

this as a reason that is rationally related to an employee's competence or turpitude or the proper performance of his or her duties and "that is not in violation of the employee's civil or constitutional rights...."

ADMINISTRATIVE IMPLICATIONS

DOL anticipates an (1) increase in the amount of litigation in the private sector and (2) increase litigation in the public sector because it provides "for cause" protection to probationary, temporary and term employees. HB 717 requires "for cause" justification for all disciplinary actions, including oral and written reprimands which do not now require that showing.

The Administrative Office of the Courts(AOC) states that as is the case with most public employees, New Mexico Judicial Branch employees are subject to a probationary period of one year during which they may be terminated without cause. However, once they survive this probationary period, courts have determined that employees have a reasonable expectation of continued employment, essentially a property interest in that job as the employee's means of livelihood. Therefore, a government employer must first provide due process if it intends to take adverse action (for just cause) that may have an adverse impact on a public employee's employment.

According to the U.S. Supreme Court, as pointed out by AOC, due process means that the employee must be given an opportunity for a hearing before he or she is deprived of any significant property interest. In *Cleveland Board of Education v. Loudermill*, the Supreme Court stated that this principle requires some kind of hearing prior to the discharge of an employee who has a constitutionally protected property interest in his or her employment.

CONFLICT/DUPLICATION

Duplicate of SB 487.

DOL indicated that the bill conflicts with the following State Personnel Rules and case law:

State Personnel Rule 1 NMAC 7.11.10.2 requires that disciplinary measures for just cause only apply to permanent, non-probationary employees. The Personnel Rule also defines just cause. The definition in this proposal conflicts with the SPO rule and the provision would give job protection to even probationary temporary and term employees.

State Personnel Rule 1 NMAC 7.11.11 allows for disciplinary measures including dismissal of probationary and temporary employees within State Government, with a 24 hour written notice and does not require just cause.

Conflicts with State Personnel Rule 1NMAC 7.11.10.2 permitting discipline such as oral or written reprimands without just cause.

Conflicts with NM case law that holds that NM is an "at will" state, meaning an employer may discharge an employee for any reason or no reason, and only prohibits the employer from dismissing an employee for discriminatory reasons.

OTHER SUBSTANTIVE ISSUES

House Bill 717 -- Page 3

The probationary period exists as period of time during which the employee must demonstrate the ability to adequately perform the job. Failure to demonstrate this ability allows the employee to be terminated at will without grievance rights.

Expands the “for cause” protection to include probationary, temporary and term employees of government agencies.

BD/ar:pr