

Internal Discrimination Complaints

Despite your best efforts to implement a fair disciplinary policy and ensure that managers apply the policy consistently, employees may complain that they were treated unfairly for discriminatory reasons. For example, an employee may complain that he was punished more severely than other employees who broke similar rules because of his race.

Conducting a prompt, thorough and impartial investigation of internal discrimination complaints about disciplinary action and taking appropriate corrective measures when necessary may resolve problems and prevent them from happening again. The following tips may be helpful in this process.



Ask the employee to:

- ▲ Explain why he believes he was treated differently than other employees; and
- ▲ Identify other employees who he believes were treated more favorably.

Meet with the manager(s) involved in those disciplinary decisions. Ask them to:

- ▲ Explain the disciplinary actions imposed on the employee and others who committed similar infractions; and
- ▲ Explain the reason(s) for these actions, including the reason(s) any employees may have been treated differently or better than other employees who committed similar infractions.

Determine whether the disciplinary policy was consistently applied.

- ▲ If employees who committed similar infractions were not punished, or were punished less severely, determine if this response was justified. For example:
- ▲ Was the infraction a repeat offense for the employee who complained about discrimination and a first offense for the employees who were treated more favorably?

- Were the infractions similar? For example, did the employee who reported discrimination use vulgar language in front of customers, while the other employees used vulgar language only in front of co-workers?
- Were there other circumstances that merited treating employees differently?

If you find evidence of discrimination, ensure that the discrimination stops immediately, correct any effects of the discrimination, and prevent it from happening again.

- ▲ For example, if you determine that an employee was punished more severely than other employees because of his race, amend any relevant documents to reflect the appropriate disciplinary action, if any. Provide the employee any pay, seniority or other benefits he would have received if he had been treated properly.
- ▲ Consider whether to discipline any managers involved in the discriminatory disciplinary action.

If you determine that the punishment was warranted, inform the employee.

- ▲ It may be helpful to explain the steps you took to investigate the complaint, the results of the investigation, and the basis for your decision.

Consider documenting the results of the investigation and any corrective or preventative action taken.

As mentioned above, an essential element of avoiding discrimination, and even the accidental appearance of discrimination (sometimes called disparate impact), is to implement and closely follow a strong progressive discipline policy. Progressive discipline demonstrates an employer's good faith effort to bring an employee into compliance with workplace policies and/or to help bring an employee's job performance up to satisfactory levels. This is essential for providing documentation and logic behind any tangible employment actions – such as termination, demotion, job transfer, etc.

SAMPLE PROGRESSIVE DISCIPLINE POLICY

As a condition of employment, you are instructed to comply with the rules and policies detailed and defined within the Company handbook, the rules and procedures specific to your job descriptions and duties and those which may be posted on the bulletin board. Violation of any work rules, including those listed above, may subject you to disciplinary action up to and including discharge. It is the Company's intent to foster and encourage compliance with all work rules.

The Company supports the use of progressive discipline to address issues such as poor work performance or misconduct. Our progressive discipline policy is designed to provide a corrective action process to improve and prevent a recurrence of undesirable behavior and/or performance issues. Our progressive discipline policy has been designed consistent with our organizational values, HR best practices and employment laws.

To that end, a system of progressive discipline is generally used which corrects employees with the intent to avoid further violations and mistakes. The progressive discipline and disciplinary actions (depending on the gravity of the offense at the discretion of the supervisor) are as follows. However, the Company reserves the right to extend, bypass, or otherwise modify one or more of the steps depending on the circumstances.

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| STEP #1 | Oral warning with file notation; |
| STEP #2 | Written warning; |
| STEP #3 | Final written warning with a possible unpaid suspension; |
| STEP #4 | Discharge. |

When implanting a progressive discipline program, company management and leaders must follow the policy consistently and hold every single employee equally accountable for following company rules.

Manager Responsibilities and the EEOC: Treating Employees Consistently

Ensuring that you treat employees consistently, or that you can justify any inconsistent treatment, may help you prevent retaliation.

Before making an employment decision that may negatively affect an employee who reported discrimination, assisted with a discrimination investigation or lawsuit, or opposed discrimination, ask yourself:

- ▲ Am I holding this employee to stricter performance or behavioral standards now than I did before he filed a discrimination complaint, assisted with a discrimination investigation or lawsuit, or opposed discrimination?
- ▲ Am I treating this employee differently than I have treated other employees who have broken similar rules?
- ▲ Am I treating this employee differently than I have treated other employees with similar skills, abilities or accomplishments?

