How to avoid a wrongful-discharge suit

Many organizations are increasingly concerned about wrongful-discharge lawsuits—and with good reason. Jury awards have reached hundreds of thousands of dollars, and in some states employers lose up to 70% of the cases.

So how can you discharge or discipline an employee without ending up in court?

Here are seven key tests of whether there was “just cause” for your action.

**Reasonable rule or order.** Was the rule or order you were enforcing reasonable related to the orderly, efficient and safe operation of business? Was it reasonably related to performance the organization can properly expect from employees?

**Notice.** Was the employee informed or warned ahead of time about the possible disciplinary consequences of his behavior? You should have a procedure in place for the application of the performance improvement plans.

**Investigation.** Before administering the discipline, did you make an effort to find whether the employee did, in fact, violate a rule or disobey an order?

**Fair investigation.** Was your investigation fair and objective? Most workplaces don’t have a history of formal investigations to set a precedent for how to get to the truth, so chart out a plan before you proceed.

**Proof.** Was there substantial evidence that the employee was guilty as charged? How confident would you be levying a courtroom judgement based only on what you discovered?

**Equal treatment.** Have you and the organization applied the rules, orders and disciplinary penalties evenhandedly and with discrimination to all employees? In answering this question, you will likely find yourself realizing that double standards do exist, as it’s only natural to give more effective workers a little leeway in certain situations.

**Appropriate penalty.** Was the degree of disciplinary action appropriate to the seriousness of the offense and the employee’s record of service with the organization?

**Note:** Be sure to document all your actions and discussions with the employee. Unsubstantiated claims form weak arguments in the courtroom.