Labor & Employment Law Daily Wrap Up, NAA CORNER—Last-Chance Agreements: drafting, negotiating, and enforcing (or opposing) them effectively, (Jun. 16, 2026)

Labor & Employment Law Daily Wrap Up

By Richard Bales

Both sides should approach LCAs as a coaching or rehabilitation tool, not simply a trap.

I. What a Last-Chance Agreement Does—and Why It Exists

A last-chance agreement (LCA) is a conditional decision to retain or reinstate an employee who otherwise likely would be discharged. The employer offers continued employment, but only if the employee complies with specified conditions which often are tied to the conduct that led to discipline in the first place.

LCAs arise in both union and non-union settings. In unionized workplaces, they are negotiated in the shadow of arbitration and the just-cause standard. In non-union settings, they serve a similar function: managing litigation risk while giving the employee one final opportunity to remain employed.

In either context, LCAs operate as both risk-allocation and behavioral-correction tools. The employer limits future uncertainty by setting clear consequences for further misconduct. The employee receives another chance, but under conditions that typically are stricter than the baseline workplace rules.

II. Why the Parties Agree to LCAs (Even When They Distrust Them)

LCAs can be uncomfortable for everyone involved. Even so, they are common because they solve problems that neither side can easily resolve through a clean discharge decision.

From the employer's perspective, an LCA often reflects uncertainty. Management may believe discharge is justified but not guaranteed to be upheld. That uncertainty may arise from inconsistent past discipline, factual disputes, procedural concerns, or the unpredictability of arbitration or litigation. An LCA allows the employer to avoid that risk while still imposing meaningful consequences.

Employers may also prefer LCAs because they preserve a trained employee. In many cases, the issue is not a lack of skill but a discrete behavioral problem—attendance, safety compliance, or workplace conduct—that management believes may be correctable.

For unions and employees, the calculus is more direct. An LCA preserves employment in situations where the alternative likely is discharge. Even when the terms are strict, a structured "final opportunity" often is preferable to the risk of job loss.

Both sides should approach LCAs as a coaching or rehabilitation tool, not simply a trap. Many LCAs include training requirements—such as safety training, harassment training, or anger-management counseling. Both sides are investing time and resources in helping the employee succeed. That purpose should guide LCA discussions.

A common but underappreciated point is that LCAs frequently signal disagreement within management, not just misconduct by the employee. That internal uncertainty creates space for negotiation, even when the employer initially presents the LCA as non-negotiable.

III. Recurring Drafting Problems (Where LCAs Go Wrong)

Many LCAs fail not because the concept is flawed, but because the drafting is imprecise, overbroad, or unrealistic. Several recurring problems appear across both union and non-union settings.

A. Overbreadth

Some LCAs attempt to cover every conceivable type of misconduct and contain broad triggering language such as “any violation of company rules” or “any misconduct.” Other LCAs provide a laundry list of triggering violations, e.g., including insubordination and safety violations on an LCA created to address attendance issues.

Overbroad LCAs muddle the message. LCAs should emphasize the specific conduct that led to the discipline. An appropriately narrow agreement helps everyone understand precisely what behavior must change and gives the employee a concrete and attainable goal to work toward rather than setting the employee up for certain failure.

B. Impossible or near-impossible standards

A similar problem is imposing standards that are difficult or impossible to meet. Attendance-related LCAs sometimes include provisions under which a single absence or tardy—regardless of cause—results in discharge.

Agreements structured this way can function less as a final opportunity and more as a delayed discharge. When success appears unattainable, the incentive to improve behavior is diminished.

C. Automatic-discharge and unilateral-determination clauses

Some LCAs include language requiring discharge for any violation of the agreement. Others provide that discharge will occur if the employer “determines” that a violation has occurred. Though both types of LCAs appear to provide clarity by drawing bright lines, they can create practical problems.

Rigid language eliminates discretion. If mitigating circumstances arise—such as illness, personal emergencies, or partial compliance—the employer may feel compelled to impose discharge even when it would prefer a lesser response.

Moreover, if the employer chooses not to enforce the provision strictly, that creates two separate problems. First, it weakens the enforceability of this LCA if the employee later violates the LCA again. Second, by creating a precedent of nonenforcement, it weakens the enforceability of future LCAs involving other employees.

D. Duration problems

Some LCAs extend for multiple months or years. In union settings, that duration may exceed the term of the governing collective bargaining agreement. In non-union settings, extended durations may raise similar fairness and enforceability concerns. Long durations increase the likelihood of changed circumstances, both for the employee and the workplace, and can make the agreement more difficult to apply consistently.

E. Waivers of the right to grieve or challenge

Some LCAs attempt to eliminate the employee’s ability to challenge a discharge decision, either by assigning exclusive decision-making authority to the employer or by expressly waiving grievance or appeal rights. While such provisions may be enforceable in some circumstances, they often raise concerns about fairness and consistency with broader contractual or legal frameworks. They also invite closer scrutiny when disputes arise.

IV. Drafting and Negotiating an Effective LCA

An effective LCA is not simply strict. It is clear, targeted, and capable of being applied in real-world situations. Both employers and unions (or employees and their counsel in non-union settings) benefit from careful drafting.

A. Define the actual problem

The agreement should focus on the conduct that led to discipline. If the issue is attendance, the LCA should address attendance. If the issue is safety compliance, the agreement should address safety behavior. Narrowing the scope improves clarity, focuses the employee on the problematic behavior, and reduces the likelihood of later disputes about whether unrelated conduct triggers the agreement.

B. Use standards that can be applied in the real world

Standards should allow for realistic compliance. Absolute or strict-liability formulations may appear strong, but they often create enforcement problems. An agreement that provides a genuine opportunity for improvement is more likely to achieve its intended purpose and to be applied consistently. It's also much more likely to be enforced by a court or arbitrator.

C. Clarify decision-making and evidence

LCAs should address how violations will be determined. Provisions that rely solely on the employer's determination can lead to disputes, particularly where the facts are contested. More balanced approaches include requiring that violations be supported by objective evidence or that the employer conduct a reasonable investigation before making a final decision. These provisions do not prevent enforcement, but they do strengthen the credibility and enforceability of the outcome.

Likewise, even streamlined agreements benefit from basic procedural protections. Providing the employee with an opportunity to respond to alleged violations or requiring a brief investigation can reduce both the risk of error and a reflexive challenge of the employer's decision. They also make it much more likely that an LCA will be enforced if challenged.

D. Build in appropriate flexibility

Rigid automatic-discharge provisions can be counterproductive. Allowing for limited discretion enables the employer to account for mitigating circumstances and to tailor the response to the situation. From the union or employee perspective, flexibility increases the likelihood that the agreement will be applied fairly rather than mechanically.

E. Set a rational duration

The duration of the LCA should reflect the nature of the conduct and the likelihood of improvement. Shorter durations are often easier to administer and defend. They also increase the odds of a successful outcome: retention of the employee and improved behavior.

In union settings, setting the duration for a period not exceeding the term of the collective bargaining agreement may provide a useful reference point. In non-union settings, similar considerations of fairness and practicality apply.

F. Recognize that LCAs are negotiated documents

Employers often present LCAs as final documents, but they usually are negotiable. Employers frequently expect some level of revision, and reasonable changes can improve both enforceability and effectiveness. Unions should recognize that internal disagreements within management over the propriety of immediate discharge may have motivated the offering of the LCA, and that often this presents an opportunity to negotiate at least some of the LCA's terms.

Moreover, in the union setting, a "take-it-or-leave-it" LCA might violate the employer's duty to bargain in good faith with the union over terms and conditions of employment. Merely raising that issue may encourage the employer to negotiate, as may a reminder that a negotiated LCA usually is much more likely to be enforced than a unilaterally imposed one. It is far more difficult for a union or employee to complain that an LCA is substantively unfair if the union or employee had a meaningful role in drafting it.

Even in non-union settings, where formal bargaining obligations may not apply, discussion and modification of terms can help create employee buy-in and reduce later disputes.

V. Enforcing (or Challenging) LCAs

When an employer asserts that an employee has violated an LCA, the dispute typically turns on how the agreement is interpreted and applied.

A. Two competing enforcement models

Two general approaches appear in arbitration and litigation.

Under a contract-enforcement model, the LCA is treated as a binding agreement. The decision-maker focuses on the language of the agreement and whether the employee's conduct falls within its terms. Review of the underlying discipline or the fairness of the agreement itself is limited.

Under a fairness or structural-integrity model, the decision-maker examines whether the agreement is consistent with the governing framework and whether its terms are reasonable. Agreements that eliminate core protections or are imposed without meaningful negotiation may receive closer scrutiny.

In practice, outcomes often reflect a combination of these approaches.

B. Where enforcement disputes actually turn

Most disputes do not hinge on abstract doctrine. They turn on practical questions:

- What does the agreement actually say?
- How specifically does it define the triggering conduct?
- Who decides whether a violation occurred, and based on what evidence?
- Did the employer follow the procedures set out in the agreement?
- Is the language clear, or does it invite competing interpretations?
- Is the agreement a fair one, or does failure appear to be preordained?
- Was the LCA a reasonable response to a rule violation? Is enforcement of the LCA a reasonable response to

subsequent misconduct?

- In the big picture, did the employer treat the employee fairly? Did the employee make a real effort to improve, or did the employee just go through the motions?

These questions often determine the outcome.

C. The role of ambiguity and drafting responsibility

Ambiguity in LCAs is common, particularly where agreements are drafted quickly or without negotiation. When language is unclear, decision-makers often consider which party drafted the agreement and whether the other party had a meaningful opportunity to negotiate its terms.

Ambiguity tends to be resolved against the drafter, especially where the drafter insisted on the at-issue language. This is yet another reason why employers may be willing to negotiate the terms of LCAs even if the LCA initially is presented as non-negotiable.

D. Waiver and inconsistent enforcement

Employers that do not enforce LCAs consistently may encounter difficulty relying on them later. If an agreement requires discharge for a violation but the employer chooses not to impose it, that decision can undermine the employer’s position in future cases. Consistency in application is therefore an important aspect of enforceability.

VI. Practical Takeaways

LCAs are most effective when they are realistic, targeted, and capable of consistent application. Both sides benefit from approaching them with those objectives in mind.

For employers:

- Draft narrowly and tie the agreement to the actual problem.
- Avoid rigid language that eliminates flexibility that later may be desirable.
- Ensure that decision-making processes are clear and defensible.
- Apply this LCA agreement consistently, and apply it consistently with previous LCAs for other employees.

For unions and employees:

- Treat LCAs as negotiable documents.
- Focus on clarity, scope, and reviewability.
- Seek standards that allow for realistic compliance and emphasize the employer’s shared interest in a successful outcome.
- Anticipate how the agreement will be applied if a dispute arises.

When carefully drafted and applied, LCAs can serve their intended purpose: preserving employment while addressing serious workplace concerns. When drafted imprecisely or applied rigidly, they tend to generate the very disputes they are meant to avoid.

About the author: Rick Bales is a professor of law at Ohio Northern University Pettit College of Law and a labor arbitrator serving on panels for the American Arbitration Association, Federal Mediation and Conciliation Service, and other dispute resolution providers. His teaching and scholarship focus on labor and employment law, arbitration, and alternative dispute resolution. The views expressed are those of the author and do not necessarily reflect the views of any organization with which he is affiliated.

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