

MAZANEC, RASKIN, RYDER & KELLER CO., L.P.A.

***REDUCING RISKS IN
TERMINATION & DISCIPLINARY
MATTERS***

*Presented to
CORSA Regional Risk
Management Seminars*

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PUBLIC EMPLOYER CHECKLIST FOR DISCIPLINARY ACTIONS

A public employer who issues discipline to an employee (including a termination for disciplinary reasons) may often either have its decision overturned or may have legal action taken against. Below is a non-exclusive check list of matters that a public employer should consider prior to issuing such discipline. To the extent that a “No” is checked, the public employer should raise the issue with its attorney prior to taking action.

I. Is Employee Is Subject To A Collective Bargaining Agreement (CBA)?

Yes No

If the answer is “No,” proceed to II. If the answer is “Yes,” and assuming it is required by the CBA, answer the following?

Was the employee given written notice of the allegation?
Bd. of Regents v. Roth, 408 US 564 (1972). Yes No

Was the notice provided within the required time frame from the date of the alleged offense? Yes No

Was the employee provided with a pre-disciplinary hearing?
Cleveland Bd. of Educ. v. Loudermill, 470 US 532 (1985). Yes No

Is the proposed discipline appropriate for the violation under the progressive discipline portion? Yes No

II. If The Employee Is Not Subject To A CBA, Is The Employee In The Classified Civil Service?

Yes No Not Sure

If the answer is “No,” proceed to III. If the answer is “Yes,” proceed to the next paragraph. If the answer is “Not Sure,” answer the questions immediately below.

Does the employee fit into one of the exceptions found at R.C. § 124.11(A)(1)-(32)? Yes No

If R.C. § 124.11(A)(8)’s clerical and administrative support exception is being used, was the employee’s position designated with DAS within sixty days of the elective officer taking office?
O.A.C. § 123:1-5-01(A). Yes No

If the employee is in the classified civil service, proceed immediately below.

Has the employee committed one of the acts set forth at R.C. § 124.34(A) or violated a policy or work rule? Yes No

If the discipline requires a “R.C. § 124.34 Order,” does the order contain the original signature and date of the appointing authority? Yes No

If the discipline requires a “R.C. § 124.34 Order,” was the employee served with the order on or before its effective date? O.A.C. § 124-3-01(A)(2). Yes No

III. Is The Discipline For Absenteeism Or Tardiness?

Yes No

If the answer is “No,” proceed to IV. If the answer is “Yes,” answer the following.

Is the employee a covered employee under the Family and Medical Leave Act (FMLA)? 29 CFR § 825.110. Yes No

If the FMLA applies, do you have reason to believe that the absence was due to the employee’s serious health condition? *Vargo-Adams v. U.S. Postal Service*, 992 F.Supp. 939 (N.D. Ohio 1998). Yes No

If the FMLA applies, do you have reason to believe that the absence was because the employee needed to care for a spouse, parent, or child with a serious health condition? 29 CFR § 825.116. Yes No

Do you have reason to believe that the absence due to a disability under the Americans with Disabilities Act (ADA)? 42 U.S.C. § 12102(2)(A). Yes No

If you have reason to believe that the absence was due to a disability under the ADA, would unpaid leave have been a reasonable accommodation. *Cehrs v. Northeast Ohio Alzheimer’s Research Center*, 155 F.3d 775, 782 (6th Cir. 1998). Yes No

IV. Did The Employee Engage In Protected Activity For Which A Claim Of Retaliation Or Wrongful Discharge Might Be Based?

Did the employee pursue a claim under the workers’ compensation act? R.C. § 4123.90? Yes No

Did the employee make a complaint of unlawful discrimination, or participate in an investigation of such a complaint?

R.C. § 4112.02(I). Yes No

Did the employee speak as a citizen on a matter of public concern protected by the First Amendment?

Garcetti v. Ceballos, 547 U.S. 410 (2006). Yes No

Did the employee request leave under the FMLA?
29 USC § 2615(a)(2).

Yes No

Did the employee make a request for a reasonable accommodation under the ADA? 42 USC § 12203.

Yes No

Did the employee make complaints about uncompensated overtime? *EEOC v. Romeo Community Schools*, 976 F.2d 985 (6th Cir. 1992).

Yes No

Did the employee make complaints about work place safety? *Pytlinski v. Brocar Products, Inc.* (2002), 94 Ohio St. 3d 77.

Yes No

Did the employee report a violation of law within the power of the employer to correct which constitutes a felony?
R.C. § 4113.52(A).

Yes No

Did the employee consult with an attorney?

Chapman v. Adia Services, Inc. (1997), 116 Ohio App.3d 534.

Yes No

V. Have You Considered Other Miscellaneous Issues?

Strategies for reducing risks arising from termination and disciplinary proceedings

- **Keep and maintain an up-to-date policy manual**
 - **Frequent changes in the law**
 - **Frequent changes in County policies**
- **Make sure policies are well-publicized and understood by all employees**
 - **Obtain signed Acknowledgement/Receipt**
- **Train supervisors and managers on how to administer and enforce policies**
 - **Ensures consistent application**
 - **Reduces risk of “similarly situated” individuals being treated differently**
- **Document all performance issues**
 - **Provides evidence for “legitimate non-discriminatory reason”**
- **Enforce policies consistently**
 - **No “preferential” treatment**
 - **Limits “disparate treatment” claims**
- **Designate an HR professional as the person to receive and investigate all claims of workplace harassment**
 - **Ensures consistency of application of harassment policy**
 - **Ensures that investigator is knowledgeable regarding the laws and County policy**

- **Consistent, regular employee evaluations**
 - Provides information to ensure consistent application of the disciplinary procedure
 - Provides a basis for “legitimate non-discriminatory reason” argument
 - Provides a basis for rewarding and keeping good employees and identification of employees needing growth and attention

- **Don’t retaliate.**
 - It’s unlawful!

- **Labor-management agreements won’t protect you from employment discrimination claims.**
 - Termination or discipline pursuant to the union contract doesn’t preclude Title VII or ORC 4112 claims

- **Decisions should not be made on the basis of politics.**
 - Very few exceptions

- **Use CORSA to review existing policies & procedures, and for training.**
 - Changing laws and recent case decisions need to be considered

- **Use the CORSA HR Helpline**
 - A valuable resource for employment issues
 - Great CORSA member benefit – it’s Free!



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Jeffrey A. Stankunas practices in all areas of civil litigation, including employment, labor, civil rights, and election law, as well as general tort liability. He is also responsible for all aspects of representation of public officials, state and local governments, and governmental agencies. Additionally, Jeff represents clients in business and real estate matters.

Jeff has won cases before all federal courts in Ohio and the United States Court of Appeals for the Sixth Circuit, as well as numerous county courts of common pleas and state appellate courts. He has also been admitted to the bar of the Supreme Court of the United States of America. Jeff has broad experience before several administrative agencies, including the United States Equal Employment Opportunity Commission, the Ohio Civil Rights Commission, the Ohio Elections Commission, and the State Personnel Board of Review.



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Jeff is frequently involved in high profile litigation, and his successful representation of numerous county boards of elections during the 2004 Presidential election received international attention. Presently, Jeff also serves as a part-time mayor's court magistrate for the City of Hilliard, Ohio.

Jeff frequently provides employment law training to managers and human resource professionals. He also teaches continuing legal education courses to other attorneys in the areas of employment law, public records and police liability. Additionally, Jeff has authored numerous articles that were published on various employment law topics, including the Americans with Disabilities Act and wrongful discharge.

Prior to joining Isaac, Brant, Ledman & Teetor, LLP, Jeff served as an Assistant Attorney General for the State of Ohio, where he practiced in the Employment Law Section.

Jeff earned his bachelor's degree from Bowling Green State University (B.A., 1997, cum laude) and his law degree from The Ohio State University (J.D., 2000). Jeff is married to Lisa Stankunas, who teaches second grade. They have a daughter, Audrey.

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Tim joined Mazanec, Raskin & Ryder Co., L.P.A. in 2002 and has since established his practice in the Cleveland office. He brings to the firm a broad base of experience in the areas of employment discrimination, civil rights litigation, professional negligence, as well as zoning and housing law. His diverse field of knowledge results from his work in private practice and as supervising attorney at the Cleveland Marshall College of Law Housing Law Clinic.

Tim has successfully represented clients in employment law cases includes representation from settlement discussions, to mediations , to motion practice, to trial in both state and federal courts throughout Ohio. Tim has also won many dismissals in administrative charges before the Equal Employment Opportunity Commission and the Ohio Civil Rights Commission. He has served as counsel in cases where claims asserted have been for discrimination and/or wrongful discharge under various state and federal civil rights statutes. In addition to his employment law practice, Tim represents governmental entities, individuals and business in litigation in civil matters such as contract disputes, professional negligence, zoning disputes, and real estate disputes.



Areas of Practice:

Employment Discrimination
Civil Rights Litigation
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Bar Admissions:

Ohio, 1991
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