

## TABLE OF CONTENTS

About the Authors .....	iii
Preface to the Third Edition .....	v
Introduction .....	vii
<b>PART I: FUNDAMENTALS OF THE DISCIPLINARY PROCEDURE.....</b>	<b>1</b>
<b>CHAPTER 1: INTRODUCTION TO THE DISCIPLINARY PROCEDURE</b>	
1.1 The Purposes of Discipline .....	1
1.2 Progressive Discipline .....	2
a) The disciplinary penalties involved in progressive discipline .....	3
i) Verbal warnings .....	3
ii) Written warnings .....	4
iii) Suspensions without pay / final warnings .....	4
iv) Demotions .....	5
v) Dismissal .....	6
1.3 When to Apply the Disciplinary Procedure .....	6
<b>PART II: THE ELEMENTS OF THE DISCIPLINARY PRO- CEDURE.....</b>	<b>9</b>
<b>CHAPTER 2: CONDUCTING A DISCIPLINARY INVESTI- GATION</b>	
2.1 Introduction .....	9
2.2 The Purposes of the Investigation .....	9
2.3 The Timing of the Investigation .....	10
2.4 Obtaining the Necessary Information .....	11
2.5 Interviewing Witnesses.....	12

## Table of Contents

2.6	Keys to an Effective Interview .....	13
2.7	The Investigation Report .....	15
CHAPTER 3: SELECTING THE APPROPRIATE DISCIPLINARY PENALTY		
3.1	Factors Influencing Discipline / Discharge .....	19
	a) The collective agreement or employment contract. .	20
	b) Applicable policies and procedures .....	20
	c) The severity and nature of the offence.....	21
	d) Previous cases and consistency.....	21
	e) The employee's previous record and the doctrine of culminating incident .....	22
	f) The employee's explanation .....	23
	g) Provocation .....	23
	h) Additional relevant circumstances .....	23
3.2	Statutorily Prohibited Motives (Ontario Legislation) ...	24
	a) The <i>Labour Relations Act, 1995</i> .....	25
	b) The <i>Employment Standards Act, 2000</i> .....	27
	c) The <i>Ontario Human Rights Code</i> .....	30
	d) The <i>Occupational Health and Safety Act</i> .....	36
	e) The <i>Workplace Safety and Insurance Act, 1997</i> ...	36
CHAPTER 4: DEALING WITH SPECIFIC TYPES OF EMPLOYEE CONDUCT		
4.1	Introduction .....	39
4.2	Leaving Work Without Permission .....	39
	a) Pregnancy and Parental Leave .....	40
	b) Personal Emergency Leave .....	41
	c) Emergency Leave, Declared Emergencies .....	42
	d) Reservist Leave .....	42
	e) Family Medical Leave.....	43
	f) Family Caregiver Leave .....	44
	g) Critical Illness Leave.....	44
	h) Crime-related Child Death or Disappearance Leave .....	45

## Table of Contents

i) Organ Donor Leave .....	45
j) Domestic or Sexual Violence Leave .....	46
4.3 Lateness .....	46
4.4 Dishonesty .....	47
4.5 Sabotage / Property Damage .....	54
4.6 Workplace Violence and Harassment .....	54
4.7 Insubordination .....	60
4.8 Sexual and Discriminatory Harassment .....	61
4.9 Conflict Of Interest .....	65
4.10 Off-Duty Conduct and Criminal Convictions .....	65
4.11 Publicly Criticizing the Employer .....	72
4.12 Breaching Company Rules .....	74
4.13 Absenteeism .....	75
a) Innocent absenteeism .....	75
b) Culpable absenteeism .....	84
c) Employment standards leaves .....	87
4.14 Performance Issues .....	87
4.15 Workplace Intoxication and Substance Abuse .....	90
4.16 Last Chance Agreements .....	91
 CHAPTER 5: ELEMENTS OF THE DISCIPLINARY / DIS- CHARGE LETTER	
5.1 Introduction .....	97
5.2 The Disciplinary Record .....	97
5.3 The Infraction .....	97
5.4 The Disciplinary Penalty Being Applied .....	97
5.5 Available Employee Support / The Positive Aspect of the Disciplinary Penalty .....	98
5.6 Serving Notice of Future Discipline .....	98
 CHAPTER 6: SAMPLE DISCIPLINARY LETTERS	
6.1 Introduction .....	101
6.2 Sample Letters .....	101
a) Suspension for fighting .....	101

Table of Contents

b)	Warning for unauthorized absence from work . . . . .	102
c)	Suspension for unauthorized absence from work . .	102
d)	Suspension for theft . . . . .	103
e)	Dismissal for damaging company property . . . . .	104
f)	Warning for failure to adhere to safety policies . . .	104
 CHAPTER 7: DISCIPLINARY AND DISCHARGE MEETINGS		
7.1	Introduction . . . . .	107
7.2	Tone . . . . .	107
7.3	Clarity and Completeness . . . . .	108
7.4	Witnesses . . . . .	108
7.5	Timing . . . . .	109
7.6	Location . . . . .	109
7.7	The Offer to Resign . . . . .	109
7.8	Following Up After the Disciplinary Meeting . . . . .	110
7.9	The Termination Meeting . . . . .	111
7.10	After a Dismissal . . . . .	113
	a) Personal items . . . . .	113
	b) References . . . . .	113
	c) Other employees . . . . .	114
	d) Post-discharge obligations . . . . .	114
7.11	Maintaining Employee Disciplinary Records . . . . .	123
 PART III: CONTRACTUAL CONSIDERATIONS AND DAMAGES ARISING FROM DISMISSAL . . . . .		
125		
 CHAPTER 8: COLLECTIVE AGREEMENT CLAUSES		
8.1	Introduction . . . . .	125
8.2	Sample Clauses . . . . .	125
	a) Just cause . . . . .	125
	b) Timeliness . . . . .	126
	c) Presence of a union representative . . . . .	126
	d) Issuing reasons . . . . .	127
	e) Reviewing personnel files . . . . .	128

## Table of Contents

f) Sunset clauses .....	129
g) Non-discrimination clause .....	130
h) Deemed termination.....	131
 CHAPTER 9: EMPLOYMENT CONTRACT CLAUSES	
9.1 Introduction .....	137
9.2 Enforceability of Employment Contracts .....	138
9.3 Types of Employment Contracts .....	140
a) Indefinite term contracts .....	140
b) Fixed term contracts .....	141
9.4 Common Clauses .....	142
a) Term of contract .....	142
b) Probationary period .....	142
c) Compensation.....	143
d) Discipline and layoffs .....	144
e) Termination of employment .....	144
i) Expressly limit entitlements to <i>ESA</i> minimums	145
ii) Expressly exclude common law right to reasonable notice.....	146
iii) Termination by employee.....	146
iv) Benefit continuation .....	146
v) Severance pay .....	148
vi) Provision of accrued wages and vacation pay .....	148
f) Curative provision .....	148
g) Restrictive covenants .....	149
h) Entire agreement .....	151
i) Severability .....	151
 CHAPTER 10: POTENTIAL DAMAGES ARISING FROM THE TERMINATION OF EMPLOYMENT	
10.1 Overview .....	157
10.2 Unionized Employees.....	158
10.3 Non-Unionized Employees.....	159

## Table of Contents

a) The <i>Employment Standards Act, 2000</i> .....	159
i) Notice of termination / termination pay .....	160
ii) Severance pay .....	161
b) The <i>Canada Labour Code</i> — unjust dismissal ....	162
i) Notice of termination / termination pay .....	163
ii) Severance pay .....	164
c) The common law .....	164
i) Damages for manner of dismissal (aggravated and punitive) .....	166
d) Damages for loss of benefits during the period of reasonable notice .....	175
i) Vacation pay .....	175
ii) Pensions .....	175
iii) Group benefit plans .....	175
INDEX .....	185