

# Public Employee Discipline/Termination in Utah – A Few<sup>1</sup> Thoughts

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28 September 2023

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Public employee discipline or termination may be challenged if it is based on an employee's disability status; the employment action discriminates against an employee in a protected class<sup>2</sup>; or it is in retaliation for an employee exercising a right.

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Utah courts consider whether public employee discipline is “*fair and appropriate.*” Here are guides for attorney review of discipline cases.

1. Has the agency factually proven the violation(s) of policy?
  - a. Consider the applicable standard of proof – preponderance of the evidence, clear and convincing evidence, other.
  - b. Have all elements of the violation(s) been proven?
2. Was the discipline (employment action) disproportionately severe under the circumstances?
  - a. Consider the harm to the agency, the officer's work record, and the underlying seriousness of the conduct.
3. Was the investigation thorough?
  - a. Were all investigatory leads examined?
  - b. Where personal interviews conducted, where appropriate?
  - c. Did the investigator have a bias?
4. How were other employees treated who engaged in similar conduct?
  - a. What is the agency's pre-existing pattern of discipline for identical or similar cases?

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<sup>1</sup> This is not a comprehensive guide to avoid messing up an employee discipline case!

<sup>2</sup> Most lists of “protected classes” fail to include persons with prior military service. Veterans are a protected class.

5. Was the employee's misconduct the product of action or inaction by the agency?
  - a. Did the employee receive adequate training?
  - b. Did supervisors contribute to the atmosphere which led to the employee's misconduct?
  
6. Did the agency take into consideration the employee's good or exemplary record?
  - a. What is the underlying character of the employee, as represented in her/his work record?
  
7. Did the agency take into consideration any mitigating circumstances?
  - a. What was the employee's state of mind, physical condition?
  - b. Was the employee provoked into misconduct?
  
8. Was the employee subjected to progressive discipline?
  - a. Did the agency take prior steps to correct a known behavioral problem?
  - b. Progressive discipline may not be required if the misconduct is severe.
  
9. Are the agency's rules clear and understandable?
  - a. Is the rule capable of more than one interpretation?
  
10. Is the employee likely to engage in similar misconduct in the future?
  - a. Has the employee been rehabilitated?
  - b. Is the misconduct an aberration from the type of conduct normally displayed by the employee?