

Progressive Discipline

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For IPMA

May 17, 2011

What is progressive discipline?

Progressive (corrective) discipline is a graduated system of penalties for repeated infractions

Conceptual Underpinnings of Progressive Discipline

- Like the collective bargaining process itself, progressive discipline assumes an ongoing relationship among the parties
- Assumes that the best interests of both employer and employee are served by maintaining the employment relationship, if possible
- Assumes “the punishment should fit the crime”

Conceptual underpinnings of progressive discipline:

- Ultimately, progressive discipline affirms the right of the employer to sever the employment relationship when an employee's continued misconduct indicates that sustained satisfactory workplace conduct is unlikely

Basic Elements of Progressive Discipline

- Pre-disciplinary action: Counseling/ coaching – making sure an employee knows what is expected and how to do what is asked of him or her

Basic Elements of Progressive Discipline

- Oral correction (sometimes called an oral warning) – letting the employee know that something is wrong
- Providing information the employee can use to correct undesirable performance

Basic Elements of Progressive Discipline

- ◉ Written counseling/warning – providing the employee with written notice that he/she is doing something he/she should not be doing, or not doing something that he/she should be doing, and that failure to correct may have disciplinary consequences
- ◉ Not usually part of the employee's permanent record (supervisor's file)

Basic Elements of Progressive Discipline

- ◉ Written Reprimand / Warning – first level of formal discipline
- ◉ Placed in personnel file – part of an employee's record, at least for awhile...

Basic Elements of Progressive Discipline

- Disciplinary Suspension – “serious discipline,” intended to send the message that failure to correct the problem could result in permanent loss of employment
- Usually small – one to three days

Basic Elements of Progressive Discipline

- Second Suspension -- often longer, 5-15 days

Basic Elements of Progressive Discipline

- ◉ Discharge for cause – “enough is enough”
- ◉ (But when is enough enough??)

Just Cause

- “No employee shall be disciplined or discharged except for just cause”

Just Cause

It sounds so straightforward ...

... but there is no single just cause
standard!

Just Cause: the Seven Key Tests (Following Arbitrator Carroll Daugherty)

1. Notice: Did the employer give the employee forewarning or foreknowledge of the possible or probably consequences of the employee's misconduct?
2. Reasonable Rule or Order: Was the employer's rule or managerial order reasonably related to (a) the orderly, efficient and safe operation of the business?

Just Cause: the Seven Key Tests

3. Investigation: Did the employer, before administering the discipline to an employee, make an effort to discover whether the employee did, in fact, violate or disobey a rule or order of management?
4. Fair Investigation: Was the employer's investigation conducted fairly and objectively?

Just Cause: the Seven Key Tests

5. Proof: Did the investigator obtain substantial evidence or proof that the employee was guilty as charged?
6. Equal Treatment: Has the employer applied its rules, orders and penalties even-handedly and without discrimination to all employees similarly situated?

Just Cause: the Seven Key Tests

7. Penalty: Was the degree of discipline administered by the employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense, and (b) the record of the employee's service with the employer?

Pitfalls of Progressive Discipline

1. The “off-the-record” past record: When the employer fails to put misconduct ON the record so that the employee is on notice and has the opportunity to correct his/her behavior
2. Do we ever forgive and forget? Does prior misconduct become “stale”?

Pitfalls of Progressive Discipline

3. Opportunity for Improvement: Fairness requires that the employee have the opportunity for "sober reflection" and a chance to correct the problem behavior
4. Failure to impose discipline in a timely manner (the perils of "enough rope")
5. Increase in penalty / double jeopardy

Helpful Tools

- Use the supervisory file – keep notes of problems, records of conversations, copies of written counseling – and refer to them when doing performance evaluations
- “Discipline Log” -- If you have to issue a formal reprimand, probably a good idea to start tracking disciplinary action to assure actual “progression”

Questions?