

NINE STEPS TO EFFECTIVE EMPLOYEE DISCIPLINE

By: Lauren M. Bernardi

One of the most difficult tasks employers are required to perform is disciplining staff. Done well and you are rewarded with a reformed employee. Done poorly and you end up with a chronic problem and potential legal liability.

This article explores progressive discipline and how to do it effectively.

Progressive discipline is an effective management tool

Progressive discipline means applying increasing levels of discipline to employees who repeatedly violate workplace rules. If the employee does not respond to discipline, the last violation becomes the “culminating incident”—the point at which you no longer need to tolerate the misconduct and may terminate the employee for just cause.

Progressive discipline helps correct employee behaviour and bring it within acceptable standards, ensuring a productive and satisfied workforce.

The goal of discipline is not to fire someone – it’s to make them a better employee

Although repeat offenders may end up losing their jobs, the goal of progressive discipline is not to enable you to fire a misbehaving employee (although that is commonly what it is used for), rather the purpose is to:

- reform the employee and bring his or her conduct within acceptable standards
- deter other employees from engaging in similar conduct; and
- maintain control over the workplace as a whole.

The Essential Steps:

Step One: Don’t avoid it

Managers frequently avoid discipline in the misguided hope that the problem will go away if ignored. But it doesn’t. In fact, more often than not, problems that are ignored only get worse.

Although it’s difficult and stressful to discipline someone, you owe it to your organization and the individual in question to do so. You don’t do anyone any favours by allowing them to persist in behaviours that ultimately make you want to terminate their employment.

Step Two: Establish your expectations

Let your employees know what you expect from them. That way they can monitor their behaviour themselves and take efforts to meet your expectations. Most employees want to comply with the rules but need to be told what they are in order to do so.

NINE STEPS TO EFFECTIVE EMPLOYEE DISCIPLINE

One important way to establish expectations is to educate your staff about your organization's policies. You can do this by discussing policies at staff meetings, paying close attention to those policies that your staff doesn't seem to understand or be following. For example, if lateness is a problem, outline the policy on absenteeism and lateness.

Step Three: Investigate an alleged rule violation before you impose discipline

Before imposing discipline, you must investigate the alleged incident to determine whether a breach of a workplace rule has occurred. This involves:

- giving the employee notice of the alleged violation and an opportunity to be heard
- investigating the offence immediately after you find out about it; and
- not imposing discipline if you have insufficient proof of the offence.

Make sure that you separate the investigation and the imposition of discipline. This means giving the employee an opportunity to defend him or herself and then taking some time to consider the evidence before deciding what discipline to impose. If you impose discipline in the same meeting in which the employee explains what happened, it will appear as though you went into the meeting with your mind made up and didn't actually give the person the opportunity to be heard. This is a legal no-no.

Step Four: Consider the seriousness of the offence

If an offence has occurred, you will need to consider how serious it is before handing out discipline. The type of discipline you impose should correspond to the seriousness of the offence.

For example, things like lateness or personal use of company computers are generally considered minor offences whereas fighting or insubordination are more serious offences.

Step Five: Consider all of the prevailing circumstances

Consider all other aspects of the situation, including

- the employee's previous record of incidents (which must have been brought to his or her attention)
- whether you have condoned the behaviour in the past
- the employee's understanding of the violated policy
- provocation, i.e., if the employee was provoked, you may want to impose a lower level of discipline
- whether there is a credibility dispute
- whether you have firsthand knowledge of the facts and have thoroughly investigated the incident, including speaking to witnesses; and
- whether you can prove the facts surrounding the incident.

NINE STEPS TO EFFECTIVE EMPLOYEE DISCIPLINE

Step Six: Decide on the appropriate level of discipline

Your next step is to decide what level of discipline is appropriate.

Sometimes managers treat two employees differently for the same workplace violation. For example, a top performer may be given a slap on the wrist for insubordination while an average performer is given a stern written warning for the same behaviour. This can create unnecessary conflict and may result in claims of unfair treatment or even discrimination. It is far better to tie the disciplinary measure to the offence rather than the employee.

Many organizations use a traditional progressive discipline system that utilizes verbal warnings, written warnings and suspensions. Another approach that is gaining popularity is a three level system. Under this system, the first level is a Level One warning, which is used for minor offences. A Level Two warning is for more serious rule violations or for repeat violations. The final warning is a Level Three warning. This is for very serious matters and for repeated rule violations for which the employee has already received a Level Two Warning. This is the type of offence which, in a traditional progressive discipline system, typically results in a suspension.

When you give a Level One or Two warning, provide guidance to the employee on how to improve his or her performance.

Meet with the employee regularly to ensure that he or she stays on track and understands what you expect. It is also important to explain the seriousness of the matter and the need for immediate improvement. When you give a Level Three warning, make it clear that any further violations will lead to termination.

Regardless of which progressive discipline system you use, you must ensure that the employee understands that he or she is being disciplined and that there are consequences for their actions. To facilitate this, all discipline should be in writing and included in the employee's file.

Step Seven: Complete the discipline notice form

Before you meet with the employee, complete the discipline notice form/memo. Be as specific as possible as to the nature of the offence and the results of any investigation you conducted into the matter. It is also critical that you note the consequences of further violations (e.g., "further violations will result in discipline, up to and including termination").

Step Eight: Discipline meetings are difficult — be prepared

When you meet with the employee be very clear about why you are imposing the discipline, what rule has been violated and what will happen if they do it again.

To make the discipline meeting work more smoothly:

- Conduct the meeting in a neutral location so that you can leave the room (it is more difficult to get an upset employee to leave).

NINE STEPS TO EFFECTIVE EMPLOYEE DISCIPLINE

- Choose a private location that avoids interruptions, inconvenience or embarrassment to the employee when leaving the meeting.
- Include a suitable witness in the meeting.
- Do not enter into a debate with the employee or appear to waffle on your decision.
- Make notes of the meeting and include them in the employee's personnel file.

Ask the employee to sign the discipline notice. Tell the employee that this signature only confirms that you have explained the discipline to him or her, not that they agree to it. If the employee refuses to sign, write "refused to sign" and the date beside the signature line.

Provide a copy of the discipline notice to the employee and place the original in his or her file.

Step Nine: Continue to monitor the employee's behaviour

If you see an improvement in the employee's behaviour, tell him or her. If there is no improvement, proceed through the discipline process. This may ultimately lead to the termination of the employee but if that is the unfortunate result, you will at least have met your legal obligations and will have reduced the risk of legal liability.

If there is an improvement, be sure to tell the employee that too. That way you are reinforcing the improved behaviour, which increases the likelihood that it will continue – and that benefits everyone.

NINE STEPS TO EFFECTIVE EMPLOYEE DISCIPLINE

About Bernardi Human Resource Law

At Bernardi Human Resource Law we know that today's response to your workplace challenges can become tomorrow's precedent. We think ahead and help you make the best decisions to meet your needs both now and in the future.

Balancing your legal obligations and business objectives can be hard. We act as your trusted advisors; not simply as lawyers but as an integral part of your management team. Through our practical advice, workshops and articles, we arm you with the knowledge and tools to address rapidly changing human resource issues.

Above all, we're on your side. We work with you to prevent costly problems and when litigation is necessary, we act as strong advocates to protect your interests.

Bernardi Human Resource Law: forward thinking at work™.

About Lauren Bernardi

Lauren is a lawyer and human resource advisor with the Mississauga firm of Bernardi Human Resource Law. Lauren's advisory, training and educational services help managers direct their human resources in a strategically sound and legally appropriate manner. She is an accomplished and entertaining speaker on management and human resource issues.

For more information, you may reach Ms. Bernardi at 905-486-1991, by e-mail at lbernardi@hrlawyers.ca or on the web at www.hrlawyers.ca.



© Bernardi Human Resource Law. This article is intended as general information only and does not constitute legal advice of any kind. Duplication and distribution of this material is permitted, provided the name of Bernardi Human Resource Law and the authors' names are included.