



JUST CAUSE Using the Seven Tests

One of the main reasons workers join unions is to gain protection against unfair and unjust discipline that employers hand out. Stewards must be ready to handle all sorts of discipline cases, from warnings to suspensions to firings. Stewards must be ready to deal with situations of gross discrimination by the employer on who gets disciplined, to dealing with union members who sometimes seem to go out of their way to get themselves fired.

Our main contractual weapon is often summed up in one short sentence, "Employees shall be disciplined or discharged only for "just cause." The importance of a sentence like this is that it binds the employer to imposing discipline not just for any reason (cause) but the reason has to be a "just" reason. Many arbitrators have gone so far as to hold all employers to a "just cause" standard, whether the contract uses the words or not. What is a "just cause" standard? It is commonly accepted that there are seven tests as to whether an employer has used "just cause" in handing out discipline. The Bureau of National Affairs lists them as follows:

1. NOTICE

Was the employee adequately warned of the consequences of his 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. REASONABLE SET OF RULES

Was the employer's rule or order reasonably related to efficient and safe operations? The employer's rules must have relevance to the stated goals of the company as well as the employees individual objectives.

3. INVESTIGATION

Did management investigate before administering the discipline? The employer must complete a thorough investigation in an attempt to gather all the facts surrounding the case. This can include interviewing employees and other potential witnesses to documents, photos and even videotapes made by surveillance system. The burden of proof is solely on the employer.

4. FAIR INVESTIGATION

Was the investigation fair and objective? The investigation must be inclusive to the employees rights of representation by the union. It must also observe the employee's rights under due process. It should be completed in a timely manner and remain objective without rushing to judgement before obtaining all the relevant facts. 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.

5. PROOF OF THE OFFENSE

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. EQUALITY

Were the rules, orders and penalties applied evenhandedly and without discrimination? All employees must be operating under the same set of rules or orders. 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. ISSUING APPROPRIATE DISCIPLINE

Was the penalty reasonably related to the seriousness of the offense and the past record? The level of discipline must be directly related to the severity of the violation. Other things, such as the employees length of service and service record should also be taken into account. Progressive discipline should be used, which means that a warning is issued first and then more severe action is taken each time further discipline is needed. If employee A's past record is significantly better than that of employee B, the employer properly may give employee A lighter punishment than employee B for the same offense.

It's that time of year again. Another winter is upon us with all the snow and ice to boot! For property owners, the winter season not only means the added efforts/costs of snow and ice removal, but also the added potential liability for slip and fall cases occurring on their premises. This article is intended to provide insight for the New York property owner as to ways in which to proactively minimize the potential of a snow and ice caused slip and fall incident.



Property Owner Responsibilities

In New York, the owner has a duty to keep their property in a "reasonably safe condition." This duty includes the responsibility for snow and ice removal (fingers crossed for a mild winter, Mother Nature). In order to be held liable, an owner must be aware of the condition and the condition must be hazardous. In terms of awareness, New York courts acknowledge both actual and constructive notice. For property owners, actual notice means personal observation as well as written and oral notice. Constructive notice means the snow or ice has been present for a long enough time that the property owner should have been aware of its presence. The "long enough time" standard is not always clear and can vary from town to town.

How to Play it Safe

Property owners are advised to keep their properties in a safe condition for all others as soon as possible upon becoming aware of snow or ice on their property. Whether it be tracking the end of a snow storm or watching for nighttime temperatures to drop below freezing after rain, the property owner is expected to stay vigilant.

Generally speaking, a property owner will not be held liable for snow or icy conditions while a snow storm is underway. However, important care must be taken when a property owner undertakes snow removal while the storm is underway. The reason is that should an owner at some point abandon snow removal efforts mid-way and the removal efforts are found to have caused a greater hazard, the owner could be found liable for a resulting injury. Additionally, there are times where all snow is removed, but the snow removal has left slippery ice for any passerby. The owner must be aware of the potential for ice to remain below the snow and undertake actions accordingly to remove, sand or salt the icy area.

Other Concerns

It is commonplace for property owners to obtain help from others for snow and ice removal. Whether it be the neighborhood kids looking to make an extra buck or a friendly neighbor offering a helping hand, owners must inspect the job performed because should the helping hand perform poorly, the owner will still be liable to the injured party. Additionally, tenants should be aware of any snow or ice removal responsibilities delegated to them from the property owner. Even though the tenant will escape liability from the injured party, the owner will have a valid claim against the tenant to cover payments made to the injured party.

Overall, property owners are best advised to use a combination of common sense, vigilance and haste in regards to all snow and ice removal from their premises.

Please note: Different states have similar rules for ice and snow removal. However, in Connecticut there is a two year statute of limitations for filing a suit as a result of injuries sustained due to snow and ice left on a premises. This is one year shorter than the applicable deadline in Massachusetts. New Jersey sidewalks are governed by its own complex set of laws and regulations. Check your individual state's website for further information.

**** The above is intended to inform, and not to advise.**

No one should attempt to interpret or apply any law without the assistance of an attorney.

MORICI & MORICI, LLP

1399 Franklin Avenue Suite 202, Garden City, NY 11530

516-873-1902 (Garden City) 212-687-6050 (Manhattan) 718-946-0111 (Brooklyn)

IDENTITY THEFT and Victim Assistance

IRS Publication 4535



What is tax-related identity theft?

Tax-related identity theft occurs when someone misuses your Social Security number to file a bogus tax return claiming a fraudulent refund. If you become a victim, the IRS is committed to resolving your case as quickly as possible.

Know the warning signs

You may be unaware you are the victim of tax-related identity theft until you file your tax return and discover a return was already filed using your SSN.

Be alert to possible tax-related identity theft if you receive an IRS notice or letter that states:

- You filed more than one tax return, and/or
- You owe additional tax, have a refund offset or you have IRS collection actions taken for a year you didn't file a return, or
- IRS records indicate you received wages from an employer unknown to you.

How to reduce your risk

- Don't routinely carry your Social Security card or any document with your SSN on it.
- Don't give a business your SSN just because they ask - only provide it when absolutely necessary.
- Don't give your personal information over the internet, phone or mail unless you initiated the contact and/or know the person or business you are dealing with.
- Protect personal information at home, on your computers and devices by using:
 - firewalls
 - anti-spam/virus software,
 - update security patches often and
 - change passwords for online internet accounts on a regular basis
- Review your credit report annually.
- Review your Social Security Administration earnings statement annually.

REMEMBER:

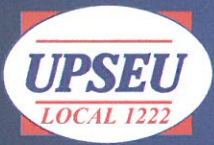
The IRS does NOT initiate contact with tax-payers by email to request personal or financial information. This includes any type of electronic communication, such as text media and social media channels. Also, the IRS does NOT call with threats of lawsuits or arrests.

Steps for victims of identity theft

1. Call companies where you know fraud occurred.
 2. Contact one of the 3 major credit bureaus to place a "fraud alert" immediately on your credit record and request a copy of your credit report.
 - Equifax.com 1-800-525-6285
 - Experian.com 1-888-397-3742
 - TransUnion.com 1-800-680-7289
 3. Use the Federal Trade Commission's online complaint form at ftc.gov/complaint or call the FTC at 1-877-438-4338 or TTY 1-866-653-4261.
 4. Follow FTC's guidance at identitytheft.gov.
- Identity.gov is the federal government's one stop resource to help you report and recover from identity theft.

Additional steps for victims of tax-related identity theft

1. Respond immediately to any IRS issued notice; call the number provided on the IRS notice and verify you are talking to an IRS employee.
2. Complete IRS Form 14039, Identity Theft Affidavit (irs.gov/pub/irs-pdf/14039.pdf)
Mail or fax the form according to instructions. If you are responding to an IRS notice, be sure to include a copy of the notice.
 - You only need to file Form 14039 one time.
 - If you are an Identity Protection PIN recipient, you don't need to file a Form 14039 to tell us you are the victim of tax-related identity theft.
3. Continue to pay your taxes and file your tax return, even if you must do so by paper.
4. If you previously contacted the IRS and don't have a resolution to your identity theft issue, you may call the IRS for specialized assistance at 1-800-908-4490. Hours are Monday - Friday from 7 am to 7 pm.



UPSEU Local 1222 Updates

LAST WORD ON THINGS TO AVOID

- 1) DON'T refuse a work order unless it is a specific danger to your health and safety.
- 2) DON'T tell anyone else to ignore or disobey a management order.
- 3) DON'T resign or encourage a member to resign: Once handed in, even if in a fit of anger or frustration, it may be impossible to retract or withdraw.
- 4) DON'T participate in or lead a walkout or slowdown unless it's authorized by the union.
- 5) DON'T automatically take management's word on everything; they are often misinformed and often have not thoroughly read the contract.
- 6) DON'T divulge confidential information. The union is the exclusive representative and can be liable for your actions.
- 7) DON'T allow personal feelings to interfere with contractual decisions. Remember the law regarding the duty of fair representation.
- 8) DON'T jump to conclusions when presented with a complaint. You need to investigate and check out the facts carefully.
- 9) DON'T lose your temper when acting in an official capacity.
- 10) DON'T "horsetrade" grievances or make "side deals." Each grievance must be considered on its own merits.
- 11) DON'T let management intimidate you from exercising your contractual rights.
- 12) DON'T promise anything you can't deliver.
- 13) DON'T try to do it all alone. You are part of the union, and your union brothers and sisters are there to help you get things done.
- 14) DON'T be just a steward on the sideline. Get involved.

MINIMUM WAGE RATES FOR 2017

Connecticut - \$10.10
New Jersey - \$8.44
New York - \$9.70 - \$10
Massachusetts - \$11

Linda Pickwick
Shop Talk Editor

UPSEU Local 1222 Headquarters
3555 Veterans Highway Suite H • Ronkonkoma • NY 11779
21 Aviation Road • Albany • NY 12205
130 Research Parkway Suite 201 • Meriden • CT 06450

www.local1222.org