

# Progressive Discipline Game Plan



Discipline is essential to holding employees accountable for the serious infractions they commit. But discipline can also be a sensitive and risky business, especially if the employee on the receiving end belongs to a labour union. Chances are that you'll end up having to defend your disciplinary actions before an arbitrator or court. Luckily, there's a strategy you can use to make punishments stick if and when they're challenged later on. Better yet, this technique can help you straighten out wayward employees and avoid showdowns in the first place. The technique is called [progressive discipline](#). Here's a 9-step Game Plan for using it to enforce your own company's HR rules and policies.

## **What Is Progressive Discipline?**

Progressive discipline is a series of gradually sterner punishments directed against the same employee that engages in a series of offences over a period of time. While the stages can vary depending on the circumstances, progressive discipline typically starts with a formal warning for a first offence, mounts to suspension for subsequent violations, and ultimately results in dismissal if the problem continues. At each stage, you confront the employee, explain what they did wrong, impose the appropriate punishment, and warn them to clean up their act or face more serious disciplinary consequences for further violations.

Progressive discipline generally works best against employees who commit repeat offences that are serious but not egregious enough to justify conducting immediate termination. Such offences may include lateness, missing workdays without a valid excuse, confrontations with coworkers and customers, and/or excessive social media use on company time.

## **Step 1. Establish Written Progressive Discipline Rules & Procedures**

Progressive discipline isn't something you can make up as you go along. There needs to be a [written policy](#) that clearly describes the steps of the process so that employees know what to expect. If employees are unionized, you'll probably need to negotiate the terms and procedures of progressive discipline with the union as part of the overall [collective agreement](#). You must notify employees in advance that you use progressive discipline and explain the steps. Put a description of the system in the collective agreement or if employees aren't in a union, the HR manual, or individual employment contract.

## Step 2. Issue Verbal Warning for a First Offence

As a rule, employees who commit violations should get at least one warning. Accordingly, a verbal warning is generally the first stage of progressive discipline. Of course, there are alternatives, such as offering employees counselling. A verbal warning should be more than just an informal “watch-your-step.” You need to deliberately tell the employee that you’re providing a verbal warning under the progressive discipline policy, lawyers say. You also need to do 3 things:

- **Specifically explain** what the employee did wrong or didn’t do right and why it’s a problem worthy of a warning.
- **Ask for an explanation.** You might find out that the offence is the result of a misunderstanding. Lack of communication can lead to precisely what you want to prevent—a grievance. Getting the employee’s side of the story will also help you prepare for a hearing in case a grievance is filed.
- **Warn the employee not to do it again.** Don’t be hostile when issuing warnings. There’s no need to antagonize the employee, especially at this stage when you don’t know if you’re facing a chronic problem or an isolated incident.

Keep a written record describing what you said and the employee’s explanation. Give a copy to the employee and the union and keep another copy in your files.

## Step 3: Issue a Written Warning for a Repeat or Subsequent Offence

If the verbal warning doesn’t solve the problem and the employee commits another safety violation, proceed to the next stage of progressive discipline by issuing a [written warning](#):

- Remind the employee of the previous warning and briefly describe the circumstances.
- Indicate that you’re issuing this written warning because the employee didn’t heed the previous warning.
- Explain the latest offence and why it warrants the warning.
- Warn of further and potentially more serious discipline if the problem continues.

Ask the employee to sign the document to acknowledge receipt and understanding of the warning. Keep a copy of the signed warning in your files and give a copy to the employee and the union.

## Step 4: Suspend the Employee for Repeat or Subsequent Offence

Hopefully the employee will get the message after receiving the written warning. But if the problem does continue and the employee commits another violation, you’ll have to up the ante. Rather than proceeding directly to termination, you might want to give the employee one more chance by imposing a suspension. Send a written letter that:

- Describes the previous incidents for which the employee received warnings.
- States how many days you’re suspending the employee without pay or describes the other punishment you’re imposing, e.g., demotion.
- Makes it clear that this is the final warning, and that further misconduct may result in dismissal.

Send the letter to the employee and the union via certified mail, return-receipt requested. Keep a copy in the files.

## Step 5. Terminate the Employee If the Problems Continue

If the problem continues, be prepared for the ultimate stage of progressive discipline: dismissal.

**Caveat:** The final or “culminating incident” needs to be more than just a minor offence; it must be a “last straw” infraction that’s serious enough to justify concluding that previous discipline hasn’t worked, further efforts would be useless, and termination is the best course of action. Be prepared for scrutiny and don’t treat an offence as a culminating incident unless you’re pretty sure you can persuade the arbitrator that the incident warrants concluding that progressive discipline isn’t and can’t be expected to work.

Once you think you have a defensible culminating incident, tell the employee you want to hold a formal meeting to discuss dismissal. The employee can then decide whether to have a union representative attend. At the meeting, go over all previous incidents and disciplinary actions. Say that the problem persists and describe the immediate cause of dismissal. Give the employee and/or representative a chance to respond. If you’re dissatisfied with the explanation, state that the employee is dismissed.

Take careful notes of everything that happens at the meeting. Make sure at least one member of management attends as a witness.

When the meeting ends, write a final memo for the files summarizing what took place including your case and the employee’s defence. Don’t send the employee a letter listing your reasons for dismissal, unless you’re required to do so under the collective agreement. Setting down all your reasons in writing might box you in during a subsequent legal proceeding challenging the dismissal.

## Step 6. Strictly Adhere to Your Progressive Discipline Procedures

While this might sound like an obvious point, an employer’s adherence to the company’s actual progressive discipline procedures—or lack thereof—is often the decisive factor in court and arbitration cases challenging disciplinary action. Thus, companies may have a solid case on the merits but still lose because they don’t follow the required progressive discipline procedures.

**Example:** A railway fired a locomotive engineer for failing to secure unattended equipment on the mainline. Applying just one instead of the required 6 hand brakes to a 900-tonne train would normally have been just cause to terminate, especially given the engineer’s history of discipline for safety violations. But the company violated its progressive discipline procedures by not letting the union rep ask certain questions about the safety program during the investigation. **Result:** The federal arbitrator nixed the discipline and reinstated the engineer, although without compensation [[Teamsters Canada Rail Conference v Canadian Pacific Railway Company](#), 2023 CanLII 24771 (CA LA), March 30, 2023].

## Step 7. Be Prepared to Terminate Immediately for Serious Offences

At face value, Step 7 sounds like a contradiction of Step 6. However, while following

procedures is critical within the confines of imposing progressive discipline, it's also generally recognized that progressive discipline is not appropriate for extremely serious violations that call for stronger and more immediate action even for a first offence, e.g., theft or physical violence. Thus, arbitrators and courts will generally allow you to dispense with the warnings and suspend or even dismiss a first offender if the potential consequences of the violation are serious enough and you punish all similar offences the same way. By the same token, you must also consider any mitigating factors before deciding upon termination, such as an employee's:

- Long and exemplary or at least satisfactory service with your company;
- Expression of genuine remorse and willingness to accept responsibility for the wrongdoing;
- Current age, physical, and mental health;
- Stressful or challenging work environment and whether there were any external factors contributing to the behaviour, e.g., whether the employee was being harassed or bullied by coworkers or supervisors; and/or
- Adverse financial circumstances or expected difficulties in finding a new job.

## **Step 8. Mete Out Discipline & Progressive Discipline Consistently**

Whether imposing progressive discipline or immediate termination, it's essential to act consistently so like offences result in like punishments. In other words, don't terminate an employee for committing the exact same infraction for which other workers have received just a warning. This is especially true if the employee you single out is of a particular race, religion, sex, age, or other grouping that human rights laws protect against discrimination, e.g., firing a black employee but only issuing a warning to a white employee guilty of the same offence.

**Example:** After suspending him for taking extended breaks without permission, an aircraft parts manufacturer fired a trainer with 19+ years of service for time theft. But the Québec arbitrator found the penalty unreasonable, noting that 3-weeks' suspension was the penalty that the company had consistently imposed on employees who committed the same offence. So, that's what the arbitrator said the employee in this case should get [[Sonaca Montreal Workers Union c Sonaca Montreal inc.](#), 2021 CanLII 18481 (QC SAT), March 10, 2021].

## **Step 9. Keep Written Records of Progressive Discipline Actions**

There's one more thing you must do to use progressive discipline effectively: keep the right records. Approach every step of the process with the mentality that your actions will be challenged in arbitration or court where you bear the burden of proof and the employee you're disciplining will likely have the "sympathy" advantage. The only way to overcome these obstacles is to produce records like memos, files, written notices, notes summarizing conversations, and any other documentation of what you did and why you did it. Documentation must be created at the time of the action. If you try to go back and document things after the fact, you're in deep trouble, lawyers caution.