

CRCOG

HR Guidelines

Progressive Discipline

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Progressive Discipline Process

Disclaimer

These HR Guidelines are provided to member cities/towns for use as a guide. While our suggestions incorporate best practices on these topics, it is understood that member cities/towns may have many of their own formal policies and practices which may or must be followed. We hope that these guidelines will assist communities with their personnel policies and practices.

Please note that these guidelines are for non-union employees. Those employees who are represented by a labor union will be governed by the terms of employment described in their collective bargaining agreement. To that extent, many of the practices described herein may not be applicable or appropriate in the union context. Additionally, if your city's/town's Charter, ordinances or other formal policies mandate that employees be treated in a fashion other than at-will, then those documents must be followed. Finally, keep in mind that most public employees enjoy some form of due process before their employment may be terminated – even when employment is at-will.

Please contact CRCOG with any questions.

I. Effective Communication

Effective communication between the employer and employee will in many instances avoid or limit costs related to mistakes, inefficiency and misunderstandings. Moreover, effective communication will maintain employee morale by putting each employee on notice of what is expected of him or her. Finally, effective communication will assist the employer in eliminating poor productivity, problem employees and legal exposure.

Employer expectations of the employee must be communicated up front in order to avoid confusion and the need to discipline. The goal of progressive discipline is to salvage the employment relationship, not to simply punish. If the employee is not a good fit for the position, then discipline will likely be a waste of time. Evaluate the totality of the circumstances before deciding whether discipline will be efficacious.

There may be occasions that an internal investigation will have to be conducted in order to determine the extent of an employee's behavior and whether certain remedial action is required (for example, allegations of harassment and discrimination). Consult legal counsel immediately when such matters arise.

II. Effective Discipline

A. Purpose

The primary purpose of effective discipline is to improve unacceptable conduct involving the employee's performance, productivity, communications, interactions with coworkers, or any other work related matter. All discipline should identify the behavior that does not meet performance requirements and the remedies that are required for the employee to improve performance. Discipline is not intended to be used if the employee is not salvageable – if the discipline will not result in improvement and continued employment. The goal is employee retention through progressive discipline – otherwise termination is warranted. Valid discipline is also a means of limiting legal exposure: appropriate disciplinary documentation serves to demonstrate the true reason for the employee's treatment – as opposed to some pernicious discriminatory motivation behind the employer's conduct.

The employer is obviously not an employee's parent, guardian or relative and therefore private issues relating to the employee's lifestyle or private affairs should not be the subject of discipline -- unless those private matters spill over into the workplace. Should private issues impact the workplace, referrals to Employee Assistance programs should be offered.

Keep in mind that:

- Discipline should be corrective and not punitive.

- Discipline should be reasonable and not arbitrary or capricious.
- Discipline should be targeted in order to be effective.

III. Legal Exposure

Before engaging in progressive discipline it is crucial that all legal exposure be considered and avoided. Examples include:

- A. Labor Issues
- B. Privacy Issues
- C. Defamation
- D. Infliction of emotional distress
- E. Discrimination
- F. Breach of Contract
- G. Wrongful termination claims

If it is possible that the employee's aberrant behavior is a result of a protected trait (for example, disability, age, religion), then the employer needs to be careful not to act in a way that could violate a law or regulation. Consult with your legal counsel or human resources professional before engaging in any discipline that may result in legal liability.

IV. Procedures for Effective Corrective Discipline

1. Routine Counseling: Regular interaction with employees for guidance, assistance and notice of expectations.

Regularly (weekly, if not daily), supervisors should advise direct reports regarding what is expected of them and whether they are meeting expectations. Counseling should not occur only when problems arise. An effective supervisor counsels an employee in an ongoing fashion. Counseling should not be done in a negative or demeaning fashion.

For example, if an employee arrives ten minutes late to work on several occasions the effective way to deal with this problem is to advise the employee that he/she is expected to arrive on time. A supervisor may also inquire whether there is a problem that is causing the employee to arrive in an untimely fashion.

Regarding work product or productivity, employees should be advised of any issues regarding work product or productivity immediately in a clear, constructive fashion.

2. Verbal Warning: The first step of progressive discipline, begins the process of seeking improved behavior and performance.

If informal, routine counseling is not effective in eliminating or altering inappropriate employee behavior, formal discipline may be warranted. At this point, a manager and/or human resources director should be advised of the ongoing problem. A verbal warning should be provided with a manager or human resources director present. Though verbal warnings are identified as a conversation this first step in discipline should be presented in a written format. Advise the employee that he/she is receiving a verbal warning for specific deficiencies in performance and how to fix the problem. Additionally, inform the employee that continued problems will result in further disciplinary action up to and including termination. A written record of the verbal warning should be prepared, dated and signed by the supervisor (the employee need not sign it) and placed in the employee's personnel file and provided to the employee. The verbal warning should be supported with a written document confirming the fact that the employer provided the employee with a verbal warning. Employees should be offered the opportunity to respond in writing if they so choose (Connecticut law requires this; see below). This document is placed in the employee's personnel file.

Normally, do not provide a time deadline to fix the problem – the time for improvement should be indefinite since improvement should be permanent. For example if an employer is providing a warning to an employee for excessive absenteeism, do not advise the employee that he/she has 60 days to demonstrate improvement. Improvement should be immediate and permanent by showing up at work regularly and on time. Exceptions to this are when a deadline is provided for the completion of a task, assignment or other obligation (e.g., completion of a certain process or training, etc.).

Do not use the term probation within any type of progressive discipline because probation connotes a period when at-will employment governs, and at-will employment is the standard in the non-union, non-contractual employment environment.

The employee should be told in writing that he/she has the right to seek the removal of the discipline document from his/her personnel file and/or provide a written response to the warning, which will be placed in the personnel file. (C.G.S. Sec. 31-128e). However, the document must be maintained in compliance with the Freedom of Information Act.

3. Written Warning: The penultimate step in the discipline process; the final opportunity for improvement before termination.

A written warning should be the final step of progressive discipline and may include a suspension. Written warnings are provided for continued deficiencies in performance and/or one time errors in conduct. The content of the written warning should be the same as the verbal warning: what the problem is; how to fix it; further transgressions may lead to termination.

Normally, do not put in a written warning a time deadline to fix the problem – the time for improvement should be indefinite since improvement should be permanent. Exceptions to this are when you are providing a deadline for the completion of a task, assignment or other obligation (e.g., completion of a certain process or training, etc.)

Do not use the term probation within any type of progressive discipline because probation connotes a period when at-will employment governs, and at-will employment is the standard in the non-union, non-contractual employment environment.

The employee should be asked to sign the written warning for purposes of receipt only. If the employee should refuse, the employer may write in the signature line, “refused to sign.” This will clarify the employee received the discipline. A copy of the written warning is given to the employee and placed in his/her personnel file. The employee should be told in writing that he/she has the right to provide a written response to the warning, which will be placed in the personnel file. The employee can also seek expungement of the warning from the personnel file (C.G.S. Sec. 31-128e). However, the document must be maintained in compliance with Freedom of Information Act.

4. Suspension: a step in the process that should only be used as part of the progressive discipline process or serious infraction.

Normally suspension should only be used in circumstances when termination is not practicable, the next step in the progressive discipline process or for providing a “last chance agreement.” Suspension may be a preliminary step to termination.

If an otherwise satisfactory employee engages in behavior that is not harmful to the organization or other employees or constituents, is truly out of character and he/she is otherwise a valuable asset to the organization, then suspension as a form of

punishment may be appropriate. For example, an employee has too much to drink at a holiday party and is appropriately contrite; a suspension may be appropriate discipline. Suspension is usually without pay. Suspensions may vary in time from 1 to 30 days in length, again depending on the infraction. However, employers must be careful to follow all Department of Labor regulations in this regard so as to avoid impacting any wage-hour exemptions for salaried-exempt workers.

5. Termination: When all progressive discipline fails, or when discipline is not appropriate under the circumstances, termination is required.

When progressive discipline fails, or when discipline is not appropriate under the circumstances, termination is required. Before taking action to terminate an employee, discuss this step with management and seek advice from your human resources professional and/or legal counsel. Always consider the legal consequences of the termination.

Give the employee a chance to tell his/her “side of the story” before the final determination on termination is made. *(Note that additional steps may be necessary in a union context.) Document the termination with the evidence for the decision.*

Note: On rare occasions demotion may be considered when the employee is not suited for a position. This remedy is typically utilized only when an employee has been promoted above his/her skill level and cannot perform the increased responsibilities of the promotion. It may be appropriate to demote the person back to the position from which he/she was promoted rather than terminating the individual.

V. Progressive Discipline Best Practices

First, follow any progressive discipline procedures mandated by a collective bargaining agreement or municipal civil service rules.

Remember that supervisors must communicate with their managers and human resources director regarding any disciplinary problems.

Effective documentation of disciplinary problems is mandatory. (See below).

Investigatory interviews regarding certain matters (e.g., harassment, theft, threatening behavior, etc.) may be warranted and performed with management and/or human resources approval and assistance. Discuss this with legal counsel.

Before conducting a disciplinary meeting with the employee, discuss the matter with management, human resources and/or legal counsel.

All disciplinary actions must be handled privately and confidentially.

All interviews must be handled privately and confidentially and interviewees should be advised of the confidential nature of the investigation.

VI. Appropriate Documentation Supporting Discipline

A. The Importance of Documentation

Documentation serves to demonstrate objective evidence that an employee had or should have had knowledge of the employer's expectations, was advised that his/her conduct was unacceptable, provided the opportunity to correct deficiencies and advised that failure to do so would result in additional discipline up to and including termination.

Avoid using website and other forms without thinking about the purpose of the document and the discipline. *Don't just use canned forms without thinking through the goals of the progressive discipline. Checking boxes on a form is not a substitute for meaningful thought about the purpose of the discipline.*

Avoiding artificial deadlines for improvement in performance whenever practicable - improvement should be permanent. Deadlines should be task specific.

Comply with any terms of any preexisting performance improvement plan, if applicable.

B. Appropriate Discipline Documentation Purposes

- Puts employee on notice of problem.
- Explains to employee how to correct conduct.
- Avoids legal exposure.
- Assists in any litigation.

C. Appropriate Discipline Documentation Best Practices

1. Be thorough, keep the words simple and to the point.
2. Include date and, if appropriate, time of incidents and discipline meetings.
3. List all persons involved. Have all parties sign the discipline documentation.
4. Describe conduct involved.
5. Explain how to resolve problem.

6. Explain what will take place if problem is not resolved.
7. Avoiding "Probation" and other words that may modify Employment At-Will. Probation connotes a period when at-will employment governs, and at-will employment is the standard in the non-union, non-contractual employment environment, so it need not be included in disciplinary materials.
8. Avoid making promises and words that eliminate Employment At-Will; for example, "If you improve, your job here is secure."
9. The documentation becomes a permanent personnel record.

VII. Special Disciplinary Problems

Contact management and/or legal counsel for these special disciplinary issues:

A. Serious misconduct

1. Health and safety of employees must be protected.
2. Criminal issues should be evaluated quickly and with legal counsel.

B. Insubordination

C. Alcohol or Drug Use/Abuse

D. Disabilities

E. Threats of Violence

F. Threats of Litigation