

Section 3 – Attendance, Misconduct and Performance Discipline

- The Seven Standards of Just Cause
- Attendance Discipline
- Notice of Remedial Action (NORA)

The Seven Standards of Just Cause

Collective Bargaining Agreements between SPEEA and all our employers provide that an employee will not be disciplined without just cause. The Agreements do not, however, define just cause. In 1966, Arbitrator Carroll Daugherty formulated seven “tests” of just cause. These seven tests, in the form of questions, have been widely accepted as an articulation of essential elements of just cause¹:

1. **NOTICE:** Did the Employer give to the employee forewarning of foreknowledge of the possible or probable consequences of the employees’ conduct?
2. **REASONABLE RULE OR ORDER:** Was the Employer’s rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the Employer’s business, and (b) the performance that the Employer might properly expect of the employee?
3. **INVESTIGATION:** Did the Employer, before administering the discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
4. **FAIR INVESTIGATION:** Was the Employer’s investigation conducted fairly and objectively?
5. **PROOF:** At the investigation, did the “judge” obtain substantial evidence or proof that the employee was guilty as charged?
6. **EQUAL TREATMENT:** Has the Employer applied its rules, orders and penalties even-handedly and without discrimination to all employees?
7. **PENALTY:** Was the degree of discipline administered by the Employer in a particular case reasonably related to (a) the seriousness of the employee’s proven offense, and (b) the record of the Employee in his service with the Employer?

“A *no* answer to one or more of the questions means that just cause either was not satisfied or at least was seriously weakened in that some arbitrary, capricious, or discriminatory element was present.” (*Id.* At 23)

¹ [Koven & Smith, Just Cause, the Seven Tests, 23-24 (2d Edition, 1992), citing 46 LA 359 (Daugherty, 1966).]

Attendance Discipline

Attendance problems are one of the three major areas in which discipline will be delivered. It is easily documented by management which increases the possibility that it will be brought to the employee's attention.

Questions to Ask

1. Is the employee using accrued sick leave or leave without pay (LWOP)?
2. If the condition is chronic, does this person qualify for Family Medical Leave Act protection (FMLA)?
3. If the employee used vacation, was it scheduled?
4. What is the total labor loss percentage for the time period involved?
5. Is the problem isolated or chronic?
6. Is there a reasonable expectation that attendance will improve in the near future?
7. Has progressive discipline been followed?
 - When a Corrective Action Memo (CAM) is given, the employee will be expected to improve and then correct the attendance problem. After this occurs, the employee will be expected to sustain the correction.
9. Is the employee given an adequate period of time to correct the problem? Is the time period defined?
10. After the problem has been corrected, when will the CAM be withdrawn from the file?
11. Has a leave of absence been considered?
12. Is the employee aware of the counseling services available through the employer?

Arbitration Guidelines for Attendance Discipline

1. Attendance discipline is subject to the standards of just cause.
2. If excessive absences have an adverse impact on the employer's operations, it can be subject to discipline regardless of the reason for the absence.
3. The employer has the right to demand "*reasonable regularity of attendance of employees.*"

Progressive Discipline

1. Was the employee given fair and reasonable time to correct the problem?
2. Was a warning given before a written statement was placed in the file?
3. If the deficiency is due to a lack of training, was the employee given opportunity for training or movement into a position appropriate for his or her skill level?
4. Was the employee's previous work record a factor in the degree of discipline given?
5. Did the degree of discipline match the degree of the performance problem:

Guidelines -- The discipline should begin with a warning and the employee should have a reasonable opportunity to improve. The employee should be told in advance of the consequences of not improving before further discipline is given.

*****Also:** Remember to keep in mind ADA (Americans with Disabilities Act) and FMLA (Family Medical Leave Act) as potential issues and opportunities.***

Notice of Remedial Action – Performance Deficiencies

LETTER OF UNDERSTANDING NO. 7 RELATING TO PERFORMANCE REMEDIAL ACTION (Puget Sound Engineering and Technical Units)

In an effort to assist all employees in reaching their full potential, a process has been adopted to identify and constructively address performance deficiencies and/or an insufficient level of skills, knowledge, and abilities necessary for current assignments.

This program includes:

- Notifying the employee of the performance deficiency through issuance of a Notice of Remedial Action form (NORA).
- Notifying the employee of the skills, knowledge, and abilities necessary for current assignments.
- Developing a clear and cogent program for the employee to correct the performance deficiency and/or acquire the necessary skills, knowledge, and abilities.

Prior to issuance to the employee the proposed NORA shall be forwarded to the appropriate Employee Relations focal for review with the Union. Such review will include a discussion about the performance criteria identified in the NORA to be utilized by the Company in assessing the employee's ability to satisfy the NORA requirements and resolve the performance deficiencies.

- Employees will be provided a minimum of 30 calendar days (excluding any paid holidays) to improve their performance and meet the requirements of the NORA.
- The manager or their designee will be available to participate in follow-up meetings with the employee, and the Union representative when requested and available, to provide status on progress.

When the manager concludes that the employee has failed to achieve the minimally acceptable performance for their classification the manager will communicate that conclusion to the appropriate Employee Relations representative to jointly determine what action will be taken. Such action may include discharge or reclassification when appropriate.

In accordance with the general objectives stated in Article 8, the Union and the Company agree that employees who are identified as having performance deficiencies or an inability to acquire the necessary skills, knowledge, and abilities, may be terminated or, at the Company's option, may be declared surplus to the needs of the Company and placed on layoff in accordance with the layoff provisions of Article 8, irrespective of their retention rating. Employees laid off according to those provisions will retain all rights they may have under Article 3.

Dated: December 2, 2008

**Society of Professional Engineering
Employees in Aerospace**

The Boeing Company

By _____
President

By _____
Vice President of Engineering, BCA

Council Representative Training

Performance Coaching Plans

Spirit WTPU Contract

ARTICLE 4 - ENGINEER PERFORMANCE

Section 4.1. Employee Performance Process

The Union and the Company agree that many factors contribute to performance. The Company will establish, modify and continuously improve the employee performance and evaluation process. The process will provide a documented means for the employee and the manager to assess performance and an option to build Individual Development Plans (IDP). The Union and the Company will discuss and the Company will consider in good faith any changes to the current process.

4.1(a) Both the employee and the manager are responsible for the completion of this process annually. A copy of the completed final review shall be placed in the employee's Personnel file.

4.1(b) It is expected that occasional disagreement over Performance Evaluation content will be resolved at the lowest possible level. A skip-level manager may be involved in the process for this purpose; however, in those few instances where such resolution is not possible, the Union may involve the Human Resource Director (or designee).

4.1(c) Failure to perform to identified performance standards may result in progressive discipline.

Section 4.2 Individual Development Plan.

Employees who want to improve their skills in their current job or qualify for a job level upgrade may develop an Individual Development Plan (IDP) with Management. The IDP will generally identify a path of courses, activities, assignments and/or on the job training. Successful completion of an IDP targeted at qualifying for a higher level job shall be considered by the Company if or when promotions are available.

Performance Coaching Plans

Spirit WEU Contract

ARTICLE 4 - ENGINEER PERFORMANCE

Section 4.1. Employee Performance Process

The Union and the Company agree that many factors contribute to performance. The Company will establish, modify and continuously improve the employee performance and evaluation process (the "Performance Management Process"). The process will provide a documented means for the engineer and the manager to assess performance and an option to build an Individual Development Plan (IDP) for the purpose of growth. The Company will provide notice to the Union of any changes to the PM Process before implementation. Any such changes will be fully communicated to the engineers prior to the beginning of the Performance Management cycle each year. No changes to the process will be permitted after the Define session each year without mutual consent of both parties. The Union and the Company will discuss and the Company will consider in good faith any changes to the current process.

4.1(a) Both the engineer and the manager are responsible for the completion of this process annually. A dated copy of the completed define session document and final review documents shall be placed in the engineer's Personnel file. During the define session, Management and the engineer will, at a minimum, discuss and set performance objectives required to Meet Expectations, and which align with the Department, Business Segment, and Enterprise goals. The engineer and the manager are also encouraged to discuss and establish targets that go beyond meeting expectation.

4.1(b) It is expected that occasional disagreement over Performance Evaluation content will be resolved at the lowest possible level. A skip-level manager may be involved in the process for this purpose. However, in those few instances where such resolution is not possible, the Union may involve the Human Resource Director (or designee).

4.1(c) The Company and employees mutually benefit when employee performance standards are met or exceeded. It is the Company's intention to provide every engineer an opportunity to be successful. Similarly, the engineer has the responsibility to strive to meet the performance objectives established in the Performance Management Plan established Council Designations will remain in effect until the next scheduled retention index review exercise or until successful completion of improvements identified in the Employee Improvement Action Plan.

How To Help Your Member Through either NORA's or Coaching Plans

1. Keep calm and listen. Your calmness may help the grievant and other participants be calm.
2. Take the best notes you possibly can – description of incidents, dates, names, places (an “old” event may be significant).
3. Note the supervisor’s behavior: Does he/she seem frustrated, angry, determined, helpful, provocative, critical, fair, unfair, etc.
4. Note the Human Resource Rep’s behavior: Does he/she do most of the talking, using words like “disappointed,” etc.
5. Note the employee’s behavior: Apprehensive, belligerent, defiant, cocky, weak or inadequate defense, meek, mild, changes subject away from performance subject at hand, blames others or other circumstances or claims others do same as he/she does but don’t get criticized for it.
6. Make sure the employee understands the terms, conditions and criticisms of the NORA and that he/she knows what is expected of him/her to comply.
7. If terms and conditions seem unclear or ambiguous, try to mediate.
 - a. Is the NORA really necessary – maybe it can be retracted with regular review meetings put in its place.
 - b. If the NORA will not be retracted, make sure it’s terms and conditions are clear, unambiguous and accomplishable.
8. Set up a review meeting schedule with the employee and supervisor and keep to it unless absolutely unable to.
9. Again, take good notes, especially in regards to positive things the manager says about employee’s work, or about criticisms which seem serious noting employee’s reaction, i.e., defensive, reasonable explanation, or what?
10. Try not to be too specific on details of the actual work. You may understand it but most likely a Contract Administrator won’t and for sure an arbitrator won’t.
11. Finally, get an assessment at the end of each review meeting as to how the employee’s performance is: satisfactory, improving, unsatisfactory.

What do you say to your member?

“The best way to ensure continued employment is to complete all elements of the NORA to the best of your ability and let the Contract Administrator worry about procedures.”

Notice of Remedial Action – Sample

The following editable form has been developed to assist in compliance with Letter of Understanding No. 7 - Relating to Performance Remedial Action of the Puget Sound SPEEA contracts for both the Professional and Technical Bargaining Units.

If you have any questions and/or need advice or counsel regarding the appropriate use of the form or the process itself, please contact one of your Puget Sound Employee Relations focal.

NOTICE OF REMEDIAL ACTION

To: _____ BEMSID: _____ Budget No.: _____

Your job progress is unsatisfactory.

[Specify the unsatisfactory elements and/or deficiencies]

EXAMPLES: (select one of the following statements)

Example 1

You must achieve and sustain satisfactory performance and progress on your current job or be removed from the assignment. Specifically, you are expected to

[Set forth specific expectations relating to knowledge, skills and abilities necessary for current assignments; develop a clear and cogent program for the employee to correct the performance deficiency and/or acquire the necessary skills, knowledge and abilities]

A minimum of 30 (thirty) calendar days (Contractual requirement. Management should also specify a maximum for clarity.) is permitted for the necessary improvement. Failure to achieve and sustain satisfactory performance will be cause for your termination at that time, or you may be terminated earlier if you do not show improvement or your performance deteriorates.

Please be aware that Company services are available to assist you if you have concerns of a medical or personal nature.

SIGNATURES:

Immediate Supervisor Date

Employee Date

Next Level Supervisor Date

Human Resources Date

NOTE:

- A copy must be sent the Company Employee Relations organization for review with SPEEA prior to issuance to the affected employee

[03/04/2009 Rev. 2]