CAUSE

A basic principle underlying most disciplinary procedures is that management must have "just cause" for imposing the discipline. This standard often is written into contracts or read into them by arbitrators. Even in the absence of a contract, it sums up the test used by employees in judging whether management acted fairly in enforcing rules. While the definition of "just cause" varies from case to case, one arbitrator has listed seven tests for determining whether an employer had just cause for disciplining an employee:

1. **Was the employee adequately warned of the consequences of the conduct?**
The warning may be given orally or in printed form. An exception may be made for certain conduct, such as insubordination, coming to work drunk, drinking on the job, or stealing employer property, that is so serious that the employee is expected to know it will be punishable.
2. **Was the rule or order reasonably related to efficient and safe operations?**
3. **Did management investigate before administering the discipline?**
The investigation normally should be made before the decision to discipline is made. Where immediate action is required, however, the best course is to suspend the employee pending investigation with the understanding that he will be restored to his job and paid for time lost if he is found not guilty.

4. **Was the investigation fair and objective?**
5. **Did the investigation produce substantial evidence or proof of guilt?**
It is not required that the evidence be preponderant, conclusive, or "beyond reasonable doubt," except where the alleged misconduct is of such a criminal or reprehensible nature as to stigmatize the employee and seriously impair his chances for future employment.
6. **Were rules, orders, and penalties applied evenhandedly and without discrimination?**
If enforcement has been lax in the past, management cannot suddenly reverse its course and begin to crack down without first warning employees of its intent.
7. **Was the penalty reasonably related to the seriousness of the offense & past record?**
If employee A's past record is significantly better than that of employee B, the employer properly may give A a lighter punishment than B for the same offense.

PROGRESSIVE DISCIPLINE

The idea of discipline is to get the offender back on track and not just to punish him or her for the offense. For less severe causes, therefore, the employer may be expected to begin with lighter disciplinary actions and resort to termination only when every attempt has been made to correct the offending behavior. For example, the following sequence of disciplinary actions is commonly employed:

1. **Oral reprimand**
2. **Written reprimand**
3. **Short-term suspension or paid suspension (week or less)**
4. **Long-term suspension or unpaid suspension (30 days or less)**
5. **Termination**

Whatever is used must be carefully and consistently applied to avoid violating Just Cause Test # 6.

SUNSET CLAUSES

An employee should regularly review their personnel file. Items that are disciplinary in nature (a letter of reprimand, for example) may be removed at the request of the employee and the consent of the employer if they are deemed to no longer be relevant due to time or circumstances.

A proactive way of addressing that issue is to attempt to get a "sunset clause" included in any written reprimand that will be placed in a personnel file. A sunset clause simply states that should no further issues arise that are similar in nature to the issues leading to discipline, the letter will be removed at a set time (often one or two years).

A sunset clause is typically included at the end of the letter or reprimand and might say something like:

"Should no further instances occur similar to those addressed in this reprimand, this document will be removed from Employee A's personnel file after two years."

Sources:

<http://www.hawaficio.org/j-coz.html>
<http://labored.missouri.edu/research/justcause.htm>
<http://www.umass.edu/usa/justcause.htm>