

# Progressive Discipline Quiz



## QUESTION

What factors should an employer consider if misconduct or behavior of an employee is severe enough to fire an employee?

## ANSWER

- Seriousness and/or frequency of a problem with an employee.
- Employee's work history.
- Effect of the conduct or behavior of the employee on the organization/business.

## WHY IS IT RIGHT

Progressive discipline is the process of using increasingly severe steps to correct inappropriate behaviour after an employee has been given a reasonable opportunity to do so. The underlying principle of sound progressive discipline is to use the most appropriate form to correct the type of behaviour that is inappropriate, given the employee's past disciplinary record.

Misconduct is deliberate behaviour, where an employee deliberately behaves in a manner he knows is inappropriate. In contrast, performance problems are often a result of lack of training, skills or motivation. Performance problems are often solved through coaching and mentoring, which is not disciplinary. Misconduct requires progressive discipline, and it sometimes leads to termination.

When an employee is being disciplined, typically the following steps are followed: verbal warning, written warning, suspension with pay and, lastly, termination. After each step before termination, the employee should be given an opportunity to correct the problem or the behaviour. If he does not correct the behaviour, the type of discipline increases in severity and, eventually, termination occurs.

It is important to determine the appropriate level of discipline in each situation and to be consistent. How others have been treated in a similar situation should be one consideration in determining appropriate action, but there are several other factors that should be considered such as the employee's

length of service, his previous record of performance and conduct, whether there was provocation involved, whether the misconduct was premeditated, whether the employee knew the rules and they had been consistently applied and whether the employee acknowledges the mistake and shows remorse.

There are exceptions to the process of progressive discipline. In considering the misconduct and the factors outlined above, it may be that the behaviour has been so inappropriate that it constitutes a fundamental breach of the employment contract. In cases such as this, termination is appropriate, even if the progressive discipline steps of verbal warning, written warning and suspension have not been followed. In all cases of discipline, whether progressive or not, it is important to do a thorough investigation, giving the employee an opportunity to explain his actions. In all cases of discipline, it is important to preserve the dignity of the employee and ensure that he is treated fairly and with respect.

### **Steps to Apply Progressive Discipline**

Most employees want to do what is expected of them. You can help by ensuring that company policies are made clear and applied consistently and fairly to everyone. However, as an employer, you may need to deal with problems caused by the performance of an employee. You should:

- **act early**...before poor work becomes a habit;
- **be fair**...by clarifying the job expectations with the employee;
- **improve the employee's performance**...by providing appropriate direction;
- **try to solve the problem**...before it gets to the dismissal stage by applying the "progressive discipline process".

The steps outlined describe the process known as **progressive discipline**. It allows you to build on the skills of your present staff and to make clear to everyone what the company policy is on job expectations. It improves the efficiency of your company by saving you the time and money involved in dismissing one employee and hiring a new one. As an employer, the way you apply the progressive discipline process is the basis of your defence if an employee files a complaint of unjust dismissal.

A good employer uses every opportunity to clearly communicate to all employees the expectations of the job and what will happen if these expectations are not met.

In the step-by-step method described here, negligence may be treated as **incompetence** (if the employee is neglecting duties without realizing what is expected) or as **misconduct** (if the employee is fully aware that duties are being neglected, but neglects them anyway). \

Rather than straight dismissal, the goal of progressive discipline is correcting poor behaviour and creating a better and more productive employee.

### **EMPLOYEE PROBLEMS**

#### **Incompetence**

Employee lacks the skills or ability needed for the job

## Misconduct

Employee breaks rules for keeping the work place efficient and safe

### Dealing with incompetence

Does the employee lack the skills needed to do the job? If so, first speak with the person face to face and clarify the expectations of the job. Tell the employee what will happen if there isn't improvement. This may include being dismissed. Act promptly. If you let it go for too long without taking action you are considered to be **condoning** the poor work performance. You can't then use it as a reason for dismissal.

Next, ask yourself if this person has the ability to learn the skills needed for the job. If so, give the employee a fair chance to improve work performance by providing job training and supervision. Allow enough time for the employee to practise and use new skills. Or, if this is a long-time employee with a good work record who has now changed positions, you could consider giving the person different work duties. This might be fairer than starting the disciplinary process.

### FORGET ME NOT

Keep a written record with dates of:

- Meetings
- Training sessions
- Warnings
- Performance reviews

Begin keeping records when you first speak to the employee about the problem. **This is essential.** If you have not done so and the employee decides to challenge the dismissal, your chances of successfully defending your actions at a hearing are greatly reduced.

## MISCONDUCT

Decide if the misconduct of your employee is minor or severe. Take into account factors like:

- Seriousness and/or frequency of the problem
- Employee's work history
- Effect on the organization

If the misconduct is **severe**, you may have just cause to fire the employee. You can dismiss immediately. This is called **summary dismissal**. However, you must act early. If you let the problem go on too long, you are **condoning** the behaviour and won't be able to use it later as a reason for summary dismissal.

If the misconduct is **minor**, speak with the employee face to face. Allow all sides of the story to be heard. Collect all the facts, including those given by witnesses. Review the job expectations with the employee. Outline the consequences if these expectations are not met. Although time consuming, it is important to keep a written record of these activities. If you both come to an agreement that the behaviour will be corrected – the problem is solved! However,

if the behaviour does not improve, you may give the employee a written warning about possible suspension.

If the problem persists, you may now consider suspending the employee. When this action is taken, provide, **in writing**, the job expectations and future consequences if they are not met.

Once the suspension is over, try to come to an agreement that there will be no further misconduct.

You are now in a better position to decide whether the last resort of dismissal is warranted.

### Mitigating and aggravating factors

There are a number of factors to consider in applying the progressive discipline process to cases of either incompetence or misconduct. For example:

- Was the misconduct intentional?
- Is the employee accepting responsibility for his/her actions?
- Was the infraction an isolated incident?
- Is this a long-term employee?
- What is the work history of the employee?

## WHY IS EVERYTHING ELSE WRONG

### A. Step-by-Step Guide to Progressive Discipline

#### 1. Document, Document, Document

In the unfortunate event that your progressive discipline undertakings do not result in the necessary improvements and you decide to terminate your employee for cause, you will want to have accurate and comprehensive documentation of all the steps you took to help your employee improve and the outcome of these progressive discipline measures.

The way you apply progressive discipline before terminating an employee for cause can have significant consequences for your business should your employee file a complaint for unjust dismissal.

You should therefore keep records of all incidents, warnings, training sessions and any other performance-related interactions. A record of cumulative poor behaviour will be a strong supporting argument for just cause termination in the eyes of the law.

#### 2. Act Early

Address poor performance before it becomes a habit. When you see areas for improvement or intervention, take the opportunity to let the employee in question know as soon as possible.

If an employee has been working a certain way for a long time without complaint, they may simply assume that what they are doing is acceptable. What's more, if you allow unacceptable performance to continue for too long, you may be seen as condoning it. In this case, you may not be able to use the offending performance as just cause for future termination.

### **3. Verbally Confront Your Employee**

Talk to your employee face to face. Let them know that you are dissatisfied with their performance. Be gracious and assume that their intention is not to be bad at their job. The vast majority of employees want to do right by their employer. So give them the opportunity to explain themselves. Getting to the bottom of an employee's poor performance will help you understand any underlying issues – such as lack of training or a need for accommodation – and empower you and your employee to move forward productively.

### **4. Clarify Expectations and Consequences**

Make sure that your employee understands what is expected of them and why. Clarify what the consequences will be if they fail to meet these expectations. These consequences may be further reprimands, suspension or even termination. This can be done verbally or in writing depending on the complexity of the situation.

Set a deadline for the employee's improvement so that they know the timeframe in which they are working.

### **5. Offer Direction and Support**

Sometimes, an employee just won't know where to start. Give your employee adequate direction about how they can improve and constructive feedback on their progress. Set goals so that they know what they are aspiring to and how long they have to (re)learn the ropes.

You may also need to provide your employee with additional training. Their poor performance may be the simple result of honest ignorance or incompetence.

### **6. Give Your Employee a Fair Chance to Improve**

Be fair. Know that some changes and improvements will take time. Give your employee reasonable time and opportunity to adjust or improve their performance.

### **7. Evaluate the Situation**

Have things improved? Does your employee seem to be making a genuine effort to learn, change and do better? If yes: Great! Problem solved! Your progressive discipline was effective.

If things do not improve, do not improve fast enough, or your employee seems reticent to improve at all, it's time to proceed to the next disciplinary step.

### **8. Issue a Written Warning**

Give your employee a written warning that clearly states how they are falling short of expectations. The warning should also detail what will happen if the employee fails to meet these expectations within the prescribed timeframe. Give a signed and dated copy of this letter to your employee and keep one to put in their employment file for your records.

### **9. Apply Further Progressive Discipline**

Depending on the nature of the poor performance, your employee's efforts to

change and other relevant factors, you may need to apply further discipline. You may decide to put your employee on probation, suspending them without pay, reassigning their work or even give them a demotion. However, exercise great care before unilaterally changing the nature of your employee's work or you may unintentionally instigate a constructive dismissal.

## **10. Termination**

If, after taking all the above disciplinary measures, your employee continues to fall short of your expectations, it may be time to terminate them. At this point, if you decide to terminate them for cause (meaning they will not receive any termination notice or pay in lieu thereof) you will likely have the necessary cumulative cause and supporting documentation to defend your decision should your employee sue for wrongful dismissal.