



CONDITIONS FOR THE OCCURRENCE OF DISCIPLINARY RESPONSIBILITY OF THE EMPLOYEE

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Article history:	Abstract:
Received: September 11 th 2022 Accepted: October 11 th 2022 Published: November 20 th 2022	This article is devoted to the conditions for the occurrence and bringing an employee to disciplinary responsibility. The concept of "misconduct", its characteristic features, types of misconduct and their distinctive features are revealed. In addition, a detailed analysis of the elements of disciplinary misconduct and the basis for bringing an employee to disciplinary responsibility is given. This article also reflects the list of categories of employees whose concept of disciplinary misconduct is interpreted due to the special nature of the duties performed, such as judges, lawyers, employees of the Department for Combating Economic Crimes at the Prosecutor General's Office of the Republic of Uzbekistan, the Bureau of Enforcement at the Prosecutor General's Office of the Republic of Uzbekistan, etc. and provides a clear example from judicial practice on the issue, arising from labor relations in the field of labor discipline.

Keywords: Misconduct, disciplinary misconduct, elements of disciplinary misconduct, legal basis, factual basis, procedural basis, conditions for the occurrence of disciplinary responsibility.

One of the most important conditions acting as a prerequisite for the existence of a phenomenon or process is the presence of its foundation[1]. The need to determine the grounds for bringing to legal responsibility implies determining the conditions and circumstances that contribute to the occurrence and application of this type of liability.

Before proceeding to the concept of disciplinary misconduct, it is necessary to clarify the meaning of the term "misconduct" and its characteristic features.

In a broad sense, a misdemeanor is an action or inaction that encroaches on public relations established by legislative acts, characterized by a small public danger[2].

In the legal literature, depending on the nature of the act committed, the following types of misconduct are provided for[3]:

- 1) Administrative misconduct;
- 2) Civil misconduct;
- 3) Disciplinary misconduct;
- 4) Material misconduct;
- 5) Procedural misconduct.

To fully understand the meaning of these types of offenses, we will reveal the features of each below.

An administrative offense is an offense that encroaches on a person, his rights and freedoms, public morality, the environment, public order and public safety, property, legitimate economic interests of individuals and legal entities, for which the legislation

provides for administrative responsibility. The recognition of an offense as an administrative offense is smoking, drinking alcoholic beverages in public places, violation of traffic rules, petty theft, etc.

Features of a civil offense consists in the commission of an offense, in particular in causing harm to the person or property of a person, as well as an organization. Examples of civil law offenses can be the late fulfillment of contractual obligations, violation of the rights of the owner, the conclusion of an invalid transaction, etc.

A disciplinary offense is an offense committed in the labor sphere. That is, this type of misconduct is associated with violations of industrial, service, military, educational, financial discipline, internal labor regulations of various organizations. Vivid examples of disciplinary offenses may be the absence of an employee at work without a valid reason for three or more consecutive hours in one working day (work shift), untimely appearance at work, the presence of an employee at work in a state of alcoholic, narcotic, psychotropic, substance abuse intoxication, etc.

Material misconduct is characterized in the commission of an offense, expressed in causing material damage to the property of an enterprise or organization by employees and employees[4]. For example, damage to the property of the enterprise, shortage of material values, etc.



Procedural misconduct is directly related to an offense in the field of the procedure for the administration of justice, in particular in the process of judicial proceedings, the issuance of a ruling, ruling or verdict of the court. To date, vivid examples of procedural misconduct can be the failure of a witness to appear on the call of an inquirer, investigator, court, failure to appear in court of the defendant, victim[5], etc.

Having considered the values of these offenses, it can be concluded that among all the above-mentioned offenses today, disciplinary misconduct in the labor law sphere is very often tolerated and committed by employees of organizations and enterprises.

As it was already noted earlier, in case of violation of labor discipline by an employee or in case of improper performance of their work duties, an employee can be brought to both disciplinary and material types of responsibility.

Consequently, it follows from this that the basis for the occurrence of disciplinary responsibility of the employee is the fact that the employee committed a disciplinary offense.

The essence of the disciplinary offense consists in the illegal and culpable failure of the employee to fulfill his work duties.

Thus, a guilty, illegal violation of labor duties by employees is recognized as a disciplinary offense, for the commission of which disciplinary responsibility is established and disciplinary punishment provided for by the Labor Code of the Republic of Uzbekistan is applied.

According to the majority of legal scholars, the issues of disciplinary responsibility against officials are reflected in the scientific literature in the most detail.

So, it should be noted that from a theoretical point of view, the grounds of legal liability are divided into legal (normative) and factual[6]. While other scholars also emphasize the procedural basis of responsibility.

1) The legal (regulatory) basis of disciplinary responsibility is a set of regulatory instructions containing requirements for subjects of disciplinary authority and establishing disciplinary measures applied to employees if they violate labor or service discipline.

2) Along with the normative basis for the occurrence of disciplinary liability, the factual basis is also characteristic. The factual basis is understood as the existence of the fact of committing a disciplinary offense, characterized by a guilty act (inaction), expressed in violation of labor or service discipline[7].

The theoretical analysis of a disciplinary offense as the actual basis of disciplinary responsibility allows us to determine a number of characteristic features[8]:

1) an action or inaction of an employee, expressed in non-performance or improper performance of functional duties;

2) guilt as an element of the subjective side of the composition of the disciplinary offense;

3) non-fulfillment or improper fulfillment by an employee of only work duties (i.e., for example, an employee is not subject to disciplinary responsibility for violating the rules of behavior in public places or in case of violation of traffic rules, etc.);

4) circumstances giving grounds to apply disciplinary measures.

The procedural basis is the existence of a law enforcement act specifying the general prescriptions of the rule of law, that is, it contains sanctions, determines the type and measure of legal responsibility.

A more complete definition of the procedural basis for disciplinary responsibility of an employee is given by S.N. Makhin. In his opinion, the procedural basis of disciplinary responsibility of an employee includes the establishment and fixation of the fact of committing a disciplinary offense, the initiation and consideration of a case of disciplinary misconduct, as well as the application (implementation) of disciplinary responsibility[9].

Thus, summarizing the opinions of scientists, we can come to the conclusion that the acts of application of law, which are the procedural basis for the occurrence of disciplinary responsibility, can serve as:

1) a court verdict that has entered into legal force;

2) a court decision that has entered into legal force;

3) court order;

4) the order of the head.

Thus, having analyzed the features of all the grounds of legal liability in general, we can come to the conclusion that bringing an employee to disciplinary responsibility is possible only if there are all three grounds of disciplinary responsibility.

Mandatory elements of a disciplinary offense are recognized as:

1) object,

2) the objective side.

3) subject,

4) the subjective side.

The presence of all elements of a disciplinary offense is the basis for bringing a person to disciplinary responsibility.

The object of a disciplinary offense is public relations aimed at ensuring labor discipline and proper performance by an employee of the duties assigned to him, provided for by the contract or the rules of internal labor regulations.

The objective side of the disciplinary offense is expressed in the action or inaction of the employee who caused harm to the employer and the consequence of the harm caused.



It should also be emphasized that the harm caused to the employer may directly involve damage to the property of third parties held by the employer, if the employer is responsible for the safety of this property. An example of this can be damage to technical equipment or loss of documents, the compensation of which is subject to the employer in the form of payment of additional financial expenses for the purchase of new or restoration of damaged property.

To date, in practice, such violations as causing damage related to the violation of the labor order established by the employer, in particular absenteeism, being late for work, the appearance of an employee at work in a state of alcoholic intoxication, etc., are very often allowed by employees.

The subject of a disciplinary offense is an employee, as a party to an employment contract, who violated labor discipline.

The subjective side of the disciplinary offense is determined by the employee's fault, expressed by intent and negligence. That is, a necessary condition, which is the basis for the application of disciplinary measures to an employee, is the employee's guilt in committing a disciplinary offense and its illegality. But it should be noted that these conditions must be present at the same time, which is a mandatory criterion for the application of this type of responsibility.

Proceeding from the above, we can say that in order to clarify and determine the fact of violation by an employee of his work duties, it is necessary to perform the following actions:

- determine the functional duties of an employee provided for by an employment contract and local acts of the enterprise that do not contradict the labor legislation of the Republic of Uzbekistan;
- to determine the culpable, illegal nature of the offense committed by the employee;
- to find out whether the employee's non-fulfillment of labor duties is related to the employer's failure to provide the conditions necessary for the employee to carry out labor activity;
- to analyze whether the illegality of actions on the part of the employer is the basis for the employee's failure to fulfill his work duties[10].

In the theory of labor law, there is a different point of view regarding the fact that if the duties of an employee are not provided for in regulatory legal acts or contracts, then the behavior of an employee that does not correspond to the interests of the organization will be recognized as illegal[11].

One of the main conditions for recognizing an employee's actions as improperly performed is the performance of duties not in full and beyond the allotted time (before or after), as a result of which the result of actions does not correspond to the originally set goal. In particular, untimely performance of official duties

may be not only in the form of lateness, delay, but also in the form of an early, for example, bank transaction for the transfer of funds before the parties agree on their actions.

It should be pointed out that non-fulfillment of labor duties does not always mean improper performance by an employee of actions that are subject to mandatory fulfillment. That is, it can be both in the form of improper performance of the work duties assigned to him by the fault of the employee, and in the form of an active action, the commission of which is prohibited.

As an example of non-fulfillment or improper fulfillment of labor duties by an employee without a valid reason, violation of labor legislation; conditions and obligations under an employment contract; provisions of internal labor regulations, job descriptions, orders of the employer, technical rules and others are considered.

According to M.Y. Gasanov, "it is necessary to focus attention on the fact that in cases stipulated by legislation, local acts of the enterprise or an employment contract, regular professional development is the duty of the employee.

Accordingly, the refusal of an employee without valid reasons to undergo advanced training within the established time limits is a violation by the employee of his work duties and may serve as a basis for bringing him to disciplinary responsibility"[12].

Actions or inaction of an employee that do not comply with laws, rules, norms provided for by the rules of internal labor regulations, regulations and charters on discipline, job descriptions, in general, the terms of the employment contract characterize the illegality of actions or inaction of the employee.

In practice, various kinds of problems often arise when terminating an employment contract, where a large number of labor disputes are directly related to the termination of an employment contract for "systematic violation by an employee of his labor duties" and "one-time gross violation of labor duties".

In particular, when considering the claim of Ms. Akilova, with whom the employment contract was terminated under the second paragraph 3 of Article 100 of the Labor Code of the Republic of Uzbekistan – for (systematic) repeated lateness to work, the court in its decision indicated that penalties were imposed on the employee for being late from the lunch break. At the same time, an elderly mother and a disabled son were dependent on the plaintiff. Akilova repeatedly appealed to the head of the enterprise with a request to establish for her, in accordance with article 229 of the Labor Code of the Republic of Uzbekistan, a part-time job, but she was illegally denied this, although the employer was obliged to grant this request. By his refusal, the employer actually forced the employee to violate the



work schedule. The court reinstated the plaintiff at work, since the plaintiff was not guilty of committing disciplinary offenses [13].

That is, based on the circumstances that have arisen, which are often encountered in practice and for the settlement of such issues, it is necessary to include in the Labor Code of the Republic of Uzbekistan norms that give at least an approximate list of circumstances that can be considered as the absence of an employee at work. Since such a framework regulation would give guidance to the employer and law enforcement agencies. In our opinion, it is advisable, as valid reasons, to consider facts that can be documented and related to the following circumstances:

- 1) important events in the life of an employee (birth of a child, death of a family member, etc.);
- 2) the health status of the employee or his family members;
- 3) circumstances beyond the control of the employee's will – force majeure (disruption of public transport, an accident).

It should be pointed out that there is a category of employees whose concept of disciplinary misconduct is interpreted due to the special nature of the duties performed. Such subjects are judges, lawyers, employees of the Department for Combating Economic Crimes at the Prosecutor General's Office of the Republic of Uzbekistan, the Bureau of Enforcement at the Prosecutor General's Office of the Republic of Uzbekistan, etc.

For example, the legal basis for disciplinary liability of civil servants can be considered the norm provided for in article 73 of the Law of the Republic of Uzbekistan "On Courts"[14], according to which the grounds for bringing judges to disciplinary responsibility are:

- 1) violation of the rule of law in the administration of justice;
- 2) inaction in the organization of judicial work due to negligence or indiscipline, as well as for committing an offense discrediting the honor and dignity of a judge and encroaching on the authority of the court;
- 3) violation of the rules of ethical conduct of judges.

In particular, the legal basis for disciplinary liability of lawyers can be considered the norm provided for in Article 14 of the Law of the Republic of Uzbekistan "On Advocacy" according to which the grounds for bringing lawyers to disciplinary responsibility are:

- a) violation by a lawyer of the requirements of the legislation on advocacy;
- b) violation by the lawyer of the Rules of Professional Ethics of lawyers, attorney-client privilege and the oath of the lawyer[15].

As a result of consideration of disciplinary proceedings, disciplinary measures such as a warning

(based on the decision of the qualification commission), suspension of the license for up to six months, termination of the license may be applied to the lawyer.

Further, paragraph 36 of the Regulation "on service in the Bureau of Compulsory Enforcement at the Prosecutor General's Office of the Republic of Uzbekistan"[16] provides for two grounds for applying disciplinary penalties to an employee:

- 1) in case of non-performance or improper performance of official duties;
- 2) for a misdemeanor discrediting the title of an employee of the Bureau and Inspection.

But it should be noted that in other industries there are some peculiarities of the conditions for the occurrence of disciplinary responsibility, that is, such provisions where disciplinary responsibility is special, such as railway transport workers, customs officials, employees of internal affairs bodies. That is, the charters of enterprises and regulations on divisions may provide for other disciplinary penalties for certain categories of workers and employees. When imposing a disciplinary penalty, it is necessary to take into account the severity of the committed labor offense and the circumstances under which it was committed. It is also recommended to take into account the behavior of the employee in the period preceding the violation of discipline [17].

Thus, according to paragraph 15 of the Regulations for Railway Transport Workers, the Regulation on the Discipline of Railway Transport Workers of the Republic of Uzbekistan, approved by the Cabinet of Ministers Resolution №8[18] dated 17.01.2014, establishes disciplinary penalties in the form of a reprimand; a fine of no more than thirty percent of the average monthly earnings. The internal regulations may provide for cases of imposing a fine on an employee in the amount of no more than fifty percent of the average monthly earnings; termination of an employment contract.

Further, in accordance with paragraph 28 of the disciplinary charter of the customs authorities for № PP-3665 "On the organization of the activities of the State Customs Service of the Republic of Uzbekistan" dated 12.04.2018[19], disciplinary measures may be imposed on employees as a reprimand, a strict reprimand, a warning about incomplete official compliance, a reduction in a special rank by one step, exemption from the position positions (demotions), arrest with detention in the guardhouse, dismissal from the customs service.

In accordance with paragraph 27 of the Disciplinary Statute of the Internal Affairs Bodies for № PP-3413 "On measures to radically improve the procedure for working with the personnel of internal affairs bodies and the organization of their service" dated 29.11.2017 [20], disciplinary penalties may be imposed on employees as a remark, reprimand, severe



reprimand, a fine of no more than fifty percent of the official salary, demotion to a special rank by one step, dismissal from office, arrest with detention in the guardhouse, dismissal from the service of internal affairs bodies.

Thus, based on the above analysis, it can be concluded that the peculiarities of work in certain industries entail the need to establish increased requirements for employees and measures of responsibility for possible violations. Labor discipline at the enterprise covers all aspects of the production and economic activities of employees, directly including the types of labor, technological and production discipline, which are closely related to each other and have their own specific content [21].

Unfortunately, the very concept of disciplinary misconduct has not received proper legal consolidation in the Labor Code, as a result, law enforcement officers are still forced to turn to similar concepts established by the definitions of explanatory dictionaries.

Consequently, from the above, we believe that it is time to legislate the concept of disciplinary misconduct in part 1 of Article 181 of the Labor Code of the Republic of Uzbekistan in the following wording: "a disciplinary offense is a guilty, unlawful violation of labor duties by employees, for the commission of which disciplinary responsibility is established and disciplinary measures provided for by the Labor Code of the Republic of Uzbekistan are applied."

In conclusion, I would like to note that, as long as the labor legislation of the Republic of Uzbekistan does not consider abuse of law as a type of disciplinary offense, this category will not have mandatory signs of illegality and punishability. Consequently, employees who have a special status and exercise leadership within a certain structure or the entire organization commit illegal acts that formally comply with legal regulations, that is, they act within the law, but at the same time infringe on the rights of other persons, including the employer.

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