

## Test for “Just Cause”

By Ronald W. Brown

Many employers have wisely adopted a written policy of “at-will” employment. Such a policy provides that either the employer or the employee may terminate the employment relationship at any time, for any reason or no reason. An effective at-will policy will foreclose any lawsuit for breach of an express or implied employment agreement. However, an “at-will” policy will not prevent a former employee from bringing an action against the employer for a wide host of other claims, such as unlawful discrimination, retaliation or termination in violation of public policy. In these types of claims, an employer will frequently be required to defend its termination or disciplinary action by demonstrating “just cause.” Employers covered by collective bargaining agreements are also typically required to demonstrate “just cause” for any disciplinary action involving a covered employee. Accordingly, employers are cautioned against taking any type of disciplinary action until all the facts and evidence are considered. Before you administer disciplinary action, you should be able to receive a “yes” answer to each of the following questions. When the “yes” answers to some questions are strong, and the “no” answers are weak, a reduced form of disciplinary action may be justified. Employers who can answer “yes” to each of these questions should be able to successfully defend against any challenge to the propriety of disciplinary action. ■

1. The basis for discipline does not violate any statute or public policy (federal, state or local).
2. Does the employee know and understand the rule and the possible disciplinary consequences of violating the rule?
3. Is the company’s rule necessary for the orderly, efficient and safe operation of the business?
4. Did the company investigate to determine whether the employee actually violated the rule? This includes investigating the employee’s statement of defense.
5. Was the company’s investigation conducted fairly and objectively?
6. During the investigation, did the company obtain substantial evidence or proof that the employee was guilty?
7. Has the company applied its rules and discipline fairly and consistently to all employees?
8. Will the degree of discipline be reasonably related to the seriousness of the proven offense as well as the employee’s length of service and work record?
9. Has the employee been honestly informed of the reasons for discipline (applies to all termination decisions)?