

Progressive Discipline Policy

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When to Use This Policy

Employers should have a written policy on discipline and discharge that may include a list of violations that will typically be met with discipline. Employers should ensure that their options remain flexible, however, and can achieve that by communicating to employees that the employer will generally attempt to provide progressive discipline, but need not do so. Internally, employers may decide to discipline or terminate employees, depending on the particular facts and circumstances of a situation.

Any written progressive disciplinary policy should avoid using words that create an obligation on the part of the employer such as "must," "will," and "shall." Instead, the employer should strive to use words like "generally," "typically" and "usually" when describing the actions it may take in response to instances of misconduct.

Importantly, the policy should specify that it does not modify the at-will nature of employment.

Below is a model policy that should be further tailored to fit the employer's specific needs

Progressive Discipline Policy

**** This document is not intended to, nor does it, in any way, alter the at-will nature of your employment with [Enter Employer Name]. [Enter Employer Name] retains the right to terminate your employment at any time, for any reason.****

Whenever a group of people work together, there must be standards of conduct for common guidance and efficiency. **[Enter Employer Name]** hopes that common sense will guide you as to the proper thing to do in most cases, so we have listed below only a few specifics regarding what we expect from you as an employee of **[Enter Employer Name]**.

Discipline may vary depending on, among other things, the severity of the offense, the circumstances under which the offense occurred, your duties, your length of service (seniority) with the company, and your overall work record, including any instances of prior misconduct and the discipline levied previously.

In order of severity, discipline can take one of the following forms: Counseling, Warning or Reprimand; Probation; Suspension (with or without pay); Suspension subject to discharge, or Discharge.

[Enter Employer Name] has no obligation to use any one or more of these forms of discipline prior to discharging an employee. This document does not alter or modify, in any way, the at-will nature of your employment at **[Enter Employer Name]**, nor does it create any contractual obligation on yours or **[Enter Employer Name]**'s part. **[Enter Employer Name]** retains the right to terminate your employment at any time, for any reason.

If you do receive the benefit of these methods of constructive counseling, warning or suspension, however, be sure to take advantage of the opportunity to learn from your mistakes and improve.

There are certain *major* offenses that may result in an immediate penalty of probation, or suspension subject to discharge, or discharge, without any prior counseling.

In other words, if you commit a major offense, all or any part of **[Enter Employer Name]**'s progressive counseling procedure may be omitted, at **[Enter Employer Name]**'s discretion. In order to avoid such severe consequences, employees should follow simple common sense guides and avoid major offenses such as, but not limited to, the following:

1. Failure or refusal to carry out orders or instructions.
2. Unsatisfactory work performance.
3. Failure to fulfill the responsibilities of the job to an extent that might or does cause injury to a person or damage to or loss of product, machinery, equipment, facilities, or other property of the Company.
4. Harassment of another employee of a sexual nature or otherwise, including but not limited to verbal or physical conduct, or unwelcome advances with regard to or on the basis of race, color, religion, creed, age, sex, national origin, marital status, disability, sexual orientation, or other classification protected by applicable law.
5. Violation of a safety, fire prevention, health, or security rule, policy or practice.
6. False, fraudulent, misleading or harmful statement, action or omission involving another employee, a customer, the Company or relations with the Company; or any action disloyal to the Company.
7. False, fraudulent, misleading or harmful statement, action or omission related to an employment application or any other information provided to or requested by the Company, whether oral or written; or refusal or failure to timely provide such information.
8. Unauthorized use of, removal of, theft of or damage to the property of the Company, an employee, an independent contractor, or a customer.
9. Threatened or actual physical violence.
10. The use of profane or abusive language.
11. Carrying any weapon while on Company business, jobsite, premises or property without authorization from the Company.
12. Violation of any of the provisions of the Company's Drug and Alcohol Policy.
13. Organized gambling, disorderly, or immoral conduct while on Company premises, jobsite or business.
14. Accepting or engaging in any outside employment with a competitor of the Company; or conducting or attempting to conduct any outside business while on the Company's premises or business.
15. Garnishments beyond the type and number protected by law.
16. Chronic, habitual, or excessive lateness or absenteeism.
17. An arrest, criminal complaint, summons to answer a criminal charge, statement of charges, indictment, criminal information or any other criminal charge or conviction of an employee, depending on the particular circumstances and the offense charged, including but not limited to the Company's judgment as to the potential risk to safety or health of employees, the security of Company premises and property, and/or the Company's reputation.

Tips

Utilizing progressive discipline for an employee who committed misconduct in the workplace is typically preferable to simply terminating the employee, particularly where the employee is otherwise a productive and valuable member of the company. Use of this or a similar policy allows the employer to build an evidentiary record in the event the employee is terminated or resigns and then initiates a legal dispute. A detailed personnel file, including past instances of misconduct and progressively severe discipline shows that the employer gave the employee several opportunities to correct his/her behavior and that the decision to terminate employment was made after careful consideration.

Warning

Employees who have individual, written employment contracts should be disciplined or terminated in accordance with the terms of the contract. Employers should also strive to determine if any verbal or written promises to the employee in question have altered the at-will nature of employment. If the employee handbook promises that terminations will only occur for "just cause," for example, employers may need to abide by the obligations created.



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