



Huron University College
Faculty Association

UNDERSTANDING YOUR RIGHTS: When the employer subjects faculty members to disciplinary actions

HUCFA's Collective Agreement with the employer sets out our rights as employees of Huron. But it also acknowledges that the Administration has certain "management rights," including a general right to discipline faculty members for non-performance of duties or for certain types of misconduct.

The employer's right to discipline faculty members is subject to important limitations, however. First, according to Section 2.1, "the Employer agrees that it shall exercise these powers, authorities, rights, privileges and obligations in a manner which is not arbitrary, unreasonable or inconsistent with this Collective Agreement." When it fails to respect these commitments, the union is entitled to launch a grievance (See *Understanding Your Grievance Procedure: A Guide for HUCFA Members*).

Discipline Isn't Punishment

In labour relations, discipline should **not** be misunderstood as "punishment." The employer is not entitled to punish HUCFA members. Instead, discipline is action taken to prevent avoidable recurrence or persistence of problems in job performance. To be effective, it has to meet important criteria, including clear communication of legitimate expectations, transparency about the standards being applied, timely communication of corrective measures that need to be taken, appropriate guidance and provision of necessary support, and continual access of faculty members to assistance and protection, where applicable, by HUCFA.

The Collective Agreement sets out both general principles and some specific requirements designed to ensure that disciplinary actions are limited in ways that protect members from unreasonable, arbitrary, or unfair treatment.

Five Limitations of Management's Right to Discipline Members

All members of HUCFA need to be aware of the following five limitations on the employer's right to discipline members.

1. Reasonable Cause

Although discipline falls under the heading of "management rights," the employer is not entitled or permitted to exercise this right in whatever way it sees fit. Instead, disciplinary actions are only permitted if the employer is able to establish "reasonable cause." The basis for the action taken must be communicated to the member, at which point the member is entitled to consult with HUCFA. The Collective Agreement

(Section 2.1) expressly requires that “disciplinary action shall not be exercised in a manner which is unreasonable, arbitrary, discriminatory, or in bad faith.” Failure to meet this demanding standard entitles the union to consider grieving on a member’s behalf. (See “Understanding Your Grievance Procedure.”)

2. Non-discrimination

The prohibition of discriminatory exercise of disciplinary action is obviously important to all HUCFA members, but especially to members from equity-seeking groups. The Collective Agreement contains a Non-Discrimination clause (Section 2.2), which applies to the disciplinary process (as noted in Section 2.9[a]). Several bases of discrimination are explicitly prohibited in the Agreement, including “physical or mental disability..., race, creed, colour, ancestry, citizenship..., ethnic or national origin, political or religious affiliation, belief or practice, sex, sexual orientation, gender identity, gender expression, marital status, family status, age, or membership or activity in an academic staff association...” If you believe that disciplinary actions are being taken that are discriminatory, be sure to reach out to the HUCFA Executive or Grievance Officer as soon as possible.

3. The Principle of Progressive Discipline

The Collective Agreement also requires that “discipline of a member will be commensurate with the seriousness of the violations and based on the principle of progressive discipline, where applicable” (Section 2.9). Although there may be some very exceptional cases in which an extreme disciplinary measure, even dismissal, might meet the standard of reasonableness, in the vast majority of cases, the terms of the Collective Agreement would require the Employer to begin with clear communication that a problem exists, and clear instructions about how to remedy the problem. Should the problem persist, an escalating sequence of steps would normally be appropriate. The Collective Agreement does not specify the steps of progressive discipline, because different cases require different responses. But a typical scenario of progressive disciplinary steps might be: first, a verbal or written expression of concern, with clear communication of the problem and how it can be remedied; second, a written letter of warning or reprimand, clearly spelling out remedies required, supports available, and consequences for non-compliance; third, a suspension, with some limited interruption of privileges or roles; finally, in extreme cases, dismissal. (The case of dismissal is subject to further limitations set out in the agreement.) Any member who is being subjected to discipline is encouraged to consult with HUCFA, confidentially, to ensure that their rights are respected.

4. Burden of Proof in Cases of Dismissal or Early Termination of a Contract

In extreme cases, where the most extreme type of disciplinary action, dismissal for cause, is sought by the Employer, HUCFA has the right to take the dispute to an Arbitration process, supervised by the Ministry of Labour. In all cases involving dismissal for cause, “the burden of proof shall be on the Employer to establish its case,” according to the Collective Agreement, and failure to satisfy this requirement may be subject to grievance by the union.

5. No Discipline for Disability or Illness

The Agreement explicitly prohibits the employer from imposing discipline on members whose work performance deficiencies are due to illness or disability. The law and the Agreement require the employer to undertake to accommodate disabilities. This is covered under the “Duty to Accommodate” provisions of the Ontario Human Rights Code, among other policies and pieces of legislation that bear on the matter. However, there may be cases where illness or disability and non-performance or misconduct are hard to disentangle. In such cases, the Collective Agreement determines that “if the Employer believes the member’s behaviour or actions to be unacceptable and subject to discipline, but also believes the behaviour or actions to be the result of medical illness, the Employer and HUCFA agree that the parties shall work together, along with the member and their health practitioner, for the purposes of an accommodation for the member.” (For more details, please read Section 2.9.b of the Collective Agreement.)

Conclusion

If you are disciplined, or are sent a disciplinary warning, a disciplinary letter or email, or are worried about any actual or possible discipline that may be taken by the employer toward you, please consider letting HUCFA know. There’s a good chance the union will be able to help.