

Amendment 55
Allowable Reasons for Employee Discharge or Suspension

1 **Ballot Title:** An amendment to the Colorado constitution concerning cause for
2 employee discharge or suspension, and, in connection therewith, requiring an employer
3 to establish and document just cause for the discharge or suspension of a full-time
4 employee; defining "just cause" to mean specified types of employee misconduct and
5 substandard job performance, the filing of bankruptcy by the employer, or documented
6 economic circumstances that directly and adversely affect the employer; exempting from
7 the just cause requirement business entities that employ fewer than twenty employees,
8 nonprofit organizations that employ fewer than one thousand employees, governmental
9 entities, and employees who are covered by a collective bargaining agreement that
10 requires just cause for discharge or suspension; allowing an employee who believes he
11 or she was discharged or suspended without just cause to file a civil action in state
12 district court; allowing a court that finds an employee's discharge or suspension to be
13 in violation of this amendment to award reinstatement in the employee's former job,
14 back wages, damages, or any combination thereof; and allowing the court to award
15 attorneys fees to the prevailing party.

16 **Text of Proposal:**

17 *Be it enacted by the People of the State of Colorado:*

18 **SECTION 1.** Article XVIII of the constitution of the state of Colorado is amended BY
19 THE ADDITION OF A NEW SECTION to read:

20 **Section 13. Just cause for employee discharge or suspension.** (1) AN EMPLOYEE MAY
21 BE DISCHARGED OR SUSPENDED ONLY IF HIS OR HER EMPLOYER HAS FIRST ESTABLISHED
22 JUST CAUSE FOR THE DISCHARGE OR SUSPENSION.

23 (2) FOR PURPOSES OF THIS SECTION:

24 (a) "JUST CAUSE" MEANS:

- 25 (I) INCOMPETENCE;
- 26 (II) SUBSTANDARD PERFORMANCE OF ASSIGNED JOB DUTIES;
- 27 (III) NEGLECT OF ASSIGNED JOB DUTIES;
- 28 (IV) REPEATED VIOLATIONS OF THE EMPLOYER'S WRITTEN POLICIES AND
29 PROCEDURES RELATING TO JOB PERFORMANCE;
- 30 (V) GROSS INSUBORDINATION THAT AFFECTS JOB PERFORMANCE;
- 31 (VI) WILLFUL MISCONDUCT THAT AFFECTS JOB PERFORMANCE;
- 32 (VII) CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE;

1 (VIII) FILING OF BANKRUPTCY BY THE EMPLOYER; OR
2 (IX) DISCHARGE OR SUSPENSION DUE TO SPECIFIC ECONOMIC CIRCUMSTANCES
3 THAT DIRECTLY AND ADVERSELY AFFECT THE EMPLOYER AND ARE
4 DOCUMENTED BY THE EMPLOYER, PURSUANT TO SUBSECTION (3) OF THIS
5 SECTION.

6 (b) "EMPLOYEE" MEANS ANY NATURAL PERSON WHO:

7 (I) HAS WORKED AS A FULL-TIME EMPLOYEE FOR AT LEAST SIX CONSECUTIVE
8 MONTHS FOR A PRIVATE SECTOR EMPLOYER; AND

9 (II) IS NOT COVERED BY A BONA FIDE COLLECTIVE BARGAINING AGREEMENT WHICH
10 CONTAINS A PROVISION THAT REQUIRES JUST CAUSE FOR DISCHARGE AND SUSPENSION
11 FROM EMPLOYMENT.

12 (c) "EMPLOYER" MEANS ANY BUSINESS ENTITY THAT EMPLOYS AT LEAST TWENTY FULL-
13 TIME EMPLOYEES IN COLORADO. "EMPLOYER" EXCLUDES:

14 (I) ANY GOVERNMENTAL ENTITY; OR

15 (II) ANY NONPROFIT UNINCORPORATED ASSOCIATION OR ANY NONPROFIT
16 CORPORATION, INCLUDING ANY CHARITABLE ORGANIZATION OR FOUNDATION EXEMPT
17 FROM FEDERAL TAXATION UNDER SECTION 501(C) OF THE "INTERNAL REVENUE CODE OF
18 1986", AS AMENDED, THAT EMPLOYEES LESS THAN ONE THOUSAND EMPLOYEES.

19 (d) "GOVERNMENTAL ENTITY" MEANS ANY AGENCY OR DEPARTMENT OF FEDERAL,
20 STATE, OR LOCAL GOVERNMENT, INCLUDING BUT NOT LIMITED TO ANY BOARD,
21 COMMISSION, BUREAU, COMMITTEE, COUNCIL, AUTHORITY, INSTITUTION OF HIGHER
22 EDUCATION, POLITICAL SUBDIVISION, OR OTHER UNIT OF THE EXECUTIVE, LEGISLATIVE,
23 OR JUDICIAL BRANCHES OF THE STATE; ANY CITY, COUNTY, CITY AND COUNTY, TOWN,
24 OR OTHER UNIT OF THE EXECUTIVE, LEGISLATIVE, OR JUDICIAL BRANCHES THEREOF; ANY
25 SPECIAL DISTRICT, SCHOOL DISTRICT, LOCAL IMPROVEMENT DISTRICT, OR SPECIAL
26 TAXING DISTRICT AT THE STATE OR LOCAL LEVELS OF GOVERNMENT; ANY "ENTERPRISE"
27 AS DEFINED IN SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION; OR ANY
28 OTHER KIND OF MUNICIPAL, PUBLIC, OR QUASI-PUBLIC CORPORATION.

29 (3) AN EMPLOYER SHALL PROVIDE AN EMPLOYEE WHO HAS BEEN DISCHARGED OR
30 SUSPENDED WITH THE EMPLOYER'S WRITTEN DOCUMENTATION OF THE JUST CAUSE USED
31 TO JUSTIFY SUCH DISCHARGE OR SUSPENSION.

32 (4) (a) ANY EMPLOYEE WHO BELIEVES HE OR SHE WAS DISCHARGED OR SUSPENDED
33 WITHOUT JUST CAUSE MAY, WITHIN ONE HUNDRED EIGHTY DAYS AFTER NOTIFICATION
34 OF THE DISCHARGE OR SUSPENSION, FILE A CIVIL ACTION IN STATE DISTRICT COURT. IF

1 THE DISCHARGE OR SUSPENSION IS HELD TO HAVE BEEN WRONGFUL UNDER THE
2 PROVISIONS OF THIS SECTION, THE COURT SHALL, AT ITS DISCRETION, AWARD THE
3 EMPLOYEE REINSTATEMENT IN HIS OR HER FORMER JOB, BACK WAGES, DAMAGES, OR ANY
4 COMBINATION THEREOF.

5 (b) IN ADDITION TO ANY AWARD MADE PURSUANT TO THIS SUBSECTION (4), THE COURT
6 MAY ALSO AWARD ATTORNEY FEES TO THE PREVAILING PARTY.

7 (c) THE DECISION OF THE DISTRICT COURT MAY BE APPEALED TO THE COLORADO COURT
8 OF APPEALS AND THE COLORADO SUPREME COURT AS PERMITTED UNDER THE COLORADO
9 RULES OF CIVIL PROCEDURE.

10 (5) THE GENERAL ASSEMBLY MAY ENACT LEGISLATION TO FACILITATE THE PURPOSES OF
11 THIS SECTION.

12 (6) THIS SECTION SHALL BECOME EFFECTIVE UPON PROCLAMATION OF THE GOVERNOR
13 REGARDING THE VOTES CAST ON THIS AMENDMENT.