



7 Questions to Ask When Establishing Cause for Disciplining and Terminating Employees

Prepared by:
Richard Alaniz, Cruickshank and Alaniz, LLP

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Published on www.lorman.com - April 2018

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7 Questions to Ask When Establishing Cause for Disciplining and Terminating Employees

Written by Richard Alaniz

Disciplining and terminating employees is never easy. Many managers struggle to do it properly. To make this process easier, businesses should consider these 7 questions when confronted with an employee that needs to be disciplined or terminated.

1. Was the Rule or Policy Known to the Employee?

Employees must be aware of the rules that they are required to follow. Just as a traffic light alerts drivers that they need to stop or go, employees must have notice of the rules that they are required to follow. Without notice employees will violate rules that they are not aware of and, more importantly, they may violate safety rules and put fellow workers at risk because they have not received proper guidance.

To avoid these problems, all businesses should have a handbook containing the relevant policies that employees need to follow. Employees should be given a copy of this handbook and sign an acknowledgement form stating that they have received it and agree to follow the rules within.

Supervisors should know these policies and consult them before making any discipline or termination decision. Managers should not “wing it” because this could lead to employees being treated differently and eventually could lead to a discrimination lawsuit.

2. Was this His/Her First Violation of the Rule or Policy or Did Other Violations Precede It?

Is the employee a problem violator? Are they always running late or is this their first absence or tardy? The level of discipline for a problem should generally be based on how frequently this problem occurred, especially if it is a routine workplace violation (e.g. absences). Some problems will be more fact specific and require a more tailored response (e.g. sexual harassment and workplace violence).

For an employee's first violation it is important to meet with the employee to discuss the problem to determine what caused the issue, how it can be addressed, and what can be done in the future to prevent it. No employer wants a first violation to turn into a repeat problem. Working with employees can help ensure that the issue will be resolved and, if done correctly, is a chance to help the employee improve.

3. Was Progressive Discipline Applied to this Violation and any Prior Violations?

Progressive discipline should always be applied to routine workplace violations. These violations include absences, leaving early, violating cell phone use policies, and other common issues. Progressive discipline ensures that supervisors do not play favorites and helps maintain workplace morale because employees understand that they will be fairly treated.

4. Is there Any Written Documentation to Support this and Any Prior Violations and the Required Corrective Action?

You should record EVERY workplace violation. This means that any time an employee violates a company policy there should be a written record that demonstrates what rule the employee violated,

how they were disciplined, and, if necessary, what steps will be taken to ensure that the problem does not occur in the future. The employee should sign and date the document to confirm that they received the violation. If the employee refuses to sign the document, then the supervisor or HR professional should write on the discipline notice that the employee refused to sign and date the document. By documenting each violation, companies are creating a record that can be used to show that employees were treated fairly and can prevent discrimination claims against the employer.

Employers may also need to document the response to the discipline or solution to the problem in some situations. For example, during an investigation of a sexual harassment or other workplace incident it may be necessary to transfer an employee to a different department or shift. You should monitor the employee to determine if any adjustments are necessary after the change has been implemented.

5. Does this Violation Warrant Termination or the Level of Discipline Applied

Check your policy. What does it require? For routine workplace violations, the required level of discipline is easy to answer. If the employee has accumulated enough points for a termination due to absences, then the obvious answer is to terminate the employee. The question becomes more difficult when considering violations that require a tailored response.

The supervisor or company can adequately deal with some claims that involve a tailored response (e.g. excusing an absence because the employee was hospitalized). However, many of the more

complicated claims require companies to consult with outside attorneys or in-house counsel. For example, sexual harassment claims, an employee's death or serious injury at the worksite, or wage discrepancies require companies to seek outside help because the answer is frequently too complicated to adequately address in a company policy. Companies must act quickly when dealing with these situations. The sooner that an issue can begin to be addressed the more likely that it can be solved quickly and without a lawsuit.

6. Have all other Employees Who Violated the Rule or Policy been Similarly Disciplined or Terminated?

Your policy must be applied consistently. Do not treat employees differently unless the facts require it. Treating employees the same for violations reduces your risk of discrimination claims. All employees have a desire to be treated fairly. If you are going to deviate from your past practice, then you should document the reason that you are treating the situation differently. Moreover, if you are going to change your discipline policy for an issue, then you must give notice to employees. You must also be careful that you do not implement the policy in a way that discriminates against employees and they understand the reason for the change.

7. Are there any Extenuating Circumstances that would Mitigate the Level of Discipline or Termination?

There are exceptions to almost every rule. When there is a violation of a rule, it is important that you take the opportunity to speak with the employee to see what caused the workplace violation. Oftentimes, there may be a reason for the incident that either mitigates the punishment required or eliminates it altogether. For

example, a safety violation may be caused by a mechanical error rather than a human mistake. A person, in a non-critical role, may also have left work early due to a family emergency and left a message for their supervisor.

Some workplace violations may even be caused by an employee's protected status or characteristic. For example, in one case an employee with diabetes ate a bag of chips that cost \$1.39 before paying for them because she was experiencing a low blood sugar attack while restocking the shelves. Walgreens paid \$180,000 to settle the employee's disability discrimination claim. The incident shows that there are times when employers need to work with employees and make exceptions.

Conclusion

Employers face a challenging situation when they fire or discipline an employee. If the employee is only being disciplined, then the discipline must be carried out in a way that does not discourage the employee or make them bitter. The employee must be prepared to continue to work and improve. Moreover, they must not feel that they were mistreated or that another employee received more favorable treatment. By asking these questions before disciplining or terminating an employee, you can develop a better response to employee problems and hopefully avoid any legal repercussions.

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