Effective Documentation and Employee Discipline

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Session Overview

- Legal pitfalls
- Common disciplinary mistakes
- Approaches to discipline
- Elements of due process
- Investigations
- Documentation techniques
- The disciplinary meeting
- Core principals of the process

Disciplinary Actions

- Your responsibility to help an Eee succeed.
- One of the least favorite yet most important responsibilities of a supervisor.
- By not addressing issues you are saying it is OK.
- A day of reckoning will come........

Avoiding Legal Problems

- Wrongful Discharge
  - Implied Contracts
  - Breach of Contract
  - Violation of Public Policy
- Discrimination
- Constructive Discharge
- Defamation
- Retaliation
Common Causes of Problems

- Not being properly trained
- Lack of proper supervision
- Personal problems
- Not aware of expectations or rules
- Got away with it before
- Disengaged attitude
- Wrong fit

Categories for Discipline

- Employees are doing something they should not be doing (misconduct) = Conduct-based discipline.
  - Violation of work rules, harassment, intoxication, fraud, misrepresentation, attendance, insubordination, etc.
- They are not doing something they should be doing (poor performance) = Performance-based discipline.

Common Mistakes to Avoid

- Providing untimely feedback
- Acting w/o all the facts
- Not addressing the problem directly
- Ignoring the issue
- “Sugar-coating” the problem
- No documentation
- Lack of follow-up

Approaches to Discipline

- Progressive Discipline
- Discipline Without Punishment
Progressive Discipline

- Oral warning
- Written warning
- Suspension
  - Last Chance Agreement
- Discharge

Discipline w/o Punishment

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<td>Reminder #1</td>
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Elements of Due Process

- **Knowledge** Eees have the right to know what is expected and what will be the consequences of their actions and future actions.
- **Consistency** Eees have the right to consistent and predictable Eer responses when a rule is violated. Don’t contradict your own policies.
- **Appropriate** The consequences match the offence.
- **Opportunity** An Eer should allow an Eee to respond before administering discipline.
- **Time Limit Reasonable** In most cases - should allow Eees a reasonable period to improve their performance.

Investigations

Prior to dispensing discipline:

- Make sure you have all the facts – don’t rely on hearsay gossip.
- Interview relevant witnesses – again just facts - who, what, when, where, how, etc.
- Interview the subject of your investigation.
- Maintain confidentiality.
- Organize any proof that you have.
- Document your process and findings.
Proper Documentation

- Relevant records would include notes regarding efforts to counsel the employee and any letters of warning, counseling forms, memos, performance improvement plans issued.
- Records should indicate specific, objective observations about an Eee's behavior and any communication with the Eee about this behavior.
- Performance Reviews – Honest & on time.

Benefits of Performance Reviews

- A tool for succession planning & development.
- Communicate corporate goals and expectations.
- Recognize and reinforce stellar performance.
- Identify ways to improve performance.
- Communicate deficiencies.
- Provide objective basis for raises, promotions, training, and other personnel actions.
- Provides documentation for employment actions.

Documentation Tips

- Outline only the critical facts.
- Who, what, when, where, and how.
- Specifically identify the rule or standard violated.
- Identify how the rule or standard was previously communicated to the employee.
- Identify any previous violations of the rule (including past counseling).

Documentation Tips Cont.

- Describe the legitimate business reason for enforcing the rule.
- Clearly describe any future expectations.
- Identify how the employer will help.
- Explain further consequences.
- Attach your exhibits.
- Identify the author and sign it.
- Have the employee sign and date the document.
- Control distribution of the memo.
Common Errors in Documentation

- No signatures or dates.
- Stating other than facts.
- Documenting state-of-mind offenses.
- Documenting vague and ambiguous consequences at the end of the memo.
- Forgetting the “e” in e-mails.

The Disciplinary Meeting

- Meet privately
- Remain calm & objective
- Don’t argue or lecture
- Focus on the behavior or performance – not the individual
- Provide an opportunity to explain
- Determine the facts
- Emphasize your expectations
- Focus on correction – not punishment
- If possible, mutually agree on a plan – seek Eee’s agreement

The Last Step: Termination

- Sometimes discharge is unavoidable.
- Terminating employees is one of the least favorite, but most important, tasks a manager has to perform.

Core Principles

- The majority of people want to do a good job, make a significant contribution to their company and be successful.
- Behavior is a function of its consequences. Managers are responsible for arranging positive consequences for those who perform well and meet expectations, and for arranging adverse consequences for those who choose not to do so.
- The critical step in correcting an Eee performance problem is to define – clearly and accurately - the gap that exists between actual performance and desired performance.
- The responsibility for defining the gap rests with the manager. The responsibility for closing the gap rests with the individual.
Core Principles Cont.

- We confront problems not only to achieve organization objectives but also because we owe it to the great majority of good Eees who are forced to shoulder the burden created by their non-contributing coworkers.

- Managing Eee performance problems holds Eees accountable for their actions, establishes a performance improvement plan that actively involves the company in the Eee’s rehabilitation and creates a defensible written record to demonstrate workplace due process.

- The fundamental purpose of discipline is not to punish misbehavior and enforce compliance - it’s to build individual responsibility and re-inspire commitment.

Our Discipline & Documentation Training for Supervisors

Training will not only ensure that your supervisors are engaging in effective methods but may also limit and prevent legal claims.

In a 1 hour program we will educate your supervisors and/or HR staff on:
- Potential liabilities and pitfalls
- Overview and parameters of the law
- Supervisors responsibilities
- The deference between a good v. bad disciplinary notice

This program can be presented on-site or in a webinar format.

Provide your supervisors with the proper tools.

Thank You!

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- For over fifty years, we have been a leader in the telecommunications industry in providing quality financial and business consulting services. Kiesling provides auditing, accounting, tax and financial and consulting services.

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