

640.14 EMPLOYMENT RELATIONSHIP - EMPLOYER'S DEFENSE OF JUST CAUSE.

This issue reads:

"Did the defendant terminate the employment of the plaintiff for just cause?"

You are to answer this issue only if you answer the (*state number*) issue in favor of the plaintiff.

On this issue the burden of proof is on the defendant.¹ This means that the defendant must prove, by the greater weight of the evidence, that the employment of the plaintiff was terminated for just cause.

An employee hired for a definite period of time may be terminated before the expiration of that definite period of time for just cause. Just cause exists when an employee

[fails to serve *his* employer faithfully and diligently]²

[fails to perform all the duties incident to *his* employment with that degree of diligence, care and attention which an ordinary person would exercise under the same or similar circumstances]³

[fails to do *his* job because of some mental, physical or other disability, even though beyond *his* control]⁴

[fails to fulfill one or more of the explicit terms of *his* employment agreement]⁵

[acquires an interest adverse to *his* employer (such as becoming engaged in a business which necessarily renders *him* a competitor of *his*

employer, no matter how much or how little time and attention *he* devotes to it)].⁶

As to this issue, the defendant contends and the plaintiff denies that the plaintiff's termination was for just cause in one or more of the following respects: (*here state defendant's contentions of just cause as supported by the evidence*). Whether such termination was for just cause is for you to decide.

Finally, as to this issue on which the defendant has the burden of proof, if you find by the greater weight of the evidence that the defendant terminated the employment of the plaintiff for just cause, then it would be your duty to answer this issue "Yes" in favor of the defendant.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the plaintiff.

1. *Wilson v. McClenny*, 262 N.C. 121, 132, 136 S.E.2d 569, 577 (1963) (just cause is an affirmative defense); *Ivey v. Banner City Cotton Mills*, 143 N.C. 189, 198, 55 S.E. 613, 617 (1906); *Eubanks v. Alspaugh*, 139 N.C. 520, 522, 52 S.E. 207, 208 (1905) (*per curiam*); *McKeithan v. Telegraph Co.*, 136 N.C. 213, 216, 48 S.E. 646, 647 (1904).

2. *Wilson, supra*, 262 N.C. at 131, 136 S.E.2d at 577.

3. "If plaintiff used alcohol to the extent it interfered with the proper discharge of his duties. . . , defendants were justified. . .". *Wilson, supra*, 262 N.C. at 132, 136 S.E.2d at 577. See also *Haynes v. Winston-Salem Southbound Ry. Co.*, 252 N.C. 391, 398, 113 S.E.2d 906, 911 (1960). Cf. *Walker v. Goodson Farms, Inc.*, 90 N.C. App. 478, 369 S.E.2d 122 (1988).

4. "Plaintiff's addiction to alcohol had caused him to neglect the business." *Wilson, supra*, 262 N.C. at 131, 136 S.E.2d at 577. *Haynes, supra*, 252 N.C. at 397-98, 113 S.E.2d at 911. See also *McKnight v. Simpson's Beauty Supply, Inc.*, 86 N.C. App. 451, 358 S.E.2d 107 (1987).

5. *McKnight, supra*.

6. *In re Burris*, 263 N.C. 793, 795, 140 S.E.2d 408, 410 (1965) (*per curiam*).

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