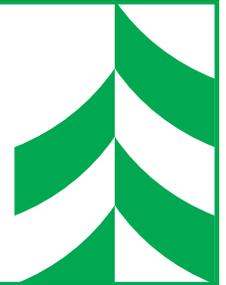




HIRING AND RETENTION

eLINE



May 15, 2014 – Vol. 13, No. 5
Page 1 of 2

DOCUMENT PROGRESSIVE DISCIPLINE TO IMPROVE EMPLOYEE PERFORMANCE AND DEFEND LEGAL CLAIMS

Do your supervisors consistently follow and document progressive discipline with employees? Though supervisors often detest the progressive discipline process, consistently following and documenting your progressive discipline policy can save your organization time and money in the long run. By creating a progressive discipline policy, employers create an expectation that employees will have notice of a problem and the opportunity to correct the problem.

Why use progressive discipline?

Progressive discipline is primarily used to:

- Correct poor performance
- Maintain the integrity of work rules
- Encourage employees to self-regulate
- Avoid and defeat lawsuits

“When it comes to progressive discipline, documenting discipline is a necessary evil,” says VP and HR Consultant Yvonne Shorts Lind, JD.

Being unpredictable in following your policies can lead to turnover and adversely impact the team and morale. If an employer does not take its own policy seriously, why should employees? Worse yet, inconsistency can lead to a variety of employment claims including discrimination. Once embroiled in litigation, a supervisor’s failure to properly document the discipline process in writing will make it more difficult for the employer to defend the lawsuit.

An employer’s documentation of a discipline, or the lack thereof, plays an important role in every employment lawsuit. “Many employers and supervisors believe that

DEFINITION:

Progressive discipline: An employee disciplinary system that provides a graduated range of responses to employee performance or conduct problems. Disciplinary measures range from mild to severe, depending on the nature and frequency of the problem.

their stories will be given deference in court, and that’s not the case,” Shorts Lind says. “Documentation is needed to corroborate the employer’s version of events, particularly since the memories of witnesses fade and key witnesses may not be as cooperative down the road.”

Drafting and enforcing your progressive discipline policy.

An effective progressive discipline policy expresses a commitment to ensuring fair treatment of all employees and in making certain that disciplinary actions are prompt, uniform and impartial. Such policies are typically comprised of the following steps, which are administered in a graduated fashion:

1. Verbal warning
2. Written warning
3. Suspension with or without pay
4. Termination of employment

“In drafting progressive discipline policies, employers should avoid policies that are overly rigid such as a policy that promises progressive discipline regardless of the circumstances,” Shorts Lind says. “As a best practice, the policy should be drafted in a manner that



HIRING AND RETENTION eLINE

May 15, 2014 – Vol. 13, No. 5
Page 2 of 2

gives an employer the flexibility to bypass one or more steps depending upon the frequency and severity of the problem.”

When discipline is necessary, employers should first determine whether the policy at issue prescribes the required course of action. For example, many employers have attendance policies that set forth specific, progressive discipline steps based upon a points or occurrence system. In this system, a certain number of points or occurrences results in a verbal warning, then a written warning after the next level is reached and so forth. If the policy at issue does not specifically prescribe a disciplinary process, employers should evaluate their past practice based on the same or similar incidents to determine the best course of action.

Best practices for documenting progressive discipline

Employers should educate supervisors on the importance of documenting progressive discipline, including informal discipline such as coaching sessions and verbal warnings. This documentation should be maintained in a supervisor’s log or file, separate from the personnel file. Supervisor training should also include:

- **Seeking guidance from human resources when appropriate.** HR should be available to provide guidance and consistency as well as assess risk before disciplinary action is taken.
- **How to document.** Stick to objective facts and avoid opinions or inappropriate commentary.
- **When to document.** The closer in time to the occurrence of the event the better, as there is a greater likelihood of an accurate depiction of events.

Additionally, the supervisor’s document is more credible and therefore carries greater weight in a legal proceeding.

- **Their obligation to preserve important documents.** Employers, including supervisors, have an obligation to take affirmative steps to preserve documents related to claims that a supervisor has actual knowledge of or has reason to suspect.

Stay current with the best practices for progressive discipline

Properly disciplining and terminating employees are among the most important personnel functions an employer can perform. Indeed, most employment claims arise following termination or another form of adverse employment action. At the same time, failing to discipline or terminate when necessary can adversely impact your workforce and business. Therefore, it’s essential for employers to understand legal risks and best practices associated with disciplining and terminating employees.

[Register](#) for our May 22 webinar, “Handling problem employees: Discipline and termination,” to learn:

- Understand how to effectively use discipline
- Match the appropriate discipline to the given problem
- Maintain an effective supervisor’s log
- Draft effective and legally sound disciplinary documents
- Conduct, and follow up on, disciplinary meetings
- Determine when to terminate, while avoiding “wrongful termination” claims

For more information, contact us at 800-258-3190 or info@AssociatedFinancialGroup.com.



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