



THE ART OF EMPLOYEE DISCIPLINE: How to Retain Control & Increase Production

Proper discipline will improve employees' satisfaction, boost performance, and shield you from expensive lawsuits. Here's how to gain the right balance.

By Michael S. Lavenant

Employees often characterize their bosses in two categories: those who rule with an iron fist and those who act as a “doormat” or “wet noodle.” The former is likely to create a temporarily productive but disgruntled employee, while the latter may foster satisfaction but not necessarily productivity. The ideal manager blends qualities from both extremes. Such a person leads with confidence and empathy while encouraging high performance.

Choose the type of discipline carefully, as it will set a precedent.

Creating this type of balance is all about educating and empowering your organization's supervisors. For a start, they must be intimately familiar with the employee handbook and their employees' job descriptions. A supervisor's success comes from promoting the organization's philosophy, complying with human resources laws, and being trained in the proper methods of disciplining employees. Discipline serves three purposes:

1. It addresses and resolves a current dispute or issue.
2. It creates a map for future behavior.
3. It sets an example to others of how they may be disciplined under similar circumstances.

The employee handbook is a crit-

ical tool in the discipline process. Although most handbooks contain disclaimers saying they're not employment contracts, they are in effect summaries of the organization's policies, outlining the expectations and obligations placed upon its employees. Properly drafted handbooks place employees on notice regarding acceptable attitude, behavior, and performance in the workplace and spell out what discipline will be imposed if the expectations aren't met.

An organization's dress code, for instance, isn't a mere formality. Inappropriate attire can lower productivity and morale. In some cases, it also poses health and safety risks resulting in workers' compensation claims. An employee's improper appearance may offend others and be construed as harassment. Unless supervisors are familiar with dress code policy and their employees' job descriptions, they can't advise those who come to work dressed inappropriately for their roles.

When Is Discipline Appropriate?

Employees should be disciplined in any of the following situations:

- They have violated established work rules or performance standards.
- They've caused a series of incidents that created an unproductive environment, even if one of the actions alone doesn't violate work rules or performance standards.

Follow these six non-negotiable rules of discipline.

• They've engaged in conduct that caused or could have caused harm to themselves or others.

• Failure to discipline an employee may result in liability to the organization or a third party.

• The organization's mission or goals can be furthered by imposing discipline.

What Form Should Discipline Take?

The choice of discipline is at the complete discretion of the organization and doesn't alter the at-will employment relationship. Disciplinary action may include, but isn't limited to:

- verbal warning
- written warning
- unpaid leave or suspension
- probationary period
- reassignment or demotion
- reduction in pay or benefits
- transfer
- termination.

What Are the Non-Negotiable Rules of Discipline?

To avoid liability for harassment, discrimination, or wrongful demotion or termination, every organization should train its supervisors to follow these six non-negotiable rules of discipline.

1. Be fair.

Ask yourself if it's fair to discipline an employee based on the *quality and quantity* of the evidence. The answers to two questions help determine the fairness of any contemplated disciplinary action:

- Is *any* disciplinary action appropriate?
- If so, what *form* of discipline is fair?

Answering these questions re-

quires managers to analyze the evidence and to review all relevant circumstances. Merely suspecting an employee of an offense isn't sufficient, since the employer has the burden of proof.

To determine the type of discipline, consider your objectives. The ideal form of discipline is proactive—giving employees notice of a problem to avoid a repeat of undesirable behavior. In some cases, however, it's necessary to use discipline as punishment to protect the organization from intolerable misconduct. In deciding the appropriateness of discipline, remember that you may be called on to convince a third party that your action was fair.

2. Be consistent.

Has the organization imposed the same penalty in similar situations? Employees must feel that similar conduct will be punished in a like manner. Consistency is crucial to protect the organization in any legal action. Particularly in discrimination claims, inconsistent disciplinary decisions are likely to be questioned. Consistency also helps minimize unemployment insurance payments, since agencies will review prior practices to decide if the discipline imposed was for violation of a consistently enforced work rule.

The employee handbook is a critical tool in the discipline process.

When disciplining someone, consider how the same infraction was handled in the past. If the offense hasn't occurred before, choose the type of discipline carefully, as it will set a precedent. Also, be certain to comply with any procedures outlined in your organization's policies. The following measures will help ensure consistency:

- **Create a file or database** to record the history of discipline.
- **Formulate and follow specific procedures** for investigating employee offenses.
- **Make it a policy** to always contact upper management before im-

An organization's dress code isn't a mere formality.

plementing serious discipline.

- **If you have a human resources director or department, be sure to contact them** about any proposed disciplinary action.

- **Keep in mind** that in any legal proceeding, the entire organization is judged, not just the actions of one supervisor.

3. Be uniform.

Make sure you have written policies, procedures, an employee handbook, and job descriptions that are uniform throughout the organization. Train employees regularly to promote a thorough understanding of policies and procedures. Discuss any inappropriate conduct with offending employees immediately, and document these communications in their personnel folders.

4. Be honest.

When disciplining employees, be candid about their performance. Never tell them they're being "laid off" when poor performance is the real reason for dismissal. When people receive honest reasons for termination or other discipline, they're less likely to question the employer's motives, seek legal counsel, or file a claim.

Similarly, it's critical that supervisors be forthright when they conduct evaluations. Periodic evaluations are an opportunity to advise people of performance issues and to point out areas that need improvement.

5. Be objective.

Use objective criteria to demonstrate the validity and legality of actions. Develop benchmarks of acceptable behavior and communicate them to supervisors so they can hold employees to specific standards. Don't include subjective opinions in counseling memos or evaluations.

6. Be prepared.

Demonstrating that the above rules have been followed requires two steps:

- **Conduct a thorough investigation** whenever an employee is accused of misconduct. Let the employee respond to the charges before imposing any discipline. Always listen to the employee's side of the story and ask for witnesses to the incident in question.

- **Document, document, document!** Warning memos, notices, and other written documents are critical to support termination or other discipline. Never verbally counsel or discipline an employee without documenting it. Notes regarding employee discipline are insufficient and have no value in litigation unless the employee is given a copy and the notes are placed in the personnel file. Clearly state the offense in written warnings, and let the employee comment.

The Results

Following these six rules will help you minimize liability when an employee makes a claim. Educating supervisors about these rules will give them the right balance between authority and receptivity. The result will be low turnover and high productivity for your organization. ■

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To Learn More

For more on disciplining employees and preventing lawsuits, see these *Nonprofit World* articles, available at www.snpo.org/members:

- **How to Conduct Discipline Interviews** (Vol. 24, No. 6)
- **Sexual Harassment: Don't Let It Destroy Your Organization** (Vol. 10, No. 2)
- **The Most Likely Lawsuits—and How to Protect Yourself** (Vol. 19, No. 1)
- **How to Assess Credibility in Workplace Investigations** (Vol. 23, No. 1)
- **To Write or Not to Write: Do You Need a Personnel Handbook?** (Vol. 11, No. 3)