The 4 Steps of Progressive Discipline

There’s no point having safety rules unless you’re prepared to discipline employees who disobey them. In fact, having rules you don’t enforce is in some ways worse than having no rules at all. But discipline is risky business, especially if the employee belongs to a union. Chances are, you’ll end up having to defend your actions before an arbitrator or court. Luckily, there’s a strategy you can use to make punishments stick if 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 and we’ll show you how to use it to enforce safety and other workplace rules.

What Is Progressive Discipline?

Progressive discipline is a series of gradually sterner punishments. It usually starts with warnings for a first offence, mounts to suspensions and ultimately dismissal. At each stage, you confront the employee, explain what he did wrong, impose the appropriate punishment and warn him to clean up his act.

Progressive discipline works best against employees who commit repeat offences of a serious but not deal-breaking nature. Such offences occur frequently in the safety realm, e.g., not wearing hardhats or other personal protective equipment. Progressive discipline is *not* appropriate for serious violations that call for stronger and more immediate action even for a first offence, e.g., theft or physical violence. 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 if you punish all similar offences the same way.

By the same token, you must consider “mitigating factors,” i.e., circumstances calling for more lenient treatment like long service, lack of previous offences, admission of wrongdoing and sincere remorse.

Setting the Stage

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 employee manual or individual employment contract.

A basic progressive discipline policy provides for at least 4 levels of punishment: verbal warning, written warning, suspension and termination. But there’s no one way to do it and policies vary depending on the organization and collective agreement.

For example, the penalty for a first offence may be counseling instead of a warning; or, there may be an intermediate penalty like demotion between suspension and termination.

How to Impose Progressive Discipline

For simplicity's sake, let's focus on the plain vanilla 4-level policy applied to safety infractions. Here's how to impose each level of punishment.

Step 1: Verbal Warning

Employees who commit safety violations should get at least one verbal warning. A verbal warning is 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 4 things:

Explain specifically what the employee did or didn't do and why it's a problem.

Ask for an explanation. You might find out that the offence is the result of a misunderstanding. For example, the employee may not have been trained how to use the equipment properly and the warning should be directed to the supervisor. Lack of communication can lead to precisely what you want to prevent—a grievance. And 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.

Write a memo 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 2: Written Warning

If the employee commits another safety violation, issue a written warning.

- Remind the employee of previous warnings and briefly describe the circumstances;
- Say that you're writing this letter because of failure to heed the warning;
- Explain what the employee did wrong; and
- Warn of further 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 3: Suspension

When and if the employee commits another safety infraction, send a formal suspension letter:

- Describing the previous incidents;
- Indicating how many days you're suspending the employee without pay (or other punishment you're imposing); and
- Making 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 4: Dismissal

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 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, let the employee know he's 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 under the collective agreement. Setting down all your reasons in writing might box you in at an arbitration hearing or court case.

Conclusion

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 almost surely have the "sympathy" advantage. The only way to overcome these obstacles is to produce records like memos to files, written notices, notes summarizing conversations, etc. and 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.