

Essentials for Following Progressive Discipline

As a manager, you will come across circumstances where it may be necessary for you to discipline or terminate an employee. There are many reasons why this action may be justified. Even so, it is possible that taking disciplinary action may result in a discrimination charge or complaint, so it is essential that you know the appropriate steps to take when making employment decisions or taking disciplinary action.

The Equal Employment Opportunities Commission advises managers to take the following advice when considering discipline:

- ▲ Ensure that disciplinary and termination decisions are not based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, age (40 or older) or genetic information (including family medical history).
- ▲ Ensure that disciplinary and termination decisions are not based on an employee's decision to report discrimination, participate in a discrimination investigation or lawsuit, or oppose discrimination (for example, threatening to file a discrimination complaint).
- ▲ In general, ensure that disciplinary and termination decisions are consistent with your discipline policy.
 - However, in some instances, you may need to deviate from that policy. In those instances, ensure that you can justify treating the employee differently.
 - For example, your discipline policy may state that employees who fail to meet deadlines will receive a warning. You may decide to waive the warning for an employee who was unable to meet a deadline because she did not receive a necessary part from a supplier, despite her repeated and timely requests for the part.
- ▲ Document the reason(s) for the discipline or termination.
 - This may help you defend your business if a discrimination charge or complaint is filed.
- ▲ To prevent misunderstandings, it may be helpful to explain the reason(s) for the discipline or termination decision to the employee.



- ▲ Respond promptly and effectively to discrimination complaints regarding disciplinary action.
- ▲ Retain any disciplinary records as required by law.
 - If an EEOC charge of discrimination is filed, keep relevant records until the charge is resolved.

As we work to heed the advice of the EEOC, one of the best ways to properly discipline and/or counsel employees is through a Progressive Discipline Policy that advocates for corrective action and helping an employee stay on track with their job goals and responsibilities.

Corrective Action through Progressive Discipline

Corrective action is a process of applying and documenting corrective actions taken to address performance and/or behavioral problems with an employee. It is a means of minimizing your exposure to litigation and should be designed to correct a problem in a positive, helpful manner whenever possible. It's important that you have a thoroughly documented business-related reason when you terminate an individual's employment.

Your documentation should demonstrate "good cause" that would convince a judge or juror. There is no substitute for hiring the right person in the first place. However, unsatisfactory performance can occur at any time to any employer and for many reasons. You have already invested a great deal of time and money in your employees. Assisting them to correct/change the problem costs far less than recruiting and training new employees.

Key Elements of Corrective Action & Progressive Discipline

- ▲ Make sure all employees receive a copy of your company's rules and policies.

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- ▲ Clearly communicate job duties and expectations to all employees.
- ▲ Apply counseling or corrective action as soon as the performance problem or behavior occurs.
- ▲ Apply policies consistently and fairly. (Most grievances and litigation result when individuals feel they have been treated unfairly.)
- ▲ Practice good faith efforts. Investigate thoroughly before making judgments. Due process includes informing the employee what the action is and why it is being taken as well as making sure the employee has the opportunity to respond to the questioned behavior or problem.
- ▲ Consider Employee Assistance Programs if available.
- ▲ Document all counseling/corrective actions—both informal and formal.
- ▲ Prepare for counseling/corrective interviews in advance.
- ▲ Conduct meetings in private.
- ▲ Conduct formal corrective actions with another supervisory or management person—preferably the person responsible for HR.
- ▲ State whether the action is formal or informal and give the employee a notice of grievance rights (if applicable).

Progressive Discipline Steps

Progressive discipline is the process of using increasingly severe steps or measures when an employee fails to correct a problem after being given a reasonable opportunity to do so. The underlying principle of sound progressive discipline is to use the least severe action that you believe is necessary, to correct the undesirable situation.

The action chosen for a particular infraction will depend on a variety of factors that include the severity of the infraction, the previous work history of the employee and consistency within the organization.

The primary purpose of progressive discipline is not to “paper the file” but to help employees get back on track.

Typical steps:

- ▲ Verbal warning
- ▲ Written warning
- ▲ Final warning with suspension
- ▲ Termination



These are the steps of progressive discipline in order from least severe to most severe. The first step is a verbal warning, followed by a written warning, final written warning with suspension and finally termination. The first three steps are designed to encourage employees to correct their behavior and improve their performance. The outcome of these disciplinary steps should be improved behavior or performance on the part of the employee. Termination is the outcome if the previous progressive discipline steps are unsuccessful in correcting employee behavior.

Discipline Rules of Engagement

When determining whether or not to take disciplinary action, and which action to take, there are four key criteria to consider.

- ▲ Severity of the offense: This helps to determine whether or not disciplinary action is needed and at what level. Some offenses are so serious that they will merit termination for a first offense, these might include serious drug and alcohol offenses, gross safety violations, violence, gross insubordination, theft, fighting, etc.
- ▲ Employee’s past record: A long record of good service should be considered when minor disciplinary infractions occur. A short service record punctuated by frequent disciplinary problems may merit more severe discipline.
- ▲ Past actions in similar incidents: Most companies establish some sort of a standard for similar disciplinary infractions. For example, a tardy employee should receive a verbal warning on their first infraction. Going significantly above or below the standard for a given infraction may appear to be discrimination or favoritism.

The Hot Stove Rule

One way to look at employee discipline is to consider the “hot stove rule.” From an employee’s perspective, being disciplined should be similar to what happens when you touch a hot stove.

If they decide to touch the stove, the reaction is immediate, impersonal and consistent.

- ▲ Immediate, in that there is no delay between the act and the consequences.

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- ▲ Impersonal, in that it doesn't matter who you are. There are no favorites and no discrimination. Whoever touches the stove will be burned.
- ▲ Consistent, in that the stove gives an equal burn to anyone who touches it. Those who touch it more often or for a longer period of time will receive worse burns.

How many warnings should an employee get?

The answer to this question depends on:

- ▲ The seriousness of the infraction. More serious infractions merit more serious disciplinary actions.
- ▲ How much time has passed since the last warning? When there are long time periods of good service between disciplinary infractions, it may be appropriate to allow an additional warning instead of elevating to the next step.
- ▲ The company's practice in similar situations. Discipline should be applied evenly for similar infractions.
- ▲ Any compelling need for individual consideration. Consider any compelling circumstances that may have contributed to the employee actions that led to discipline. It is often found that employees who are involved in some kind of a crisis in their personal life have difficulties maintaining their work performance.
- ▲ Bad timing that casts doubt on the employer's motive. This includes any recent incidents, complaints or claims that can create the appearance of retaliation.

Employee discipline is always a judgment call. If you give due consideration to the above factors, it's less likely that your decisions regarding employee discipline will be second guessed or later overturned.

Documentation Tips

- ▲ Always be Specific
- ▲ Describe in a Narrative Form
- ▲ If the employee has any appeal rights, specify
- ▲ Clearly specify the future action to occur if the offensive behavior does not cease.

Importance of Signatures on Documentation

Make sure that you get employee signatures on documentation for performance appraisals, counseling notes and memos, written warnings, written resignations and suspension records. Having an employee's signature makes it difficult for the employee to later deny that the event or action took place. Conversely, introducing documents into evidence without employee signatures is a sure way to lose credibility and weaken your case.

Timber Products Manufacturers Association

dot the i's and cross the t's

Meaning: If you dot the i's and cross the t's, you do something very carefully to make sure you haven't made any mistakes

If employee refuses to sign:

Sometimes employees refuse to sign documents. There are many reasons for this. Sometimes they are suspicious that they might be signing away rights or that they're acknowledging guilt. In some cases, they may just want time to think about it. With others, it is a control issue. They simply aren't going to sign and you can't make them.

Remind employees it's not an admission of guilt. It's simply acknowledging you shared the contents of the document with them. If they still won't sign, don't make an issue out of it. Call another supervisor or an HR representative to your office. Have the witness acknowledge the action that has taken place.

Write in: "employee refused to sign" at the bottom of the document – then you and the witness then both sign the document.

Checklist of items to consider when moving through progressive discipline steps:

- ▲ Has all critical information been reduced to writing and placed in the personnel file?
- ▲ Is the nature of the employee's misconduct or lack of performance clearly described in a specific, factual manner?
- ▲ Was the employee clearly informed of required standards of behavior and performance?
- ▲ Does the record progress from mild, early warnings to more serious, comprehensive documents?
- ▲ Was the employee given adequate assistance and direction by management?
- ▲ Has the employee had reasonable time and a fair opportunity to improve?
- ▲ Is the lack of performance or misconduct sufficiently persistent and serious to warrant the proposed corrective action?
- ▲ Has the employee been given fair warning of the consequences of continued performance problems or misbehavior?

If you can answer yes to all of the above questions based on documents contained in the personnel file, you will have a well-documented corrective action.

Discipline: Record of Verbal or Written Counseling

Name: _____ Dept: _____ Date: _____

Date of occurrence: _____ Time: _____ Location: _____

The following counseling has taken place (check all that apply and give details under explanation):

<input type="checkbox"/> Absence	<input type="checkbox"/> Harassment
<input type="checkbox"/> Tardiness	<input type="checkbox"/> Dishonesty
<input type="checkbox"/> Violation of company policies and/or procedures	<input type="checkbox"/> Violation of safety rules
<input type="checkbox"/> Horseplay	<input type="checkbox"/> Leaving work without authorization
<input type="checkbox"/> Smoking in unauthorized areas	<input type="checkbox"/> Unsatisfactory job performance
<input type="checkbox"/> Failure to follow instructions	<input type="checkbox"/> Insubordination
<input type="checkbox"/> Unauthorized use of equipment, materials	<input type="checkbox"/> Falsification of records
<input type="checkbox"/> Other	

Summary of violation: _____

Summary of corrective plan of action: _____

Follow-up date(s): _____

Employee: _____ Date: _____

Supervisor: _____ Date: _____

HR Manager: _____ Date: _____